

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

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OVERVIEW

- Company Registry's Role
- Legal framework on Beneficial Ownership in Malaysia
- Guideline for the Reporting Framework for Beneficial Ownership of Legal Persons
- Proposed Amendments to the Companies Act 2016
- Lessons Learnt

COMPANY REGISTRY'S ROLE



Registers & Regulates
Legal Persons



- Companies
- Limited liability partnerships
- Partnerships
- Sole proprietors

Keeps facility to supply
corporate information



**BASIC INFORMATION &
other corporate information**

Publicly available



Limited only to
Law Enforcement
Authorities



**BENEFICIAL OWNERSHIP
INFORMATION**

LEGAL FRAMEWORK ON BENEFICIAL OWNERSHIP

COMPANIES ACT 2016 [ACT 777]

Enforced on 31 January 2017

Definition	Reporting framework	Submission of BO information
<ul style="list-style-type: none"> ▪ Sec. 2 to be read together with sec. 8 ▪ Ultimate owner of shares ▪ Interest & control in shares 	<ul style="list-style-type: none"> ▪ Secs. 51 & 56 ▪ Power to request BO information from shareholders ▪ To record the BO information as part of Register of Members ▪ Keep at registered office 	<ul style="list-style-type: none"> ▪ Sec. 68 ▪ Declaration in annual return ▪ BO information must be lodged if shares are held by trustees or nominees

LEGAL FRAMEWORK ON BENEFICIAL OWNERSHIP

GUIDELINES FOR THE REPORTING FRAMEWORK FOR BENEFICIAL OWNERSHIP OF LEGAL PERSONS

Effective on 1 March 2020

Objectives

- To assist companies in complying with the BO reporting requirements
- To establish parameters for reporting requirements and continuous reporting obligations

Coverage Area

- Application & exemption
- Main principles and obligations
- Criteria to identify a BO
- Reasonable measures to be taken in identifying a BO
- Transitional period

APPLICATION & EXEMPTION

- The guidelines is applicable to all companies unless exempted
- Exempted companies are:
 - (a) Companies licensed by the Central Bank of Malaysia
 - (b) Companies regulated under the securities laws
 - (c) Companies whose shares are quoted on a stock exchange
 - (d) Companies whose shares are deposited in the central depository

MAIN PRINCIPLES & OBLIGATIONS UNDER THE GUIDELINES



Identify, obtain & verify the BO Information



Record the BO Information



Keep the BO Information accurate & updated



Update changes to the BO Information & notify the Registrar

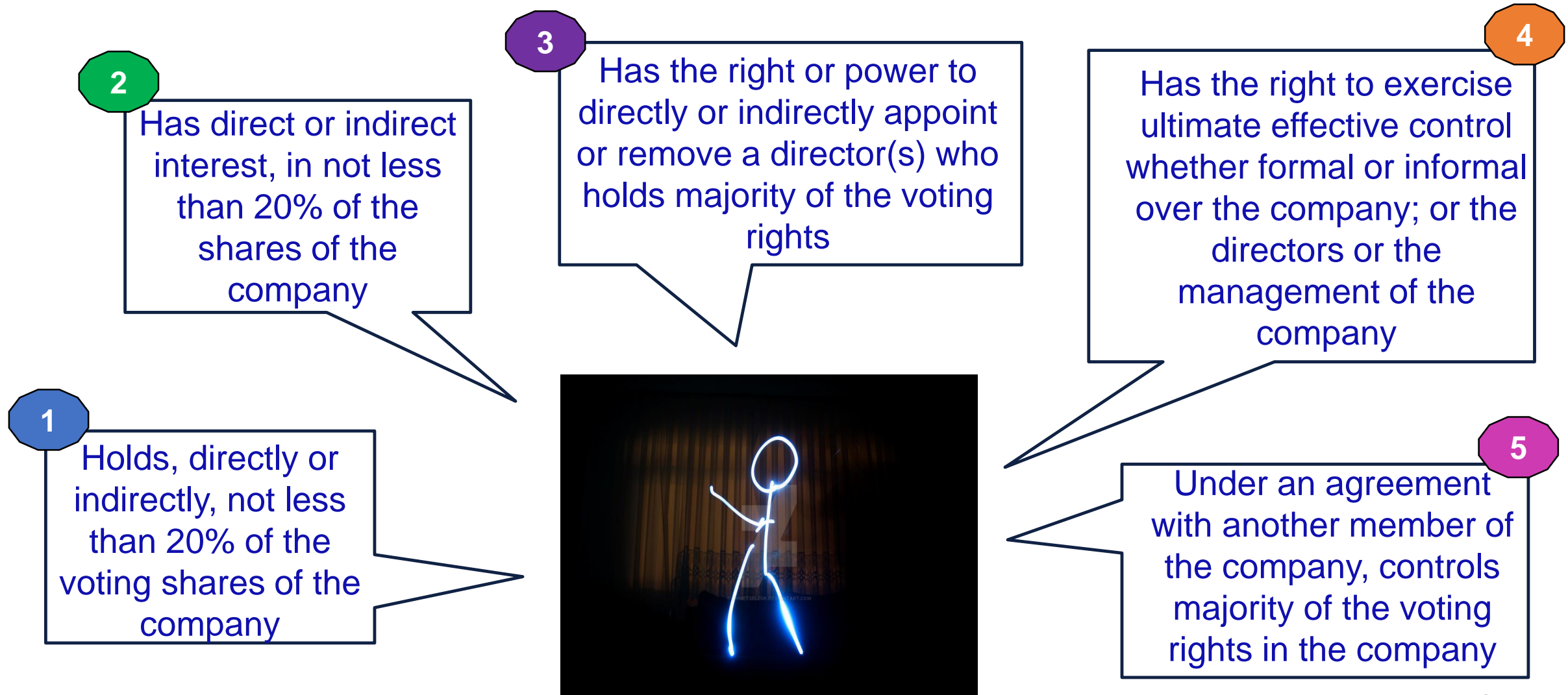


Keep the BO Information at the registered office or where the ROM is kept



Give access to law enforcement agencies, the BO & authorized persons

CRITERIA TO IDENTIFY A BENEFICIAL OWNER



REASONABLE MEASURES TO IDENTIFY A BENEFICIAL OWNER



Consider interest in the entity held by individual/ corporate entity/trust



Review all documents/ information available at the company's level



Sending out notices under subsection 56(1), (2) or (3)



Consider any evidence to show interests or rights held through variety of means



Internal policy to require shareholders/ partners to notify the entity



Any other actions that can be taken depending on the company

TRANSITIONAL PERIOD

BO REPORTING TIMELINE

Transitional Period

Entity to obtain, verify & keep the BO information at its level

Post Transitional Period

Registrar will invoke his power under section 56(6) of the CA 2016 & companies will have 14 days to submit the BO information

***CURRENT STAGE** – the transitional period of 31 December 2020 has been extended to coincide with the implementation of the proposed Companies (Amendment) Bill & the Limited Liability Partnerships (Amendment) Bill (via announcement made on 17 December 2020)

AMENDMENT TO THE COMPANIES ACT 2016

Register of BO

- ⑩ Requirement for companies to keep a separate register of beneficial ownership
- ⑩ Notify the Registrar of any changes in the Register

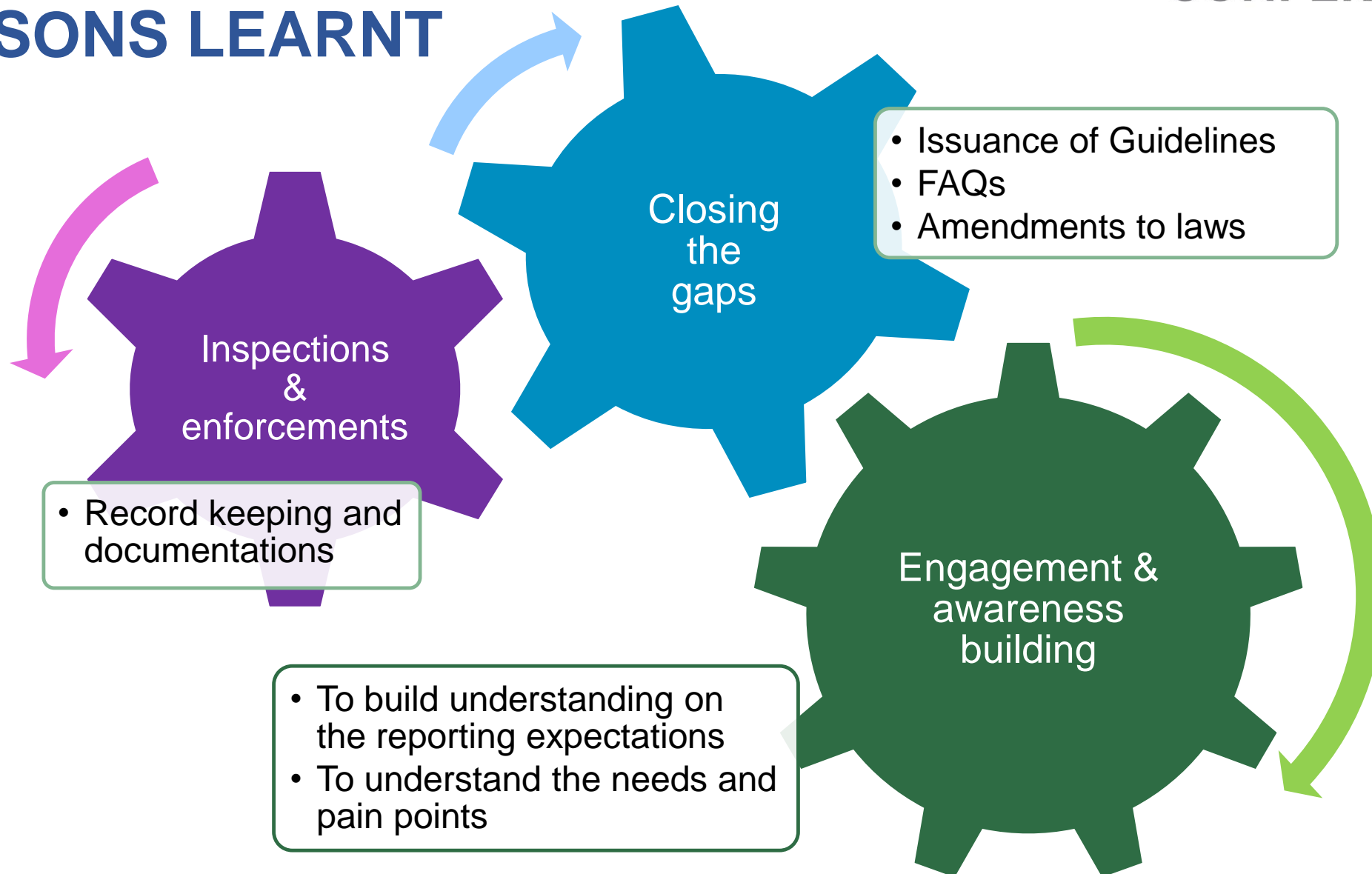
Additional Powers to Companies

- ⑩ To request BO information from any person who knows the identity of the BO
- ⑩ To request information from BO when there is changes
- ⑩ To request BO to correct information

Obligation of BO

- ⑩ If a person believes that he is BO, he is required to inform the company & provide the relevant information accordingly
- ⑩ A BO must inform the company on changes of his particular including when he ceases to be a BO

LESSONS LEARNT



THANK YOU