

Companies Act 2016 [Amendment] Bill 2024: Introduction to Beneficial Ownership, and Nominees Reporting Framework

March 2024
One Asia Lawyers Group

Yuki Hashimoto
Lawyer(Japan)
Najad Zulkipli
Lawyer(Malaysia)

1. Introduction

The Malaysian Companies Act 2016 (the “Act”) is undergoing a transformative makeover through the Companies (Amendment) Bill 2024 (“Bill”), focusing on the new framework of disclosure and reporting of beneficial ownership and improvement to the existing corporate rescue mechanism. The Bill was endorsed by the House of Representatives of the Malaysian Parliament on 28 November 2023, passed by the Senate on 13th December 2023 subsequently received Royal



Assent on 24th January and was gazetted on the 2nd February 2024. As of the date of this newsletter, the Bill has yet to be enforced as law. Following this significant alteration, the Companies Commission Malaysia (“CCM”) has recommended additional amendments to the Act concerning the reporting of nominee shareholders and nominee directors’ status to complement the beneficial ownership framework.

The Bill marks a pivotal movement in Malaysia's regulatory landscape, reinforcing the country's commitment to promoting transparent and accountable business practices. Based on the statements from the CCM, these changes is aimed to align Malaysia’s practice in ensuring transparency of ownership with the international standard while addressing the gaps identified by FATF, which subsequently address in a Consultative Document on the Proposed (Amendment) Bill 2020¹. These changes are critical to prepare Malaysia for the upcoming mutual evaluation exercise by FATF starting from year 2024-2025. Another factor was the recent development of the FATF standards that include the disclosure requirements for nominees². As such, Malaysia wishes to adhere to these international standard since Malaysia is a member of FATF.

In this edition, we will explore the key changes on Beneficial Ownership and Nominee framework and to understand how this potential revamp will impact businesses across the nation.

¹ Article 27 of the Consultative Documents on the Proposed (Amendment) Bill 2020 state the gaps were identified by FATF through the Malaysian Mutual Evaluation Report published in 2015 (MER 2015) which include to give clarity to the definition of ‘beneficial owner’ which goes beyond ownership of shares, to provide clarity and guidance of the beneficial ownership reporting framework which include foreign and local companies and limited liability partnership, among others.

² Article 13 of International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation (the FATF Recommendations) states that: Countries should take measures to prevent and mitigate the risk of the misuse of nominee shareholding and nominee directors, by applying one or more of the following mechanisms: (a) requiring nominee shareholders and directors to disclose their nominee status and the identity of their nominator to the company and to any relevant registry, and for this information to be included in the relevant register, among others.

2. The New Framework of Beneficial Ownership

The Bill proposes a comprehensive framework for the disclosure and reporting of Beneficial Ownership ("BO"), appearing to align with the Guidelines for the Reporting Framework for Beneficial Ownership of Legal Persons ("Guidelines") issued by the CCM in 2020. In tandem with the Bill that is currently pending the Royal Assent, the CCM has also released a consultative documents seeking the public opinion on the proposed new guidelines for the reporting of BO suggesting revised details corresponding the Bill and providing example of case studies illustrating the reporting structure ("New Guidelines").

The Bill proposed an insertion of a new Division 8A, consisting of new provisions of Sections 60A (Definition of BO), 60B (Register of BO), 60C (Company's power to require disclosure of BO), 60D (Duty of BO to provide information), and 60E (Exemption). Please see the summary of each section below:

2.1 The expansion of definition of "Beneficial Owner"

The Bill introduces a proposed expansion of the definition of "Beneficial Owner" under a new Section 60A(1)³. This broader definition will encompass any natural persons who ultimately own or control the company, including those exercising ultimate effective control and that the Registrar of CCM may issue guidelines in identifying a beneficial owner of a company. On the other hand, the current definition of "Beneficial ownership" under Section 2 is individuals holding ultimate ownership of shares, excluding nominees, as of the date of this newsletter⁴. The intention of the Bill is to include those person who has no shares in the company but ultimately has control over the company. Hence, the sentence "including those person who exercise ultimate effective control over a company" was introduced.

The New Guidelines clarified that "ultimately owns or controls a company" refers to the ownership through interest in the company's shares of not less than 20%. Meanwhile "ultimate effective control" refers to individuals who hold less than 20% shares or voting rights, but still exercised significant control or influence over the directors or the management of the company, whether formal or informal⁵.

The impact of this extension is that, the Beneficial Owners will be defined beyond individuals with a stake in shares, and would incorporate those individuals with non-shares interests. For non-shares interest, the New Guidelines provides example of criteria of a non-share interest as an individual exercise ultimate effective control over a company when the recommendation made by him is always followed by the members holding the majority of the voting rights in the company. The individual is not necessarily a member or director of the company but consistently exercises dominant influence or control over the company or regularly consulted for the decision of the board of directors⁶

2.2 Introduction of Register of Beneficial Ownership

³ The Bill proposed definition of "Beneficial Owner" under Section 60A(1) as follows: (1) A person is a beneficial owner of a company if he is a natural person who ultimately owns or control 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.

⁴ Section 2(1) of the existing Companies Act 2016 defines "Beneficial Owner" as the ultimate owner of the shares and does not include a nominee of any description.

⁵ Article 26 and 26 of the Consultative Documents for BO Guidelines issued by CCM.

⁶ Article 29(c) of the Consultative Documents for BO Guidelines issued by CCM.

The Bill proposes a revolutionary change in the form of a dedicated Register of BO, outlined in a new Section 60B. This register mandates companies to submit key information about BO to the CCM. The required details include the BO's full name, address, nationality, dates of assuming and relinquishing the BO role, among other pertinent information and must be kept at the registered office, similar to other registers. It serves as a repository for updating any changes, mirroring the current practice for other registers⁷ mandated by the CCM.

Despite the New Guidelines have provided that the registry of BO (RBO) is to be kept by the CCM, the template of filing the same to CCM have yet to be provided. Further elucidation, guidelines, and templates for the submission process are anticipated from the CCM, necessitating vigilance from company secretaries post-Bill enactment, especially concerning the proposed inclusion of BO information in the annual return filing as outlined in the new sub-section 68(3)(ia) and (ib).

2.3 Company's power to require disclosure of BO

Section 56 of the current Act provides the “*power of company to require disclosure of beneficial interest in its voting shares*” meanwhile the Bill introduces new Section 60C, empowering companies to demand disclosure of BO information from their members or shareholders without having regard to voting shares. This would mean that the company is empowered to request for disclosure if an individual is identified as beneficial owner through shares or other means. Companies are obligated to record and submit this information to the Register of BO, including subsequent changes, to the CCM. The Annexure A of the New Guidelines have also provided the sample of notice to be sent by the company to pursuant to Section 60C. It is worth to note that the current Act does not provide the sample of such notices.

2.4 Duty of BO to provide Information

To bolster the BO reporting framework, the Bill introduces a duty for Beneficial Owners under new Section 60D. It mandates any individual who reasonably believes they qualify as a BO to notify the company, providing requisite information for subsequent submission to the CCM.

2.5 Exemption

New Section 60E introduces an exemption mechanism, granting the relevant Minister the authority to issue and gazette an Order in support of the Bill. This Order, if enacted, would exempt specific classes of companies from the proposed Division 8A. However, such exemption is contingent upon meeting certain requirements. Notably, this provision comes into play if these companies are already subject to similar BO requirements under other existing written laws. The actualization of such exemption will only be known upon the gazetting of such an Order. Despite the exemption, Article 21 of the New Guidelines suggests exempted companies to notify the CCM of their exemption status and provide the BO status to other competent regulators where such companies are under its purview.

2.6 Special Requirements for Foreign Companies

For registration purposes, beyond the existing requirements in section 562(1) of the Act, the Bill proposed that foreign companies to also furnish BO information. Additionally, a new section 573A will extend Division 8A to cover foreign companies, bringing them under the umbrella of BO framework. Furthermore, proposed amendments to section 576(2) of the Act will mandate the inclusion of BO information and the address where the register of BO is maintained, if not at the foreign company's registered office, in the annual return of a foreign company. These changes signify an enhanced focus on transparency and accountability in the operations of foreign entities.

⁷ Other registers in the current practice is Register of Members, Directors, Secretaries, Auditors and Register of Charges.

3. The New Framework for Nominee Shareholders and Nominee Directors

3.1 Additional Amendments

The CCM has issued consultative document to seek the public's opinion on the proposed additional amendments to the Act, aiming to align with recent developments from the Financial Action Task Force (FATF) regarding enhancements to the beneficial ownership framework, particularly concerning the disclosure of the status of nominee shareholders and nominee directors.

Specifically, the proposed amendments include the introduction of a new division in the Act known as "Division AA", which primarily outlines definitions for "nominee shareholder," "nominee director," and "nominator," along with the establishment of registers for nominee shareholders and nominee directors of both local and foreign companies.

The consultative document has expired on 31st January 2024 and it will progress for review before it is being tabled in the Malaysian parliament.

3.2 Similar mechanism as BO framework

The CCM recommends similar mechanism like BO to be applicable to nominees. They will be required to disclose their identity, the information relating to the their nominator and company will have the obligation to keep the register of the nominee.

4. Penalties for Non-Compliance

Recognizing the importance of compliance, the Bill and the Proposed Amendments introduces penalties for companies that fail to adhere to the disclosure requirements. These penalties include fines not exceeding twenty thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction, particularly under new Section 60B(6) for failure relating to keeping the register of BO. The move aims to instill a greater sense of responsibility among businesses and discourage any attempts to circumvent the regulations.

5. What Does This Mean for Your Business?

Upon the passage of the Bill, the restructured beneficial ownership reporting framework represents a pivotal transformation in corporate transparency and accountability. Businesses operating in Malaysia would face with the crucial task of promptly comprehending and adjusting to the changes. A thorough review of existing beneficial ownership structures is essential, with a priority on updating records to align with the new requirements.

Moreover, companies are encouraged to seek professional consultation for compliance and deep understanding of the amended regulations. Proactivity and staying well-informed will not only shield businesses from potential legal consequences but will also contribute to fostering a business environment distinguished by trust and credibility.

6. Conclusion: A New Era for Corporate Transparency

The improvement is important to assist law enforcement agencies in carrying out their law enforcement activities especially in combatting the money laundering activities and to support reporting institutions such as financial institutions and the Designated Non-Professional Business and Profession (DNBPs) in performing the onboarding process (*Know-Your-Customer*) as required under the Anti-Money laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLATFAPUA 2001).

The nominee scheme is not uncommon in Malaysia, especially considering the significant foreign investment in various industries. However, certain sectors impose restrictions on foreign equity ownership, obligating a majority stake held by Malaysians to ensure local participation in the economy. Consequently, many businesses have adopted the nominee scheme to adhere to these regulations, resulting in local entities often acting upon the instructions of foreign entities, whom are the beneficial owners. The enforcement by authorities regarding the operationality of companies with restricted stakes utilizing nominee schemes by foreign entities after the Bills are passed remains unclear. It is expected that the CCM will issue further guidelines including the transition period to allow companies to adjust to these changes.

The author believes that these changes ensure transparency and promote accountability for business owners in Malaysia, particularly since the nominee scheme is widely implemented in the country. While authorities have long recognized the significance of the nominee scheme, particularly concerning foreign investors, clear rules for reporting have not been established until now. Malaysia is also following the best practices of other jurisdictions, such as Singapore, which has already amended its legal framework to introduce new provisions on nominees in its Companies Act of 1967.

When these changes take effect, businesses are encouraged to seek consultations from legal professionals to ensure compliance with the law. Should you have any questions or require assistance in expecting these changes, our expert team is here to help.

◆ One Asia Lawyers ◆

One Asia Lawyers Group is a network of independent law firms created to provide seamless and comprehensive legal advice for Japanese and international clients across Asia. With our member firms in Japan, Southeast Asia, Oceania and other ASEAN countries, One Asia Lawyers Group has a strong team of legal professionals who provide practical and coherent legal services throughout each of these jurisdictions.

For any enquiry regarding this article, please contact us by visiting our website: <https://oneasia.legal/> or email: info@oneasia.legal.

This newsletter is general information for reference purposes only and therefore does not constitute our group member firm's legal advice. Any opinion stated in this newsletter is a personal view of the author(s) and not our group member firm's official statement. Please do not rely on this newsletter but consult a legal adviser or our group firm member for any specific matter or legal issue. We would be delighted to answer your questions, if any.

< Author >



Yuki Hashimoto
One Asia Lawyers Malaysia
Lawyer (Japan)

He established his own firm in Japan and worked as a representative partner of a law firm with three offices in Japan. He has provided legal service as advisor to a wide range of organization in Japan, including companies in construction, real estate management, system development as well as local government and politic parties. He has been a member of One Asia Lawyers since September 2020, providing advice on general cross-border Asian legal matters (M&A, regulatory investigations, etc.) with a focus on Malaysia.

yuki.hashimoto@oneasia.legal



Farhatun Najad Zulkipli
One Asia Lawyers Malaysia
Lawyer (Malaysia)

She is an attorney qualified in Malaysia and a qualified Advocate and Solicitor of the High Court of Malaya. She has numerous years of experience in both in-house and private practice and her main areas encompass commercial and corporate advisory work, real estate disposal and acquisition, technology-based contract negotiation and more. After joining One Asia Lawyers in 2021, her practice is focused primarily on general corporate matters, structuring and handling cross border transactions involving joint ventures, mergers and acquisitions, business transfers and restructuring of share capital, foreign investments, regulatory compliance and corporate governance, employment and industrial law related matters.

najad.zul@oneasia.legal