



# REGULATORY REFORM INITIATIVES



## MANAGEMENT REPORT

**REGULATORY REFORM INITIATIVES****AMENDMENT TO THE CA 2016**

Efforts to amend the CA 2016 were initiated by SSM in 2020, culminating in the introduction of the Companies (Amendment) Bill 2023. This Bill has two (2) primary objectives: to strengthen the corporate rehabilitation framework and to enhance transparency within the corporate sector ecosystem in Malaysia.

As a key initiative to support the corporate sector in mitigating the adverse effects of the COVID-19 pandemic and ensuring long-term sustainability, the Companies (Amendment) Bill 2023 aims to improve existing legislative provisions related to corporate rescue mechanisms and rehabilitation for companies facing financial difficulties.

Regarding corporate transparency, the Bill seeks to enhance the beneficial ownership reporting framework, aligning Malaysia with recent international developments aimed at combating money laundering, terrorism financing, corruption and tax evasion. Malaysia's commitment to addressing these issues will be closely monitored by various international bodies, including the Financial Action Task Force (FATF). The FATF's assessment of Malaysia is scheduled to commence in 2024, during which the effectiveness of enforcement and legal measures related to anti-money laundering and terrorism financing will be thoroughly evaluated.

Through these amendments, SSM aims to foster a more resilient and transparent corporate landscape, promoting accountability and trust within Malaysia's business environment.

**CONSULTATION AND MINISTERIAL APPROVAL PROCESS**

The initial consultation process for the Bill was conducted by circulating the draft Bill to various regulatory bodies and professional organisations. Public consultations and joint discussions took place from July to August 2020, engaging a diverse range of stakeholders, including professional bodies, industry players (such as banking and insolvency practitioners), regulatory authorities and other government agencies.

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Following these consultations, the feedback collected from stakeholders was used to formulate the policies that guided the drafting of the Bill. These policies were subsequently tabled and received Cabinet approval on 12 July 2023.

With the approval of the policies in place, the final draft of the Bill was presented to the Cabinet on 9 August 2023, where it was approved, marking a significant step forward in the legislative process.

### Consultation and Drafting of the Companies (Amendment) Bill 2023



#### JUNE - JULY 2020

Circulation of the draft bill to regulatory bodies and professional organisations.



#### JULY - AUGUST 2020

- (a) Circulation of the draft consultation documents to the stakeholders
- (b) Consultations with the stakeholders



#### SEPTEMBER 2020 - AUGUST 2023

- (a) Policies Approvals
- (b) Drafting Process

### HIGHLIGHTS ON THE COMPANIES (AMENDMENT) BILL 2023

The Bill consists of 31 clauses, comprising 4 policy clusters. The first policy cluster aims to widen the application of corporate rescue mechanisms, particularly the voluntary corporate arrangement (CVA) and judicial management (JM). The second policy cluster is to strengthen the corporate rehabilitation framework through improvements to existing provisions relating to the scheme of arrangement or compromise and enhancements to provisions relating to CVA/JM. The third policy cluster is to strengthen the beneficial ownership reporting framework and the fourth policy cluster aims to enhance corporate governance and practices.

### The Companies (Amendment) Bill 2023 Policy Clusters

#### POLICY 1

Widening the application of corporate rescue mechanism [corporate voluntary arrangement (CVA) and judicial management (JM)]

#### POLICY 2

Strengthening the corporate rehabilitation framework through:

- (a) Enhancement of provisions relating to scheme of arrangement or compromise; and
- (b) Enhancement of provisions on CVA/ JM

#### POLICY 3

Strengthening the beneficial ownership reporting framework

#### POLICY 4

Enhancing of corporate governance & practices

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**REGULATORY REFORM INITIATIVES****TABLING OF THE COMPANIES (AMENDMENT) BILL 2023 AT THE PARLIAMENT**

The Bill was tabled in the Third Meeting of the Second Session of the Fifteenth Parliament. The first reading took place in the Dewan Rakyat on 12 October 2023. The Bill was tabled and approved in the Dewan Rakyat after the second and third readings on 28 November 2023 without any amendments.

Subsequently, the Bill was tabled and approved in the Dewan Negara on 13 December 2023 as an act, cited as the Companies (Amendment) Act 2023.

The Companies (Amendment) Act 2023 is expected to come into force in the first quarter of 2024.

Sections under the Companies (Amendment) Act 2023	
Section 1	The short title and the Act commencement date
Section 2	Amendment on the definition of 'beneficial owner' under section 2 of Act 777
Section 3	New 8A Division relating to beneficial ownership of a company
Section 4	Amendment to section 68 require a company to lodge with the Registrar the particulars of beneficial ownership of the company in the Annual Return
Section 5	Amendment to subsection 152(2) for the purpose of consistency with the Capital Markets and Services Act 2007
Section 6	Introduction to a new subsection 258(1A) to empower the Registrar to extend the time for circulation of financial statements and reports upon application by private companies
Section 7	Introduction to a new subsection 264(4A) and (4B) relating to the auditors' independency
Section 8	Amendment to section 365 to provide for the definitions of 'related company' and 'subject company' in relation to a scheme compromise or arrangement
Section 9	Amendment to section 366 the approval of a scheme of compromise or arrangement and the meetings chair person
Section 10	Amendment to section 367 relating to the appointment of an insolvency practitioner in relation to a proposed scheme of compromise or arrangement
Section 11	Amendment to subsection 368(1) and (2) and to insert new subsections 368(1A), (3A) relating to the restraining order application and moratorium period
Section 12	Introduction to new sections 368A, 368B, 368C dan 368D to facilitate a scheme of compromise or arrangement for a group of related companies
Section 13	Introduction to new sections 369A, 369B, 369C and 369D relating to the power of court and the requirement for creditors to file the proof of debt
Section 14	Amendment to section 395 which extends the application of the corporate voluntary arrangement to all companies
Section 15	Introduction to a new section 398A to allow secured creditors to recover secured movable property during the moratorium period



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## Sections Under The Companies (Amendment) Act 2023

Section 16	Amendment to paragraph 403(b) relating to judicial management
Section 17	Introduction to a new subsections 406(1) and (2) relating to the extension of period to pay debt
Section 18	Introduction to a new subsection 411(5) to allow secured creditors to recover secured movable property under certain circumstances
Section 19	Introduction to a new section 415A to allow a company under judicial management to obtain rescue financing
Section 20	Introduction to a new Division 9 and a new section 430A to deal with the insolvency related clause under any contract for the supply of essential goods and services
Section 21	Introduction to a new subsection 433(4D) and (4E) to require an approved liquidator to notify the Registrar of certain information
Section 22	To clarify that the date of the commencement of the winding up is the date of the winding up order, in line with subsection 467(2)
Section 23	Introduction to a new paragraph 562(1)(fa) to require a foreign company to provide the information of beneficial ownership to the Registrar at the point of registration
Section 24	Introduction to a new section paragraph 567(1)(fa) to require a foreign company to lodge with the Registrar the particulars on any change or alteration to the status of the foreign company
Section 25	Introduction to a new section 573A to clarify that the provisions relating to beneficial ownership is also applicable to all foreign companies.
Section 26	Introduction to a new section paragraph 576(2)(ha) and (hb) to require a foreign company to lodge with the Registrar the particulars of beneficial ownership of the foreign company with the Registrar in its Annual Return
Section 27	Amendment of section 582 in the national language text, to substitute the word ' <i>akuan ketidaksolvenan</i> ' with the word ' <i>pengisytiharan kesolvenan</i> '
Section 28	Introduction to a new section 612A to provide that the website of the Commission may be used to publish or advertise information which is otherwise required to be published or advertised in a newspaper
Section 29	Introduction to a new paragraph 613(1)(aa) and (ba) relating to the power of the Minister to make regulations.
Section 30	To introduce a new Schedule Ninth A into Act 777 relating to the essential goods and services protected under section 430A
Section 31	To provide for a saving provision

## MANAGEMENT REPORT

**REGULATORY REFORM INITIATIVES****PROPOSED AMENDMENTS TO THE LLPA 2012**

The proposed amendments to the LLPA 2012 are aimed at providing a more comprehensive legal framework relating to the rehabilitation of business entities and enhancing transparency and overall governance.

Additionally, these amendments seek to improve the framework for reporting beneficial ownership, taking into account recent international developments in combating money laundering activities, terrorism financing, corruption and tax evasion.

The proposed amendments to the LLPA 2012 are anticipated to positively impact the corporate environment in Malaysia. By providing necessary support to viable entities, such as LLPs, facing financial difficulties, these amendments aim to afford them the necessary room to sustain their operations, particularly in the challenging post-COVID-19 pandemic landscape.

This enhanced corporate legal framework is designed to cultivate a culture of transparency in business practices, encouraging compliance with established regulations. Ultimately, it will help to create a more resilient and accountable business ecosystem, facilitating growth and recovery in the corporate sector.

The policies relating to the Limited Liability Partnerships (Amendment) Bill were tabled and approved by the Cabinet on 12 April 2023.

**Policies under the Limited Liability Partnerships (Amendment) Bill****POLICY 1****Introduction of rehabilitation mechanisms for LLPs under the LLPA 2012.**

- (a) Introducing corporate voluntary arrangement and judicial management processes.
- (b) Considering the similar status between LLPs and company, where both are separate legal entities from their shareholders but have a more flexible administrative structure.

**POLICY 2****Introduction of a beneficial ownership framework for LLPs.**

- (a) Requiring LLPs to obtain, record and report beneficial ownership information to the SSM.
- (b) Enhancing transparency of beneficial ownership information to assist regulatory and enforcement agencies in combating serious crimes.

**POLICY 3****Strengthening policies regarding procedures supporting the sustainable implementation of LLPs governance.**

- (a) Encompassing other significant amendments, including general amendments to enable utilisation of SSM website to publish information which is otherwise required to be publish in newspaper.

## REGULATORY REFORM INITIATIVES

### GUIDELINES RELATING TO THE OBLIGATIONS OF COMPANY SECRETARY AS A REPORTING INSTITUTION UNDER THE ANTI-MONEY LAUNDERING, ANTI-TERRORISM FINANCING AND PROCEEDS OF UNLAWFUL ACTIVITIES ACT 2001

In 2023, SSM issued the Guidelines Relating to the Obligations of Company Secretaries as Reporting Institutions under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLA 2001).

These guidelines were developed based on the requirements outlined in the 'Anti-Money Laundering, Countering Financing of Terrorism and Targeted Financial Sanctions for Designated Non-Financial Businesses and Professions (DNFBPs) & Non-Bank Financial Institutions (NBFIs)' (AML/ CFT and TFS for DNFBPs and NBFIs) policy document (BNM Policy Document) issued by BNM.

These guidelines are issued pursuant to paragraph 21(1)(c) of the AMLA 2001 which empowered SSM with the authority as a supervisory or licensing authority to issue guidelines to assist reporting institutions (Company Secretaries) in detecting suspicious activities relating to AMLA.

### PUBLICATION OF DIGITAL BOOKS

In 2023, SSM published two (2) digital guidance books titled Company Directors' Responsibilities and Code of Ethics for Company Director and Company Secretary.

Both books were released to update the guidelines relating to directors responsibilities and the code of ethics for company directors and secretaries, aligning them with the requirements of latest corporate governance and new legislations that must be adhered to in the administration and management of business entities.

#### Digital Books on Company Directors' Responsibilities and Code of Ethics for Company Director and Company Secretary



#### COMPANY DIRECTORS' RESPONSIBILITIES

This document outlines the essential minimum standards of conduct expected of all directors in the execution of their duties and responsibilities under the CA 2016. It aims to present the key requirements of the CA 2016 in a manner that is easily comprehensible for directors.

The guidelines are organised into three (3) main sections:

- (a) **Overview of Company Directors:** A detailed description of the roles and responsibilities of company directors.
- (b) **Powers and Duties of Company Directors:** An in-depth exploration of the powers and duties conferred upon directors by the CA 2016.
- (c) **Fundamental Obligations of Company Directors:** An outline of other essential obligations that directors must adhere to in their capacity.

These structured guidelines are designed to enhance understanding and compliance, ultimately fostering good governance within companies.

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### Digital Books on Company Directors' Responsibilities and Code of Ethics for Company Director and Company Secretary



#### CODE OF ETHICS FOR COMPANY DIRECTORS AND COMPANY SECRETARIES

This document serves as a comprehensive guideline outlining the ethical expectations for both Company Directors and Company Secretaries in the execution of their duties. It provides a foundational framework that all types of companies can utilise to develop their own tailored code of conduct, incorporating specific principles and guidelines relevant to the unique roles and ethical standards within their respective industries.

The code is divided into two (2) distinct parts:

**Part A:** Focuses on the ethical standards and expectations for Company Directors.

**Part B:** Concentrates on the ethical guidelines specifically for Company Secretaries.

Within each part, the document elucidates the underlying principles, objectives and detailed codes of conduct that should guide the behaviour of directors and secretaries, fostering integrity and accountability in their professional practices.