

## Malaysia Introduces Mandatory Disclosure of Beneficial Ownership



The Guidelines for the Reporting Framework for Beneficial Ownership of Legal Persons issued by the Companies Commission of Malaysia (“CCM”) came into effect on 1 March 2020 (“Guidelines”). The Guidelines set out a reporting framework to identify and disclose the beneficial ownership of entities (“BO reporting framework”). You will find the Guidelines [HERE](#).

Under the BO reporting framework, all companies and Limited Liability Partnerships (“LLPs”) are required to:

- Take reasonable steps to identify, obtain and verify its ultimate beneficial owners (“BO”),
- Record and keep the beneficial ownership information (“BO Information”) accurate and up-to-date in the register of members (for companies) or the register of partners (for LLPs) (“BO register”),
- Enable access to the BO Information to competent authorities, law enforcement agencies, and the BO in a timely manner; and

- Notify the CCM of the BO Information obtained, including any changes thereto.

In this newsletter, we will provide a first overview of the BO reporting framework as set out in the Guidelines.

In order to ensure compliance and since collection, verification and submission of the BO Information can take some time, companies and LLPs should then contact their respective company secretaries / compliance officers as early as possible.

### A. What is a “Beneficial Owner”?

The Companies Act 2016 (“CA”) defines a BO as “the ultimate owner of the shares and does not include a nominee of any description”.



In the BO reporting framework, the phrase “the ultimate owner of the shares” is understood to cover both ownership and effective control. In particular, in the case of a company limited by shares, “the ultimate owner of the shares” is an individual (natural person) who meets at least one of the following criteria:

**Ownership Criteria:**

- **Criteria 1:** the individual has interest, directly or indirectly, in not less than 20% of the shares of the company,
- **Criteria 2:** the individual holds, directly or indirectly, not less than 20% of the voting shares of the company.

**Effective Control Criteria:**

- **Criteria 3:** the individual 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 4:** the individual 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 5:** the individual 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.

## B. What Entities Are Covered by the Guidelines

### I. Entities That Fall Within the Scope of the Guidelines

The Guidelines apply to all types of businesses, such as:

- All local companies incorporated under the CA, including companies limited by shares, companies limited by guarantee and trust companies,
- All foreign companies registered under the CA,
- All local and foreign LLPs; and
- Businesses (sole proprietorships and partnerships).

Businesses registered under the Registration of Businesses Act 1956, namely sole proprietorships and partnerships, are deemed compliant with the requirements under the Guidelines as all business owners are individuals and citizens or permanent residents in Malaysia. Consequently, in practice, the Guidelines apply to companies and LLPs, either local or foreign.

### II. Exempted Entities

By exception, the following companies and LLPs are exempted from the BO reporting framework:

- Companies licensed by Bank Negara Malaysia under the Financial Services Act 2013 or the Islamic Financial Services Act 2013,
- Prescribed development financial institutions under the Development Financial Institutions Act 2002,
- Licensed money services business under the Money Services Business Act 2011,
- Entities licensed or registered under the Capital Markets and Services Act 2007,
- Companies whose shares are quoted in a stock exchange, either local or foreign exchange,
- Companies whose shares are deposited in the central depository pursuant to the Securities Industry (Central Depositories) Act 1991; and
- Certain rare exempt LLPs.

Those exempted companies must make a declaration of their exempted status.

## C. How to Identify the BO?

The covered companies and LLPs must take reasonable steps to identify, obtain and keep the BO information accurate and up-to-date, primarily by employing at least one of the following actions:

- Considering the interests in the company or the LLP held by individual, corporate entities and/or trusts,
- Reviewing all documents and information available at the entity's level,
- Sending out notices to all members or partners and any other relevant person on a yearly basis,
- Considering any evidence that may show interests or rights held through a variety of means that may ultimately be controlled by the same person,
- Having an internal policy on BO reporting in the constitution of the company, the partnership agreement of the LLP, or such other document deemed appropriate; and
- Maintaining a BO Register and ensuring that the information therein is up-to-date, accurate and accessible in a timely manner.

Should the company or LLP fail to identify the BO, they must show proof that they attempted to obtain the BO information by sending at least two notices to the members and partners respectively.

## D. What Are the Applicable Timelines

Two different sets of timelines should be considered here: (i) when the obligations start and (ii) for how long entities have to comply with them.

### I. Transitional period and post-transitional period

The obligations of companies and LLPs in accordance with the BO reporting framework are implemented in two steps:

- A transitional period, from 1 March 2020 to 31 December 2020, during which they must obtain, keep and update the BO information at the entity's level; and
- A post-transitional period starting 1 January 2021, during which they must obtain, keep, update the BO information and notify the CCM.



### II. Timeline for the Companies and LLPs to Obtain and Provide the BO Information

Following the transition, both companies and LLPs will have to submit the BO information to the CCM before 14 January 2021, or such extended time frame as decided by the CCM. This evidently requires the necessary information to have been gathered during the year 2020.

After the end of the transitional period, companies and LLPs are required to provide the BO information as follows:

#### Companies must:

- Obtain the BO information within 30 days after the appointment of a company secretary,
- Enter the BO information into the register of BO within 60 days after the BO information has been obtained or received,
- Notify the CCM of the BO information and any subsequent changes, within 14 days from the date the BO information is entered into the register of BO,
- Lodge the annual return, together with the BO information, not later than 30 days from the anniversary of its incorporation date; and

- By exception, new foreign companies must obtain the BO information, enter the BO information into the register of BO and notify the CCM during the registration stage.

**LLPs must:**

- Provide the BO information at the registration stage,
- Notify the CCM of changes in the registered particulars within 14 days from the date of changes of the BO information in the registered particulars; and
- Lodge their annual declaration, together with the BO information, within 90 days from the end of the financial year.

## E. What Are the Penalties in Case of Non-Compliance

Depending on the roles and responsibilities of persons involved with the BO information, various penalties will be applied.

Those in charge of obtaining and verifying the BO information, recording and keeping up-to-date the BO information in the BO register, and lodging the annual return (for companies) or the annual declaration (for LLPs), can be liable to a fine up to MYR 20,000 for non-compliance. This concerns the directors, company secretaries and agents of companies or the partners and compliance officers of LLPs.

Members of a company and partners of LLPs will both be more severely punished respectively for not providing the BO information requested. Failure to comply can result in a fine of up to MYR 50,000 and even imprisonment in the case of natural persons. Regarding companies specifically, this fine will be applied not only to members, but also to any person from whom the company requests BO information.

## F. How Can We Help

In view of the serious consequences in the event of non-compliance, we recommend that the covered entities consider their new obligations in terms of disclosure of the BO.

Our corporate team can help you identify and verify your BO, complete and update the BO Register and implement internal processes to help you remain compliant with the newly applicable Guidelines.

## Your Contact



### Pascal Brinkmann, LL.M. (Stellenbosch)

**Partner, Lawyer, Accredited Tax Practitioner  
(Income Tax) (Singapore)**

**Kuala Lumpur, Malaysia**

**P +60 3 2166 0085**

**pascal.brinkmann@luther-services.com**

## Imprint

Luther Rechtsanwaltsgesellschaft mbH, Anna-Schneider-Steig 22, 50678 Cologne, Germany, Phone +49 221 9937 0, Fax +49 221 9937 110,

Unit 17-2, Level 17, Wisma UOA II, No. 21, Jalan Pinang, 50450 Kuala Lumpur, Malaysia, Fax +60 (0)3-21660087, [contact@luther-lawfirm.com](mailto:contact@luther-lawfirm.com)

*Editor:* Pascal Brinkmann, LL.M. (Stellenbosch), Managing Director, Unit 17-2, Level 17, Wisma UOA II, No. 21, Jalan Pinang, Phone: +60 (0)3-21660085, [pascal.brinkmann@luther-services.com](mailto:pascal.brinkmann@luther-services.com)

*Copyright:* These texts are protected by copyright. You may make use of the information contained herein with our written consent, if you do so accurately and cite us as the source. Please contact the editors in this regard [contact@luther-lawfirm.com](mailto:contact@luther-lawfirm.com)

## Disclaimer

Although every effort has been made to offer current and correct information, this publication has been prepared to provide information on recent regulatory and legal developments in Malaysia only. It is not exhaustive and thus does not cover all topics with which it deals. It will not be updated and cannot substitute individual legal and/or tax advice. This publication is distributed with the understanding that Luther, the editors and authors cannot be held responsible for the results of any actions taken on the basis of information contained herein or omitted, nor for any errors or omissions in this regard.

