

DNR Management Services

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Our ref: DNR-Evening Crest-24-443

28th May 2024

EVENING CREST SDN. BHD.

C-34-01, Colonial Tower
Empire City Damansara,
Damansara Perdana PJU 8,
47820, Petaling Jaya,
Kuala Lumpur

Dear *Sirs/Madam*,

Re: COMPANIES (AMENDMENT) ACT 2024 AND CHANGES TO THE BENEFICIAL OWNERSHIP (BO) REPORTING FRAMEWORK

We refer to the above subject matter.

Changes to the BO Reporting Framework

We wish to alert you about recent changes to the company law in Malaysia regarding the BO Reporting Framework.

On 1 April 2024, Suruhanjaya Syarikat Malaysia (SSM) announced the Phase 1 enforcement of the Companies (Amendment) Act 2024 [**CAA 2024**] and issued new Guidelines for the Reporting Framework for Beneficial Ownership of companies [**BO Guidelines 2024**]

We summarize some of the key changes affecting all companies include yours –

Definition of “beneficial owner”

Prior to the Amendment Act, the Companies Act interpreted “beneficial owner” as the ultimate holder of the shares and excludes any nominee of any description.

The new interpretation now distinguishes between the beneficial owner in relation to shares, and beneficial owner in relation to a company. Notably, the existing definition of a beneficial owner in relation to shares remains unaltered.

The new section 60A(1) specifies that a person is considered as a beneficial owner of a company if he is a natural person who ultimately owns or controls over a company, and includes those who exercises ultimate effective control over a company. Note that reference to a “company” also includes reference to a “foreign company”.

BO Register

Prior to the Amendment Act, the Companies Act was silent on any register of beneficial owners. The new section 60(B) sets out the requirements in relation to the beneficial owners register (“BO Register”) of a company.

In relation to the BO Register, note that:

- the information in the BO Register must be submitted to SSM not later than 30 June 2024 (or any other date as may be extended) through their new platform known as e-BOS in which the Company Secretary is the only authorised and approved lodger;
- it must be maintained at the company's registered office or another designated location in Malaysia, with notification to the Registrar.
- the BO Register must have the beneficial owner's full name, addresses, nationality, identification details, and usual place of residence. Additionally, it must include the dates when one becomes a beneficial owner and when they cease to be one;
- the company must inform the Registrar of any changes to the register of beneficial owners;
- companies are obliged to submit a notice to the Registrar within 14 days of any changes in the BO Register; and
- companies are required to preserve records of information for seven (7) years from the date an individual ceases to be a beneficial owner.

Non-compliance with these requirements by the company and its officers constitutes an offence. Upon conviction, the company and/or its officers can be fined up to **RM20,000**, with an additional daily fine of up to RM500 for a continuing offence.

Notices in relation to the identity of beneficial owner

The new section 60(C) requires any member of the company to inform the company whether they are a beneficial owner of the company. If they are not, they would have to provide particulars sufficient to enable persons to be identified as the beneficial owners of the company and any other information as specified in section 60B(1).

When a company possesses knowledge or reasonable grounds to believe that an individual is a beneficial owner, sections 60C(1)-(3) obliges the company to issue a written notice. Once the information has been provided, they have 14 days from the date when the information was received to record it in the BO register.

Notice must also be given to the beneficial owner of the company with regards to any changes to the particulars of a beneficial owner listed in the register. If the company has reasonable grounds to believe that a change has occurred, it must notify the beneficial owner to confirm the change and provide the relevant details. Similarly, if there are reasonable grounds to suspect inaccuracies in the particulars listed, the company must notify the beneficial owner to confirm or correct the information. This ensures transparency and accountability by compelling companies to actively seek and confirm beneficial ownership information.

A company and every officer who contravenes sections 60C(1)-(6) commits an offence. Violating any notice under section 60C is an offence, unless they can demonstrate that the company is already in possession of the relevant information or that the request for information

was frivolous or vexatious. False statements or recklessly providing false information while purportedly complying with a notice issued is also considered an offence.

Duty of beneficial owner of company to provide information

Any individual who believes they are a beneficial owner of a company must promptly inform the company and provide the required information. Beneficial owners are also obligated to update the company about any changes in their details listed in the BO Register. Furthermore, if a person ceases to be a beneficial owner, they must promptly notify the company, specifying the cessation date and relevant details. Violation of the provisions outlined in section 60D constitutes an offence.

The latest BO Guidelines 2024 supersede the 'Guideline for the Reporting Framework for beneficial ownership of Legal Persons' issued on 1 March 2020 and 17 December 2020 respectively.

Criteria Application to a Beneficial Owner

If an individual (natural person) shareholder or member of the Company meets one or more of the below criteria, he / she is regarded as a "beneficial owner":-

- A. Has interest, direct 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; or
- 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.
- F. Has less than 20% of shares or voting shares but exercises significant control or influence over the company

Situations where BO of the Company is the Senior Management

The Company is required to provide the information of its senior management in place of a beneficial owner in the event the Company has taken all reasonable steps to identify its beneficial owner and arrived at the conclusion that:

- (a) the Company has no BO;
- (b) the BO of the Company cannot be identified; or
- (c) the Company is still in the process of obtaining the BO information,

Consequences of Non-Compliance or False and Misleading Information

We would also like to draw your attention to the severe penalties for non-compliance:

Section 60C(7)

Please be informed that any person who fails to comply with this notice commits an offence under Section 60C(7), a company and every officer who contravene S60C(1),(2),(3),(4),(5) or (6) commits an offence under Section 588(2).

Section 588 (2)

Under Section 588 (2)(a) in the case of a person who is an individual, upon conviction, to a fine not exceeding RM50,000 or to imprisonment for a term not exceeding 3 years or both.

Section 588 (2)(b) in the case of a person other than an individual, upon conviction, to a fine not exceeding RM50,000.

Section 591

It is an offence under Section 591 to provide false or misleading information that a person may be liable, upon conviction, the imprisonment for a term not exceeding 10 years or to a fine not exceeding RM3 million or both.

Our Firm's Obligations and Charges

As your Company Secretaries, our firm shall be providing the necessary corporate secretarial services and advice to ensure your company's compliance with the changes outlined above by providing and undertaking the following –

- 1) drafting, preparing and sending out the notices required under the BO Guidelines 2024 on an annual basis;
- 2) ensuring the alignment of the information in the Register of BO with the annual return submission;
- 3) compiling and setting up the Register of BO and ensure information is accurate and maintained correctly
- 4) verifying the particulars of a BO who is not a member of the company, if any, and to obtain copies of their NRIC / passport, confirmation of residential address and such other supporting documents as required;
- 5) where the company has a corporate shareholder, we would have to obtain the information of the corporate shareholder to ensure that whatever information given by that shareholder can be verified through SSM's corporate profile print-out as well as to conduct a tracing of that corporate shareholder's corporate shareholder, if any;
- 6) conducting and performing such due diligence process as required for items (d) and (e) above;
- 7) submitting the BO information to SSM via e-BOS;
- 8) attending to any request from any enforcement bodies for access to the BO register; and
- 9) updating and advising you on the changes affecting the BO Guidelines 2024 as and when required.

The above work and documentation processes incur additional time cost and responsibilities on our part as well as impose liabilities on us as the reporting institution. We would therefore be imposing a fee of RM200.00 (Ringgit Malaysia: Two Hundred Only) per annum subject to a maximum of five (5) individual shareholders. If your company has corporate shareholders, the fee would be RM300.00 (Ringgit Malaysia: Three Hundred Only) due to the added responsibilities of obtaining the BO information from the corporate shareholder and sending a verification notice to the named BO as well as to conduct the due diligence process on their BO's information and particulars.

Yours sincerely,



ROBIAH BINTI AHMAD

DNR MANAGEMENT SERVICES