

Client Alert

March 2020

Implementation of Beneficial Ownership Reporting Framework for Companies in Malaysia

For further information, please contact:

Brian Chia
Partner
+603 2298 7999
brian.chia@wongpartners.com

Poh Seng Lim
General Manager
+603 2298 7831
pohseng.lim@bakermckenzie.com

Introduction

In the age of globalisation and increased complexity of corporate structures, there is an urgent requirement to identify the actual persons behind these corporate structures.

The Companies Commission of Malaysia ("**CCM**") has issued the Guideline for the Reporting Framework for Beneficial Ownership of Legal Persons, which came into effect on 1 March 2020 ("**Guidelines**"), to implement a reporting framework on the beneficial ownership of companies.

The framework imposes an obligation on inter alia all companies incorporated in Malaysia and foreign companies registered in Malaysia under the Malaysian Companies Act 2016 ("**CA**") to:

- (a) identify and verify its ultimate beneficial owners ("**BO**");
- (b) keep the requisite information ("**BO Information**") for completing the register of BO ("**BO Register**") accurate and up to-date;
- (c) enable access to the BO Information in a timely manner; and
- (d) notify the CCM of the BO Information obtained, including any changes thereto.

Please [click here](#) to access and read the full Guidelines.

Definition of a Beneficial Owner

Under the CA, a BO is defined as "the ultimate owner of the shares and does not include a nominee of any description".

In respect of companies limited by shares, the BO of a company is an individual (i.e. natural person) who satisfies any of the following criteria:

- (a) Significant interest / ownership
 - (i) Has direct or indirect interest in 20% or more of the company's shares;
 - (ii) Holds directly or indirectly, 20% or more of the company's voting shares;
- (b) Effective control
 - (i) Has the right to exercise "ultimate effective control" over the company, directors or the management of the company;



- (ii) Has the right or power to directly or indirectly appoint or remove director(s) who hold a majority of the voting rights at board meetings; or
- (iii) Is a member of the company and, under an agreement with another member, controls alone a majority of the voting rights in the company.

Note that "ultimate effective control" refers to a situation where the company, the directors or the management of the company, whether formal or informal, is accustomed or is under an obligation to act under the directions, instructions or wishes of an individual. In such a situation, this individual is deemed the BO of the company.

In respect of companies limited by guarantee (i.e. companies without a share capital), a BO is an individual (i.e. natural person) who satisfies either (b) (i) or (b) (ii) above only.

Aside from these parameters, the Guidelines do not clearly address how a BO is identified for entities with different structures including investment funds, trusts and public listed companies. Pending further clarification from the CCM, these issues will have to be considered on a case-by-case basis.

Application

The Guidelines apply to:

- (a) all companies incorporated in Malaysia under the CA;
- (b) foreign companies registered in Malaysia under the CA;
- (c) companies limited by guarantee; and
- (d) limited liability partnerships.

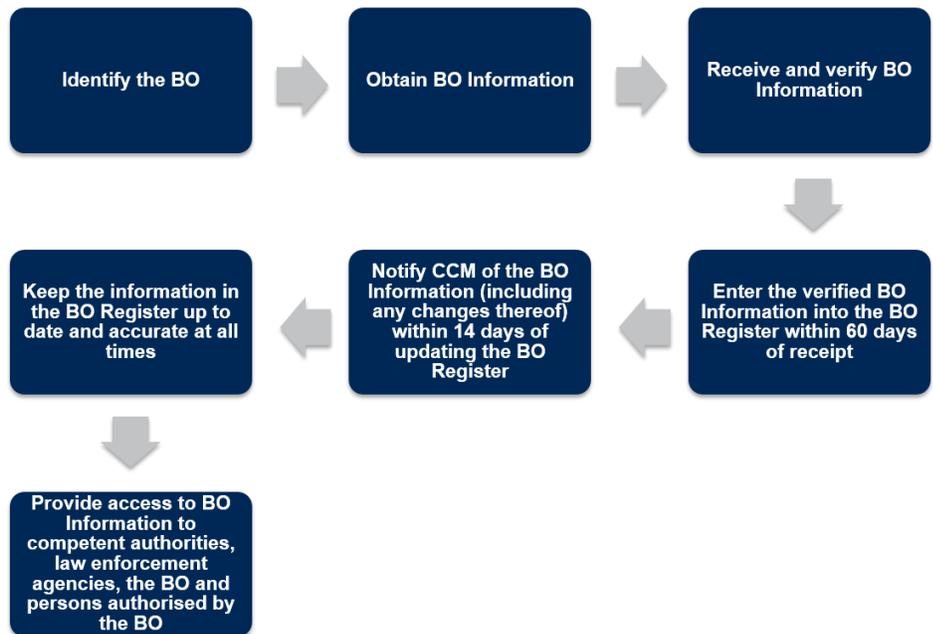
The Guidelines do not apply to:

- (a) companies licenced by Bank Negara Malaysia pursuant to the Financial Services Act 2013 and/or the Islamic Financial Services Act 2013;
- (b) a prescribed development financial institution under the Development Financial Institutions Act 2002;
- (c) a licenced money services business under the Money Services Business Act 2011;
- (d) an entity licenced or registered under the Capital Markets and Services Act 2007;
- (e) companies whose shares are quoted in a local or foreign stock exchange; and
- (f) companies whose shares are all deposited in the central depository pursuant to the Securities Industry (Central Depositories) Act 1991.

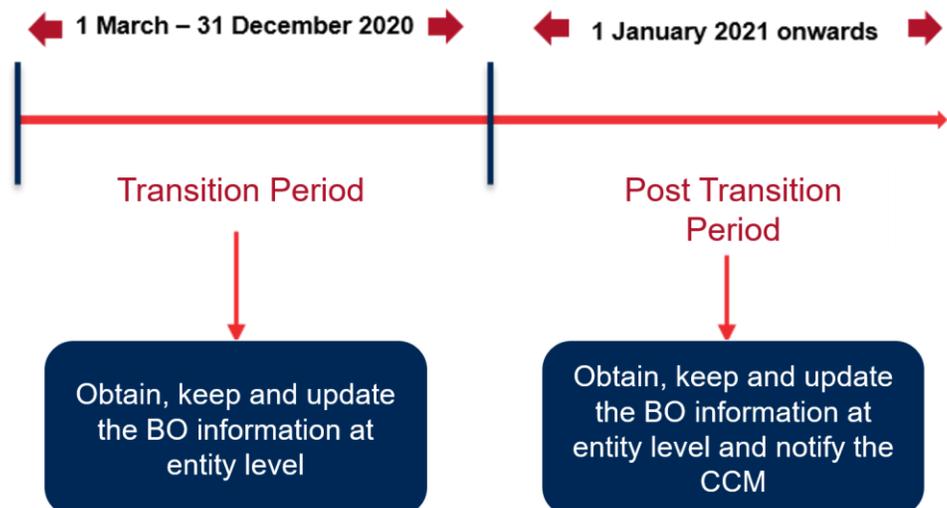


Compliance lifecycle and transition

The compliance lifecycle of the BO reporting framework is illustrated below:



The CCM has prescribed a transition period of 1 March 2020 to 31 December 2020 for companies to comply with the BO reporting framework. This is illustrated in the diagram below:





After the transition period, companies will be required to submit its BO Information to the CCM within 14 days from the end of that period or such extended time frame as the CCM may determine.

Next Steps

To comply with the Guidelines, our corporate services team will follow up with a separate communication on directional guidance for the next steps in complying with the BO reporting framework. This will include templates of the notification letter, form to be completed with the BO information and other requirements.

Once the BO information has been obtained, our corporate services team will populate the BO Register during the transition period. After the transition period, the necessary disclosures will be made to the CCM.

As there is a continuing disclosure obligation, the BO Register will be updated whenever there are updates or changes to the BO information.

www.wongpartners.com

Wong & Partners
Level 21
The Gardens South Tower
Mid Valley City
Lingkaran Syed Putra
59200 Kuala Lumpur