



Taxavvy

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The Companies (Amendment) Bill 2023

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The Companies (Amendment) Bill 2023 (“Amendment Bill”) was passed by the Dewan Rakyat and Dewan Negara in the last quarter of 2023. It is anticipated that the enforcement would take place in Quarter 1 2024, which means that entities would need to start reporting the information of its Beneficial Owners (“BO”) to the Suruhanjaya Syarikat Malaysia (“SSM”) (also known as the Companies Commission of Malaysia) within 3 months or a specified timeline from the enactment of the Amendment Bill.

The existing Guideline on Beneficial Ownership Reporting Framework (“BO Guideline”) issued by SSM in 2020 was meant to provide guidance for companies in this self-regulated reporting regime to fully understand the requirements and to prepare for the reporting. This period is known as the “Transitional Period”.

During the Transitional Period, companies are required to identify, obtain, verify and maintain the BO information. Upon gazette of the Amendment Bill, SSM will issue a Revised BO Guideline whereby companies would further be mandated to report and disclose the BO information to the SSM through its annual returns and update the SSM when there are any changes to the BO and their information.

BO Guideline would be enhanced following the Amendment Bill, and these are the anticipated enhancements:

New definition of BO	The definition has now expanded from ultimate owner of shares to include a natural person who ultimately owns or controls a company.
New criteria	An individual who holds less than 20% of shares or voting rights but exercises significant control or influence over the company.
Identification of BO cannot be evaded	When a company has taken all efforts and measures but is unable to identify a BO, a natural person who holds the position of senior management shall be named.
BO self disclosure	Any person who is reasonably believed to be a BO of an entity should make a self-disclosure to the company whenever he/she becomes a BO, any changes to the particulars and when he/she ceases to be a BO.
Reporting and disclosure	Companies are mandated to maintain a separate Register of Beneficial Owners (“Register of BO”), conduct annual identification of BO for submission of such information together with the annual returns and notify the SSM when there are changes to the BOs and/or the BOs’ information.
Exempted entities	Exempted companies are required to notify SSM of their exemption status together with the information of the senior management.

What do companies need to start doing now?

- Put in place a system to support the end-to-end process to comply with the BO Guideline and the enhancements.
- Working with your teams to ensure suitable resources and strategies are in place for a smooth reporting.
- Incorporate the BO process in the annual return compliance cycle annually.
- Consider any changes to BO in restructuring or when there is a change in ownership (direct and indirect).
- Adopt a BO policy / framework to strengthen governance.
- Identify suitable platforms for verification checks on the BOs and their information.
- 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.

Frequently Asked Questions

1. *How should companies commence the BO reporting framework process?*

You may refer to the BO Guideline issued by the SSM for guidance. The Guideline is available on SSM's website www.ssm.com.my/Pages/Home.aspx (Legal Framework > Companies Act 2016 > Guideline). SSM will further issue a Revised Guideline when the Amendment Bill is enforced.

2. *Who is responsible for the BO reporting regime within a company?*

The board of directors is ultimately responsible to ensure the company complies with the BO reporting framework. Members of the Company and/or the BO has an obligation to inform the Company whether he/she is a BO and provide the necessary details for reporting. Any other persons who had received notice from the Company and is aware of the BO should also inform the Company.

3. *Which are the companies that are exempted from the Revised BO Guideline? Will I continue to be exempted under the Revised BO Guideline if I am exempted now?*

The new exemption list will be made available once the gazette order is published by the Minister of Domestic Trade and Cost of Living.

4. *Will the information of the BO be publicly available?*

No, access to the Register of BO is only for competent authorities, law enforcement agencies, the BO whose name has been entered in the Register of BO and any other person authorised by the BO.

5. *What is the foreseeable enforcement action to be taken by SSM for failure to comply with the Enhanced BO Reporting Framework?*

SSM will conduct inspections from time to time to ensure all companies comply with the BO Guideline. Any person who fails to comply commits a breach and the SSM has power to take action against such persons.

6. *Are the BO Guideline applicable to all foreign entities?*

The BO Guideline is applicable to all companies registered / incorporated under the Companies Act 2016 and the Limited Liability Partnerships Act 2012.

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