

Plenary Session 3: Beneficial Ownership Reporting: Transitional Period and Future Obligations

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Manager

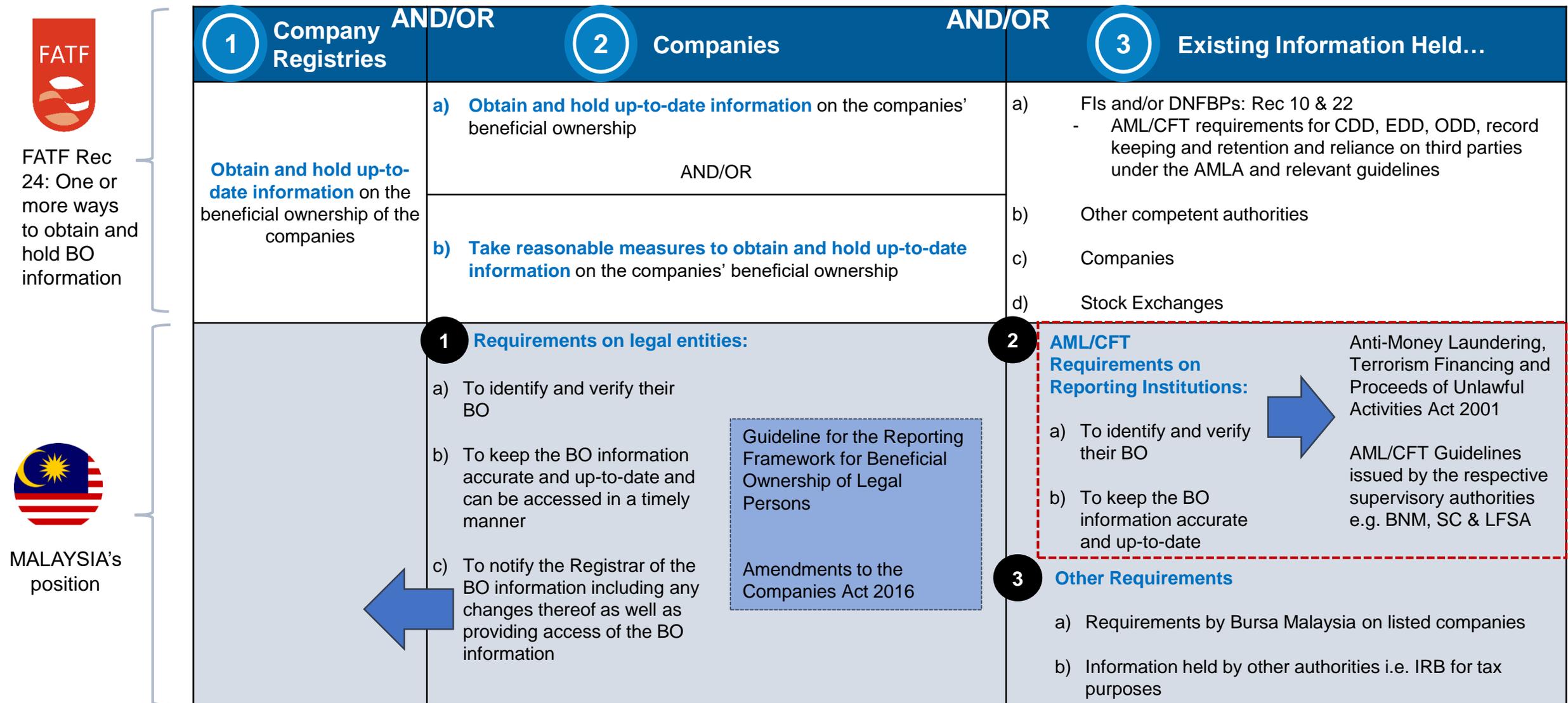
Financial Intelligence and Enforcement Department
Bank Negara Malaysia

Outline of Presentation

- FATF's Recommendations & Malaysia's Beneficial Ownership (BO) Framework
- BNM - BO Regulatory Requirements on Reporting Institutions (RIs) under AML/CFT Regime
- Supervisors Experience in Assessing the Implementation of BO Requirements
- Mapping BNM and SSM's Policies on BO

FATF Recommendations & Malaysia's BO Framework

Malaysian requirements on transparency of BO based on the FATF Recommendation



Revisions to Recommendation 24 is currently undertaken by the FATF:
<https://www.fatf-gafi.org/publications/fatfrecommendations/documents/white-paper-r24.html>

Regulatory and supervisory/ monitoring approaches

BO Requirements on RIs under AML/CFT Regulatory Regime

Invocation of AML/CFT requirements on RIs under the AMLA and regulatory instruments

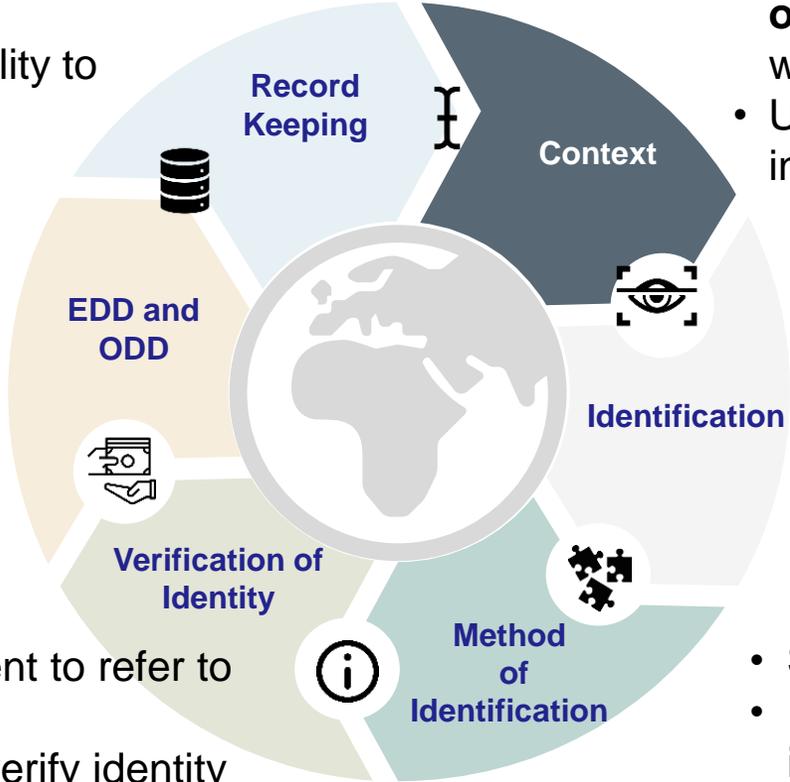
AMLA

POLICY DOCUMENT

GUIDANCE

FAQ

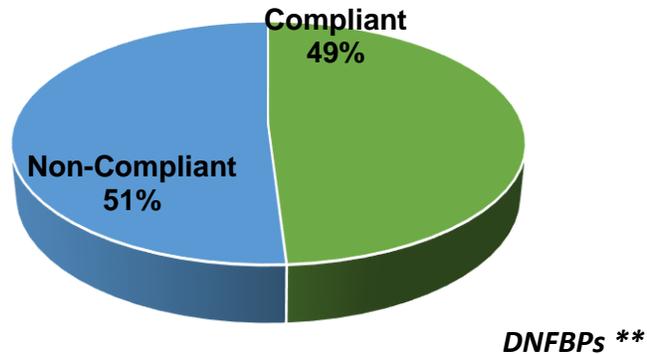
- **Best Practices** on **Record keeping** of beneficial ownership information
- **Centralisation** of information and ability to identify anomalies
- **EDD** for all **nominee** services provided by professional intermediaries under the revised Policy Document
- Effective **ODD** (identity and monitoring)
- **Verification** obligations i.e. requirement to refer to reliable and independent document
- Example of reasonable measures to verify identity of BO including open sources information
- Good practices e.g. measures when fail to verify BO, conducting self assessment



- Definition of BO comprises of **ownership and control** elements, which in line with the FATF Standards
- Understanding of beneficial ownership in different types of entities
- Through the FATF recommended cascading steps , **ownership and control**
- **Source documents** to identify BO
- Relationships and circumstances indicating BO
- Definition and illustration of reasonable measures, foreign BO and good practices

Challenges noted in the implementation by reporting institutions (RIs) and ongoing measures undertaken to address those challenges.

RIs' Compliance with BO Requirements*



However, the gatekeepers (i.e. trust companies, company secretaries, lawyers and accountants) have shown better compliance with BO requirements when compared to other DNFBP sectors

* Data collected in 2020

** DNFBP includes DPMS, REAs, gaming outlets and gatekeepers. Out of 2036 RIs of DNFBPs which have legal person clients

❌ Common Challenges

- Awareness and understanding of the BO requirements
- Identification of higher risk relationship (e.g. gatekeepers)

✅ Mitigating Measures Undertaken in 2020

- Issuance of Guidance on BO and FAQs to assist RIs in better understanding and implementation of BO requirements
- Updating of requirements for higher risk RIs
- Sharing of red flags
- Organising awareness sessions and webinars to increase the awareness of DNFBPs
- Conduct on-site and off-site examination to assess RI's compliance levels, and mitigate gaps

Mapping BNM & SSM Policies on BO

Both policies on BO complements one another, in maintaining Malaysia's compliance to FATF standards.

BNM

Anti-Money Laundering, Countering Financing of Terrorism and Targeted Financial Sanctions for Designated Non-Financial Businesses and Professions (DNFBPs) & Non-Bank Financial Institutions Policy Document (Policy Document)

Competent Authority under AMLA

SSM

Guideline for Reporting Framework for Beneficial Ownership of Legal Persons (SSM's BO Guideline) issued pursuant to Companies Commission of Malaysia Act 2001 (CCMA)

Company Registrar

Policy/ Guidelines

Role of BNM/SSM

Details of Both Policies

Any natural person(s) who ultimately owns or controls a customer (in this case referring to a legal person) on whose behalf a transaction is being conducted.

Reporting institutions under the 1st Schedule of AMLA 2001 including company secretaries

- To maintain the BO information
- Not required to submit to BNM, unless requested



> 25% of equity interest (direct or indirect)

Definition of Beneficial ownership

The ultimate owner of the shares and does not include a nominee of any description.



Both concepts are in line with international standards under the FATF

Applicability

All companies and limited liability partnerships (LLPs) as defined in the Registrar's Guidelines for the Reporting Framework for Beneficial Ownership of Legal Persons (SSM's BO Guideline)

Reporting requirement



- To submit on annual basis
- To notify the Registrar of any change in BO information

Threshold of ownership

Not less than 20% of shares or voting shares (direct or indirect)

Meeting the higher threshold would automatically render both thresholds are met



- **AML/CFT and TFS for DNFBPs and NBFIs**
http://amlcft.bnm.gov.my/publication/AML_CFT_TFS_PD_for_DNFBPs_and_NBFIs.pdf
- **FAQs on AML/CFT and TFS for DNFBPs and NBFIs (NEW)**
http://amlcft.bnm.gov.my/document/DNFBP/faq/02.FAQs_DNFBP_01092020.pdf
- **Guidance on Verification of Individual Customers for Customer Due Diligence (NEW)**
http://amlcft.bnm.gov.my/document/DNFBP/faq/03.Guidance_on_Verification_01092020.pdf
- **Guidance on Beneficial Ownership (NEW)**
http://amlcft.bnm.gov.my/document/DNFBP/faq/04.Guidance_on_BO_01092020.pdf

Thank You

If you have any question regarding the contents of the presentation, please email to nirmala@bnm.gov.my or pang@bnm.gov.my

Techniques Used to Obscure Beneficial Ownership



shell companies, especially in cases where foreign ownership is spread across jurisdictions



complex ownership and control structures



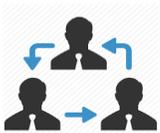
bearer shares and bearer share warrants



formal nominee shareholders and directors where the **identity of the nominator is undisclosed**



informal nominee shareholders and directors, such as close associates and family



trusts and other legal arrangements which enable a **separation of legal ownership and beneficial ownership of assets**



intermediaries in forming legal persons, including professional intermediaries

Source: <https://www.fatf-gafi.org/media/fatf/documents/reports/FATF-Egmont-Concealment-beneficial-ownership.pdf>

BO Obligations on RIs as part of Customer Due Diligence (CDD)

Identification and verification of BO by RIs under the Policy Document issued by BNM



- Refers to any **natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted.**
- It also includes those **natural persons who exercise ultimate effective control over a legal person or arrangement.**

Reference to 'ultimately owns or control' or 'ultimate effective control' refers to situations in which ownership or control is exercised through a chain of ownership or by means of control other than direct control.



On Legal Persons



On Legal Arrangements

Identify and take reasonable measures to verify identity of BO

(a) Identity of the **natural person who ultimately has a controlling ownership interest in a legal person.**

At a minimum, include:

- Identification of directors/shareholders with **equity interest of more than 25%;**
- Proper authorisation for persons authorised to represent the company (letter of authority/ directors' resolution); and
- NRIC / Passport to identify the authorised person(s)

(b) If there is **a doubt on the controlling interest** - the identity of the **natural person exercising control through other means**

(c) **Where there is no natural person identified** - the identity of the natural person who holds the **senior management position**

For trusts, the identity of:

- Settlor;**
- Trustee(s);**
- Protector (if any);**
- Beneficiary;**
- Class of beneficiaries;** and
- Any other **natural person exercising ultimate effective control over the trust** (including through the chain of control / ownership).

Identification & verification of the BOs up to the LEVEL OF NATURAL PERSONS who have control