

## Companies (Amendment) Bill 2023

## COMPANIES (AMENDMENT) BILL 2023

On 10 October 2023, the Ministry of Domestic Trade and Cost of Living, through the Companies Commission of Malaysia (“the Registrar”), tabled amendments to the Companies Act 2016 (“CA 2016”) for first reading at Dewan Rakyat. The Companies (Amendment) Bill 2023 (“Bill”) was passed by the Dewan Rakyat (House of Representatives) and Dewan Negara (Senate) of the Malaysian Parliament on 28 November 2023 and 13 December 2023 respectively. The Bill is presently awaiting Royal Assent for gazetting into law.

The objective of amendments of the Bills, amongst others, is to introduce a framework for the reporting of beneficial ownership, to improve the existing provisions relating to corporate governance framework, scheme of arrangement or compromise (“SOAC”) and corporate rescue mechanisms.

The following section will address the amendments proposed by the Bill concerning beneficial ownership reporting, outlined as follows:

### Beneficial Ownership Reporting

There are 10 main areas of the new/amended sections relating to Beneficial Ownership Reporting that were introduced as follows:

New/Amended Sections	Brief Description
1. Definition of Beneficial Owner (“BO”) of a Company [s2 and s60A(1)]	A BO will be defined as ‘a natural person who ultimately owns or controls over a company and includes a person who exercises ultimate effective control over a company’.
2. Guidelines to identify a BO of a Company* [s60A(2)]	The Registrar may issue guidelines for the purpose of identifying a BO of a company.

New/Amended Sections	Brief Description
3. Companies to keep and maintain a Register of BO and lodge the relevant BO information with the Registrar [s60B, s68, s576(2)]	<p>s60B(1) and (2) will require companies to record the BO information in the register of BO and the register is to be kept at the registered office or at any other place in Malaysia as notified to the Registrar.</p> <p>s60B(3) requires companies to lodge with the Registrar a notice with the particulars of the BO of the company.</p> <p>The amendments also require both companies and foreign companies to lodge with the Registrar the particulars of beneficial ownership in their annual returns.</p>
4. Access to the BO information [s60B(9), s613(1)(aa)]	The Minister will be empowered to determine person or class of persons who may access a company's register of BO or the beneficial ownership information lodged with Registrar and the Minister may also set out the manner, terms, conditions and fee for such access.
5. Duty of Company to require the disclosure of BO Information [s60C]	<p>The company has a duty to obtain information of its BO or confirm the accuracy of information by providing notices to the following persons, as applicable, essentially gathering the information and particulars of the BO of the company:</p> <ul style="list-style-type: none"> <li>(a) members of the company.</li> <li>(b) notices to persons the company knows or has reasonable grounds to believe to be a BO of the company.</li> <li>(c) any member or person the company knows or has reasonable grounds to believe knows the identity of the BO of the company.</li> </ul>
6. Duty of BO to give BO information [s60D]	The BO of a company has the duty to notify the company upon becoming a BO and provide prescribed information, as well as inform the company of any changes in the provided information.

New/Amended Sections	Brief Description
7. Exempted Companies [s60E]	The Minister may by Gazette publication exempt any class of companies from the beneficial ownership of companies reporting, either unconditionally or subject to such terms.
8. Offences [s60B(6), s60C(7),(8),(9) and s60D(4)]	<p>A specific penalty will be enforced for any contravention of the section on maintaining the register of BO and the lodgement of information with the Registrar. The company and every officer who contravenes the section may be liable to a fine not exceeding RM20,000.00 and a further fine of RM500 per day in the case of a continuing offence.</p> <p>Additionally, any person who contravenes any notice under s60C or failing in their duty under s60D commits an offence. Please note that the general penalty under s588 of the CA 2016 would still apply to these other provisions related to BO reporting. Upon conviction, the penalty is a fine not exceeding RM50,000 or a maximum three-year jail term or both.</p>
9. Foreign company to provide information of BO to the Registrar at the point of registration [s562(1)(fa)]	A foreign company will be required to provide the BO information for the purpose of its registration as a foreign company under the CA 2016.
10. Beneficial ownership of foreign company [s573A]	The provisions relating to beneficial ownership will also be applicable to all foreign companies.

*\*On 22 December 2023, the Registrar issued a consultative document on the “Proposed Guideline for the Reporting Framework for Beneficial Ownership of Companies (Revised) and Case Studies and Illustrations of the Guideline for the Reporting Framework for Beneficial Ownership of Companies”. Please click [here](#) for the Proposed Guideline for Reporting of BO.*



Additionally, various other amendments have been introduced to:

1. Strengthen the corporate rehabilitation frameworks through enhancement of provisions related to SOAC and corporate rescue mechanisms.
2. Promote compliance and facilitate ease of business by:
  - (a) extending the time for circulation of financial statements and reports upon application
  - (b) empowering the Registrar to issue guidelines for determining the independence of the auditor and the firm of auditors
  - (c) requiring approved liquidators to notify and update their details with the Registrar
  - (d) allowing the website of the Registrar to be used for publishing or advertising information that is otherwise required to be published or advertised in a newspaper

For further details on the full amendments introduced in the Bill, please click on the link below and **search for “D.R.33/2023”**.

<https://www.parlimen.gov.my/bills-dewan-rakyat.html?uweb=dr&lang=en>

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