



Session 9: BENEFICIAL OWNERSHIP: FRAMEWORK AND EXPECTATIONS

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BACKGROUND PERSPECTIVE

- CA 2016 introduces beneficial ownership reporting through the Annual Return
- Companies are required to declare:

“*that none of the members of the company is holding shares as a nominee or trustee.”

(If any of the members of the company is holding shares as a nominee or trustee, annex a separate list of information relating to beneficial ownership.)

BACKGROUND PERSPECTIVE

- The implementation of section 241 on 15 March 2019 imposes an obligation on company secretaries as reporting institutions.
- Duty to comply with the requirements of the AMLATFAPUAA 2001 when carrying out certain activities
- The obligations is applicable to ALL practising certificate holders

DEFINITION OF BENEFICIAL OWNER

Definition of 'beneficial owner' under section 2	"The ultimate owner of the shares and does not include a nominee of any description."
Definition of 'interest in shares' under section 8(4)	<p>"A person shall be deemed to have an interest in a share where a body corporate has an interest in a share and—</p> <ul style="list-style-type: none">(a) the body corporate is, or its directors are accustomed, or is under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that person in relation to that share;(b) that person has a controlling interest in the body corporate; or(c) that person or his associates, or that person and his associates are entitled to exercise or control the exercise of not less than twenty per centum of the votes attached to the voting shares in the body corporate."

ISSUES FACED BY INDUSTRY

- Lack of guidance on the definition of BO
- Who is responsible for the reporting
- Timeliness, accuracy of reporting
- Other implications?

PROPOSED BO REPORTING FRAMEWORK

Proposal #1: Definition of BO

(1) Company (except for CLBG)

An individual is deemed to be a BO or have control over a company if he fulfills one or more of the tests below:

- (a) Directly or indirectly owns more than 20% shares;
- (b) Directly or indirectly have interest more than 20% shares;
- (c) Holds direct or indirect more than 20% of the voting shares;
- (d) Have the right to exercise significant control whether formal or informal over the company or its directors;
- (e) Is a member of the entity and, under an agreement with another member of the entity, controls alone a majority of the voting rights in the entity; or
- (f) Has the right to exercise, or actually exercises dominant influence or control over the entity.

PROPOSED BO REPORTING FRAMEWORK

Proposal #1: Definition of BO

(2) Company Limited by Guarantee (CLBG)

An individual is deemed to be a BO or have control over the CLBG after fulfilling either one or more tests as follows:

- (a) Have the right to exercise significant control whether formal or informal over the company or its directors;
- (b) Have the right or power to directly or indirectly appoint or remove a director; or
- (c) Has the right to exercise, or actually exercises dominant influence or control over the entity has controlling interest.

PROPOSED BO REPORTING FRAMEWORK

Proposal Scope of Reporting #2:	The following entities are within the scope of reporting: (a) Companies incorporated under the CA 2016, unless exempted; (b) Foreign companies registered under the CA 2016, unless exempted;
Proposal Exempted Entities #3:	Exempted entities: (a) Listed companies on a stock exchange either local or foreign exchange; (b) Financial institutions;
Proposal Access to BO Information #4:	Access will be granted to the following person: (a) Competent authority and law enforcement agencies; (b) A beneficial owner whose name has been entered in the company's register; (c) The legal owner whose BO has been disclosed.

PROPOSED BO REPORTING FRAMEWORK

Proposal #5: BO Information Entry Point

(1) Local Company

- (a) Duty to lodge annual return together with the BO information;
- (b) New companies will lodge the BO information within 30 days from the appointment of company secretaries;
- (c) The Registrar will invoke section 56(6) (6 months from the effective date) for existing companies to obtain the BO information from its members and then to notify the Registrar within 14 days from the date the companies received the information;
- (d) Companies shall notify the Registrar of the changes in the particulars of the register within 14 days from the date of change.

(2) Foreign Company

- (a) Duty to submit annual return together with BO information;
- (b) Duty to submit the BO information during the registration stage for new foreign company;
- (c) Duty to submit an up-to-date BO information to the Registrar within 14 days from the date of the changes.

PROPOSED BO REPORTING FRAMEWORK

Proposal #6: Verification & Lodgement of BO Information

- (1) It shall be the duty of the company secretary to ensure BO information is lodged, accurate and up-to-date and can be assessed in timely manner.
- (2) It shall be the duty of a company to keep supporting documents as the basis for the verification of information either in physical or softcopy form.