Beneficial Ownership Reporting for Companies in Malaysia: Issues and Challenges

Submitted by: Malaysia
BENEFICIAL OWNERSHIP reporting for COMPANIES IN MALAYSIA: Issues and Challenges

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The Companies Act 2016 introduces the concept of BO and the reporting framework

Section 2 – definition of BO
Sections 51, 56 and 68 – reporting framework

Objectives:
To address the lacunae on the lack of BO reporting framework in Malaysia to be in line with international standards
To assist investigations in identifying the perpetrators hiding behind companies
IMPLEMENTATION ISSUES

Lack of guidance on the definition of BO

Timeliness and accuracy of reporting

Verification of BO information

Who is responsible for the reporting

Parameter of reporting

Guidelines for the Reporting Framework for Beneficial Ownership of Legal Persons
GUIDELINE FOR THE REPORTING FRAMEWORK FOR
BENEFICIAL OWNERSHIP OF LEGAL PERSONS

To provide guidance for companies, limited liability partnerships and businesses to comply with the BO requirements:
- Establishing reporting requirements and continuous reporting obligations
- The parameters of reporting, processes and procedures

To harmonise with international standards (FATF & best practice of other jurisdictions)

Came into effect on 1 March 2020
PARAMETER AND PERSON RESPONSIBLE FOR REPORTING

PARAMETER FOR REPORTING

- All legal persons (companies, limited liability partnerships and businesses) are required to comply with the Guideline.

Exception:
- Companies licensed by Central Bank of Malaysia under the relevant laws
- Persons regulated under the securities laws
- Companies whose shares are quoted in a stock exchange
- Companies whose shares are deposited in the central depository

PERSON RESPONSIBLE FOR REPORTING

- Board of Directors
- Company Secretaries
- Shareholders or persons receiving notices under section 56
DEFINITION OF BENEFICIAL OWNER

**FATF Recommendations**

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 persons who exercise *ultimate effective control* over a legal person or arrangement.

**Section 2 of the CA 2016**

Ultimate owner of the shares and does not include a nominee of any description.

**Section 8 of the CA 2016**

Interest in shares

The need to clarify “ultimate owner” of shares
FURTHER GUIDANCE ON DEFINITION OF BO

OWNERSHIP vs. CONTROL

COMPANY WITH SHARE CAPITAL

• Ownership – having interest in not less than 20% of the shares or voting rights (whether direct or indirect, alone or under an agreement)
• Control – right to exercise control over the management of the company, right to appoint or remove director

COMPANY WITHOUT SHARE CAPITAL

• Control – right to exercise control over the management of the company, right to appoint or remove director
PRINCIPLES OF THE BO REPORTING FRAMEWORK

1. IDENTIFY - based on criteria, use reasonable measures
2. OBTAIN – issuance of notices to shareholders/partners or other persons
3. VERIFY – supporting documents and other means
4. RECORD – enter the BO info in RBO
5. NOTIFY the Registrar
6. ACCURATE AND UP TO DATE – continuous obligation
7. ACCESS – to competent authority, LEA, BO and persons authorised by BO
Identifying BO – REASONABLE MEASURES

- Consider interest in the entity held by individual/corporate entity/trust
- Review all documents/information available at the entity’s level
- Sending out notices to shareholders/partners to confirm whether they are the BO or if not, to identify the person who may be the BO
- 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 entity
KEEPING THE BO INFORMATION & ACCESSIBILITY

- BO information must be kept at the registered office
- Supporting documents must also be kept at the registered office
- BO information to be kept for 7 years after a person ceases to be BO
- Timely access must be given to competent authorities and law enforcement agencies
BO REPORTING TIMELINE

Implementation status of the guidelines

1 March until 31 December 2020

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

CURRENT STAGE

After 31 December 2020 or such further extended date

- Registrar will invoke his power under section 56(6) of the CA 2016 & companies will have 14 days to submit the BO information
- LLPs will have 14 days to notify the Registrar for any change to the registered particulars
WAY FORWARD

COMPANIES (AMENDMENT) BILL 2020

Clarification on definition of beneficial owner

Enhanced requirements for companies to keep Register of Beneficial Owners and related obligations

Widening the power of company to request BO information from a person whom the company reasonably knows:

(i) That the person is a beneficial owner; or

(ii) That the person knows the identity of another person who is a beneficial owner

Duty of beneficial owner to provide information to company
End of Presentation

Thank you