



Highlights of the Administrative Measures on Beneficial Owner Information and Action Plan

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On 30 April 2024, the People's Bank of China ("PBOC") and the State Administration for Market Regulation ("SAMR") jointly promulgated the *Administrative Measures on Beneficial Owner Information* ("BO Measures"), which will come into effect on 1 November 2024. The BO Measures outline specific requirements for the filing and management of beneficial owner ("BO") information, mandating that relevant market entities ("Filing Entities") file BO information through the relevant registration system of the market regulation authorities. The PBOC is tasked with establishing a BO information management system to facilitate the efficient collection, retention and processing of BO information. The relevant state authorities as well as financial institutions and designated non-financial institutions (financial institutions and designated non-financial institutions are hereinafter collectively referred to as "AML Obligors") are permitted to access and inquire about BO information through the PBOC according to law.

According to the BO Measures, the Filing Entities newly incorporated after 1 November 2024 shall file BO information through the relevant registration system at the time of incorporation (for online registration) or within 30 days from the date of incorporation (for onsite registration). **The Filing Entities already incorporated prior to 1 November 2024 are granted a one-year grace period**, and shall file BO information pursuant to the BO Measures by **1 November 2025**. In addition, according to the Q&A regarding the BO Measures, the PBOC will introduce the *Guidelines for Filing of Beneficial Owner Information* to assist the Filing Entities with more complex equity (partnership) structures in their filing processes. As of the date of this article, the aforesaid guidelines have not yet been released. We will continue to follow the progress and provide updates on a timely basis.

In light of the upcoming implementation of the BO Measures, this article provides a concise analysis of the BO Measures, aiming to raise the awareness of the Filing Entities and encourage the timely initiation of relevant preparatory actions.

I. Filing Entities

According to Article 2 of the BO Measures, companies, partnerships and branches of foreign companies are currently defined as "Filing Entities" under the BO Measures. Individual industrial and commercial households are not required to file BO information. Non-corporate enterprise legal persons, sole proprietorships, farmers' specialized cooperatives (associations) and their branches, as well as branches of domestic companies and partnerships, are temporarily not subject to the BO information filing requirement.

Furthermore, Article 3 of the BO Measures stipulates conditional exemption for companies and partnerships with small scale and uncomplicated equity (partnership) structures. Specifically, the Filing Entities with registered capital (contribution amount) not exceeding RMB 10 million (or its equivalent in foreign currency) and whose shareholders or partners are all natural persons are exempted from filing BO information, provided they make a commitment. This exemption applies on the condition that no natural persons other than the shareholders or partners have actual control over the Filing Entities or derive benefits from them, and that there are no instances of control or benefit being obtained through means other than equity or partnership interest.

II. Criteria for Identifying BO and Filing Information

1. Criteria for Identifying BO

The concept of BO under the BO Measures is consistent with that defined in the relevant anti-money laundering (“**AML**”) rules, such as the *Notice of the People’s Bank of China on Strengthening the Identification of Clients for Anti-Money Laundering* and the *Notice of the People’s Bank of China on Further Improving the Identification of Beneficial Owners* (hereinafter collectively referred to as “**PBOC Notices**”). The PBOC Notices encompass a broader range of subjects, including companies, partnerships, trusts, funds and other types of institutions and organizations, and stipulate the criteria for different types of subjects to identify BO. The BO Measures mainly target entities that are registered with the market regulation authorities, such as companies, partnerships and branches of foreign companies. To identify the BO of trusts, funds and other product-type entities, the criteria outlined in the PBOC Notices still need to be referenced.

According to Article 15 of the BO Measures, a BO is defined as a natural person who ultimately owns or actually controls the Filing Entity, or enjoys the ultimate benefits of the Filing Entity. In other words, the identification of a BO must penetrate to a natural person.

Article 6 of the BO Measures details the criteria for BO identification. Any natural person who meets one of the following criteria will be identified as a BO of the Filing Entity:

- (1) Criterion 1: A natural person who directly or indirectly, ultimately owns more than 25% of the equity, shares or partnership interest in the Filing Entity.
- (2) Criterion 2: A natural person who, though not meeting Criterion 1, ultimately enjoys more than 25% of the profit rights or voting rights in the Filing Entity.
- (3) Criterion 3: A natural person who, though not meeting Criterion 1, exercises actual control, either alone or jointly, over the Filing Entity.

The “actual control” under Criterion 3 includes, without limitation, the exercise of control through agreements, closely related individuals, such as deciding on the appointment or removal of legal representative, directors, supervisors, senior management personnel or executive partners, deciding on the formulation or implementation of significant business and management policies, deciding on financial revenues and expenditures, and long-term actual possession and use of essential assets or major capital, etc.

There may be more than one natural person identified as BOs. If there are multiple natural persons who meet any of the above three criteria, they should all be filed as BOs. If it is not possible to identify

a BO through the above criteria, the person responsible for the day-to-day management of the Filing Entity shall be regarded as the BO.

For most Filing Entities, the BO is typically the natural person who ultimately holds more than 25% of the equity (partnership interest). Only entities with complex equity (partnership interest) arrangements need to identify the BO according to the criteria specified in the BO Measures. The filing of the BO for such entities can be conducted according to the *Guidelines for Filing of Beneficial Owner Information* to be released by the PBOC. The top-layer group entity of many foreign-invested companies is an overseas listed company with dispersed shareholding structure, and it may not be possible to identify a natural person who meets any of the above three criteria. In such cases, the person responsible for the day-to-day management (usually the general manager) can be filed as the BO.

The BO of a branch of a foreign company is the BO identified by the foreign company in accordance with the above criteria as well as the senior management personnel of the branch.

A wholly state-owned company or state-controlled company shall regard its legal representative as the BO for filing.

2. BO and Actual Controller

Despite some similarities, the BO stipulated in AML-related laws and regulations as well as the BO Measures is different from the actual controller stipulated in the *Company Law of the People's Republic of China* ("**Company Law**"). Specifically:

- (1) The actual controller of a company under the Company Law refers to a person that can actually dominate the company's actions through investment relationships, agreements or other arrangements, with the key being "control." In contrast, the implication of BO encompasses three aspects: ownership, control and benefit. The BO can be an owner, or a controller or a beneficiary of a company (partnership).
- (2) The actual controller can be either a legal person or a natural person, whereas the BO must be a natural person. In identifying the BO, it is necessary to "penetrate each layer" to the natural person who ultimately owns, actually controls the Filing Entity or enjoys its ultimate benefits.
- (3) There is only one actual controller (in some cases, there may be no actual controller), whereas there can be multiple BOs.

For foreign-invested companies, according to the *Measures on Reporting of Foreign Investment Information*, the investment information to be reported by them to the commerce authority includes the information of the actual controller, which, in conjunction with the Information Reporting Form for

Foreign-Invested Enterprises, should refer to the actual controller as defined in the Company Law. After the BO Measures come into effect, the foreign-invested companies are required to report not only information of the actual controller, but also information of the BO, which may be the same subject or different subjects.

3. BO Filing Information

According to Article 11 of the BO Measures, the information of the BO to be filed by a Filing Entity includes: name, gender, nationality, date of birth, usual residence or workplace address, contact information, type, number and term of validity of the identity certificate, type of BO relationship as well as the formation date and termination date (if any). In addition to the basic information mentioned above, if the BO is identified according to Criterion 1, the proportion of equity, shares or partnership interest held shall also be filed; if the BO is identified according to Criterion 2, the proportion of profit rights or voting rights shall also be filed; if the BO is identified according to Criterion 3, the method of actual control shall also be filed.

It is worth noting that the BO information to be collected by an AML Obligor as required by the PBOC Notices is limited to name, address, type, number and term of validity of the identity certificate. The BO Measures require more detailed information. It is recommended that the Filing Entities identify the BOs according to the above criteria in a timely manner, communicate with the Bos and explain the filing requirements in advance, so as to facilitate the subsequent collection and filing of BO information.

III. Collection, Circulation and Use of BO Information

1. The SAMR oversees and guides the construction of relevant registration system, and instructs local registration authorities to carry out the filing of BO information according to law. The PBOC establishes a BO information management system to receive, store, and process BO information in a timely manner.
2. The PBOC and its branches provide guidance for the filing of BO information, with the cooperation of the market regulation authorities.
3. The Filing Entities shall file BO information through the relevant registration system. The local market regulation authorities shall urge the Filing Entities to file BO information in a timely manner, and the PBOC and its branches shall urge the Filing Entities to accurately file BO information.
4. After the market regulation authorities collect BO information, they shall promptly transfer such information to the PBOC.
5. The BO information will not be publicly disclosed by the PBOC upon receipt. The relevant state authorities, when necessary for performing their duties, can obtain the BO information from the PBOC according to law. The AML Obligors, when fulfilling their AML and anti-terrorism financing obligations,

can inquire about BO information through the PBOC. Apart from the relevant state authorities and the AML Obligors, other individuals, entities, or counterparts or partners not being the AML Obligors do not have the right to obtain or inquire about the BO information of the Filing Entities.

IV. Obligations of Relevant Entities

1. Obligations of the Filing Entities

The Filing Entities should understand the criteria for identifying BO and the filing requirements, ensuring the accuracy of identification, the timeliness of filing, and the authenticity and completeness of filing information. As mentioned above, the existing entities shall complete the filing of BO information by 1 November 2025, and entities newly incorporated after 1 November 2024 shall complete the filing of BO information at the time of incorporation (for online registration) or within 30 days from the date of incorporation (for onsite registration). If there is any change to the BO information, the Filing Entities shall update the filed information within 30 days from the date of change through the relevant registration system. In addition, if the PBOC takes measures to verify the information of BOs, the Filing Entities shall cooperate.

2. Obligations of Recipients of BO Information

The relevant state authorities and the AML Obligors shall keep any legally-obtained BO information confidential. Furthermore, if the relevant state authorities and the AML Obligors discover any errors, inconsistencies or incompleteness in the BO information of the Filing Entities in the BO information management system, they shall promptly report such situations to the PBOC. Therefore, the AML Obligors still need to pay attention to the requirements under the PBOC Notices, and shall make full use of information, data or materials obtained from reliable sources and in reliable ways to identify and verify the BO information received by them.

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