



Aaron Gerard Sankar  
**Corporate**  
T: +603 6208 5811  
E: [ags@lh-ag.com](mailto:ags@lh-ag.com)

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### **Guidelines on Reporting Framework for Beneficial Ownership**

The Companies Commission of Malaysia (or SSM) has issued an exposure draft on the Guidelines for the Reporting Framework for Beneficial Ownership of Legal Persons (**Guidelines**). The Guidelines are still in draft form and not yet in force pending feedback from practitioners and members of the public.

#### **Beneficial owners**

Beneficial owners are defined under the Companies Act 2016 to mean the “*ultimate owners of shares*” and do not include a nominee of any description. A company is required to confirm in its annual return (which is lodged annually with the SSM) that, among others, none of its members are holding shares in the company as trustee or nominee.

#### **Disclosure obligations**

Under section 56 of the Companies Act, companies may:

- (1) issue a written notice to a member of the company, requesting information on whether the member holds any voting shares of the company as a beneficial owner or trustee;
- (2) issue a written notice to any person who has an interest in any voting shares of the company, requesting information on whether the person holds any voting shares as beneficial owner or trustee; or
- (3) issue a written notice, requesting its member to inform the company on whether any voting rights held are subject to any agreement/arrangement.

Note that section 56 empowers a company to request for information but does not state that it is an obligation that companies make such request. However, if a notice is issued, a person who fails to comply with the notice commits an offence. If information is received, companies are required to record and are obliged to notify SSM of

such information and changes thereof.

Notwithstanding the above, the Guidelines provide that companies **are required** to send the section 56 notice to its shareholders at least once in a calendar year, for annual return submission purposes and to identify beneficial owners. It is further provided under the Guidelines that companies **must** have a policy to require its shareholders to notify the company when there is a change in the beneficial owners' information.

The Guidelines also clarify the meaning of *ultimate owners of shares* and provide five criteria to assist companies in identifying beneficial owners, covering both perspective of ownership and effective control. For instance, if a person holds at least 20% of the voting shares of a company, whether directly or indirectly, such person is a beneficial owner. Companies then have an obligation to record and report.

The deadline to provide feedback on the draft Guidelines is 4 December 2019.

Christie Wong Yi Shen ([wys@lh-ag.com](mailto:wys@lh-ag.com))

If you have any queries on the Guidelines, please contact the author or her team partner [Aaron Gerard Sankar](mailto:ags@lh-ag.com) ([ags@lh-ag.com](mailto:ags@lh-ag.com)).

Lee Hishammuddin Allen & Gledhill

Level 6, Menara 1 Dutamas  
Solaris Dutamas  
No. 1, Jalan Dutamas 1  
50480 Kuala Lumpur  
Malaysia

T +603 6208 5888  
F +603 6201 0122/0136  
E [enquiry@lh-ag.com](mailto:enquiry@lh-ag.com)  
W [www.lh-ag.com](http://www.lh-ag.com)

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