

## COMPANIES (AMENDMENT) ACT 2024: UPDATED FRAMEWORK FOR THE REPORTING OF BENEFICIAL OWNERSHIP INFORMATION

### Introduction

Despite efforts to curb illicit activities, individuals are becoming increasingly sophisticated in structuring transactions. On the surface, these transactions appear legitimate, but a thorough examination often reveals their illicit nature. Often the individual perpetrators hiding behind such businesses employ devious means to avoid their identity from being easily detected.[1] This can negatively impact investor confidence in financial markets should there be a lack of an accurate beneficial ownership and control structure disclosure regime in place to counteract the said predicament.[2]

Prior to the Companies (Amendment) Act 2024 ("**Amendment Act**"), beneficial ownership reporting requirements were governed under Sections 51 and 56 of the Companies Act 2016 ("**CA 2016**").[3] The Amendment Act was passed with the objective of elevating corporate transparency through the introduction of a more comprehensive beneficial ownership reporting framework in line with the current international standards and best practices.[4]

The Amendment Act came into effect on 1 April 2024. In addition to the Amendment Act, the Registrar of the Companies Commission of Malaysia ("**CCM Registrar**") has issued 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 ("**Case Studies and Illustrations**").

This article focuses on:

- (a) the scope of beneficial ownership; and
- (b) the reporting of beneficial ownership.

## **Scope of Beneficial Ownership**

### **(a) The New Definition of "Beneficial Owner"**

The Amendment Act inserted Section 60A into the CA 2016, which defines a beneficial owner of a company as:

*"60A. Beneficial owner of company*

*(1) A person is a beneficial owner of a company if he is a natural person who ultimately owns or controls over a company and includes a person who exercises ultimate effective control over a company.*

*(2) The Registrar may issue guidelines for the purpose of identifying a beneficial owner of a company."*

To ascertain the definition of the phrase "ultimately owns or controls a company" and "ultimate effective control", reference has to be made to the Guidelines. The Guidelines provide that:

(i) "ultimately owns or controls" a company refers to the ownership through interest in shares of the company (direct) including effective interest (indirect) in not less than 20%; [5] and

(ii) "ultimate effective control" refers to situations where an individual who holds less than 20% shares or voting rights, but still exercises significant control or influence over the directors or the management of the company, whether formal or informal, is accustomed or is under an obligation to act under the directions, instructions or wishes of that individual. The individual who has the ultimate effective control is not necessarily someone who holds any shares in the company or has any position in the company.[6]

### **(b) The Criteria Used in Determining a "Beneficial Owner"**

The Guidelines has further deconstructed the abovementioned definitions of "ultimately owns or controls" and "ultimate effective control" into six (6) criteria, namely:

(i) Criteria A - holds directly or indirectly in not less than 20% of the ordinary shares of the company;[7]

(ii) Criteria B - holds directly or indirectly in not less than 20% of the voting shares of the company;[8]

(iii) Criteria 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;[9]

(iv) Criteria D - has the right or power to directly or indirectly appoint or remove a director(s) who holds the majority of the voting rights at the meeting of directors;[10]

(v) Criteria E - is a member of the company and, under an agreement with another member of the company, controls alone a majority of the voting rights in the company; [11] and

(vi) Criteria F - has less than 20% of ordinary shares or voting shares but exercises significant control or influence over the company.[12]

In respect of companies limited by shares, an individual will be considered a beneficial owner if he meets one or more of Criteria A – Criteria F.[13] In respect of companies limited by guarantees, an individual will be considered a beneficial owner if he meets one or more of Criteria C, D or E.[14]

### (c) The Application of the Beneficial Ownership Reporting Framework

The beneficial ownership reporting framework introduced by the Amendment Act and the Guidelines is applicable to all companies (including foreign companies) which are incorporated and registered under the CA 2016.[15]

The Guidelines are issued to assist companies to understand and fully comply with the beneficial ownership reporting requirements,[16] whereas the Case Studies and Illustrations is meant to complement the issuance of the Guidelines. [17] The Guidelines will supersede the Guideline for the Reporting Framework for Beneficial Ownership of Legal Persons, which was issued by the CCM Registrar on 1 March 2020 (Revised 17 December 2020).[18]

## **Reporting of Beneficial Ownership**

### (a) Duty of Company to keep Register of Beneficial Owners

Pursuant to the introduction of Section 60B through the Amendment Act, companies are now required to keep a distinct register of its beneficial owners and their particulars.[19] Any changes to the particulars in the register of beneficial owners of the company will result in the company being required to lodge a notice on the changes with the CCM Registrar within fourteen (14) days from the date of the change.[20] Companies were initially given a time frame of three (3) months from 1 April 2024 to 30 June 2024 to update and lodge the beneficial ownership information with the CCM Registrar.[21] However, CCM has since given an extension up until 30 September 2024 to update and lodge such beneficial ownership information, pursuant to the issuance of Practice Directive No. 9/2024 (Revised) by the CCM Registrar.[22]

Further, it is also to be noted that unless otherwise allowed by the CCM Registrar, the lodgement of beneficial ownership information by all companies must be made through the Electronic Beneficial Ownership System ("**e-BOS**").[23]

## (b) Power and Duty of Company to Require Disclosure of Beneficial Owners

With the introduction of Section 60C via the Amendment Act, companies shall require (by notice in writing) its members,[24] or, if it has reasonable grounds to believe that any person knows[25]/is a beneficial owner[26] of the company, such person, to:

(i) state whether they are beneficial owners of the company, and provide their particulars;[27] or

(ii) state whether they know or have reasonable grounds to believe that any other person is a beneficial owner of the company, and provide the said person's particulars.[28]

It should be noted that the language employed in Section 60C is 'shall', which means that although the section confers wide powers to a company, companies are also duty-bound to exercise said powers. Furthermore, under the same Section 60C, if a company has reasonable grounds to believe that a change has occurred to the particulars of a beneficial owner,[29] or that such particulars are incorrect,[30] the company shall require said person to provide the particulars of the change[31]/provide the correct particulars.[32]

In addition to the above reporting, the information of its beneficial owners are also required to be included in the companies' annual return pursuant to the Amendment Act inserting Section 68(3)(ia) and (ib)(in respect of local companies) and Section 576(2)(ha) and (hb)(in respect of foreign companies).[33] However, to date, this requirement is not yet in force, as it will only be enforced on a later date which is to be determined by the CCM Registrar.[34]

## (c) Steps to be Taken by Company Unable to Determine its Beneficial Owners

If a company is unable to determine its beneficial owner due to the fact that:

(i) the company has reasonable grounds to believe that it has no beneficial owners;[35]

(ii) the company has reasonable grounds to believe that it has beneficial owners, but they cannot be identified;[36] or

(iii) the company is still in the process of obtaining its beneficial ownership information,[37]

then the company must provide the name and particulars of a natural person who holds the position of senior management who is primarily in charge of the management of the company in place of the beneficial owner(s),[38] such as its director, president, or chief operating officer.[39] It should be noted that in the case of scenario (iii), once the beneficial ownership information is obtained, the company must then replace the name and particulars of its senior management with the name and particulars of its beneficial owner(s).[40]

#### (d) Duty of Beneficial Owners to Self-Disclose

A pertinent feature introduced through Section 60D of the Amendment Act is the direct imposition of a duty on beneficial owners to provide their particulars[41]/change in particulars[42]/particulars of their cessation as beneficial owner[43] to a company.

### **Conclusion**

In summary, companies need to take reasonable steps to identify the beneficial owners of the company and ensure that their register of beneficial owners is accurate and up-to-date, whereas beneficial owners have a duty to self-report to companies.

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1. Registrar of the Companies Commission of Malaysia, Guidelines for the Reporting Framework for Beneficial Ownership of Companies, paragraph 4.  
<[https://www.ssm.com.my/Pages/Legal\\_Framework/Document/01\\_Guideline%20BO%20\(Post%20T%26P\)%20Final%20Uploaded%20Version.pdf](https://www.ssm.com.my/Pages/Legal_Framework/Document/01_Guideline%20BO%20(Post%20T%26P)%20Final%20Uploaded%20Version.pdf)>.
  2. Erik P.M. Vermeulen, 'Beneficial Ownership and Control: A Comparative Study Disclosure, Information and Enforcement' (2013) OECD Corporate Governance Working Papers No. 7, Executive Summary  
<<https://www.oecd-ilibrary.org/docserver/5k4dkhwckbzv-en.pdf?expires=1722888925&id=id&accname=guest&checksum=316B924E7B63F75B70A452505ABFDBA1>>.
  3. Companies Commission of Malaysia, 'FAQs on the Companies Act (Amendment) 2024 [Act A1701]', Question 21 <[https://www.ssm.com.my/Pages/Legal\\_Framework/Document/FAQ%20CA%20\(Amendment\)%202024.pdf](https://www.ssm.com.my/Pages/Legal_Framework/Document/FAQ%20CA%20(Amendment)%202024.pdf)>.
  4. Dewan Rakyat (House of Representatives) Debate 12 October 2023, No. 52, pages 92 and 93; Guidelines for the Reporting Framework for Beneficial Ownership of Companies, paragraphs 5 and 6.
  5. Guidelines for the Reporting Framework for Beneficial Ownership of Companies, paragraph 24.
  6. Guidelines for the Reporting Framework for Beneficial Ownership of Companies, paragraphs 25 and 26.
  7. Guidelines for the Reporting Framework for Beneficial Ownership of Companies, paragraph 27(a).
  8. Guidelines for the Reporting Framework for Beneficial Ownership of Companies, paragraph 27(b).
  9. Guidelines for the Reporting Framework for Beneficial Ownership of Companies, paras 27(c) and 29(a).
  10. Guidelines for the Reporting Framework for Beneficial Ownership of Companies, paragraphs 27(d) and 29(b).
  11. Guidelines for the Reporting Framework for Beneficial Ownership of Companies, paragraphs 27(e) and 29(c).
  12. Guidelines for the Reporting Framework for Beneficial Ownership of Companies, paragraph 27(f).
  13. Guidelines for the Reporting Framework for Beneficial Ownership of Companies, paragraph 27.
  14. Guidelines for the Reporting Framework for Beneficial Ownership of Companies, paragraph 29; Please refer to paragraphs 27 and 29 of the Guidelines for the Reporting Framework for Beneficial Ownership of Companies, and the Case Studies and Illustrations of the Guidelines for the Reporting Framework for Beneficial Ownership of Companies for further guidance on the identification of a beneficial owner in relation to Criteria A – F.
  15. Guidelines for the Reporting Framework for Beneficial Ownership of Companies, paragraph 18.
  16. Guidelines for the Reporting Framework for Beneficial Ownership of Companies, paragraph 2.
  17. Companies Commission of Malaysia, Case Studies and Illustrations of the Guidelines for the Reporting Framework for Beneficial Ownership of Companies, page 1  
<[https://www.ssm.com.my/Pages/Legal\\_Framework/Document/02\\_Case%20Studies%20%26%20Illustrations%20\(Post%20T%26P\)%20Final%20Uploaded%20Version.pdf](https://www.ssm.com.my/Pages/Legal_Framework/Document/02_Case%20Studies%20%26%20Illustrations%20(Post%20T%26P)%20Final%20Uploaded%20Version.pdf)>.
  18. Guidelines for the Reporting Framework for Beneficial Ownership of Companies, paragraph 67.
  19. Companies Act 2016, section 60B(1).
  20. Companies Act 2016, section 60B(3) and 60B(4).
  21. Registrar of the Companies Commission of Malaysia, Practice Directive No. 9/2024: Lodgement of Beneficial Ownership Information under the Companies Act 2016 through e-BOS, paragraph 4  
<[https://www.ssm.com.my/Pages/Legal\\_Framework/Document/Practice%20Directive%209%202024%20\(Final\)%20Uploaded%20version.pdf](https://www.ssm.com.my/Pages/Legal_Framework/Document/Practice%20Directive%209%202024%20(Final)%20Uploaded%20version.pdf)>.
  22. Registrar of the Companies Commission of Malaysia, Practice Directive No. 9/2024: Lodgement of Beneficial Ownership Information under the Companies Act 2016 through e-BOS (Revised), paragraph 4  
<[https://www.ssm.com.my/Pages/Legal\\_Framework/Document/Practice%20Directive%209%202024%20\(Revised-%20Extended%20time%20frame\)%20r1%20\(fair\)%20v2.pdf](https://www.ssm.com.my/Pages/Legal_Framework/Document/Practice%20Directive%209%202024%20(Revised-%20Extended%20time%20frame)%20r1%20(fair)%20v2.pdf)>.



23. Practice Directive No. 9/2024: Lodgement of Beneficial Ownership Information under the Companies Act 2016 through e-BOS (Revised), paragraph 6; The Electronic Beneficial Ownership System ("e-BOS") is accessible at <<https://ssm4u.com.my>>. Further guidance in relation to the usage of e-BOS can be obtained from CCM's Beneficial Ownership FAQ, Category: Electronic Beneficial Ownership System (e-BOS), accessible at <<https://www.ssm.com.my/Pages/FAQ/FAQ-Beneficial-Ownership.aspx>>.
24. Companies Act 2016, section 60C(1).
25. Companies Act 2016, section 60C(3).
26. Companies Act 2016, section 60C(2).
27. Companies Act 2016, section 60C(1) and 60C(2).
28. Companies Act 2016, section 60C(2) and 60C(3).
29. Companies Act 2016, section 60C(5).
30. Companies Act 2016, section 60C(6).
31. Companies Act 2016, section 60C(5).
32. Companies Act 2016, section 60C(6).
33. Guidelines for the Reporting Framework for Beneficial Ownership of Companies, paragraph 37(a).
34. Companies Commission of Malaysia, Corporate Portal, 'FAQ Beneficial Ownership', Category: Beneficial Ownership Reporting Framework of Companies <<https://www.ssm.com.my/Pages/FAQ/FAQ-Beneficial-Ownership.aspx>>.
35. Guidelines for the Reporting Framework for Beneficial Ownership of Companies, paragraph 43(a).
36. Guidelines for the Reporting Framework for Beneficial Ownership of Companies, paragraph 43(b).
37. Case Studies and Illustrations of the Guidelines for the Reporting Framework for Beneficial Ownership of Companies, pages 23 and 24.
38. Guidelines for the Reporting Framework for Beneficial Ownership of Companies, paragraph 43.
39. Case Studies and Illustrations of the Guidelines for the Reporting Framework for Beneficial Ownership of Companies, pages 23 and 24.
40. Guidelines for the Reporting Framework for Beneficial Ownership of Companies, paragraph 44.
41. Companies Act 2016, section 60D(1).
42. Companies Act 2016, section 60D(2).
43. Companies Act 2016, section 60D(3).

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