



MAICSA ANNUAL CONFERENCE 2024

SESSION 1: REGULATORY UPDATES

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COMPANIES (AMENDMENT) ACT 2024 [A1701]

TABLING DATES



Dewan Rakyat: 10 October 2023 & 28 November 2023

Dewan Negara: 13 December 2023

Royal Assent: 24 January 2024

Gazette of Royal Assent: 2 February 2024

Provisions: 31 Sections & 1 Schedule

ENFORCEMENT STAGES



The enforcement of the Companies (Amendment) Act 2024 is staggered into two stages:

1) **First Stage: 1 April 2024**

All the provisions in the Amendment Act EXCEPT:

- ❖ Section 4 (relating to section 68 CA 2016 - MBRS)
- ❖ Section 14 (relating to section 395 CA 2016 - 8th Schedule)
- ❖ Section 26 (relating to section 576 CA 2016 - MBRS)
- ❖ Section 28 (relating to section 612A CA 2016 - SSM website platform)

2) **Second stage: Later date**

- ❖ The date of enforcement for sections 4, 14, 26 and 28 of the Amendment Act will be determined by the Registrar.

OBJECTIVES OF AMENDMENTS



Strengthening corporate rehabilitation framework



Facilitate companies facing financial difficulties

Support economic recovery and competitiveness

Enhanced corporate transparency

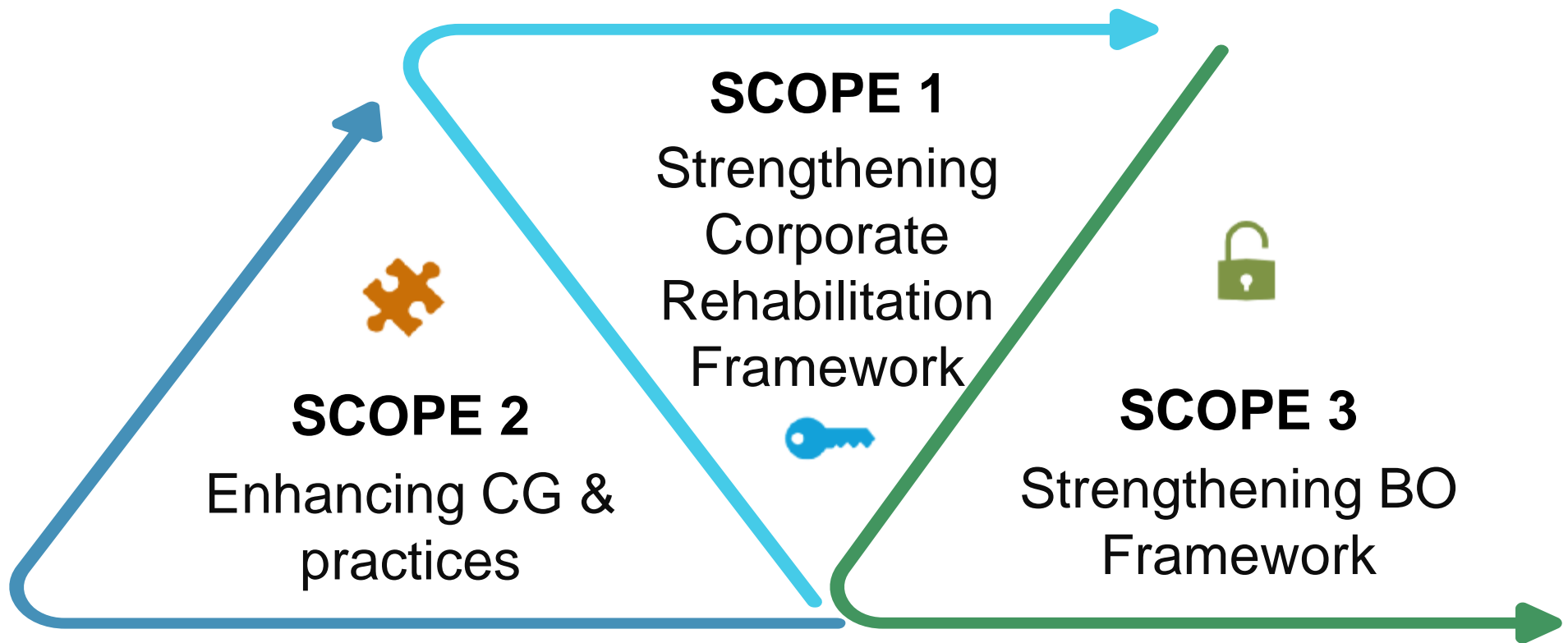


Enhancing transparency on beneficial ownership reporting

Supporting enforcement activities against money laundering, terrorist financing, corruption and other serious crimes

To support FATF/OECD evaluations in 2024/2025

SCOPE OF AMENDMENTS



SCOPE 2

**ENHANCEMENT OF CORPORATE GOVERNANCE
& PRACTICES**

CONTENTS OF THE ACT



Scope 2: Corporate Governance & Practices

Amendment	New
<ol style="list-style-type: none">1. Section 152(2)2. Paragraph 536(2)(a)	<ol style="list-style-type: none">1. Subsection 258(1A)2. Subsections 264(4A) & 264(4B)3. Subsections 433(4D) & (4E)4. Paragraph 567(1)(fa)5. Section 612A

SCOPE 2: ENHANCEMENT OF CORPORATE GOVERNANCE AND PRACTICES



- Ø As part of continuous effort to ensure high level of governance among companies, improvements are made to the Companies Act 2016 to promote compliance and facilitate ease of business.
- Ø New policies are continuously introduced to reflect the current needs of the corporate community for greater efficiency and better governance.

SCOPE 2: ENHANCEMENT OF CORPORATE GOVERNANCE AND PRACTICES



Ø Among the important amendments are as follows:

Section 28 of Act A1701: New section 612A

- § the SSM official website can facilitate and be used to publish information and gazettes in lieu of legislative requirements to overcome practical issues where there is no longer widespread circulation of physical newspapers throughout Malaysia and reduce the high cost of advertising.

Section 7 of Act A1701: New subsections 264(4A) & (4B)

- § that the Registrar is empowered to issue guidelines to ensure that the principle of auditors' independence is maintained in relation to the appointment of auditors who have spouses working in the company or group of companies to be audited by the auditor's firm.

Section 21 of Act A1701: New subsections 433(4D) & (4E)

- § To require liquidators to report their details to Registrar once licence has been approved.

SCOPE 2 – SECTION 152(2) (AMENDMENT)



EXISTING

NEW

Application of Subdivision 9 152.(1) ...

(2) This Subdivision shall not apply to an offer or invitation to subscribe for or purchase any securities of a corporation, including any excluded offer or excluded invitation as defined in the Capital Markets and Services Act 2007.

“(2) This Subdivision shall not apply to an offer, invitation or issuance to subscribe for or purchase any securities of a corporation, including any excluded offer, excluded invitation or excluded issue in the Capital Markets and Services Act 2007”.

SCOPE 2 – SECTION 536(2)(a) (AMENDMENT)



EXISTING	NEW
<p>Offences by officers of companies in liquidation 536.(1) ...</p> <p>(2) For the purposes of this section, the date of the commencement of winding up shall be—</p> <p>(a) in the case of a winding up by Court, the presentation of the winding up petition against the company; or</p> <p>(b) in the case of a voluntary winding up, the passing of the resolution to wind up the company.</p>	<p>Offences by officers of companies in liquidation 536.(1) ...</p> <p>(2) For the purposes of this section, the date of the commencement of winding up shall be—</p> <p>(a) in the case of a winding up by Court, on the date of winding up order; or</p> <p>(b) in the case of a voluntary winding up, the passing of the resolution to wind up the company.</p>

SCOPE 2 – SECTION 258(1)(a) (NEW)



EXISTING	NEW
None	<p>Time allowed for sending out copies of financial statements and reports</p> <p>258. (1) The circulation of financial statements and reports—</p> <ul style="list-style-type: none">(a) for a private company, shall be within six months of its financial year end; and(b) for a public company, shall be at least twenty-one days before the date of its annual general meeting. <p>(1A) In relation to a private company, the Registrar may, as he considers fit, extend the period within which financial statements and reports are required to be circulated by a private company if the private company makes an application for an extension of the period of circulation before the expiry of the period referred to in paragraph (1)(a).</p>

SCOPE 2 – SECTIONs 264(4A) & (4B) (NEW)



EXISTING	NEW
None	<p>Company auditors</p> <p>264. (1) A person shall not—</p> <ul style="list-style-type: none">(2)...(3)...(4)... <p>(4A) Notwithstanding paragraph (4)(b), no partner of the firm is disqualified by reason of his spouse being an officer of the company, if such reason does not compromise the independence of the auditor and the firm of auditors.</p> <p>(4B) The Registrar may issue guidelines for the purpose of determining the independence of the auditor and the firm of auditors.</p>

SCOPE 2 – SECTIONs 264(4A) & (4B) (NEW)



EXISTING	NEW
None	<p>Qualification of liquidator</p> <p>433.(1) ... (2) ... (3) ... (4) ...</p> <p>(4D) Any person who has been approved as a liquidator under subsection 433(4) shall, within thirty days of the approval, notify the Registrar the following particulars:</p> <ul style="list-style-type: none">(a) personal information of the approved liquidator;(b) approval as an approved liquidator;(c) the firm of the approved liquidators, including partners of the firm and branches, if any; and(d) any other particulars required by the Registrar. <p>(4E) If there is any change to the particulars specified in subsection (4d), the liquidator shall update the information within fourteen days from the date of such change.</p>

SCOPE 2 – SECTION 567(1) (fa) (NEW)



EXISTING	NEW
None	<p>Return to be filed where documents, etc., altered</p> <p>567.(1) If any change or alteration is made in— ... (fa) the status of whether the foreign company is private or public; or ...</p>

SCOPE 2 – SECTION 612A (NEW)



EXISTING	NEW
None	<p>Publication or advertisement on website</p> <p>612A. Where any information is required to be published or advertised in a newspaper under this Act, any person may, in lieu of publishing or advertising the information in a newspaper, publish or advertise the information on the website of the Commission in the form and manner as the Registrar may determine upon payment of the prescribed fee.</p>



**PUBLICATION OR ADVERTISEMENT ON THE OFFICIAL WEBSITE OF THE
COMPANIES COMMISSION OF MALAYSIA (SSM) UNDER
SECTION 612A OF COMPANIES ACT 2016**

PROPOSAL OF ISSUANCE OF PRACTICE NOTE



The proposed Practice Note will be issued pursuant to section 20C of the Companies Commission of Malaysia 2001 and section 612A of the Companies Act 2016 (CA 2016).

OBJECTIVE



The objectives of this Practice Note (PN) are—

- (a) to provide the manner to publish or advertise information on the official website of the Companies Commission of Malaysia (SSM) which is otherwise required to be published or advertised in a newspaper under the CA 2016;
- (b) to provide the documents or provisions which are referred in the CA 2016 for the purposes of publication or advertisement of the information on the official website of SSM; and
- (c) to provide any other related matters or general requirements for the publication or advertisement of the information on the official website of SSM.

BACKGROUND



Currently, there are certain provisions in the CA 2016, and its related subsidiary legislations, that require companies to advertise any information in “*one widely circulated newspaper in Malaysia in the national language and one widely circulated newspaper in Malaysia in the English language*”.

NEW SECTION 612A



By virtue of the enforcement of the Companies (Amendment) Act 2024 [Act A1701], the CA 2016 was amended with the introduction of section 612A which states the following:

“Publication or advertisement on website

612A. *Where any information is required to be published or advertised in a newspaper under this Act, any person may, in lieu of publishing or advertising the information in a newspaper, publish or advertise the information on the website of the Commission in the form and manner as the Registrar may determine upon payment of the prescribed fee.”*

MAIN PURPOSES



- Ø To provide an alternative option to practical issues with the circulation of physical newspapers where the circulation is not readily available throughout Malaysia;
- Ø To provide an alternative solution with a lower cost to advertise or to publish as required under the CA 2016;
- Ø To ease the difficulties faced by the public where there is a need to publish or advertise as required by CA 2016; and
- Ø To provide for the establishment of a central platform where the advertisement and publication of information requirement by the CA 2016 can be advertised or published and easily accessible for future references.

ALTERNATIVE PLATFORM TO ADVERTISE



The official website of SSM may be used as an alternative platform to publish or advertise information in lieu of the statutory requirements to advertise or publish such information in widely circulated newspapers throughout Malaysia. This PN proposes to clarify the following:

- (a) to provide an alternative platform of publication or advertising for companies and it is not meant to impose additional requirements pertaining to publication or advertising obligations under the CA 2016; and
- (b) to provide that the alternative is applicable to all companies incorporated or registered under the CA 2016.

SSM PORTAL FOR ADVERTISEMENT OR PUBLICATION



- ∅ Companies or applicants may publish or advertise any information with reference to the related provisions in CA 2016 and its related subsidiary legislation when submitting the information on the website of SSM.
- ∅ Any information to be published or advertised must comply with the directions together with the terms and conditions of the PN as specified by SSM and these may be updated from time to time as may be required by SSM.

REQUIREMENTS TO ADVERTISE ON SSM WEBSITE - Submission of Information



- (a) The SSM website is proposed to be made available 24/7.
- (b) The information to be published or advertised can be submitted to the official website of SSM a day prior to the day when the information is required under CA 2016 to be published or advertised in the manner to be determined in the PN in both the national and English language.

REQUIREMENTS TO ADVERTISE ON SSM WEBSITE - Submission of Information



- (c) The advertisement or publication must have at least the following information:
- (i) the publication date and submission date of the information to be published or advertised;
 - (ii) the content of the information to be published or advertised in both the national and English language; or where a provision requires only either one of the languages, to insert the word “N/A” in the advertisement space not used; and
 - (iii) the particulars as required of the companies, applicants or any other person by, or on whose behalf, the information to be published or advertised is submitted.
- (d) The information to be published or advertised will not be accepted for the advertisement or publication purposes if advertiser or publisher fails to comply with the requirements.

REQUIREMENTS TO ADVERTISE ON SSM WEBSITE - Publication or Advertisement of Information



- ∅ Upon submission of the application for information to be published or advertised, the period of publication or advertisement of the information will be displayed for seven (7) days on the intended day, or such other periods as may be required under the CA 2016 on the official website of SSM.
- ∅ In the event there is an error in the information or advertisement which has already been published or advertised, any request to amend or replace the publication or advertisement shall not be considered. In such instances, a new application for the rectified information or advertisement to be published or advertised must be submitted together with the payment of a new fee.

REQUIREMENTS TO ADVERTISE ON SSM WEBSITE - Publication or Advertisement of Information



- ∅ The publication or advertisement will continue to be available for downloading purposes by companies or applicants for seven (7) days via SSM Portal after the day of submission of the information for publication or advertisement on the official website of SSM.
- ∅ The copy of the information published and advertised on the official website of SSM can be viewed by the public on the intended publication or advertisement date.

FEE



PROPOSED FEE TO ADVERTISE OR PUBLICATION?



**CONSULTATIVE DOCUMENT ON THE REVIEW
OF AUDIT EXEMPTION CRITERIA FOR
PRIVATE COMPANIES
IN MALAYSIA**

OBJECTIVE



- ❗ The aim of introducing audit exemption is to reduce the financial burdens faced by micro and small companies as well as the time cost of having their accounts audited.
- ❗ The policy also aimed at reducing the cost of doing business as a whole.
- ❗ To share the progression of qualifying criteria threshold on audit exemption for private companies based on the current corporate practice and trends and the proposed changes in the Consultative Documents dated 7 February 2024.

BACKGROUND - RECAP



- i Practice Directive No. 3/2017 (PD 3/2017) - Qualifying Criteria for Audit Exemption for Certain Categories of Private Companies – issued on 4 August 2017.
 - Ø Objective - To reduce regulatory burden and cost of doing business for small and medium sized companies by allowing certain categories of private companies to be exempted from having their financial statements being audited.
 - Ø Set out the qualifying criteria for private companies incorporated in Malaysia from having to appoint an auditor in a financial year pursuant to subsection 267(2) of the Companies Act 2016 (“CA 2016”).

BACKGROUND - RECAP



No.	Types of private companies	Criteria
1.	Dormant companies	Companies must have either been dormant since the time of incorporation, or dormant during the immediate past and current financial year.
2.	Zero-revenue companies	Companies must fulfil the following three (3) requirements: a) No revenue during the current financial year; b) No revenue in the immediate past two financial years; and c) Total assets do not exceed RM300,000 for the current Statement of Financial Position as well as in the immediate past two financial years.

BACKGROUND - RECAP



No.	Types of private companies	Criteria
3.	Threshold-qualified companies	<p>Companies must fulfil the following three (3) requirements:</p> <ul style="list-style-type: none">a) Annual revenue not exceeding RM100,000 during the current financial year and the immediate past two (2) financial years;b) Total assets in the current Statement of Financial Position of RM300,000 or less and in the immediate past two financial years; andc) Has not more than five (5) employees at the end of its current financial year and in the immediate past two (2) financial years.

BACKGROUND - RECAP



- ⓘ There are also built-in safeguards which allows shareholders holding not less than 5% of the total voting shares to require the company to have its accounts audited.
- ⓘ On top of that, the Registrar is also given the power to direct companies to have their accounts audited.

CONSULTATIVE PAPER – 2 FEBRUARY 2023



To continue to adopt the same qualifying criteria based on **turnover, assets, and employee thresholds but with revision**. The revised threshold for each criterion as follows:-

DORMANT COMPANY	ZERO-REVENUE COMPANY	THRESHOLD QUALIFIED COMPANY
<p>Companies must have either been dormant since the time of incorporation, or dormant during the immediate past and current financial year. (No change)</p>	<ul style="list-style-type: none">• Turnover: NIL (No change).• Total assets: To increase total assets from RM300,000 to RM500,000. Applicable for the current Statement of Financial Position as well as in the immediate past two financial years;	<ul style="list-style-type: none">• Turnover: To increase annual revenue from RM100,000 to RM1,000,000 during the current financial year and the immediate past two (2) financial years;• Total assets: To increase total assets in the current Statement of Financial Position from RM300,000 to RM1,000,000 in the immediate past two financial years; and

CONSULTATIVE PAPER – 2 FEBRUARY 2023



To continue to adopt the same qualifying criteria based on **turnover**, **assets**, and **employee thresholds** but **with revision**. The revised threshold for each criterion as follows:-

DORMANT COMPANY	ZERO-REVENUE COMPANY	THRESHOLD QUALIFIED COMPANY – CONT'D
<p>Companies must have either been dormant since the time of incorporation, or dormant during the immediate past and current financial year. (No change)</p>	<ul style="list-style-type: none"> • Turnover: NIL (No change). • Total assets: To increase total assets from RM300,000 to RM500,000. Applicable for the current Statement of Financial Position as well as in the immediate past two financial years; 	<ul style="list-style-type: none"> • Employees: To increase from not more than five (5) to not more than thirty (30) employees at the end of its current financial year and applicable to the immediate past two (2) financial years.

- ü To maintain the existing qualifying criteria of fulfilling all 3 criteria
- ü The above criteria are not applicable to a private company that is a subsidiary of a public company.
- ü An Exempt Private Company (EPC) that fulfils the above criteria but opts not to lodge the financial statement with SSM must continue to undergo an audit.

CONSULTATIVE PAPER – 7 FEBRUARY 2024



Proposal of new qualifying criteria based on **turnover**, **assets**, and **employee thresholds**. This modification aims at creating a more comprehensive and efficient approach in determining the eligibility for audit exemptions. To increase the threshold for each new criteria as follows:-

CRITERIA 1	CRITERIA 2	CRITERIA 3
The annual income of the company during the current financial year and in the immediate past two (2) financial years does not exceed RM3,000,000.	The total assets of the company in the current statement of financial position and in the immediate past two (2) financial years does not exceed RM3,000,000.	The number of employees at the end of the current financial year and in the immediate past two (2) financial years does not exceed thirty (30) staff.

- ü To revise the qualifying criteria of fulfilling all 3 criteria to **fulfilling any two (2) of the 3 specified criteria**.
- ü The above criteria are not applicable to a private company that is a subsidiary of a public company.
- ü An Exempt Private Company (EPC) that fulfils the above criteria but opts not to lodge the financial statement with SSM must continue to undergo an audit.

EXPECTATIONS



- It is also perceived that a higher thresholds for audit exemptions will encourage better take-up rates for companies relating to their financial reporting obligations under CA 2016.
- On the other hand, companies may face difficulty in obtaining loan permits, licences, etc if the practice of requiring Audited Financial Statement is still prevalent and it can be addressed via awareness programs for users.

EXPECTATIONS



- i Therefore, it is good if the following initiatives are implemented to increase the overall take up rate of audit exemption:
 - (a) To develop a proper communication plan to increase awareness on the existence of audit exemption benefits to both preparers and users of Financial Statements including SMEs, licensing authorities, Financial Institutions, Inland Revenue Board of Malaysia and other stakeholders.
 - (b) To assist in the achievement of the objectives, that are to -
 - Encourage eligible SMEs to adopt and apply audit exemption and at the same time, retain compliance to the Financial Statements standards with filing obligations; and
 - To streamline the processes and procedures of obtaining licences, loan, grant, etc. with SSM's policy.

EXPECTATIONS



- (c) To review the qualifying criteria threshold for audit exemption on private companies with the purpose to allow more SMEs to enjoy the audit exemption benefits.



THE PROPOSED AMENDMENTS TO THE COMPANIES ACT 2016
[ACT 777] RELATING TO NOMINEE SHAREHOLDERS AND
NOMINEE DIRECTORS

**SCOPE OF
PRESENTATION**

Objective

Background

Questions/Issue

OBJECTIVE OF THE PROPOSED AMENDMENTS



To amend the Companies Act 2016 by introducing several new provisions on reporting and disclosure obligations of nominee shareholders and nominee directors

BACKGROUND

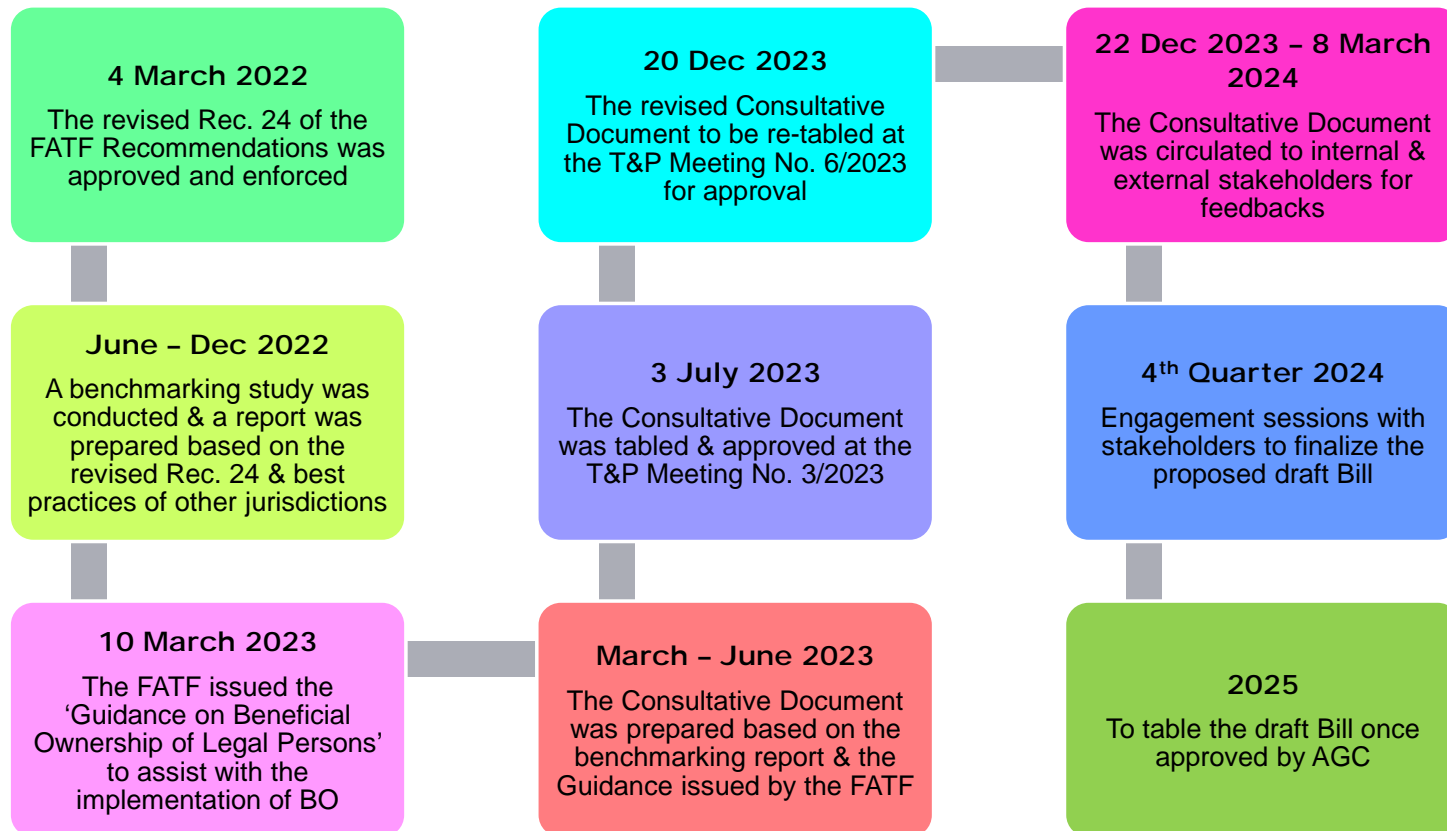


FATF Recommendations (Interpretive Note to Rec. 24)

Countries should take measures to prevent and mitigate the risk of the misuse of nominee shareholding and nominee directors, by applying **one or more** of the following mechanisms:

- i [requiring nominee shareholders and directors to disclose their nominee status and the identity of their nominator to the company and to any relevant registry](#), and for this information to be included in the relevant register, and for the information to be obtained, held or recorded by the public authority or body or the alternative mechanism. [Nominee status should be included in public information](#);
- i [requiring nominee shareholders and directors to be licensed](#), for their nominee status and the identity of their nominator to be obtained, held or recorded by the public authority or body or alternative mechanism referred to in paragraph 7 and for them to maintain information identifying their nominator and the natural person on whose behalf the nominee is ultimately acting, and make this information available to the competent authorities upon request; or
- i [enforcing a prohibition of the use of nominee shareholders or nominee directors](#).

BACKGROUND



CONSULTATIVE DOCUMENT DATED 22 DECEMBER 2023



10 CONSULTATIVE QUESTIONS

CONSULTATIVE QUESTIONS



Question 1: Do you agree with the introduction of a new Division AA under the CA 2016? Please provide clarifications to your response.

Question 2: Do you agree with the recommendation to make Division AA applicable to local and foreign companies? Please provide clarifications to your response.

Question 3: Do you agree with the introduction of a new register of nominee shareholders proposed under the CA 2016? Why? Please provide clarifications to your response.

CONSULTATIVE QUESTIONS



Question 4: Do you agree with the recommendation to make public the status of ‘nominee shareholder’ and the information relating to ‘nominator’ can only be accessed by certain categories of person? Please provide clarifications to your response.

Question 5: Do you agree with the introduction of new definitions ‘nominee shareholder’ and ‘nominator’ for the purpose of the register of nominee shareholders as this will ensure no overlapping of interpretation with the existing ‘nominee’ and ‘nominator’ concept relating to shareholder under the CA 2016? Please provide clarifications to your response.

CONSULTATIVE QUESTIONS



Question 6: Do you agree that the new definitions of ‘nominee shareholder’ and ‘nominator’ are in line with the FATF Recommendations? We also seek comments on whether the proposed definitions of ‘nominee shareholder’ and ‘nominator’ are appropriate. Please provide clarifications to your response.

Question 7: Do you agree with the introduction of a new register of nominee directors proposed under the CA 2016? Why? Please provide clarifications to your response.

Question 8: Do you agree with the recommendation to make public the status of ‘nominee director’ and the information relating to ‘nominator’ can only be accessed by certain categories of person? Please provide clarifications to your response.

CONSULTATIVE QUESTIONS



Question 9: Do you agree with the introduction of new definitions ‘nominee director’ and ‘nominator’ for the purpose of the register of nominee directors as this will ensure no overlapping of interpretation with the existing ‘nominee’ and ‘nominator’ concept relating to director under the CA 2016? Please provide clarifications to your response.

Question 10: Do you agree that the new definitions of ‘nominee director’ and ‘nominator’ are in line with the FATF Recommendations? We also seek comments on whether the proposed definitions of ‘nominee director’ and ‘nominator’ are appropriate. Please provide clarifications to your response.



PROPOSED AMENDMENTS TO THE TRUST COMPANIES ACT 1949

OVERVIEW

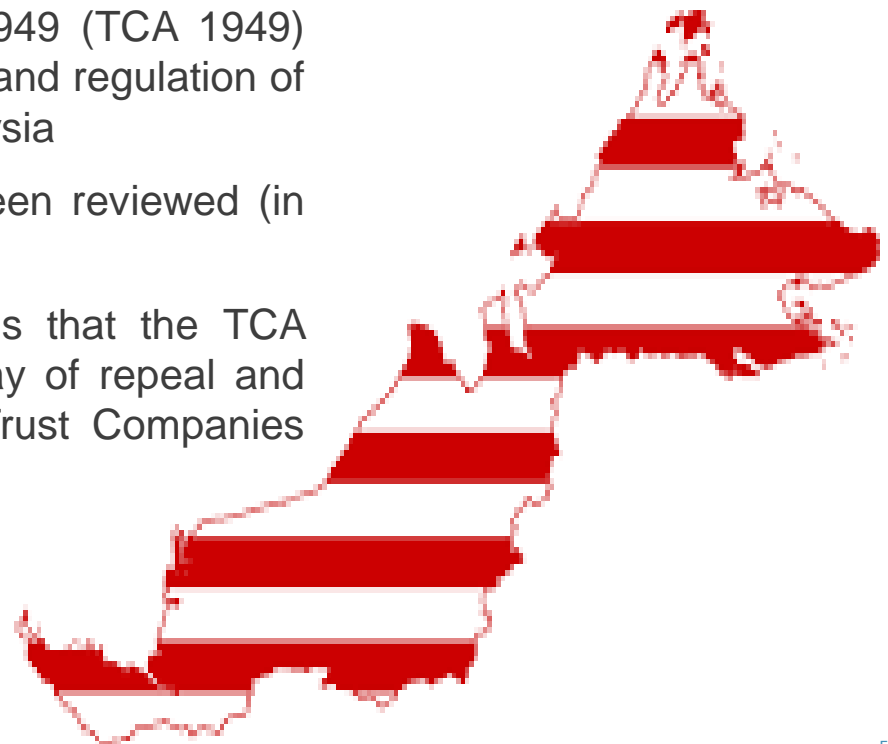


- Background
- Timeline
- Gaps under the Trust Companies Act 1949
- Main policies under the Trust Companies Bill

BACKGROUND



- Trust Companies Act 1949 (TCA 1949) provides for registration and regulation of trust companies in Malaysia
- TCA 1949 has never been reviewed (in principal) since 1949
- The review recommends that the TCA 1949 be updated by way of repeal and replace with the new Trust Companies Bill



Why the review process is critical ?

1

Modernization of the trust company law in line with the development of other corporate legal framework that will give impact to the operation and activities of trust company in Malaysia

2

Clarity and certainty in law that will avoid inconsistent & overlapping provisions in other statutes

3

Abolishment of outdated and complicated rules which create uncertainties with regard to the registration processes and reporting procedures

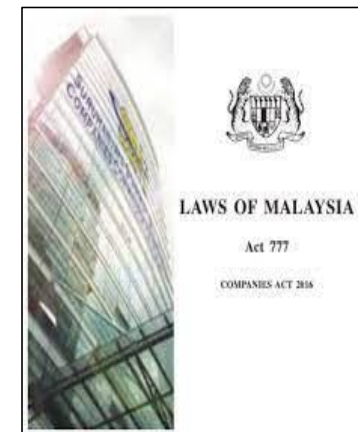
4

Harmonization of the law with the relevant international standards

BACKGROUND



Modernization of the trust company law in line with the development of other corporate legal framework that will give impact to the operation and activities of trust company in Malaysia



BACKGROUND



Clarity and certainty in law to avoid inconsistent & overlapping provisions in other statutes that regulate trust arrangements



Capital Market and Services Act 2007

Financial Services Act 2013

Trustees (Incorporation) Act 1952

Any other Acts that regulates trust arrangements

BACKGROUND



Abolishment of outdated and complicated rules which create uncertainties with regard to the registration processes and reporting procedures

Cross referencing to the Companies Act 1965

Abandonment of the authorized share capital concept

Omission of the current reciprocal provisions relating to trust law in Singapore

BACKGROUND



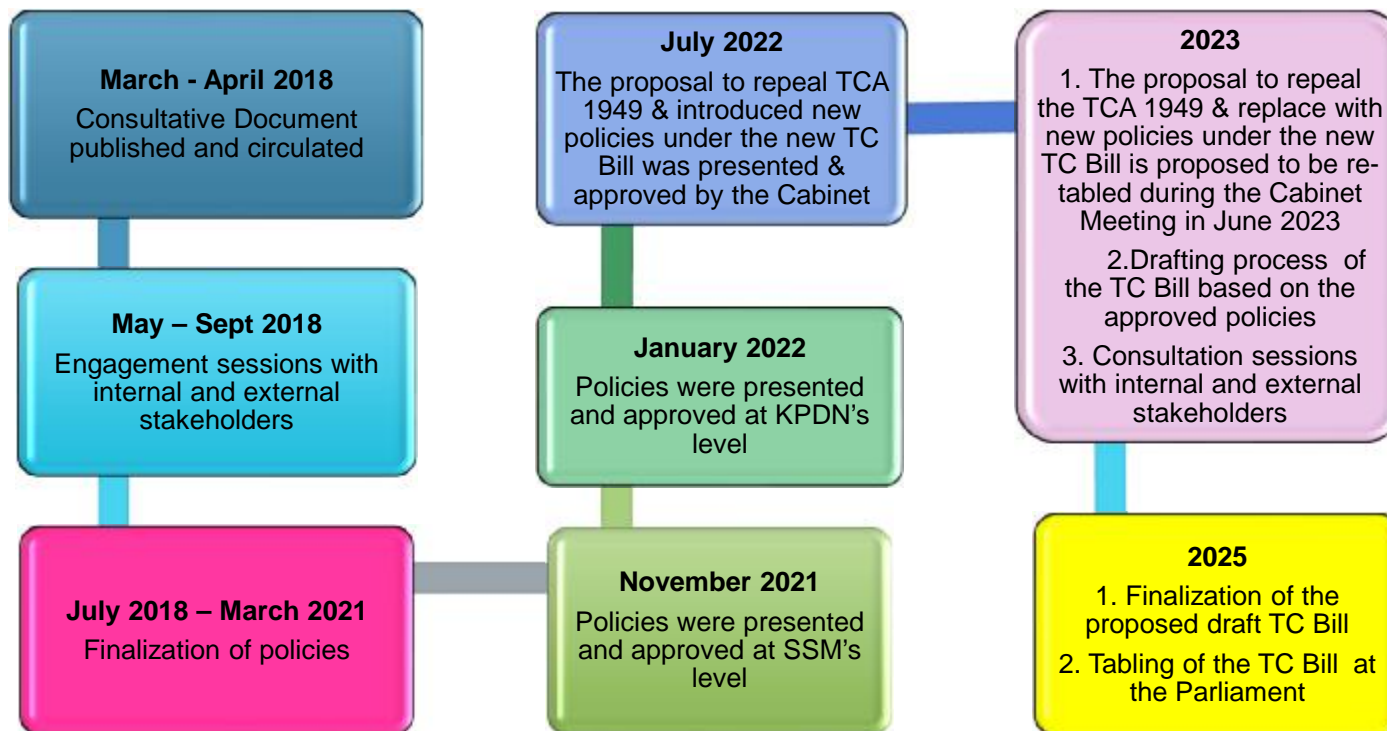
NATIONAL COORDINATING COMMITTEE
ON COMBATING MONEY LAUNDERING
AND FUNDING OF TERRORISM



**Harmonization of the law with the
relevant international standards**



BACKGROUND: TIMELINE



GAPS UNDER THE TRUST COMPANIES ACT 1949

No clear definition of 'trust business' to ascertain the parameters of trust business within the ambit of the law

No clear provisions on mandatory registration & requirements

The concept of 'authorized share capital' mentioned in the TCA 1949 has been abolished under the CA 2016

The reciprocal provisions under Singapore's law relating to trust companies have been repealed

No specific provisions relating to beneficial ownership reporting framework in line with Rec. 25 of the FATF Recommendation

Enforcement powers are not in harmonious with other laws under SSM's purview

No clear provisions on mandatory registration & requirements

Section 3 of the TCA 1949

“Any public company incorporated in Malaysia **may** apply to the Registrar to be registered as a trust company:”

Paragraph 3(a) of the TCA 1949

“the objects of the company are restricted to some or all of the objects set out in section 8”

Section 32 of the TCA 1949

“No member of a trust company shall at any time hold, or have any interest in shares in the capital of the company to an amount exceeding **one-fifth of the issued capital**”

The concept of 'authorized share capital' mentioned in the TCA 1949 has been abolished under the CA 2016

Paragraph 3(b) and (e) of the TCA 1949

“the authorized capital of the company is not less than five hundred thousand ringgit divided into shares of not less than ten ringgit each”

“at least one hundred and fifty thousand ringgit of the authorized capital has been bona fide paid up”

Item 2(a) of the Schedule

“where the authorized capital does not exceed RM500,000”

No specific provisions relating to beneficial ownership reporting framework in line with Rec. 25 of the FATF Recommendations

25. Transparency and beneficial ownership of legal arrangements *

Countries should take measures to prevent the misuse of legal arrangements for money laundering or terrorist financing. In particular, countries should ensure that there is adequate, accurate and timely information on express trusts, including information on the settlor, trustee and beneficiaries, that can be obtained or accessed in a timely fashion by competent authorities. Countries should consider measures to facilitate access to beneficial ownership and control information by financial institutions and DNFBPs undertaking the requirements set out in Recommendations 10 and 22.

Recommendation 25 (R.25) will be enhanced to bring its requirements broadly in line with those for Recommendation 24 on legal persons to ensure a balanced and coherent set of FATF standards on beneficial ownership.

Enforcement powers are not in harmonious with other laws under SSM's purview

Section 22 of the TCA 1949

- Appointment of inspector by the Minister to investigate the affairs and management of trust company
- The inspector shall make a report of his investigation to the Minister of Finance
- All expenses of and incidental to any investigation shall be paid by the company, if the Minister of Finance so directs

MAIN POLICIES UNDER THE TRUST COMPANIES BILL

BENCHMARKING STUDY



- § Best practices of other jurisdictions such as Singapore, Hong Kong, the United Kingdom, New Zealand, Cayman Island and British Virgin Islands
- § International standards set and reports published by the Financial Action Task Force (FATF) and Organization for Economic Co-Operation and Development (OECD) (Latest is dated March 2022)

All the best practices and international standards above may be considered with modifications to suit Malaysia's legal environment.

6 MAIN POLICIES UNDER THE PROPOSED TRUST COMPANIES BILL



1. Parameter of activities



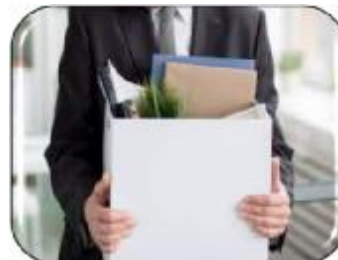
2. Mandatory registration regime



3. Beneficial Ownership Reporting Framework for Legal Arrangements



4. Administration of Trust Companies



5. Restructuring & Ceasation of Business



6. Electronic Services

1. PARAMETER OF ACTIVITIES



1	<p>Application Shall not apply to trust business or trust activities under other written laws.</p>
2	<p>Clear parameter of trust business or trust related activities The Act will provide a clear parameter of trust business or trust related activities with the introduction of the definition of “Trust Business”.</p>

2. MANDATORY REGISTRATION REGIME



1	Mandatory Registration <ul style="list-style-type: none">• Incorporated as a public company limited by shares under the CA 2016.• Registered as a trust company under the TC Bill before carrying on trust business.
2	Constitution with specific objects <ul style="list-style-type: none">• Every trust company shall have a constitution with specific objects.• The Registrar shall approve any amendments to the constitution which will serve as a control mechanism.
3	Security deposit <p>The requirement for security deposit will be maintained and the value will be revised to cover all liabilities and risks undertaken by the trust company.</p>
4	Harmonization with the existing policies under the CA 2016 <ul style="list-style-type: none">• Cross reference to the CA 2016.• Abandonment of authorized share capital concept and will be replaced with issued capital requirement.

2. MANDATORY REGISTRATION REGIME



5	<p>Shareholding requirement Shareholders cannot hold more than 20% shares in the trust company.</p>
6	<p>Reciprocal provisions relating to trust company under Singapore's law Similar provisions in the TCA 1949 will be deleted under the TC Bill.</p>

3. BENEFICIAL OWNERSHIP REPORTING FRAMEWORK FOR LEGAL ARRANGEMENTS



1	<p>New definition of 'beneficial owner of trust business'</p> <ul style="list-style-type: none">• Insertion of new definition of 'beneficial owner' to promote transparency of ownership and control of a trust company and its trust arrangement.• To be in line with the amendments made to the CA 2016 through the Companies (Amendment) Bill 2022
2	<p>Annual Statement</p> <ul style="list-style-type: none">• Detail reporting of trust business through annual statement submission which include beneficial ownership information of legal arrangements undertaken by the trust company as trustee.• Introduction of a new beneficial ownership reporting framework for legal arrangements (trust arrangement).

4. ADMINISTRATION OF TRUST COMPANIES



1	<p>Duties and responsibilities as director of trust company</p> <ul style="list-style-type: none">• Director of trust company will have additional duties and responsibilities to ensure the covenants in a trust arrangement are carried out and delivered.• The Registrar will have the power to impose specific terms and conditions with regard to the qualification and experience of a director of trust company for better management of the trust company.• Specific penalties against directors for breach of duties and responsibilities specified under the TC Bill.
2	<p>Fit and proper requirement</p> <p>The Registrar will have the power to impose any terms and conditions on directors of trust company.</p>

4. ADMINISTRATION OF TRUST COMPANIES



3 The Board will have the power to fix remuneration, charges and fees

- The board of directors will have the power to fix remuneration, charges and fees for the works done.
- Aggrieved party will have the power to appeal to the Court to review the remuneration, charges and fees fixed by the board of directors.

4 Auditors

The current policy on the appointment of auditors for trust company under the CA 2016 will be maintained.

5. RESTRUCTURING & CEASE OF BUSINESS



1	Court's power to order winding up of trust companies The law will retain current provisions relating to Court's power to order winding up of trust companies.
2	Cease business Trust companies are allowed to cease business subject to certain terms and conditions.
3	Scheme of arrangement and corporate rescue mechanism Trust companies may benefit from provisions relating to scheme of arrangement and corporate rescue mechanism under the CA 2016.
4	Minister's power to apply for winding up pursuant to section 465(2)(b) of the CA 2016 The law will retain the existing Minister's power to apply for the winding up of a trust company on specific circumstances and the Registrar is empowered to apply to wind up a trust company which is being used for unlawful purposes.



6. ELECTRONIC SERVICES

1	<p>Mandatory Electronic Filing The law will introduce mandatory electronic filing for lodgement or filing of documents and empower the Registrar to supply information and issue any documents electronically.</p>
2	<p>Electronic Filing All documents required to be lodged under the TC Bill must be lodged electronically in line with the CA 2016 and the Interest Scheme Act 2016.</p>



Thank you