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## **Beneficial Ownership Reporting for Companies in Malaysia: Issues and Challenges**

Submitted by: Malaysia



**Capacity Building Workshop on Exposing the  
Unseen Hands: Tackling Concealment of  
Beneficial Ownership  
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# **BENEFICIAL OWNERSHIP reporting for COMPANIES IN MALAYSIA: Issues and Challenges**

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## BACKGROUND

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:

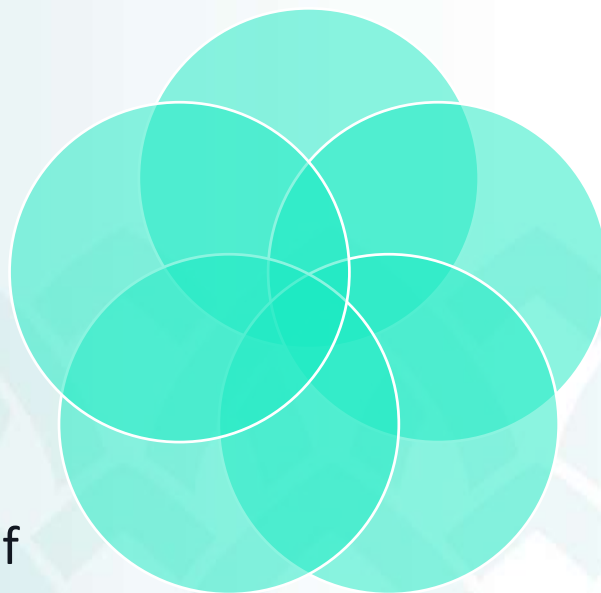
To address the lacunae on the lack of BO reporting framework in Malaysia to be in line with international standards

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



Who is  
responsible for  
the reporting



Guidelines for the  
Reporting  
Framework for  
Beneficial  
Ownership of Legal  
Persons

Verification of  
BO information

Parameter of  
reporting





# 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



IDENTIFY - based on criteria, use reasonable measures



OBTAIN – issuance of notices to shareholders/partners or other persons



VERIFY – supporting documents and other means



RECORD – enter the BO info in RBO



NOTIFY the Registrar



ACCURATE AND UP TO DATE – continuous obligation



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