
COMPANY LAW

BOLSTERING CORPORATE INTEGRITY: THE COMPANIES (AMENDMENT) ACT 2024

**This is Part 1 of our two part series analyzing the Companies (Amendment) Act 2024.*

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INTRODUCTION

It is worthwhile to witness the progression of Malaysia's company law with the passing of Companies (Amendment) Act 2024 ("**2024 Amendment**") on 28th November 2023,¹ which came into force on 1st April 2024 as fixed by the Minister of Domestic Trade and Cost of Living² except for 4 provisions.³

The 2024 Amendment encompasses two main amendments to our existing Companies Act 2016 namely the approach for the disclosure of beneficial ownership and introducing a more comprehensive framework at par with international practices to ensure that the scheme of arrangements and compromise could be used as a more effective rehabilitation tool for companies facing financial difficulties.⁴

In this article, we will examine and provide a summary on the 2024 Amendments in respect to beneficial ownership.

BENEFICIAL OWNERSHIP

One of the notable amendments for the 2024 Amendments touches upon beneficial ownership, with the obligations to disclose the former, being applicable to both local and foreign companies.⁵

One may pause for a moment and ponder upon what's the definition of "*beneficial ownership*"? It generally caters for a scenario where, at the outset, A may appear to be the legal owner of *Company XYZ*. However, the individual or entity behind A, injecting capital into the company and benefiting from the business, is actually B who is actually the "Owner" of the Company. Therefore, B, the beneficial owner ("**BO**") camouflages himself behind the name of a legal owner, A for various reasons.

¹ Yuki Hashimoto and Najad Zulkipli. (2024). Malaysia: Companies Act 2016 [Amendment] Bill 2024: Introduction to Beneficial Ownership, and Nominees Reporting Framework. *Lexology*. Retrieved from [Click HERE](#) >. Site accessed on 4 April 2024.

² FMT Reporters. (2024). Companies (Amendment) Act 2024 will give more transparency, says minister. *FMT*. Retrieved from [Click HERE](#) >. Site accessed on 4 April 2024.

³ Phua Pao Yii, Kok Chee Kheong, & Tan Wei Liang. (2024). The Companies (Amendment) Act 2024 – Part 1. *Skrine*. Retrieved from [Click HERE](#) >. Site accessed on 6 April 2024.

⁴ Noor Azreen Amira Yusri. (2023). SSM's Companies (Amendment) 2023 Bill Tabled For The First Reading In Parliament. *SSM*. Retrieved from < [Click HERE](#) >. Site accessed on 6 April 2024.

⁵ Companies (Amendment) Act 2024 (Act 1701) (Malaysia) s 573A.

In short, a legal owner is akin to a remote control, while a BO is the mastermind who presses the buttons and dictate the directions of the Company.

CHANGES TO THE LAW

Notably, the 2024 Amendment foresees that beneficial ownership may exist in relation to both (i) share; and (ii) company ownership situation.⁶ Post 2024 Amendment, the definition of BO under section 2,⁷ has been conferred a wider interpretation to include: (i) in relation to **shares**, the ultimate owner of the shares and does not include a nominee of any description; and (ii) in relation to a **company**, a natural person who ultimately owns or controls over a company and includes a person who exercises ultimate effective control over a company.⁸

The 2024 Amendment makes it mandatory unless exempted by the Minister,⁹ for every company to identify their BO¹⁰ and have the particulars of their BO recorded in the register,¹¹ failing which shall, upon conviction, be liable to fines up to RM20,000 for the first offence and RM500 per day during which the offence continues after conviction.¹² Furthermore, the general penalties prescribed under s. 588 of the CA 2016¹³ are equally applicable to offences relating to reporting, which upon conviction, shall trigger the penalty of a fine up to RM50,000 or an imprisonment term up to 3 years, or both.

Additionally, the company shall, from the day a person becomes a BO until 7 years after they have ceased,¹⁴ to keep the registration of the beneficial owners at the (i) registered office of the company; or (ii) any other place as notified to the Registrar.¹⁵

Moreover, pursuant to s. 60B (9),¹⁶ the Minister has the discretion to prescribe any person, including law enforcement agencies and competent authorities, to have access to the register of BO of the company or BO information lodged with the CCM. Arguably, the Minister may also set out the manner, terms, conditions, and fee for such access.¹⁷

Notwithstanding the company's omission to comply with statutory duty to procure the BO's information prescribed under s. 60C, anyone who reasonably believes that he is a BO, shall be placed on the legal onus to do the following: -

- i. notify the company that he is a BO;¹⁸
- ii. provide his particulars as required under s. 60B (1);¹⁹
- iii. inform the company of any changes in their particulars as recorded in the register of beneficial owners;²⁰ and
- iv. notify the company, as soonest as possible, that such person has ceased to be a BO, by stating the date and particulars of cessation.²¹

⁶ Companies (Amendment) Act 2024 (Act 1701) (Malaysia) s 2.

⁷ Ibid.

⁸ Ibid., s 60A.

⁹ Ibid., s 60E.

¹⁰ Ibid., s 60C.

¹¹ Ibid., s 60B (1).

¹² Ibid., s 60B (6), s60C (7) & (8) & (9), s60D (4).

¹³ Companies Act 2016 (Act 777) (Malaysia) s 588.

¹⁴ Ibid., s 60B (5).

¹⁵ Ibid., s 60B (2) & (3).

¹⁶ Ibid., s 60B (9).

¹⁷ Samantha Tai. (2024). Malaysia's Companies (Amendment) Bill 2024 and Accelerated Transfer Process from ACE to Main Market. *Boardroom Small Business Solutions*. Retrieved from [Click HERE](#) >. Site accessed on 6 April 2024.

¹⁸ Companies (Amendment) Act 2024 (Act 1701) (Malaysia) s 60D (1)(a).

¹⁹ Ibid., s 60D (1)(b).

²⁰ Ibid., s 60D (2).

²¹ Ibid., s 60D (3) (a) & (b).

METHOD TO IDENTIFY

By virtue of s. 60A (2), the Registrar has issued a guideline²² for a company to identify whether an individual is a BO upon the **satisfaction of either 1 or more** of the following criteria:

- Criteria A** : Has interest, directly or indirectly, in at least 20% of the shares of the company;
- Criteria B** : Holds, directly or indirectly, at least 20% of the voting shares of the company;
- 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;
- Criteria D** : Has the right or power to directly or indirectly appoint or remove a director(s) who holds a majority of the voting rights at the meeting of directors; or
- 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.

RATIONALE

Evidently, one of the triggering points that gave impetus to the passing of 2024 Amendment is in response to the Financial Action Task Force's 2015 evaluation of Malaysia (FATF).²³ Nevertheless, the ultimate reasoning behind the 2024 Amendment are to encourage comprehensive beneficial ownership reporting, enhance the corporate sector's transparency, and provide better assistance to enforcement agencies²⁴ i.e., the Royal Police of Malaysia, the Central Bank of Malaysia, Companies Commission of Malaysia, and Inland Revenue Board of Malaysia in their initiatives to combat crimes such as money laundering, terrorism financing, corruption, and tax evasion.²⁵ In the international context, the 2024 Amendment is aimed at assisting the companies to achieve equivalent benchmarks as other countries when reporting their financial information and who owns them, in tandem with global norms i.e., FEDF or OECD.²⁶

KEY TAKEAWAYS

- From 1st April 2024 onwards, Companies are empowered under the 2024 Amendment to seek for any beneficial ownership information from its shareholders and any potential beneficial owners.
- Companies are required to maintain a register of beneficial ownership and keep in its registered office or any other places notified by the Registrar.
- The Company may obtain more information in relation to BO from the following documents issued by the Companies Commission of Malaysia: -

²² SSM. (2024). Guideline for The Reporting Framework for Beneficial Ownership of Legal Persons. SSM. Retrieved from < . [Click HERE](#) >. Site accessed on 3 April 2024.

²³ MISHU. (2024). Companies (Amendment) Act 2024: New Beneficial Ownership Reporting Requirements. MISHU. Retrieved from < [Click HERE](#) >. Site accessed on 4 April 2024.

²⁴ Malaysia, Parliamentary Debates, *Representative*, Fifteen Parliament, Second Session, 28 November 2024, pg 97 (Puan Hajah Fuziah binti Salleh).

²⁵ Ibid., pg 93 (Puan Hajah Fuziah binti Salleh).

²⁶ Ibid., pg 97 (Puan Hajah Fuziah binti Salleh).

- (a) Guidelines for the Reporting Framework For Beneficial Ownership of Companies; and
- (b) Case studies and Illustrations of the Guidelines for the Reporting Framework for Beneficial Ownership of Companies.

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