



BANK NEGARA MALAYSIA
CENTRAL BANK OF MALAYSIA



SURUHANJAYA SYARIKAT MALAYSIA
COMPANIES COMMISSION OF MALAYSIA
(Agensi di bawah KPDNHEP)

Requirements of BNM and SSM on Beneficial Ownership of Legal Persons

Applicable to: Company Secretaries

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PART A: Overview

1.0 Introduction

1.1. Corporate vehicles (legal persons) play an essential and legitimate role in the economy. However, under certain circumstances, they may be misused for illicit purposes by criminals as legal persons present an attractive way to disguise and convert the proceeds of crime before introducing them into the financial system. Given the involvement of company secretaries in establishing and managing legal persons, the services provided by company secretaries are vulnerable to exploitation by criminals and other professional intermediaries involved in the schemes designed to obscure beneficial ownership and hence veiled the actual owner of the company.

1.2. The Financial Action Task Force (FATF) has established standards on transparency of beneficial ownership of legal persons to deter and prevent the misuse of legal persons through the following recommendations:

- a) **Recommendation 22 (read together with Recommendation 10 on customer due diligence)** requires designated non-financial businesses and professions (DNFBPs) including company secretaries to identify the beneficial owner, and take reasonable measures to verify the identity of the beneficial owner(s) of their customers; and
- b) **Recommendation 24** requires countries to ensure that adequate, accurate and timely information on the beneficial ownership of legal persons is made available and can be accessed by the competent authorities in a timely fashion.

2.0 Objective

2.1 The aim of this Reference Note is to provide greater clarity on the similarities and differences between the obligations of company secretaries on the requirements relating to beneficial ownership of legal persons as stipulated in the following guidelines:

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- a) **Anti-Money Laundering, Countering Financing of Terrorism and Targeted Financial Sanctions for DNFBPs and Non-Bank Financial Institutions Policy Document issued by Bank Negara Malaysia (BNM) (BNM's Policy Document)**¹ under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLA); and
- b) **Guideline for the Reporting Framework for Beneficial Ownership of Legal Persons issued by Companies Commission of Malaysia (SSM) (SSM's Guideline)** under section 20C of the Companies Commission of Malaysia Act 2001 (CCMA 2001).

2.2. Notwithstanding the different requirements and obligations imposed by the respective guidelines issued by BNM and SSM, both guidelines are intended to complement one another in strengthening the reporting transparency of beneficial ownership in Malaysia.

3.0 Disclaimer

3.1 This Reference Note is not intended to replace any requirements in either BNM's Policy Document or SSM's Guideline. The information provided in this Reference Note should not be regarded as exhaustive advice or information relating to the subject matter, nor should it be used as a substitute for legal advice. In the event where the information in any Act or subsidiary legislation differs from the information contained within this Reference Note, the information in such Act and subsidiary legislation shall prevail and take precedence.

3.2 The information contained herein is accurate as of the date of publication, 31 March 2022.

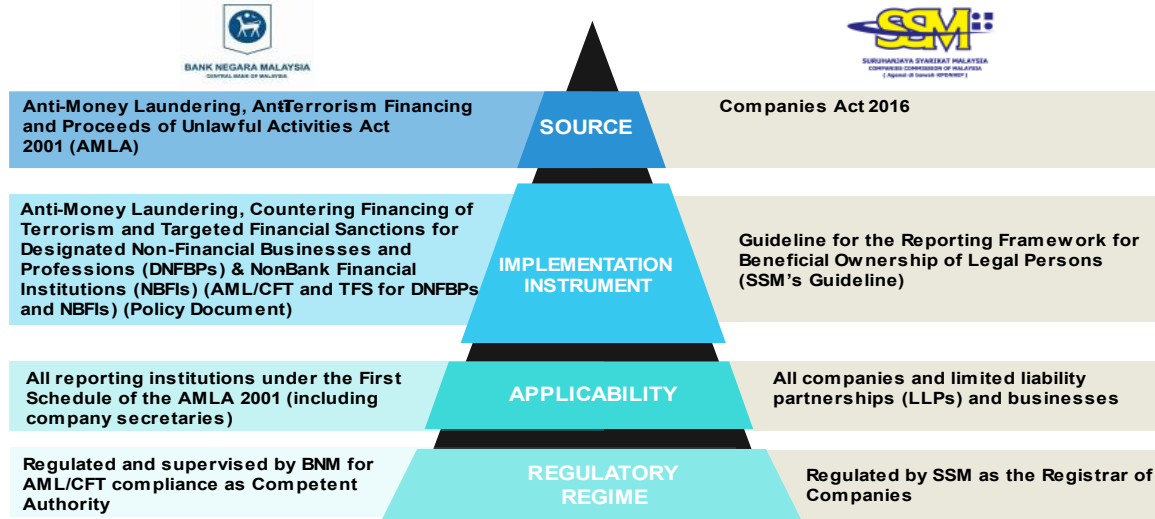
¹ BNM has issued the Guidance on Beneficial Ownership (BNM's BO Guidance) dated 1 September 2020 which is intended to provide clarification and recommended best practices in relation to beneficial ownership obligation under the BNM's Policy Document

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PART B: Joint Illustrative Reference Note

OVERVIEW OF BENEFICIAL OWNERSHIP REQUIREMENTS

General principle Reporting institutions or company secretaries are required to understand the structure of ownership and control of legal persons



CONCEPTS

Key Components & Requirements

General Requirements	Definition	Threshold	Reporting Requirements	Records Keeping Requirements
<p>Identify, take reasonable measures to verify, update and maintain BO information of customers (legal persons) as part of CDD process</p>	<p>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.</p>	<p>More than 25% of equity interest (direct or indirect)</p>	<p>Required to maintain the BO information and are not required to submit to BNM, unless when requested by BNM.</p>	<p>Maintain relevant BO records for 6 years from end of business relationship, in the manner as prescribed under the Policy Document</p>
<p>Identify, obtain, verify, record and maintain the BO information of a legal person in the register of BO and keep at the registered office</p>	<p>Natural person(s) who is the ultimate owner of the shares and does not include a nominee of any description (which shall cover from the perspective of ownership and effective control).</p>	<p>Not less than 20% of shares or voting shares of the company (direct or indirect)</p>	<p>Required to lodge the BO information with SSM on an annual basis and notify SSM if there is any change of BO information of the companies or LLPs</p>	<p>Keep records for at least 7 years from the date the person ceases to be BO, in the manner as prescribed under the Guideline</p>

Exemptions on Requirements

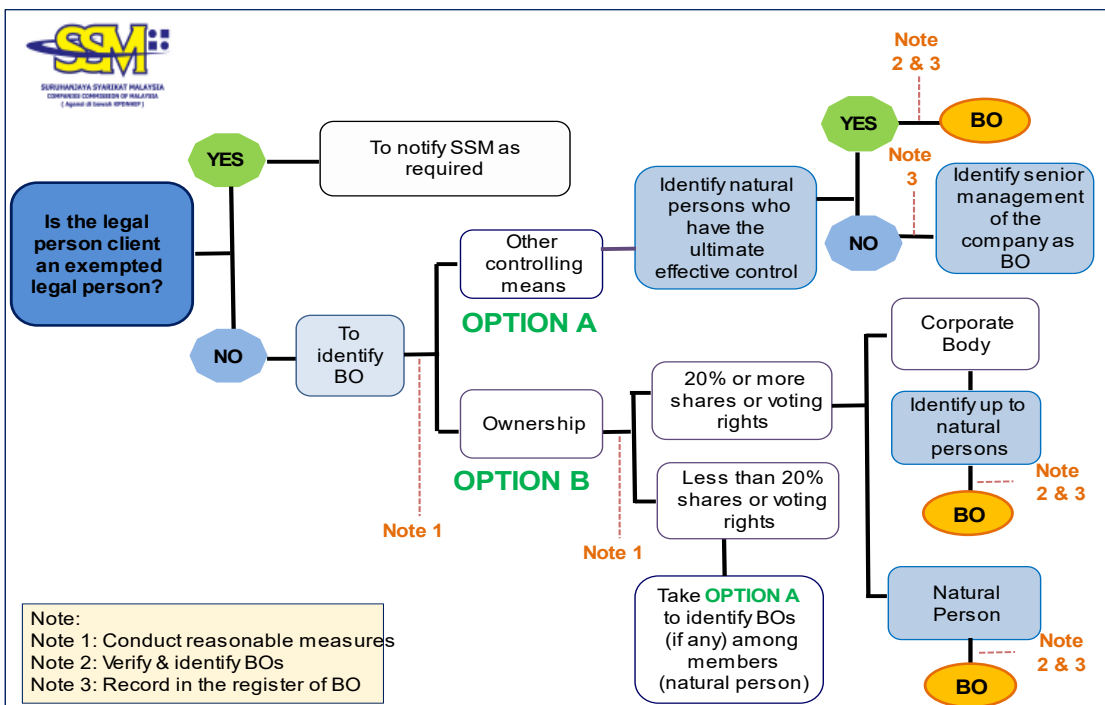
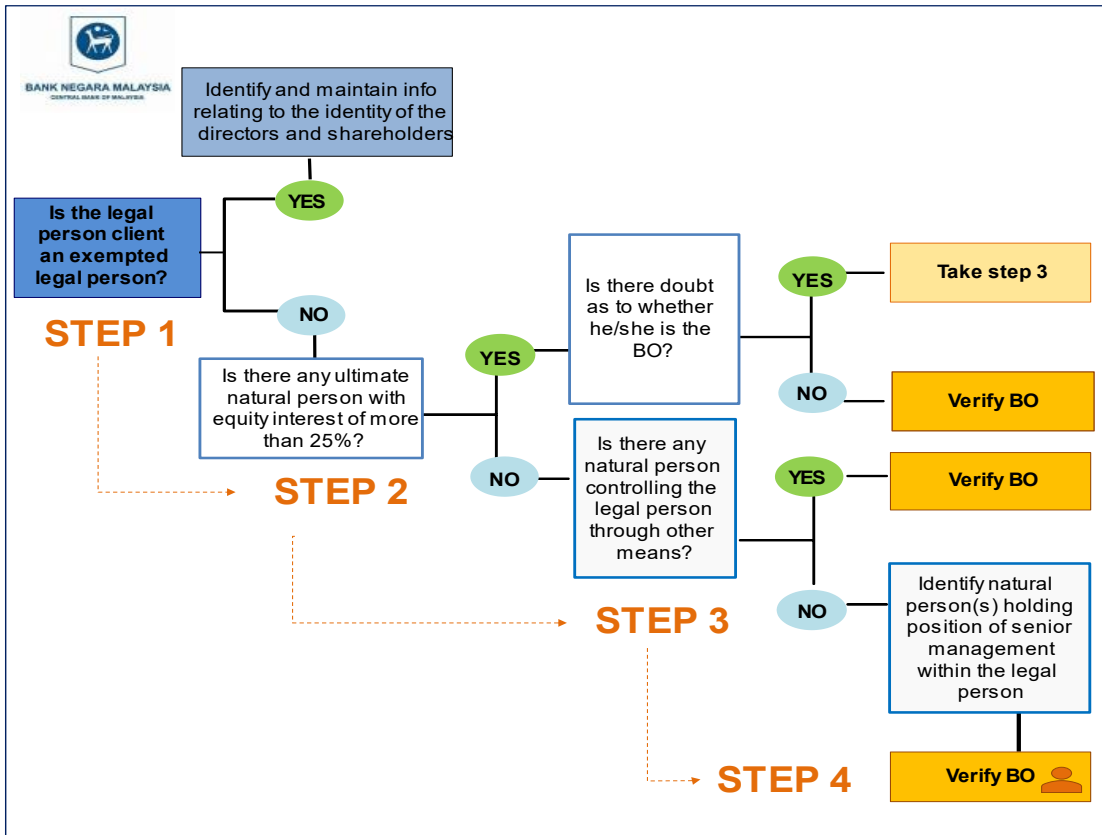
<p>Exemption for:</p> <ul style="list-style-type: none"> Obtaining Certificate of Incorporation/ Constitution from the legal person Verifying identity of directors/ shareholders <p>*Information must still be obtained and kept by RI</p>	<p>Types of exemption on specified entities</p> <p>Similarities</p>	<p>Exemption for:</p> <ul style="list-style-type: none"> Identifying, obtaining, keeping, maintaining BO register and providing BO information to SSM <p>*Exemption status must still be declared</p>
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- Entities under the purview of Bank Negara Malaysia**
- Financial Services Act 2013
 - Islamic Financial Services Act 2013
 - Prescribed development financial institution (DFI) under the DFI Act 2002
 - Licensed money services business (MSB) under the MSB Act 2011
- Persons regulated under the securities laws**
i.e. Capital Markets and Services Act 2007 (CMSA 2007)

	Differences	
Publicly listed companies listed in Bursa Malaysia; and ii. Foreign public listed companies in recognised exchanges & not listed in high risk countries	Listed Companies	Companies whose shares are quoted in a stock exchange, either local or foreign exchange
Foreign FIs not from high risk countries	Foreign FIs	Not applicable. SSM's Guideline does not apply to foreign FIs not incorporated/registered in Malaysia
Licensed entities under the Labuan Financial Services and Securities Act 2010 & the Labuan Islamic Financial Services and Securities Act 2010	Entities in Labuan	Not applicable as these entities fall under the purview of Labuan Financial Services Authority (LFSA) which has its own BO regime
None	Others	Companies with share deposits in the central depository

BENEFICIAL OWNERSHIP - THE PROCESS

Step-by-step guide to determine the beneficial owners behind a legal person



Illustrative Example

How to ensure that both BNM's and SSM's requirements are met



Company ABC, a newly incorporated company that is not an exempted entity, wishes to appoint you as its company secretary. The following are the steps that you may wish to take, in relation to your beneficial ownership reporting obligations, as the company secretary of **Company ABC**:

1 Onboarding Company ABC as a customer ●●



- ❑ Review shareholding information of Company ABC to identify beneficial owner(s) based on SSM's ownership threshold (20%) and/or BNM's cascading steps.
- ❑ If Company ABC or its BO does not fall under the exempted list of entities, take reasonable measures to verify the information of the beneficial owner(s) against reliable and independent source document.



2 Reporting to BNM* ●

**(when requested)*

- ❑ Company ABC is required to **maintain** the BO information and are **not required to submit to BNM, unless when requested by BNM.**
- ❑ Reporting of the BO information to BNM only as part of suspicious transaction report, when needed



3 Reporting to SSM ●



- ❑ Obtain BO information within 30 days after being appointed as Co Sec and record BO information in the register within 60 days after obtaining the information
- ❑ Lodge with SSM within 14 days from the date the BO information is entered in the register
- ❑ Submit BO information to SSM together with annual return



4 Update the BO information ●●

- ❑ Notify SSM within 14 days of any changes to the BO information recorded in the register.
- ❑ CDD process should be conducted on new BO identified and the information must be recorded accordingly.
- ❑ Co Secs should, on an on-going basis, review and update the BO information, based on its assessment of company ABC's risk profile, as part of its on-going due diligence obligation.



5 Keeping records of Company ABC's BO information ●●



- ❑ Keep records of the process undertaken in identifying and verifying the BO of Company ABC, any updates made and relevant documents supporting the information.
- ❑ All records are to be kept up to 6 years after you have ceased business relationship with Company ABC
- ❑ The BO information and its supporting documents must be kept up to 7 years from the date the person ceases to be a BO

●	SSM requirements
●	BNM requirements
●●	SSM & BNM requirements

PART C: Appendices

1.0 Source Documents and Applicability

Subject	Regulation	Provision	Details of Requirements
Source Documents	BNM	Paragraph 4.1 of the BNM's Policy Document	Issued pursuant to the AMLA and section 143(2) of the Financial Services Act 2013 (FSA).
	SSM's Guideline	Paragraphs 1 to 5 (Introduction) of SSM's Guideline	Issued by SSM under section 20C of the CCMA 2001 to ensure compliance with FATF Rec. 24.
Applicability	BNM	Paragraph 3.3 of the BNM's Policy Document	<p>Applicable to persons prescribed by the Minister or licensed by SSM to act as a company secretary of a company pursuant to section 235 of the Companies Act 2016 (referred to as "company secretaries"), when they, whether in person or through a firm or company, prepare or carry out the following activities for their clients:</p> <ul style="list-style-type: none"> • act as formation agent of legal entities; • act as (or arrange for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal entities; • provide a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership, or any other legal entities or arrangement; • act as (or arrange for another person to act as) a trustee of an express trust; or • act as (or arrange for another person to act as) a nominee shareholder for another person.
	SSM's Guideline	Paragraphs 10 to 14 (Application & Objectives) of the SSM's Guideline	All companies, limited liability partnerships (LLPs) and businesses.

2.0 Definition, Process and Other Requirements

Subject	Regulation	Provision	Details of Requirements
<p>Definition of Beneficial Owner of Legal Person</p>	<p>BNM</p>	<p>Paragraph 6.2 of the BNM's Policy Document</p>	<p>“Beneficial Owner” 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.</p> <p>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.</p>
	<p>SSM's Guideline</p>	<p>Paragraphs 25 and 26 of the SSM's Guideline</p>	<ul style="list-style-type: none"> • The ultimate owner of the shares and does not include a nominee of any description. • The phrase ‘ultimate owner of the shares’ shall cover from the perspective of ownership and effective control depending on the types of company.
<p>Process</p>	<p>BNM</p>	<p>Paragraph 14.10.6 of the BNM's Policy Document</p>	<p>Reporting institutions are required to identify and take reasonable measures to verify the identity of beneficial owners according to the following sequence:</p> <ol style="list-style-type: none"> (a) the identity of the natural person(s) who ultimately has a controlling ownership interest in a legal person. At a minimum, this includes identifying the directors/shareholders with equity interest of more than twenty-five percent/partners; (b) to the extent that there is doubt as to whether the person(s) with the controlling ownership interest under (a) above is the beneficial owner(s) or where no natural person(s) exert control through ownership interests, the identity of the natural person (if any) exercising control of the legal person through other means; and (c) where no natural person is identified under (a) or (b) above, the identity of the relevant natural person who holds the position of Senior Management.

Subject	Regulation	Provision	Details of Requirements
	<p>SSM's Guideline</p>	<p>Section 4 of the SSM's Guideline</p>	<p>Companies and LLPs are required to take at least one or more of the following reasonable measures to identify beneficial owner(s):</p> <ul style="list-style-type: none"> (a) Consider interests in the company or LLP held by individuals, corporate entities and/or trust; (b) Review all documents and information available at the company's/LLP's level; (c) Sending out notices pursuant to subsection 56(1), (2) or (3) of the Companies Act 2016 (for companies); (d) Consider any evidence that can show interests or rights held through variety of means which might ultimately be controlled by the same person; (e) Policy to require shareholders/partners to notify the company/LLP on BO information; (f) Any other actions that may have to be taken depending on the circumstances of each company/LLP. <p>In taking any of the reasonable measures above, the following criteria to deem natural persons as BO(s) from the perspective of ownership and effective control must be considered:</p> <p>Companies</p> <ul style="list-style-type: none"> (a) has interest, directly or indirectly, in not less than 20% of the shares in the company; (b) holds, directly or indirectly, not less than 20% of the voting shares of the company; (c) has the right to exercise ultimate effective control whether formal or informal over the company; or the directors or the management of the company; (d) has the right or power to directly or indirectly appoint or remove a director(s) who holds majority of the voting rights at the meeting of directors; or (e) is a member of the company and, under an agreement with another member of the company, controls alone, majority of the voting rights in the company.

Subject	Regulation	Provision	Details of Requirements
			<p>Limited Liability Partnerships</p> <ul style="list-style-type: none"> (a) holds directly or indirectly a right to share in not less than 20% for the capital contribution of the LLP; (b) holds directly or indirectly, not less than 20% of the rights to vote in the LLP; (c) has the right to exercise ultimate effective control whether formal or informal over the LLP; or the partners of the LLP; or (d) holds, directly or indirectly, the right to appoint or remove the majority of those involved in the management.
<p>Reporting Requirements</p>	<p>BNM</p>	<p>Section 25 of the AMLA</p>	<p>For the purposes of monitoring a reporting institution’s compliance with Part IV of the AMLA, the competent authority may authorise an examiner to examine:</p> <ul style="list-style-type: none"> (a) any of the reporting institution’s records or reports that relate to its obligations under this Part, which are kept at, or accessible from, the reporting institution’s premises; and (b) any system used by the reporting institution at its premises for keeping those records or reports. <p>In carrying out the examination, the examiner may:</p> <ul style="list-style-type: none"> (a) ask any question relating to any record, system or report of a reporting institution; and (b) make any note or take any copy of the whole or part of any business transaction of the reporting institution.

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Subject	Regulation	Provision	Details of Requirements
		Paragraph 25 of the BNM's Policy Document	Reporting institutions are required to submit the following reports to the Financial Intelligence and Enforcement Department, Bank Negara Malaysia, as and when applicable: <ul style="list-style-type: none"> Data and Compliance Report issued by Bank Negara Malaysia; and any other report as may be specified by Bank Negara Malaysia.
	SSM's Guideline	Section 3 of the SSM's Guideline	Companies and LLPs are required to lodge the BO information with SSM on an annual basis and shall notify SSM if there is any change of BO information of the companies or LLPs during the year.
Issuance of Notices to BO	BNM	Not Applicable	There is no such requirement under the BNM's Policy Document to issue notice to the BO.
	SSM's Guideline	Paragraphs 24(c), 38 and 39 of the SSM's Guideline	Companies have the power to require disclosure of BO information from its members through notices as provided under the Companies Act 2016 and LLPs are encouraged to adopt similar approach in order to obtain the BO information
Usage of BO information	BNM	Paragraph 14.10.3 of the BNM's Policy Document	For customers that are legal persons, reporting institutions are required to understand the nature of the customer's business, its ownership and control structure. As provided under BNM's BO Guidance, the obligations of a reporting institution on beneficial ownership requirements are: <ul style="list-style-type: none"> (a) Identifying a natural person who is the beneficial owner of the customer and obtaining information that describes the ownership, control and structure of the legal persons/ legal arrangements relating to the beneficial owner;

Subject	Regulation	Provision	Details of Requirements
			<ul style="list-style-type: none"> (b) Taking reasonable measures to verify the accuracy of the information obtained and keeping records of all relevant documents; (c) Conducting customer risk profiling to identify the risk category of the beneficial owner; and (d) Performing further regulatory obligations based on the risk category of the beneficial owner such as CDD, sanction screening and high risk jurisdiction.
	SSM's Guideline	Part II Section 5 of the SSM's Guideline	BO information obtained under the SSM's reporting framework is to be recorded in the register of beneficial owners, kept at the registered office and can be accessed in a timely manner by the authorised persons
Record Keeping Requirements	BNM	Paragraph 21 of the BNM's Policy Document	<ul style="list-style-type: none"> (a) Reporting institutions are required to keep the relevant records including any accounts, files, business correspondence and documents relating to transactions, in particular, those obtained during the CDD process. This includes documents used to verify the identity of customers and beneficial owners, and the results of any analysis undertaken. The records maintained must remain up-to-date and relevant. (b) Reporting institutions must ensure that all relevant records relating to transactions which are kept are sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity. (c) Reporting institutions are required to keep the records for at least six years following the completion of the transaction, the termination of the business relationship or after the date of the occasional transaction. (d) In situations where the records are subjected to on-going investigation or prosecution in court, they shall be retained beyond the stipulated retention period until such time reporting institutions are informed by the relevant law enforcement agency that such records are no longer required.

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Subject	Regulation	Provision	Details of Requirements
			(e) Reporting institutions are required to retain the relevant records in a form that is admissible as evidence in court pursuant to the Evidence Act 1950, and make such records available to the competent authority or supervisory authorities and law enforcement agencies in a timely manner.
	SSM's Guideline	Part I Section 5 of the SSM's Guideline	<p>The company/LLP must ensure that the BO information and the supporting documents to verify the BO information are in order and kept either at the registered office or at the same place the register of members or the register of partners is kept, for at least 7 years from the date a person ceases to be a BO.</p> <p>The BO information must be kept either in the national language or English language and may be kept either in physical or electronic form.</p>

3.0 Exemption

Subject	Regulation	Provision	Details of requirement
Nature of Exemption	BNM	Paragraph 14.10.9 – 14.10.10 of the BNM's Policy Document	<p>Reporting institutions are exempted from obtaining a copy of the Certificate of Incorporation or Constitution and from verifying the identity of directors and shareholders of the legal person which fall under the exemption.</p> <p>Notwithstanding the above, reporting institutions are required to identify and maintain information relating to the identity of the directors and shareholders of legal persons through a public register, other reliable sources or based on information provided by the customer.</p>

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	SSM's Guideline	Part II Section 2 of the SSM's Guideline	Exempted entities are exempted from identifying and maintaining the BO Register including lodging the BO information with SSM so long as the entity remains exempted. However, despite being exempted, such entities are still required to declare their exempted status in their annual returns and annual declarations and submit the name of its senior management as BO, as the case may be, to SSM.
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Details of Exemption		
Type of entity	BNM's Policy Document (Paragraph 14.10.9)	SSM's Guideline (Part II Section 2)
Listed Companies	<ul style="list-style-type: none"> • Public listed companies or corporations listed in Bursa Malaysia • Foreign public listed companies: <ul style="list-style-type: none"> (i) listed in recognised exchanges; and (ii) not listed in higher risk countries 	Companies whose shares are quoted in a stock exchange, either local or foreign exchange
Foreign Financial Institutions	<ul style="list-style-type: none"> • Foreign financial institutions that are not from higher risk countries 	Nil
Entities under BNM	<ul style="list-style-type: none"> • Authorised person under the FSA and the Islamic Financial Services Act 2013 (i.e. any person that has been granted a licence or approval) • Prescribed institutions under the Development Financial Institutions Act 2002 • licensed entities under the Money Services Businesses Act 2012 	<ul style="list-style-type: none"> • Companies and LLPs which are licensed by Bank Negara Malaysia under Financial Services Act 2013, Islamic Financial Services Act 2013 • Prescribed development financial institution under the Development Financial Institutions Act 2002 • Licensed money services business under the Money Services Business Act 2011
Entities under Securities Commission Malaysia	<ul style="list-style-type: none"> • Persons licensed or registered under the Capital Markets and Services Act 2007 	<ul style="list-style-type: none"> • Persons regulated under the securities laws as follows: <ul style="list-style-type: none"> (i) Entity licensed or registered under the CMSA 2007 (ii) Stock exchange, derivatives exchange, clearing house and central depository approved under the securities laws (iii) Recognised self-regulatory organisation (SRO) under the CMSA 2007 (iv) Private retirement scheme administrator approved under the CMSA 2007

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<p>Entities under Labuan Financial Services Authority (LFSA)</p>	<ul style="list-style-type: none"> Licensed entities under the Labuan Financial Services and Securities Act 2010 and the Labuan Islamic Financial Services and Securities Act 2010 	<p>Nil</p>
<p>Others</p>	<p>Nil</p>	<p>Companies whose shares are deposited in the central depository pursuant to the Securities industry (Central Depositories) Act 1991 (only applicable if all the shares in a company remain deposited with the central depository)</p>