

Key Amendments to the Companies Act 2016: Beneficial Ownership and Corporate Rescue Mechanisms

CLIENT ALERT

APRIL 2024

1. The Companies (Amendment) Act 2024 (“**CAA 2024**”) was gazetted on 2 February 2024 after receiving royal assent. The amendments came into effect on 1 April 2024 except for sections 4, 14, 26 and 28, which will take effect on a future date to be announced by the Minister of Domestic Trade and Cost of Living.
2. The CAA 2024 focuses on the disclosure and reporting framework of beneficial ownership of companies and amendments to the corporate rescue mechanisms. The amendments to the corporate rescue mechanisms are regarded as restructuring-friendly. In general, we observe that insolvency practitioners and the business community welcome them.
3. With the effect of the amendments related to beneficial ownership under the CAA 2024, in addition to the existing obligations under the Guidelines for the Reporting Framework for Beneficial Ownership of Legal Persons issued by the Companies Commission of Malaysia (“**CCM**”) in 2020, companies must also lodge the beneficial ownership information with CCM.
4. **Beneficial Ownership**

A new Division 8A is inserted into the Companies Act 2016, which introduces the following:

- (a) **Beneficial owner:** The definition of beneficial owner has been amended to distinguish between a beneficial owner in relation to shares and a beneficial owner in relation to a company. A beneficial owner in relation to a company refers to a natural person who ultimately owns or controls over a company and includes a person who exercises ultimate effective control over a company. Such person would own, whether directly or indirectly, at least 20% of the company’s shareholding or has the ability to control the decisions made by the board of directors.
- (b) **Register of beneficial owners:** Companies are now required to keep a register of beneficial owners and to notify CCM of any changes to the particulars in the register of beneficial owners within 14 days from the date of change.

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- (c) **Disclosure of beneficial owner:** Companies now have the power to require any member of the company to identify and disclose the beneficial owners.
- (d) **Beneficial owner to provide information:** A duty is imposed on the beneficial owner of a company to notify the company of his status as a beneficial owner and to provide the prescribed particulars. Any changes to the said particulars or status as a beneficial owner shall also be notified to the company.

5. Corporate Rescue Mechanisms

The following are some of the key features relating to corporate rescue mechanisms under the CAA 2024:

- (a) **Judicial Management:** Before the amendments, there were issues regarding whether judicial management was available to a listed company. With the amendments under CAA 2024, it is clear that a listed company may resort to seeking protection and restructuring under judicial management. Judicial management continues to be unavailable to certain entities regulated under the Capital Market Services Act 2007.
- (b) **Corporate Voluntary Arrangement:** Before the amendments, corporate voluntary arrangements were not available to a company with a secured creditor(s). Such pre-amendment provision severely restricted the applicability of a corporate voluntary arrangement. Such restriction will be removed under the CAA 2024. However, the amendment to (removal of) this provision has not yet come into effect as of 1 April 2024.
- (c) **Scheme of Arrangement:** Restructuring-friendly features introduced include an automatic moratorium for a period of up to two months from the date of the application for a restraining order to the court (often accompanying the scheme of arrangement application), super priority for rescue financing provided by rescue financier, restraining orders for related companies to facilitate restructuring, power of the court to cram down, and power of the court to approve a scheme without the meeting of creditors (commonly referred to as “pre-pack”).
- (d) Many of the provisions introduced in the amendments are consistent with the restructuring features found in the UK, Singapore and the US.

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