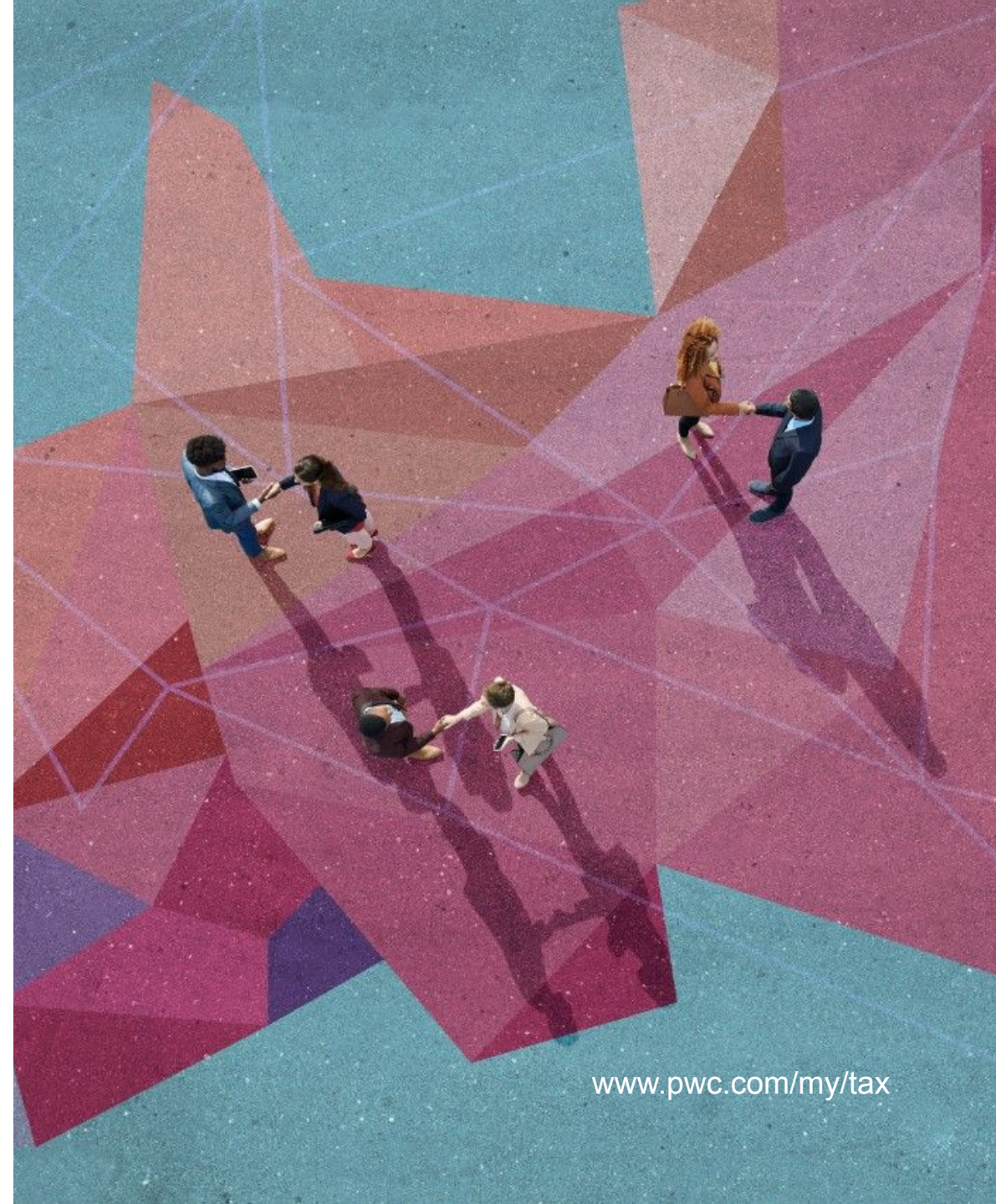




Taxavvy

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Companies Amendment Act 2024: Beneficial ownership reporting



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Companies Amendment Act 2024: Beneficial ownership reporting

The Companies (Amendment) Act 2024 (“Amendment Act”) has been enforced on 1 April 2024 in relation to section 2 and Division 8A, with the exceptions of sections 68 and 576. All companies registered under the Companies Act 2016 (CA 2016) are required to lodge their beneficial ownership (BO) information to the Companies Commission of Malaysia (SSM) within 3 months from 1 April 2024 through e-BOS. No enforcement action will be taken for non-compliance for lodgements up until 30 June 2024.

Following the enforcement of the Amendment Act, a revised guideline on BO reporting framework has been issued by the SSM to assist companies in fully complying with the framework.

The salient points to note in respect of the revised guideline include the following:

<i>Definition of BO</i>	A BO is a natural person who ultimately owns or controls a company through interest in shares and effective interest and includes an individual who exercises ultimate effective control over the company.
<i>New criteria</i>	There is a total of six criteria on who shall be a BO, with a new criteria being introduced where an individual who owns less than 20% shares or voting rights but exercises significant control or influence over the company
<i>Register of BO</i>	Companies must now keep a separate register of BO at the registered office or some other place notified to the SSM.
<i>Obligation of BO</i>	The BO shall notify the company of their status as BO including any changes to the information recorded in the register of BO.
<i>Reporting to SSM</i>	Newly incorporated companies must notify the SSM of its BO information within 60 days from the appointment of a company secretary. Foreign companies must notify the SSM of its BO information at the point of registration and within 14 days from the date of registration. Any changes to the information recorded in the BO register shall be notified to the SSM within 14 days of the date recorded. The annual filing of BO information together with the annual return is not enforced as of todate.
<i>Exemption</i>	No company is exempted from the application of this BO reporting framework under Division 8A of the CA 2016.
<i>Senior management</i>	Companies without a BO or still in the process of identifying the BO are required to name one or more individuals from senior management who is primarily in charge of the management of the company in place of the BO.

What do companies need to start doing now?

- Consider if current information in the BO register would be different with the new definition and criteria.
- Understand the roles and responsibilities of directors, members, company secretary / agent, BO and persons given notice by the company under the CA 2016 to ensure compliance under Division 8A of the CA 2016.
- Understand the scope of reporting, i.e. first entry points and continuing obligation.
- Create and maintain the register of BO, including supporting documents.
- For exempted entities or entities without a BO, identify and compile information of the senior management to indicate in the register of BO.
- Notify the SSM of the company's BO information in the e-BOS system by 30 June 2024.
- Put in place a robust end-to-end process for the BO reporting framework.
- Adopt a BO policy / framework to strengthen governance.

Frequently Asked Questions (FAQs)

1. **What if my company is a government / state-owned company?**
The company is required to submit and declare the relevant office as the BO of the company.
2. **Does a public listed company need to send notice to each and every member?**
The company shall send notice to members holding 20% shares or more or any person believed to have ultimate effective control over the company.
3. **Does a public listed company or regulated company fall under any exemption from Division 8A of the CA 2016?**
No exemption is provided. All companies registered under the CA 2016 will have to comply with the BO reporting framework.
4. **Will the information of the BO be publicly available?**
No. Access to the register of BO is only available to the BO, persons authorised by the BO, competent authorities and law enforcement agencies.
5. **Who is responsible for the BO reporting framework?**
The company shall be responsible, i.e. the board of directors is ultimately responsible to ensure full compliance from identification, verification and recording of BO information.
6. **Who is responsible to notify the SSM on the BO information in the register through e-BOS?**
The company secretary is required to verify their account for the first time in e-BOS and thereafter, to file the information through e-BOS by 30 June 2024 and any subsequent changes.
7. **What are the sanctions for non-compliance with Division 8A after 1 July 2024?**
The company and every officer may be subject to fines from MYR20,000 and / or imprisonment.

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