

Annex

To facilitate the provision of information on legislation, policies, practices and institutions related to promoting beneficial ownership information transparency, including existing registry(ies) and mechanism(s) to make requests for such information, the Secretariat has prepared the following questionnaire as a guide that States parties may wish to use. This questionnaire follows the same format as the questionnaire that was circulated in May 2022 in Note Verbale CU 2022/156(A)/DTA/CEB/CSS. If your Government responded to the previous questionnaire, please only provide new and/or updated information.

The secretariat also wishes to draw the attention of the Government to the conference room paper entitled “Good practices and challenges with respect to beneficial ownership and how it can foster and enhance the effective recovery and return of proceeds of crime” (available at [CAC/COSP/WG.2/2022/CRP.1](#)) and to the contributions received in the response to the aforementioned Note Verbale (available on the webpage of the [16th session of the Working Group on Asset Recovery](#)).

Collecting the information for this questionnaire may require cooperation by several different agencies/authorities. States parties may wish to send the questionnaire to the following agencies/authorities, depending on their national system for obtaining and recording information on legal persons and legal arrangements in their country, e.g.:

- Company registry and any other relevant registry(ies)
- Agency(ies)/authority(ies)/body(ies) responsible for obtaining and maintaining beneficial ownership information
- National competent authorities responsible for international cooperation in criminal matters, including freezing and confiscation of criminal proceeds

Questionnaire on Beneficial Ownership Information

1. Definition of beneficial ownership & mechanisms for obtaining beneficial ownership information

1.1 Please provide the definition of “beneficial ownership” in your country for: (a) **legal persons**; and (b) **legal arrangements**, including the relevant legislation (if applicable). Please describe criteria and thresholds that are applied to determine beneficial ownership, including any criteria for exercising control without legal ownership (e.g. voting rights, right to appoint or remove board of directors).

a) Legal Persons

[Section 2 of the Companies Act 2016 \(“CA 2016”\)](#) defines ‘beneficial owner’ as the ultimate owner of the shares and does not include a nominee of any description.

[For the purposes of identifying a beneficial owner under section 56](#), reference must also be made to section 8. Subsection 8(4) of the CA 2016 states that a person is deemed have an interest in a share where a body corporate has an interest in a share and that person or his associates, or that person and his associates are entitled to exercise or control the exercise of

not less than twenty per centum of the votes attached to the voting shares in the body corporate.

Companies Commission of Malaysia (SSM) has issued the 'Guideline for the Reporting Framework for Beneficial Ownership of Legal Persons' dated 1 March 2020 (revised 18 December 2020) ("Guideline") pursuant to section 20C of the Companies Commission of Malaysia Act 2001 (CCMA 2001). The Guideline clarifies that the definition of beneficial owner shall include the perspective of ownership and effective control. The Guideline will guide the relevant stakeholders in determining the identity of beneficial owners of the company and it will be based on specific criteria and thresholds which is in line with the CA 2016.

Under paragraph 27 of the Guideline, an individual who meets one or more of the criteria or a combination of any one of the criteria may be determined as a beneficial owner (BO):

- a) Has interest, directly or indirectly, in not less than 20% of the shares of the company;
- b) Holds, directly or indirectly, not less than 20% of the voting shares of the company;
- c) Has the right to exercise ultimate effective control whether formal or informal over the company; or the directors or the management of the company;
- d) 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;
- e) 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.

[Note: SSM is amending the Companies Act 2016 to change the definition of "beneficial owner". This Bill proposed to be presented in Parliament in the October/December session 2023.]

Bank Negara Malaysia (BNM) in January 2020 had issued the revised Anti-Money Laundering, Countering Financing of Terrorism and Targeted Financial Sanctions for Financial Institutions (FIs), Designated Non-Financial Businesses and Professions (DNFBPs) and Non-Bank Financial Institutions (NBFIs) (the Guidelines) to the FIs, DNFBPs and NBFIs (collectively referred to as reporting institutions) which (among others) requires the reporting institutions to conduct customer due diligence (CDD) on legal persons and legal arrangements, including the beneficial owners. This Guidelines are legally enforceable by the BNM, in the event of any contraventions.

Beneficial owner is defined under the Guidelines and refers to any natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those natural persons who exercise ultimate effective control over a legal person or arrangement. Reference to "ultimately owns or control" or "ultimate effective control" refers to situations in which ownership or control is exercised through a chain of ownership or by means of control other than direct control.

The requirement to determine the beneficial owner of legal persons as part of CDD process specifies that reporting institutions are required to identify and take reasonable measures to verify the identity of beneficial owners according to the following sequence: (a) the identity of the natural person(s) who ultimately has a controlling ownership interest in a legal person. At a minimum, this includes identifying the directors/shareholders/partners with equity interest of more than 25%; (b) to the extent that there is doubt as to whether the person(s) with

the controlling ownership interest is the beneficial owner(s) or where no natural person(s) exert control through ownership interests, the identity of the natural person (if any) exercising control of the legal person through other means; and (c) where no natural person is identified, the identity of the relevant natural person who holds the position of Senior Management.

b) Legal Arrangements

Trust Companies Act 1949 (“TCA 1949”) which is under SSM’s purview provides for the registration and regulation of companies carrying out trust activities in Malaysia (except for Labuan). TCA 1949 came into force on 15 March 1973 and currently, the Act is being reviewed with the objective to replace the Act with a new Trust Companies Bill that will reform the current Act at par with other major common law jurisdictions as well as beneficial ownership concepts for legal arrangements in line with the international standard set by the Financial Action Task Force (FATF). Once the review process is completed, the new Bill will introduce beneficial ownership reporting framework for legal arrangements created by companies registered as trust companies under the Trust Companies Bill.

[Note: Please note that SSM only controls supervise companies that carry out trust activities registered under the Trust Company Act 1949. There are other agencies which regulates the trust industry in Malaysia such as the Department of Prime Minister (BHEUU) who regulates the Holders Act Trusts 1949 and Trustees (Incorporation) Act 1952 and also the Labuan Companies Act which is regulated by the Board Labuan Financial Services (Labuan FSA). In connection with that, SSM only regulates a small number trust activities carried out by registered Trust companies with SSM totaling 44 companies as of May 31, 2023.]

Whereas for legal arrangements, reporting institutions are required to identify and take reasonable measures to verify the identity of beneficial owners through the following information: (a) for trusts, the identity of the settlor, the trustee(s), the protector (if any), the beneficiary or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust (including through the chain of control/ownership); or (b) for other types of legal arrangements, the identity of persons in equivalent or similar positions

The Guidelines can be accessed at the following:

- a) Anti-Money Laundering, Countering Financing of Terrorism and Targeted Financial Sanctions for Financial Institutions (FIs):
https://amlcft.bnm.gov.my/documents/6312201/6321216/AML_CFT_TFS_PD.pdf/b7152be7-cebe-28a7-e12a-4633e8990d56?t=1646233840499
- b) Anti-Money Laundering, Countering Financing of Terrorism and Targeted Financial Sanctions for Designated NonFinancial Businesses and Professions (DNFBPs) and Non-Bank Financial Institutions (NBFIs):
https://amlcft.bnm.gov.my/documents/6312201/6321216/PD_DNFBP.pdf/a74ad389-1679-c40e-14ef736b467622ea?t=1646233822693

Beneficial owner of securities of public listed companies

In the context of share ownership of public listed companies in Malaysia, clients who deals in securities which are quoted and traded in Bursa Malaysia (e.g. shares of listed corporations) vis-à-vis a stockbroking company (participating organisation) are required to open a trading

account (Rules of Bursa Malaysia Securities, Rule 7.05). Where a trading account is opened for the client, the participating organisation must clearly identify the Central Depository System (CDS) Account (securities account) where the securities arising from all dealings in the trading account shall be credited into or debited from. The securities account is an account established by a central depository (Bursa Malaysia Depository or BMD) for the recording deposit of securities and for dealings in such securities by the client. Every securities account opened with the central depository must be opened in the name of: (a) the beneficial owner of the deposited securities; or (b) the authorised nominee (section 25(4) of SICDA). Both (a) and (b) collectively will be referred to as “depositor”.

Under the Securities Industry (Central Depositories) Act 1991 (Act 453) the term “beneficial owner”, in relation to deposited securities, mean the ultimate owner of the deposited securities who is the person who is entitled to all rights, benefits, powers and privileges and is subject to all liabilities, duties and obligations in respect of, or arising from, the deposited securities, and does not include a nominee of any description. Further, paragraph 5.01 of the Depository Rules require that every securities account opened must bear the name, national identity card number or passport number, address of the depositor, an account number and it must state whether such account belongs to a Malaysian or a foreigner. In the case of an authorised nominee, it can only hold deposited securities for one beneficial owner in respect of each securities account and the law also requires the authorised nominee to disclose the name and details of the beneficial owner to the central depository (section 25A of SICDA). Any dealings in deposited securities can only be effected by the beneficial owners or an authorised nominee (section 29A of SICDA). The SC also has the power to require information and documents under section 53 of SICDA for the purposes of investigation of any offence under SICDA.

2. Access to basic information on legal persons

- 2.1 Please describe the **process** for obtaining *basic information* on legal persons created or registered in your country, including the role of the company registry.

SSM acts as a repository of corporate information. One of the statutory functions of SSM is to supply corporate information to the public as provided under paragraph 17(e) of the CCMA 2001. Basic information can be purchased through SSM’s portals on payment of prescribed fees.

- 2.2 Please list the **categories** of *basic information* on legal persons that is obtained and recorded by the company registry (or other relevant registries), e.g. name of entity, date of incorporation, tax ID number, etc.

The following basic information is kept at SSM:

- a) The name of the company;
- b) The number of the company;
- c) The status of whether the company is private or public;
- d) The nature of business of the company;
- e) The address of the registered office;
- f) The name, identification, nationality and the ordinary place of residence of every person who is to be a member of the company and, where any of these persons is a body corporate, the corporate name, place of incorporation, registration number and the registered office of the body corporate;
- g) The name, identification, nationality and the principal place of residence of every person who is to be a director;
- h) The name, identification, nationality and the principal place of residence of the secretary, if

any; and

- i) In the case of a company limited by guarantee, the amount up to which the member undertakes to contribute to the assets of the company in the event of its being wound up.

2.3 Is the company registry available publicly & online in your country? **YES / NO**

If **YES**, please provide links to the company registry and any other relevant registries of legal persons, or provide details about how the public can access them.

The company registry is available via online platforms i.e., MyCoID and Malaysian Business Reporting System (MBRS) (specifically for submission of annual return and financial statement). As for the supply of corporate information of companies, there are two (2) online platforms available to the public namely, e-Info and MyDATA.

The links for the platforms:

- a) MyCoID (<https://mycoid2016.ssm.com.my/>)
- b) MBRS (<https://www.ssm.com.my/Pages/Services/OtherServices/MBRS.aspx>)
- c) e-Info (<https://www.mydata-ssm.com.my/homePage>)
- d) MyDATA (<https://www.ssm-einfo.my/>)

3. Access to beneficial ownership information of legal persons

3.1 Through which mechanism(s) can competent authorities (such as law enforcement, police, financial intelligence unit and tax agencies) access *beneficial ownership information* on companies and other legal persons created or registered in your country. Please select all that apply.

- Through a registry/registries with beneficial ownership information
- Through a different mechanism
- Competent authorities do not currently have access to beneficial ownership information

Through a different mechanism as follows:

- a) Under the *Guideline for Reporting Framework For the Beneficial Ownership of Legal Persons* issued by the Companies Commission of Malaysia, companies are required to maintain a Register of Beneficial Owners (“Register of BO”) at the registered office of the companies where the register of members are being kept. All BO information must be kept in the Register of BO and companies are required to ensure the BO information are accurate and kept up to date. Under the Guidelines, the company is obliged to give access to competent authorities, law enforcement agencies, to the BO information; and
- b) Mechanism pursuant to customer due diligence requirement imposed on reporting institutions under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLATFAPUAA) and sectoral guidelines in relation to prevention of money laundering and terrorism financing (SC’s Guidelines of Prevention of Money Laundering and Terrorism Financing For Reporting Institutions in the Capital Market or “SC’s AML Guidelines”) which requires capital market intermediaries as reporting institutions to take reasonable steps to verify the identity of natural persons who own or exercise effective control (“beneficial owner”) over a customer (e.g. legal person/legal arrangement) who is not a natural person. Under Section 16(6) of AMLATFAPUAA, a reporting institution shall record any information, data or details obtained pursuant to customer due diligence (“CDD”) requirement and shall, upon request in writing, provide a copy of such record to the competent authority.

Paragraph 10.4 of SC's AML Guidelines also requires that a reporting institution must retain, maintain and update the relevant records (including CDD records) in such a way that:

- (a) the relevant law enforcement agencies and internal and external auditors of the reporting institution will be able to reliably judge the reporting institution's transactions and its compliance with the AMLA;
- (b) any transaction effected via the reporting institution can be reconstructed; and
- (c) the reporting institution can satisfy within a reasonable time any enquiry or order from the relevant law enforcement agencies as to the disclosure of such relevant record.

If **REGISTRY**, please provide further details on such registry(ies) including:

- Authority(ies)/agency(ies) responsible for obtaining and maintaining beneficial ownership information and for maintaining the register(ies). Please list if more than one;
- Categories of beneficial ownership information (data fields) obtained, recorded and maintained on the registry(ies), e.g. name, nationality, date of birth, address, etc.;
- Types of legal entities covered within the scope of the beneficial ownership registry(ies), including any exempt entities;
- Details of the registry's(ies') access policy:
 - Is the information on the registry(ies) available to the public? **YES / NO**
 - If **YES**, please include a link(s) to the registry(ies).
 - If **NO**, please list the authorities/agencies that have access to this information, or that can request access.
 - Does accessing beneficial ownership information in the registry(ies) entail any costs?
 - Does the registry(ies) provide features to search information by different types of information, e.g. legal entity name, name of director, name of beneficial owner, by first or last name, by business address, by registered agent? Is it possible to search for a combination of information (Boolean searches)?
- Frequency of updates of information and triggers for updates;
- Any mechanisms to verify beneficial ownership information submitted to the registry(ies) by legal persons or their representatives (if they exist).

3.2 Please describe any other sources (mechanisms) through which competent authorities/agencies can access beneficial ownership information in your country. In each case, please describe how beneficial ownership information on companies and other legal entities is made available to authorities and/or the public (if applicable).

Examples may include through private-public partnerships (e.g. involving financial institutions, notaries and/or corporate service providers), though stock exchange or security exchange commission, or disclosure obligations for participation in public procurement processes, etc.

The beneficial ownership reporting framework under the current Guideline provides for transitional period starting from 1 March 2020 and the period shall end with the enforcement of beneficial ownership provisions in the amendments made to the Companies Act 2016 through the Companies (Amendment) Bill 2023. During the transitional period, entities are required to obtain, keep and update the beneficial ownership information at the entity's level and once the transitional period ends, entities will have to lodge the beneficial ownership information with the Registrar. During this period, competent authorities and law enforcement agencies in enforcing

the laws under their purview will have access to the records kept by the entities including the register of beneficial ownership for investigation purposes.

After the transitional period ends and based on the Companies (Amendment) Bill 2023, competent authorities and law enforcement agencies will have access to the beneficial ownership information kept at the entity's level as well as with the Registrar whilst for the relevant public authorities such as Ministry of Finance Malaysia whose in charge of public procurement and those recognized as reporting institutions under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 [Act 613] (AMLATFAPUA 2001) including financial institutions, lawyers and accountants will have access to the beneficial ownership information. Hence, the beneficial ownership information is not publicly available.

For the beneficial ownership information obtained by the reporting institutions pursuant to their CDD obligations (as provided above), the competent authorities particularly financial intelligence unit (FIU), law enforcement agencies and supervisory authorities are able to access such information. The Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLA) provides the respective powers to the agencies to access the information maintained by the reporting institutions for financial intelligence, investigation and supervision purposes.

The AMLA can be accessed at the following link:
<https://amleft.bnm.gov.my/documents/6312201/6321213/Anti-Money+Laundering%2C+AntiTerrorism+Financing+and+Proceeds+of+Unlawful+Activities+Act+2001+%28AMLA%29.pdf/d1db4402-6cbb-c23d3299-71f3064b5f31?t=1646233806240>

3.3 Are foreign legal persons, foreign (express) trusts or foreign legal arrangements allowed to operate in/own assets/ and/or register in your country? **YES / NO**

If **YES**,

The answer is YES for foreign legal persons. The answer is NO for legal arrangements as trust companies registered under the Trust Companies Act 1949 must first be incorporated as local companies under the Companies Act 2016.

Foreign legal persons and arrangements are subject to CDD process when dealing with the reporting institutions under the AMLA and the Guidelines. As such, basic as well as beneficial ownership information of these entities are maintained and kept up to date by the reporting institutions.

- how is basic information on these arrangements recorded (if at all)?
For foreign companies, the basic information must be submitted for the purpose of registration as provided under section 562 of the Companies Act 2016.
- how is beneficial ownership information on these arrangements recorded (if at all)? Please provide details of the relevant legislation and practices.
Beneficial ownership information of foreign legal persons must be submitted during registration stage pursuant to paragraph 562(1)(g) of the Companies Act 2016 and annually, during lodgement of annual return pursuant to paragraph 576(2)(i).

4. Access to basic information and beneficial ownership information of (express) trusts and other similar legal arrangements

- 4.1 Does your country recognize (express) trusts or other similar legal arrangements? **YES / NO**
- If **YES**, please provide a broad overview of your country's system and mechanisms for obtaining beneficial ownership information on (express) trusts and other similar legal arrangements created or registered in your country.
 - If **NO**, please skip to question 5

Malaysia recognizes trusts created under the Common Law as well as statutes. For trusts created in onshore, the trusts usually will appoint professional trustees particularly the trust companies who are the reporting institutions under the AMLA. Similarly, when the trusts open an account or conduct transaction, the financial institutions who are the reporting institutions will also conduct CDD including to identify and verify the beneficial owners of the trusts. While for trusts created in Labuan International Business and Financial Centre, all Labuan trusts are required to appoint Labuan trust company as one of the trustees, as prescribed under the Labuan Trusts Act 1990. All Labuan trust companies are reporting institutions which subject to the same CDD requirements as explained above. With regard to the mechanism to obtain beneficial ownership information on legal arrangements, please refer to our response under Question 3.2

The trusts under SSM purview shall be the trust arrangements made by the trust companies registered under the Trust Companies Act 1949 (TCA 1949). Under the current Act, there is no specific provisions relating to legal arrangements as such, SSM is in the process of reviewing the Act to introduce several modern law concepts in line with international standards including the beneficial ownership reporting for legal arrangements (for more information, please refer to the relevant consultative document issued by SSM:

https://www.ssm.com.my/Pages/Legal_Framework/PublicConsultantpdf/consultation_document_on_the_review_of_the_tca_1949.pdf The review process is expected to be completed with the tabling of the proposed Trust Companies Bill at the Parliament for approval by the end of 2024.

Mechanism pursuant to customer due diligence requirement imposed on reporting institutions under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLATFAPUAA) and sectoral guidelines in relation to prevention of money laundering and terrorism financing (SC's Guidelines of Prevention of Money Laundering and Terrorism Financing For Reporting Institutions in the Capital Market or "SC's AML Guidelines") which requires capital market intermediaries as reporting institutions to take reasonable steps to verify the identity of natural persons who own or exercise effective control ("beneficial owner") over a customer (e.g. legal person/ legal arrangement) who is not a natural person. Under Section 16(6) of AMLATFAPUAA, a reporting institution shall record any information, data or details obtained pursuant to customer due diligence ("CDD") requirement and shall, upon request in writing, provide a copy of such record to the competent authority. In relation to a legal arrangement such as a trust, paragraph 8.1.6 (b) of the SC's AML Guidelines requires the reporting institution to identify and take reasonable measures to verify the identity of the beneficial owners by way of verifying the identity of the settlor, the trustee or the protector, the beneficiary or class of beneficiaries and any other natural person (including through a gain of control/ ownership).

- 4.2 How is *basic information* on (express) trusts and other legal arrangements obtained and

recorded in your country?

Under the current Act, there is no specific provisions relating to collection of basic information of trust arrangements. However, SSM is in the process of reviewing the Act to introduce several modern law concepts in line with international standards including the beneficial ownership reporting for legal arrangements (for more information, please refer to the relevant consultative document issued by SSM:

https://www.ssm.com.my/Pages/Legal_Framework/PublicConsultantpdf/consultation_document_on_the_review_of_the_tca_1949.pdf The review process is expected to be completed with the tabling of the proposed Trust Companies Bill at the Parliament for approval by the end of 2024.

4.3 How is *beneficial ownership information* on (express) trusts and other legal arrangements obtained and recorded in your country?

Y Through a registry/registries with beneficial ownership information

Y Through a different mechanism

Y Competent authorities do not currently have access to beneficial ownership information

If **REGISTRY**, please provide details on the registry(ies), authority(ies)/agency(ies) in charge of maintaining the registry(ies), type of information collected, and details on the access policy. If **ALTERNATIVE MECHANISM**, please provide details on the mechanism, type of information collected, and details on the access policy.

Through a different mechanism among others: Mechanism pursuant to customer due diligence requirement imposed on reporting institutions under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLATFAPUAA) and sectoral guidelines in relation to prevention of money laundering and terrorism financing (SC's Guidelines of Prevention of Money Laundering and Terrorism Financing For Reporting Institutions in the Capital Market) which requires capital market intermediaries as reporting institutions to take reasonable steps to verify the identity of natural persons who own or exercise effective control ("beneficial owner") over a customer (e.g. legal arrangement) of the reporting institution who is not a natural person. Under Section 16(6) of AMLATFAPUAA, a reporting institution shall record any information, data or details obtained pursuant to customer due diligence ("CDD") requirement and shall, upon request in writing, provide a copy of such record to the competent authority. In relation to a legal arrangement such as a trust, paragraph 8.1.6 (b) of the SC's AML Guidelines requires the reporting institution to identify and take reasonable measures to verify the identity of the beneficial owners by way of verifying the identity of the settlor, the trustee or the protector, the beneficiary or class of beneficiaries and any other natural person (including through a gain of control/ ownership).

5. Sanctions

5.1 Please describe the types of sanctions, sanctionable conduct, and targets of sanctions for non-compliance with beneficial ownership disclosure regulations (whether on the registry(ies) or through an alternative mechanism).

Sanctions including criminal, civil and administrative actions can be undertaken against reporting institutions for non-compliances with the Guidelines including beneficial ownership related requirements.

The enforcement approach will be depending on the nature of the offences and can be taken pursuant to the AMLA, the Financial Services Act 2013 (FSA), the Islamic Financial Services Act 2013 (IFSA), the Development Financial Institutions Act 2002 (DFIA), and the Money Services Business Act 2011 (MBSA):

- 1) Penalty under the AMLA carries a fine of up to RM1.0 million.
- 2) Penalty under the FSA/IFSA/DFIA carries a fine of up to RM5.0 million in the case of a breach that is committed by a body corporate or unincorporated or RM1.0 million ringgit in the case of a breach that is committed by any individual.
- 3) Penalty under the MSBA carries a fine of up to RM500,000 or to imprisonment for a term up to 3 years or to both.

The supervisory authorities conduct on-site examination as well as off-site monitoring on reporting institutions to ensure full compliance with CDD requirements (including beneficial ownership requirements) by reporting institutions in-line with the risk-based approach.

The FSA and IFSA can be accessed at the following links: FSA: <https://www.bnm.gov.my/documents/20124/820862/Financial+Services+Act+2013.pdf> IFSA: <https://www.bnm.gov.my/documents/20124/8102422b-e6dd-d149-8db0-e3637e89ed5c> DFIA: <https://www.bnm.gov.my/documents/20124///90271e9c-989c-ad9d-326b-fdfc8d87ca7f> MSBA: <https://www.bnm.gov.my/documents/20124///ef89a17a-0a5b-27ad-8aba-458a9888cd1f>

A. Sanctions for legal persons under the Companies Act 2016 relating to beneficial ownership

PROVISION	DETAILS	PENALTY
Section 588	General Penalty	Individual - maximum 3 years imprisonment or a fine not exceeding RM50,000 or to both / other than individual - a fine not exceeding RM50,000)
Subsection 56 (7)	A person who fails to comply with a notice issued by the company or gives false and misleading information in reply to the notice	General penalty under section 588
Subsection 56 (8)	A company and every officer who fails to comply with direction of Registrar, SC or a stock exchange	General penalty under section 588
Subsection 584	Require a company or officer of the company to furnish information relating to shareholding of any	Maximum of 10 years imprisonment or a fine not exceeding RM3 million or to both

	person to the Registrar	
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B. Sanctions for legal persons under the Limited Liability Partnership Act 2012 relating to beneficial ownership

PROVISION	DETAILS	PENALTY
Section 17	Requiring an LLP or officer of the LLP to furnish information relating to any change made to the registered particulars to the Registrar	Fine not exceeding RM10,000
Section 80	Any person who are making false or misleading statements commits an offence	Maximum of 5 years imprisonment or a fine not exceeding RM500,000 or to both

- 5.2 Please describe the powers available to the designated authority(ies)/agency(ies) to enforce sanctions for non-compliance with the beneficial ownership disclosure requirements, including any statistics on enforcement of such sanctions.

For legal persons, enforcement actions may be taken only after the transitional period end and the relevant provisions relating to beneficial ownership are enforced. For legal arrangements, since there are no provisions relating to beneficial ownership reporting framework under the Trust Companies Act 1949, enforcement actions can only be taken under the proposed Trust Companies Bill.

Please refer to response under Question 5.1 above on powers available to supervisory authorities to enforce sanctions for non-compliance with beneficial ownership related requirements.

6. International Cooperation, asset recovery and challenges

Under the transitional period, beneficial ownership information of legal persons is available only at the entity's level kept at the registered office and can be accessed by the competent authorities and law enforcement agencies. The access to the beneficial ownership information at the registry level is available only after the transitional period ends and can be accessed by competent authorities, law enforcement agencies and certain categories of persons that will be gazetted under the Companies Act 2016. The same policies will be proposed for beneficial ownership of legal arrangements under the proposed Trust Companies Bill.

- 6.1. Does your country make beneficial ownership information available to foreign competent authorities (directly or upon request)? Please provide details of the relevant legislative and

regulatory framework in your country that allows for the international exchange of such information.

Under the securities laws' framework, Security Commission's (SC) power to obtain information or provide assistance to foreign supervisory authority is confined to investigation purposes only. Section 150 of Securities Commission Malaysia Act 1993 ("SCMA") provides that the SC, upon receiving a written request from a foreign supervisory authority for assistance to investigate into an alleged breach of a legal or regulatory requirement which the foreign supervisory authority enforces or administers, provide assistance to the foreign supervisory authority by carrying out investigation of the alleged breach of the legal or regulatory requirement or provide such other assistance to the foreign supervisory authority as the Commission thinks fit. Under the SCMA, "foreign supervisory authority" means a foreign authority which exercises functions corresponding to the functions of the SC under a securities law or any person outside Malaysia exercising regulatory functions and in respect of which the SC considers desirable and necessary to render assistance in the interest of the public.

Under the transitional period, beneficial ownership information of legal persons is available only at the entity's level kept at the registered office and can be accessed by the competent authorities and law enforcement agencies. The access to the beneficial ownership information at the registry level is available only after the transitional period ends and can be accessed by competent authorities, law enforcement agencies and certain categories of persons that will be gazetted under the Companies Act 2016. The same policies will be proposed for beneficial ownership of legal arrangements under the proposed Trust Companies Bill.

Under the AMLA, Central Bank of Malaysia (BNM) in its capacity as the Financial Intelligence Unit (FIU) may enter into an agreement or arrangement with a corresponding authority of a foreign State regarding the exchange of information that BNM or the corresponding authority has reasonable grounds to suspect would be relevant to the investigation or the prosecution of a money laundering offence or a terrorism financing offence or an offence that is substantially similar to either offence. The scope of the exchange of information covers beneficial ownership information as well. Under the Financial Services Act 2013 (FSA) and the Islamic Financial Services Act 2013 (IFSA), the Bank in its capacity as the supervisory authority is also allowed to exchange information, including beneficial ownership information with the foreign counterparts.

- 6.2. Please describe how foreign competent authorities may request or access beneficial ownership information on legal persons and legal arrangements formed in your country. Which agency(ies)/authority(ies) is/are responsible for receiving and responding to foreign requests? **Please provide contact information and instructions.**

In your opinion, what are the main challenges faced by *foreign competent authorities* to access beneficial ownership information held in your country?

- 6.3. In your opinion, what are the main challenges faced by *competent authorities of your country* to access/receive beneficial ownership information held in a foreign country?
Challenges would typically occur where the information on beneficial owner resides in offshore jurisdiction such as Bermuda and British-Virgin Island (BVI). The information is not easily accessible.

- 6.4. Do you have any case studies or examples where the transparency of beneficial ownership has *enabled or enhanced the effective recovery and return of proceeds of crime in (or for) your country?*

Until the transitional period ends with the enforcements of the Companies (Amendment) Bill 2023 which contained a new beneficial ownership reporting framework, no enforcement actions can be taken and thus, no case studies or examples can be shared.

7. Good Practices for Beneficial Ownership Transparency

- 7.1. Has your country implemented any specific good practices relating to Beneficial Ownership?

Companies Commission of Malaysia require companies to obtain and hold up-to-date information on the companies' beneficial ownership via the issuance of the Guideline for Reporting Framework For the Beneficial Ownership of Legal Persons issued by the Companies Commission of Malaysia in 2020.

BNM has taken various efforts to ensure compliance of CDD requirements including on beneficial owners by the reporting institutions. One of the key activities is the supervisory thematic review on implementation of beneficial ownership requirements by FIs and DNFBPs (particularly the legal sector) to identify the common gaps or challenges faced by reporting institutions in meeting the beneficial ownership requirements. The findings of the thematic review were communicated to the reporting institutions to inform on the common gaps found and to share industry best practices identified to help improve compliance level with CDD and beneficial ownership related requirements.

In September 2020, BNM also issued the Guidance on Beneficial Ownership to guide the reporting institutions in implementing their CDD obligations on beneficial owners. The Guidance also provides some examples of best practices. The Guidance can be accessed at the following link: https://amleft.bnm.gov.my/documents/6312201/6321409/04.Guidance_on_BO_01092020.pdf

On-going outreach sessions by BNM and industry-driven awareness programme are also conducted to elevate understanding of the requirements.

8. Follow-up to the special session of the General Assembly against corruption

- 8.1. Please describe any other measures, if any, that your country may have taken to implement paragraph 16¹ of the political declaration adopted by the General Assembly at its special session against corruption held in June 2021.

16. We commit to making efforts in international cooperation and taking appropriate measures to enhance beneficial ownership transparency by ensuring that adequate, accurate, reliable and timely beneficial ownership information is available and accessible to competent authorities and by promoting beneficial ownership disclosures and transparency, such as through appropriate registries, where consistent with the fundamental principles of domestic legal systems and using as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering. To this end, we will develop and implement the measures necessary to collect and share such information on the beneficial ownership of companies, legal structures and other complex legal mechanisms, and we will enhance the

ability of competent authorities in this regard.