



FREQUENTLY ASKED QUESTIONS

BENEFICIAL OWNERSHIP REPORTING FRAMEWORK OF COMPANIES

NO	QUESTION	ANSWER
1	<p>What are the provisions relating to beneficial ownership reporting under the Companies (Amendment) Act 2024 [Act A1701] (Act A1701) and what are the enforcement dates?</p>	<p>The provisions relating to beneficial ownership reporting are found under the new Division 8A and amendments to section 68 of the Companies Act 2016 (CA 2016).</p> <p>These provisions will be implemented in two (2) phases.</p> <p>The new Division 8A will be enforced on 1 April 2024 whilst paragraphs 68(3)(ia) & (ib) and paragraphs 576 (2)(ha) & (hb) will be enforced on a later date to be determined by the Registrar.</p>
2	<p>Are there any guidance to be referred to by companies for the purpose of complying with the enhanced beneficial ownership reporting framework?</p>	<p>In addition to the relevant provisions under the CA 2016 (as amended by Act A1701), companies can refer to the 'Guidelines for the Reporting Framework for Beneficial Ownership of Companies' (Guidelines) and 'Case Studies and Illustrations of the Guidelines for the Reporting Framework for Beneficial Ownership of Companies'.</p> <p>Both documents are available on SSM's website: (https://www.ssm.com.my/Pages/Le</p>

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		gal_Framework/Companies-Act-2016.aspx)
3	After the enforcement of Act A1701 on 1 April 2024, can existing companies still refer to 'Guideline for the Reporting Framework for Beneficial Ownership of Legal Persons' which was issued on 1 March 2020 (revised on 17 December 2020)?	Companies must only refer to the "Guidelines for the Reporting Framework for Beneficial Ownership of Companies" issued on 1 April 2024 to complement the amendments made via the Act A1701. This Guidelines replaces and supersedes the previous set of Guidelines.
4	What types of companies that will be subjected to the beneficial ownership reporting framework under the CA 2016?	All companies including foreign companies registered under the CA 2016 are subjected to the beneficial ownership reporting framework under the CA 2016.
5	Are there any companies exempted under section 60E of the CA 2016?	Currently there are no exemption given to any class of companies under section 60E of the CA 2016 as there are no other written law that imposes similar requirements as the new Division 8A. As such, all companies must fully comply with the beneficial ownership reporting framework under the CA 2016.
6	Who is a beneficial owner?	Beneficial owner is an individual or natural person who – <ul style="list-style-type: none"> (a) ultimately owns or control a company through shares in the company; or (b) control by other means. Therefore, a corporate entity cannot be named as the beneficial owner of a company.
7	For an individual to be identified as the beneficial owner of a company, must he fulfil all the criteria mentioned in the	A person is a beneficial owner if he meets one (1) or more criteria stated in the Guidelines.

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	'Guideline for the Reporting Framework for Beneficial Ownership of Companies' (the Guidelines)?	For the purposes of the beneficial ownership reporting where the individual meets more than one (1) criteria, each criterion must be recorded accordingly.
8	Which class of shares must be considered in determining whether a person controls through ownership of shares?	In determining whether an individual is a beneficial owner, the shares to be considered must be ordinary shares.
9	Can an individual become a beneficial owner if that individual holds less than 20% of the shares?	<p>Yes, an individual can become a beneficial owner even though that individual holds less than 20% of the shares.</p> <p>Under criteria F in the Guidelines, even though an individual holds less than 20% shares in a company, he could still be a beneficial owner of the company if he fulfils criteria C, D or E.</p>
10	What is the difference between Criteria A and Criteria B?	<p>Criteria A refers to the shareholding of ordinary shares as reflected in the register of members.</p> <p>Criteria B refers to the voting rights accorded to such ordinary shares which may differ as may be provided in the constitution.</p>
11	Can a company have more than one (1) beneficial owner?	Yes, it is possible for a company to have more than one (1) beneficial owner.
12	Who should determine the beneficial owners of a company?	<p>Generally, the company and its board of directors are responsible for the maintenance and reporting of the beneficial ownership information.</p> <p>Nevertheless, the company may appoint any person to carry out such functions. The determination of beneficial owners must be carried out based on reasonable measures as specified in the Guidelines.</p>

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		<p>Upon obtaining the beneficial ownership information, the company secretary must update the register of beneficial owners to be maintained by the company.</p>
13	<p>If a person is unable to determine the date he becomes a beneficial owner, what is the date to be stated in responding to the notice given to him?</p>	<p>The provision relating to beneficial ownership reporting was first introduced when the CA 2016 was enforced on 31 January 2017.</p> <p>In this regard, if the person can determine the date in which he becomes a beneficial owner, he is required to state that actual date when he becomes the beneficial owner of the company even if the date was before 31 January 2017.</p> <p>However, if the individual has taken reasonable steps to ascertain the date he becomes a beneficial owner but still unable to do so, the date that he becomes a beneficial owner is deemed to be 31 January 2017, being the enforcement date of CA 2016.</p> <p>In the case where a person has reasonable cause to believe he is a beneficial owner at a date after 31 January 2017, then he needs to state that later date.</p>
14	<p>Is it mandatory for companies to serve the notices under section 60C of the CA 2016?</p>	<p>Companies must serve the notices under subsections 60C(1), (2), (3), (5) and (6) (whichever is applicable) and are required to send the notice under subsection 60C(1) at least once a year.</p> <p>This is a requirement as stated in paragraph 21 of the Guidelines.</p>

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15	Is there any specific method to send the notices under section 60C of the CA 2016?	<p>In the absence of any specific method to send notices under section 60C, a company may choose to send the notices and documents in any manner the company deems practical subject to any relevant requirements in their constitution (if any).</p> <p>Any notices issued under section 60C and the responses received can be in either in physical or electronic form.</p> <p>The information relating to the notices and responses must be recorded in the register of beneficial owners.</p> <p>The company must also ensure proper record keeping on the feedbacks received together with supporting documents as required under Part IV of Section 4 and Part I of Section 5, of the Guidelines.</p>
16	In a situation where a company did not get any response to any notices sent under section 60C of the CA 2016, how many attempts will be considered as sufficient?	<p>In the event no responses are received by the company after notice under section 60C has been issued, at least one (1) more attempt must be made by the company to reach out to the members or any person identified by the company.</p> <p>The records of the notices sent out must be kept as supporting documents together with the register of beneficial owners.</p>
17	Can a company solely rely on the information received from its beneficial owner instead of sending out notices as empowered under section 60C of the CA 2016?	No, the information received from the beneficial owner does not absolve the company from its obligation to send notices under section 60C.
18	With the enforcement of Act A1701 on 1 April 2024, do companies need to start the	Act A1701 introduces a comprehensive beneficial ownership reporting framework where it includes

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	<p>process of identifying their beneficial owners all over again even though they have complied with the previous framework under the "Guideline for the Reporting Framework for Beneficial Ownership of Legal Persons" (previous Guidelines)?</p>	<p>the requirements reflected in the previous Guidelines. The main differences between the previous and the new framework are:</p> <ul style="list-style-type: none"> (a) Criteria F where companies may identify an individual as a beneficial owner when such individual has less than 20% shares or voting shares and did not fall under Criteria A or B but has control under Criteria C, D or E; (b) Clarification on the requirement to name Senior Management in Place of Beneficial Owner in certain circumstances. <p>As such, companies need not conduct further assessment if the introduction of paragraphs (a) and (b) above does not affect the beneficial ownership information recorded in the register of beneficial owners.</p>
19	<p>How should public listed companies comply with section 60C of the CA 2016?</p>	<p>Public listed companies must give notice to:</p> <ul style="list-style-type: none"> (a) any of their members holding not less than 20% of shares in the company; and (b) any member or any person whom they have reasonable ground to believe has ultimate effective control over the companies.
20	<p>What is the time frame given to a newly incorporated company to comply with the beneficial ownership reporting framework?</p>	<p>Newly incorporated companies will have sixty (60) days from the appointment of company secretary to ensure the beneficial ownership information is obtained and recorded in the register of beneficial owners.</p>

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		<p>The 60-day period shall include the 14-day period to lodge the beneficial ownership information with the Registrar from the date of the record.</p>
21	<p>As paragraphs 68(3)(<i>ia</i>) & (<i>ib</i>) and paragraphs 576 (2)(<i>ha</i>) & (<i>hb</i>) will only be implemented later, how will companies submit the beneficial ownership information together with annual return starting from 1 April 2024 onwards?</p>	<p>Companies will submit its beneficial ownership information together with annual return based on the existing requirements of MBRS.</p> <p>Based on the existing requirements, companies must submit the beneficial ownership information with the annual return if -</p> <ul style="list-style-type: none"> (i) the company has a beneficial owner either through a nominee or trustee; or (ii) the legal owners are not individuals (corporate shareholders). <p>However, if all legal owners of the company are individuals and they are also the beneficial owners in their own right, Annexure for 'Particulars of Beneficial Ownership' need not filled in and lodged.</p> <p>In such case, please ensure Section F(f) in the AR be struck out.</p> <p>In addition, please refer to PD No. 7/2021 issued on 8 March 2021 for guidance.</p>
22	<p>What is the time frame for companies to lodge their beneficial ownership information with the Registrar after A1701 is enforced?</p>	<p>Companies are given a 3-months' time frame i.e. from 1 April 2024 until 30 June 2024.</p>
23	<p>What must a company do if there are changes to the</p>	<p>There is no limitation for the company to lodge beneficial ownership</p>

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	beneficial ownership information within the 3-month stipulated time frame after such information was lodged with the Registrar?	<p>information with the Registrar during the stipulated three (3) months' time frame.</p> <p>The company can submit and update the beneficial ownership information with the Registrar anytime during the three (3) months period without the need to adhere to the 14 days lodgement period from the date on which the information is recorded in the register of beneficial owners of the company.</p>
24	Will SSM take any enforcement action during the stipulated time frame?	No.
25	What are the expectations on companies after the stipulated time frame ended?	<p>Companies must ensure their continuous obligation to maintain the register of beneficial owners by obtaining, identifying, verifying, keeping the information up to date and recording the beneficial ownership information in the register of beneficial owners.</p> <p>The records must be properly maintained including the record of any changes to the particulars of the beneficial ownership information as well as notify such changes with the Registrar.</p> <p>After the stipulated time frame has ended, there will not be any extension of time granted for failure to lodge beneficial ownership information with the Registrar and late lodgement penalty will be imposed.</p>
26	In which circumstances that allow companies to declare its senior management in place of beneficial owner?	Companies are allowed to declare its senior management in place of beneficial owner in the following circumstances:

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		<p>(a) the company has no beneficial owner;</p> <p>(b) the beneficial owner of the company cannot be identified; or</p> <p>(c) the company is still in the process of obtaining its beneficial ownership information.</p>
27	Can a company name more than one (1) individual in their senior management for the purpose of beneficial ownership reporting framework?	Yes.
28	Does a company need to update its beneficial ownership information if any of its shareholders passed away?	<p>If a shareholder who is also a beneficial owners passed away and an Administrator or Executor has been appointed, the beneficial ownership information must be updated with the Administrator or Executor's name.</p> <p>The name remains until the shares of the deceased has been transferred after the division of the deceased's property. Once the shares have been transferred to the new legal owner, the company must issue a notice under section 60C of the CA 2016 to determine who the new beneficial owner is.</p> <p>If the Administrator or Executor is yet to be appointed, the name of the deceased will remain in the register. The name of the deceased will remain in the register of beneficial owners until an Administrator or Executor is appointed.</p>
29	Does a company in the process of winding up/ liquidation	Once a company enters a winding-up/liquidation process, the company is

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	<p>subjected to the beneficial ownership reporting framework?</p>	<p>no longer subjected to the register of beneficial ownership framework.</p> <p>However, if the winding-up process is stopped or the dissolved company is being reinstated, the company will be subjected to the beneficial ownership reporting framework and the beneficial ownership information must be updated.</p>
30	<p>Will a company acting as a trustee pursuant to the Trust Companies Act 1949 be subjected to the beneficial ownership reporting framework?</p>	<p>Under the current legal framework, trustee companies themselves are subjected to the beneficial ownership reporting framework under the CA 2016.</p> <p>SSM will issue a separate guidelines on legal arrangements specifically for trust business or trust arrangement under the Trust Companies Act 1949.</p> <p>In the future, trust companies will be subjected to two (2) different frameworks on beneficial ownership.</p>
31	<p>Who can have access to the registry of beneficial owners and register of beneficial owners?</p>	<p>The register of beneficial owners is kept by companies. Only competent authorities, law enforcement agencies, beneficial owners and persons authorised by the beneficial owners will have the right of access to the register of beneficial owners.</p> <p>The Registry of beneficial owners consists of beneficial ownership information lodge and maintained with the Registrar. Competent authorities, law enforcement agencies, public bodies carrying out Government procurement, beneficial owners and persons authorised by the beneficial owners can have access to the beneficial ownership information lodged with the Registrar.</p>

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		The Minister will prescribe via a regulation of any person or class of persons that will have access to the register of beneficial owners and beneficial ownership information lodged with the Registrar.
32	Can auditors have access to the register of beneficial owners by virtue of his duty to form an opinion on the registers maintained by the company including subsections 266(3), (4), (5) and (12) of the CA 2016?	<p>No, auditors are not required to state in his report particulars of any deficiency, failure or shortcoming in respect of the register of beneficial owners.</p> <p>Therefore, auditors do not need to have access to the register of beneficial owners together with its related information and explanations for the purposes of their audit.</p>
33	Can the templates under Annexure A in the Guidelines be modified for the purpose of identifying a beneficial owner?	Yes. The templates serve as guidance only and it can be adapted in accordance with the facts and circumstances of each company. However, please ensure all important information based on the relevant provisions in the Companies Act 2016 and the Guidelines is obtained and recorded.