

# What's New?

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## Reporting Framework for Beneficial Ownership (BO) of Legal Persons



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On March 2020, the Companies Commission of Malaysia (SSM, being its abbreviation in Malay) had brought the Guideline for the Reporting Framework for Beneficial Ownership of Legal Persons.

In the Guideline, all the entities listed below are required to obtain and update the information on Beneficial Ownership (BO):-

- **All business entities registered under Companies Act 2016 (CA 2016);**
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- **LLP under Limited Liability Partnerships Act 2012; and**
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- **Other entities such as Sole Proprietorship and Partnerships under ROBA 1965.**

Thus, the Guideline aims to provide a clear direction to the business entities under CA 2016 and LLP under LLPA 2012 on the new reporting framework of beneficial ownership and the procedures of the framework.

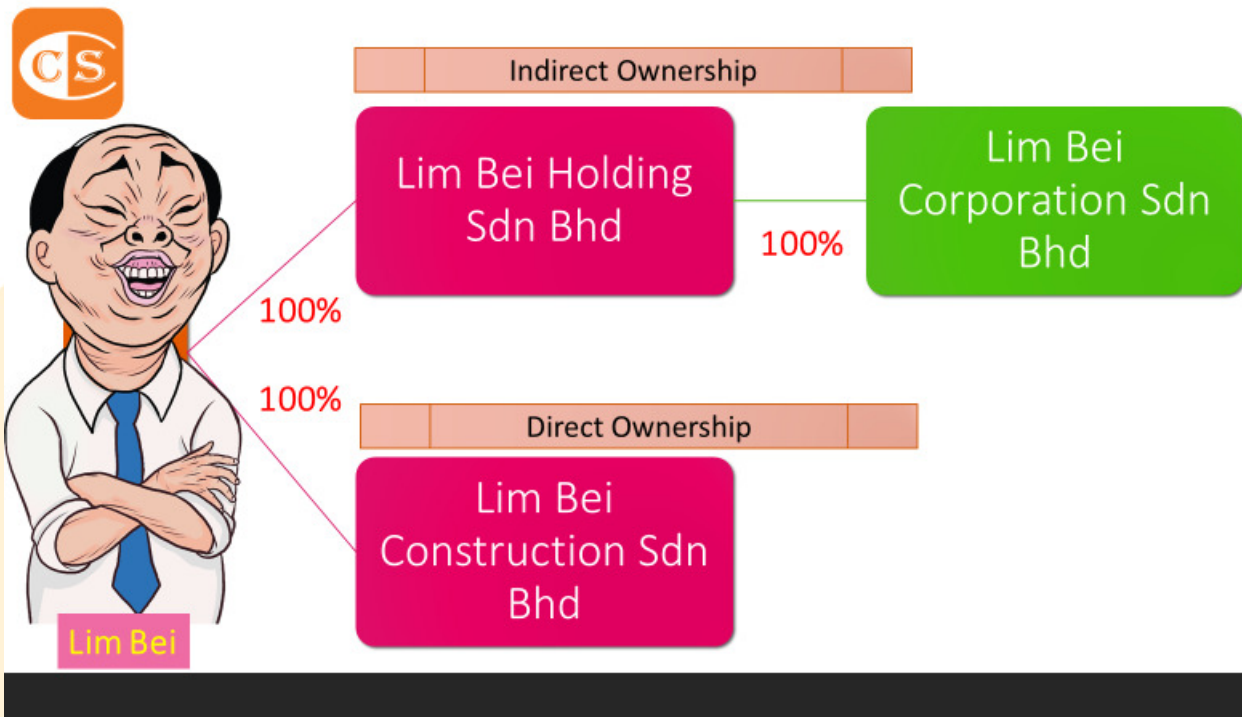
### **Relevant Provisions in the Companies Act 2016 on Beneficial Owners**

In fact, before the release of the Guidelines for the Reporting Framework for Beneficial Ownership of Legal Persons on March 2020, a provision had already been laid out on the issue of beneficial ownership in Companies Act 2016 (CA 2016).

According to Section 2 of CA 2016, the term beneficial ownership is defined as “*the ultimate owner of the shares and does not include a nominee of any description*”.

Generally, beneficial owners are a natural person who ultimately own or has control, whether directly or indirectly, over a corporate entity arrangement.





Referring to the diagram above, Lim Bei is a natural person and the beneficial owner of Lim Bei Construction Sdn. Bhd under direct ownership. At the same time, Lim Bei is also the beneficial owner of Lim Bei Corporation Sdn. Bhd. under indirect ownership.

### 3 Key Limbs of the Companies Act 2016 on Beneficial Ownership

In Companies Act 2016 (CA 2016), Companies Commission of Malaysia (SSM, being its abbreviation in Malay) had also set out a provision on beneficial ownership, which is under Section 56 of the act.

There are three (3) important limbs of the section.

➤ First limb (Section 56(1))

Company has the power under Section 56(1) to issue a notice in writing to a member of the company to provide confirmation whether the member holds any voting shares as beneficial owner or as trustee.

If such member is holding the share as a trustee, he is required to disclose the identity and particulars of the beneficial owner.

➤ Second limb (Section 56(2))

Company has the power to issue a notice in writing to any other person who has an interest in any of the voting shares in the company.

The notice to this other person will require the person to provide confirmation whether the person holds the voting shares as beneficial owner or a trustee,

Similarly, if this person is holding the share as a trustee, he is required to disclose the identity and particulars of the beneficial owner.

Relevant acts for Section 56 (2) is Section 8 of CA 2016, which underlined that a person shall be deemed to have interest in a share of a body corporate where:

- a) The body corporate is, or its directors are, essentially accustomed to act in accordance with the instructions of that person in relation to that share;
- b) That person has a controlling interest in the body corporate; or
- c) That person or his associates are entitled to exercise not less than 20% of the votes attached to the voting shares in the body corporate.

➤ Third limb (Section 56(6))

SSM, stock exchange or Securities Commission can exercise its power.

Such a regulator can issue a notice in writing to the company for the company to invoke its power under Section 56(1) or (2) and to immediately provide the regulator with the information obtained.

Failure to comply with the notice will result in an offence. However, no reference to penalty was made under Section 56. Thus, the general penalty provision will apply. Under Section 588 of the act, upon conviction of any failure of compliance without the penalty stated, a fine not exceeding RM50,000 or a maximum three-year jail or both will be sentenced on the entity.

If there has been false or misleading statement made, this would carry a heavier penalty of a maximum 10-year jail term or a maximum RM3 million fine or both.

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