



RECENT AMENDMENTS TO COMPANIES ACT 2016: ENHANCING TRANSPARENCY IN BENEFICIAL OWNERSHIP

The Malaysia Companies Act 2016 ("CA 2016") has undergone significant amendments recently, particularly concerning the disclosure and regulation of beneficial ownership which are encapsulated in the Companies (Amendment) Act 2024 ("CA Amendment Act"). These amendments aim to enhance transparency and align Malaysia's corporate governance practices with international standards. The CA Amendment Act (except sections 4, 14, 26 and 28) has come into force on 1 April 2024.

Under the CA 2016, companies were given the power to require any member of the company (or any other person) to inform the company as to whether the member holds shares as a beneficial owner or trustee¹. Where the member (or such other person) holds shares as a trustee, the member (or such other person) is required to disclose the details of such beneficial owner for purposes of identification and their nature of interest. A company is also required to keep and maintain a separate register to record the information of beneficial ownership received by a member. In this context, 'beneficial owner' is referred to as the ultimate owner of the shares and does not include a nominee of any description².

The paragraphs below highlight a few of the changes.

1. Definition of 'Beneficial Owner' Expanded

One of the key changes introduced by the amendments is the expansion to the definition of 'beneficial owner'. 'Beneficial owner' is now defined to also include:

"a natural person who holds ultimate ownership or control over a company, including those who exert effective control"

The Registrar has issued a Guidelines for the Reporting Framework for Beneficial Ownership of Companies ("BO Guidelines") following the CA Amendment Act to further clarify the meaning of 'beneficial owner' or what constitutes the term 'ultimate ownership or control over a company' or 'effective control'. A beneficial owner of a company limited by shares is defined to mean an individual who meets one or more of the following criteria:-

- (a) holds directly or indirectly in not less than 20% of the shares of the company;
- (b) holds directly or indirectly in 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 who holds a majority of the voting rights at the meeting of directors;
- (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; or
- (f) has less than 20% of shares or voting shares but exercises significant control or influence over the company.

2. Statutory Obligations on Companies

With the insertion of Section 60B of the CA 2016, companies are now imposed with the statutory obligations to:

- (a) maintain a register of beneficial owners containing detailed personal information;
- (b) keep the register at the company's registered office;
- (c) notify the Registrar of any changes in the particulars within 14 days from the date on which the change is recorded in the register; and
- (d) retain information of former beneficial owners for a period of 7 years.

A failure to comply with these obligations is an offence and the company and every officer will be liable upon conviction to a fine not exceeding RM20,000 and in the case of a continuing offence, a further fine not exceeding RM500 for each day which the offence continues after conviction.

¹ Section 56 of the Companies Act 2016

² Section 2 of the Companies Act 2016

3. Duty of Beneficial Owner to Disclose

In addition to Section 56 of the CA 2016, the CA Amendment Act imposes an obligation on beneficial owners to notify the company that they are a beneficial owner and to provide the required information to the company. A beneficial owner is also required to notify the company of any changes in his particulars including any information on cessation where he ceases to be a beneficial owner. A failure to do so will be an offence under the CA 2016.

4. Power of Companies to Require Disclosure

Pursuant to the new Section 60C of the CA 2016, a company is imposed with the obligation to issue a notice in writing to (i) a member; (ii) a person whom the company knows or has reasonable grounds to believe that he or she is a beneficial owner of the company; or (iii) a member or a person whom the company knows or has reasonable grounds to believe that such member or person knows the identity of a person who is a beneficial owner of the company, requiring disclosure of beneficial ownership and provision of the relevant information. A failure to disclose or the provision of false information is an offence under the CA 2016.

5. Annual Return Requirements

Another key change introduced by the amendments is in respect of the annual return to be lodged by the company. The new Section 68(3) of the CA 2016 now mandates companies to include beneficial ownership information in their annual returns. This means that companies are required to report information on beneficial ownership in the lodgement of their annual return to the Registrar. As the annual return is a publicly available document, this new introduction will enhance transparency and accountability of the companies.

6. Extension to Foreign Companies

The insertion of the new Section 573A of the CA 2016 extends the requirements in respect of beneficial ownership reporting to foreign companies and their agents. Therefore, the requirements on disclosure of beneficial ownership apply not only to companies incorporated in Malaysia but also to foreign companies which are carrying on business in Malaysia.

Conclusion

The recent amendments to the Malaysia CA 2016 signify a concerted effort to enhance corporate transparency. By strengthening regulations on beneficial ownership, Malaysia aims to fortify its corporate governance framework and foster a business environment conducive to sustainable growth and investor confidence.



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