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# Regulation Around the World

## Beneficial ownership registers

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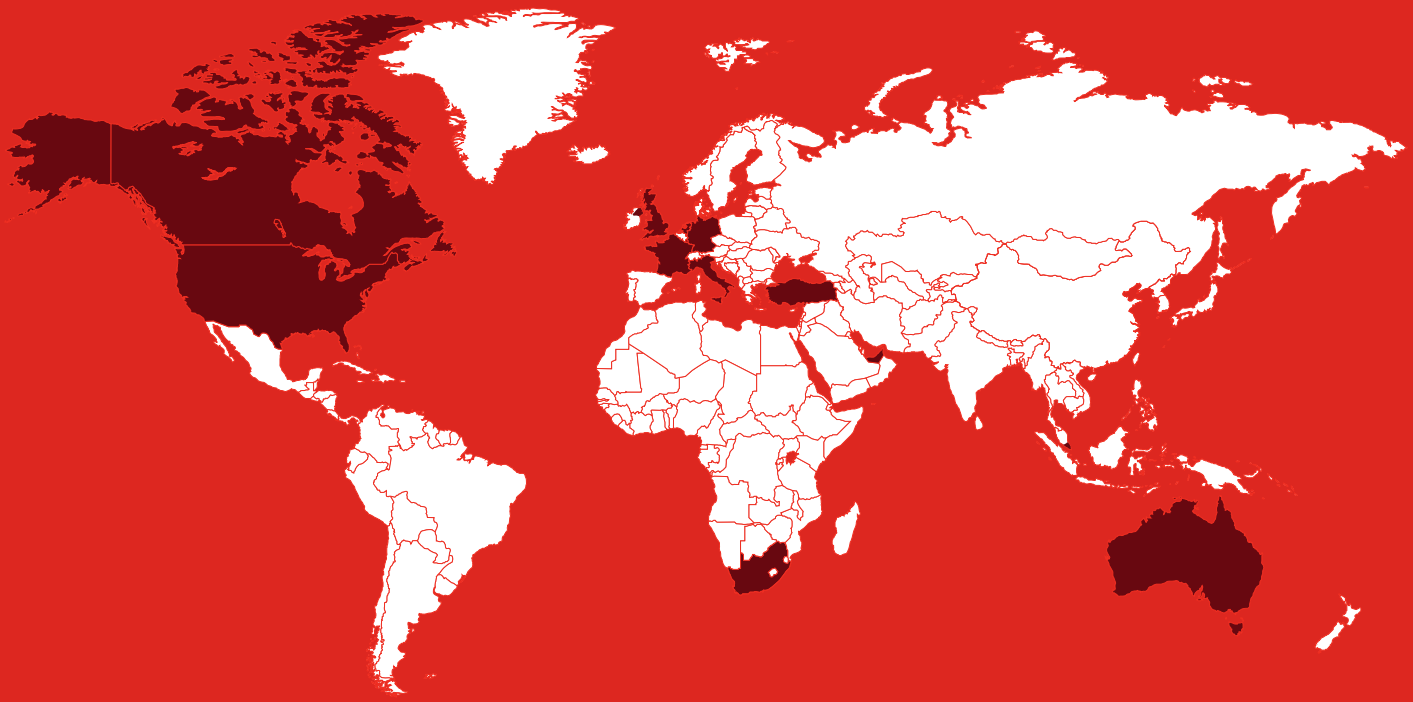
# Beneficial ownership registers

In this edition of Regulation Around the World we review the position regarding beneficial ownership registers which has come into the spotlight following work by the Financial Action Task Force and the introduction of reforms in a number of jurisdictions. Identifying beneficial owners has always been a difficult task for both regulators and financial institutions themselves given that it can be obscured through, for example, shell companies and/or complex ownership and control structures, and the position has recently become even more pressing following the sanctions levied on Russia following its invasion of Ukraine. Should beneficial ownership registers become more common they would provide an important tool for cross-checking underlying customer data and proactively identify relevant sanctions exposure by looking beyond immediate corporate ownership.



## Key risks include:

### Global

The FATF has recently published updated guidance on Recommendation 24 and a revised version of the FATF recommendations to reflect revisions to Recommendation 25 on the transparency and beneficial ownership of legal arrangements and its interpretative note. The FATF has also recently revised the definitions in the glossary to its recommendations of "beneficial ownership", "beneficiary" and "legal arrangements" to provide more clarity on legal arrangements.

### United Kingdom

The UK has three registers, the People with Significant Control register, the trusts register and the Overseas Entities register. In terms of the latter, overseas entities had to register with Companies House and tell them who their registrable beneficial owners or managing officers were by January 31, 2023. However, in February 2023 it was noted in the media that almost half of the companies required to declare their ownership had failed to do so. Changes are also being made to the UK registers via the Economic Crime and Corporate Transparency Bill which is currently making its way through Parliament.

### United States

The Corporate Transparency Act (CTA) is bolstering the US corporate transparency framework and addressing deficiencies in the anti-money laundering framework. Under the CTA FinCEN is in the process of enacting regulations to provide the details as to how a corporate registry of beneficial ownership information will be organized.

### Canada

Corporations governed by the Canada Business Corporations Act (CBCA) are required to maintain a securities register of all individuals with "significant control" over the corporation. On June 23, 2022, amendments to the CBCA requiring private corporations to regularly report beneficial ownership information to Corporations Canada received royal assent. The relevant provisions have not yet been proclaimed into force.

### Europe

On November 22, 2022 the Court of Justice of the European Union (CJEU) issued a decision with respect to a matter regarding the public beneficial ownership register in Luxembourg which was challenged by the beneficial owner of a company. Also, the European Commission has adopted a package of measures to strengthen the EU's anti-money laundering regime. This includes a Sixth Anti-Money Laundering Directive and a First Anti-Money Laundering Regulation.

### Netherlands

The Dutch Act on the registration of ultimate beneficial owners of corporate entities and other legal entities was adopted on June 23, 2020 in light of the Fourth Anti-Money Laundering Directive. At present whilst the register may be consulted by authorities such as the Public Prosecution Service, the general public cannot consult it.

### France

France is strongly committed to the fight for transparency of the beneficial owners of companies. On January 19, 2023 Bruno Le Maire, Minister of the Economy, Finance and Industrial and Digital Sovereignty, issued a press release stating that he had decided to maintain public access to the data of the register of beneficial owners pending drawing in all the consequences of the CJEU's judgment.

### Germany

On August 1, 2021 the Transparency Register and Financial Information Act (Transparenzregister- und Finanzinformationsgesetz/TraFinG) came into force and obliges companies to identify their beneficial owners and declare them on a transparency register. Also, the obligations of foreign entities to collect, keep up-to-date, and file information on their beneficial owners with the transparency register were expanded to cover share deals and other transaction structures resulting in an indirect acquisition of German real estate.

### Luxembourg

Luxembourg's Registre des Beneficiaires Effectifs (RBE), can be consulted in French, English and German but the excerpts are in French or German depending on the language used for the filling. Luxmbourg Business Register have restored access to the RBE albeit on a restricted basis.

### Italy

While Italy has adopted the legislative measures aimed at introducing the beneficial ownership register, in the context of transposing the Fourth Anti-Money Laundering Directive into Italian law, the register has not yet been activated.

### United Arab Emirates

Cabinet Resolution No.58 of 2020 introduced a new requirement for companies licensed in the UAE to maintain a register of beneficial owners, shareholders and nominee board members. Both direct and indirect ownership/control are to be considered.

### Australia

The new Labor Government has released a consultation paper in which it announced that it will implement a public registry of beneficial ownership to improve transparency on corporate structures, in order to show who ultimately owns or controls a company or other legal entity.

### Hong Kong

The Companies (Amendment) Ordinance 2018 requires companies incorporated in Hong Kong to maintain beneficial ownership information by way of keeping a "significant controllers register".

### Singapore

Since July 30, 2020 entities not only have to maintain their own register of registrable controllers but they must also lodge the same information with ACRA's central register. Information in the central register is only made available to law enforcement agencies.

### Shanghai

On December 27, 2021 the Peoples Bank of China and State Administration for Market Regulation published the draft Interim Measures on Information Filing of Ultimate Beneficial Owners of Market Entities for public consultation. The Draft Interim Measures were due to take effect from March 1, 2022 but this has been delayed and the timing for its official promulgation is unclear.

### South Africa

Amendments to the Trust Property Control Act, 1988 and the Companies Act, 2008, lay the basis for South Africa to develop a mechanism to bring transparency to the beneficial ownership of corporate vehicles such as trusts and companies. The majority of these amendments commenced on April 1, 2023.

### Turkey

Corporate taxpayers and managers, trustees or representatives of trusts and similar entities established in a foreign country that have their headquarters in Turkey or have a resident manager in Turkey are obliged to make an ultimate beneficiary owner information notification to the Revenue Administration.

# Global

The Financial Action Task Force (FATF) is the global standard setter for measures to fight money laundering and terrorist financing. In 1990 the FATF drew up its original 40 Recommendations as an initiative to combat the misuse of financial systems by persons laundering drug money. In October 2001 the FATF expanded its mandate to deal with the issue of the financing of terrorism, and took the step of creating eight special recommendations on terrorist financing. In 2003, the FATF added two recommendations which were directed at addressing the need for the disclosure of beneficial ownership information of corporations and trusts, and making that information available to law enforcement and other competent authorities.

Addressed to corporations, Recommendation 24 concerns the transparency and beneficial ownership of legal persons. The relevant part provides:

> *...Countries should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities...*

Recommendation 25 created a parallel expectation for the "adequate, accurate, and timely," disclosure of beneficial ownership information relating to trusts.

The FATF defined a "beneficial owner" as:

> *"Beneficial owners refers to the natural person(s) who ultimately own or controls a legal entity and/or the natural person on whose behalf a transaction is conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement."*

In 2012, the FATF strengthened its standards on beneficial ownership, by providing more clarity about how countries should ensure information is available, and to deal with vulnerabilities such as bearer shares and nominees. The FATF then followed up by issuing Guidance on Transparency and Beneficial Ownership in 2014 to further clarify what the FATF standards require. Among other things it clarified that "ultimately owns or controls" and "ultimate effective control" refers to situations in which ownership control is exercised through a chain of ownership or by means of control other than direct control.

Importantly, Recommendations 24 and 25 do not require beneficial ownership information to be stored or made accessible through any form of government maintained registry, whether publicly accessible or not. The approach focussed more on companies collecting and retaining up-to-date beneficial ownership information in their own records, which could then be accessed by law enforcement and other competent authorities.

Compliance with Recommendations 24 and 25 became part of the FATF's peer-based mutual evaluation process which began in 2014.

In July 2016 the FATF reported to the G20 that it had identified some significant implementation challenges on beneficial ownership. In October 2019 the FATF issued a best practices paper on beneficial ownership for legal persons. The paper was issued in light of the results of the FATF mutual evaluations which indicated that jurisdictions found it challenging to achieve a satisfactory level of transparency regarding the beneficial ownership of legal persons. The paper identified the most common challenges that countries face in ensuring that the beneficial owner(s) of legal persons is identified, and suggested key features of an effective system. The paper also suggested options for jurisdictions to obtain beneficial ownership information of overseas entities.

In February 2021, the FATF issued a document setting out the outcomes from its plenary meeting in which it was stated that it would explore potential amendments to further strengthen its beneficial ownership requirements.

On October 22, 2021 the FATF issued a consultation paper on amendments to Recommendation 24, following a white paper in June 2021. Among other things the consultation paper proposed new requirements in the interpretative note to Recommendation 24 which included that countries should follow a multi-pronged approach to ensure that a company's beneficial ownership can be determined in a timely manner by a competent authority. Countries were to decide, on the basis of risk, context and materiality, what form of registry or alternative mechanisms they would use to provide competent authorities with efficient access to information.

On March 4, 2022 the FATF issued a statement confirming that it had adopted amendments to Recommendation 24 and its interpretative note requiring countries to adopt a multi-pronged approach. Among other things the statement provided that countries should:

- Require that companies obtain and hold adequate, accurate and up-to-date information on their own beneficial ownership and make such information available to competent authorities in a timely manner.
- Require that beneficial ownership information be held by a public authority or body functioning as a beneficial ownership registry or may use an alternative mechanism if such a mechanism also provides efficient access to adequate, accurate and up-to-date beneficial ownership information by competent authorities.
- Apply any additional supplementary measures that are necessary to ensure the determination of beneficial ownership of a company. These additional measures include holding beneficial ownership information obtained by regulated financial institutions and professionals, or held by regulators or in stock exchanges.

The FATF added that it expected all countries to take concrete steps to implement the new standards promptly and to determine the appropriate sequence and timeframe for implementation at national level.

Going forward, the FATF will analyse the growing practical experience of implementing beneficial ownership registries, with a view to identifying best practices and supporting implementation by countries. It will also revise its methodology for assessing the new obligations.

On October 26, 2022 the FATF issued a public consultation on an updated version of its guidance paper to Recommendation 24. The deadline for responses was December 6, 2022. Among other things in this consultation the FATF is asking if there are examples of registries and alternative mechanisms for holding accurate, adequate and up-to-date beneficial ownership information.

On the same date the FATF launched a public consultation on Recommendation 25 and its interpretive note on the transparency and beneficial ownership of legal arrangements. The FATF is also considering amending the definition of beneficial ownership in its glossary to provide more clarity regarding legal arrangements. The FATF's objective is to improve Recommendation 25 and its interpretive note to better meet its stated objective to prevent the misuse of legal arrangements for money laundering or terrorist financing. The deadline for responses was December 6, 2022.

On March 10, 2023 the FATF published updated guidance on Recommendation 24 and a revised version of the FATF recommendations to reflect revisions to Recommendation 25 on the transparency and beneficial ownership of legal arrangements and its interpretative note. The updated guidance to Recommendation 24 is intended to help countries:

- Identify, design and implement appropriate measures to ensure that beneficial ownership information is held by a public authority or body functioning as a beneficial ownership registry, or an alternative mechanism that enables efficient access to the information.
- Assess and mitigate the money laundering and terrorist financing risks associated with foreign companies to which their countries are exposed.

The FATF also revised the definitions in the glossary to its recommendations of "beneficial ownership", "beneficiary" and "legal arrangements" to provide more clarity on legal arrangements.

During its February plenary meeting, the FATF said that it would start working on a guidance document to help countries implement the revised Recommendation 25 requirements.

# United Kingdom

The UK has registers of beneficial ownership for three different types of assets:

- Companies. Information on the beneficial ownership of companies (the People with Significant Control register) has been publicly available since 2016.
- Properties and land. A public beneficial ownership register (the Register of Overseas Entities) for UK property.
- Trusts. The register of trusts was introduced in 2017 and is not public.

All British Overseas Territories and Crown Dependences have or will introduce public company beneficial registers. An amendment introduced to the Sanctions and Anti-Money Laundering Act 2018 was intended to require the UK Government to legislate to ensure that British overseas territories introduced such registers by the end of 2020. However, the UK Government interpreted the amendment differently, and British overseas territories have now committed to introduce such registers by the end of 2023. Crown dependencies have also committed to do so after the EU reviews the implementation of its public registers.

UK companies, Societates Europaeae (SEs), limited liability partnerships (LLPs) and eligible Scottish partnerships (ESPs) must identify and record the people who own or control their company. Companies, SEs and LLPs need to keep a register of people with significant influence or control (PSCs) in relation to them, in addition to existing registers such as the register of directors and register of members (shareholders), and must file the PSC information with the central public register at Companies House. ESPs are not required to keep their own register but must file their PSC information with the central public register at Companies House.

A PSC is an individual who holds more than 25% of the shares or voting rights in the company or the right to appoint or remove the majority of the board of directors. A PSC may also be an individual who has the right to exercise, or actually exercises, significant influence or control over the company. Where a trust or firm satisfies any of the foregoing conditions if it were an individual then the PSC will be any individual holding the right to exercise, or actually exercising, significant influence or control over the activities of that trust or firm.

An officer of the company must:

- Identify the PSCs over the company and confirm their information.
- Record the details of the PSC on the company's own PSC register within 14 days.
- Provide this information to Companies House within a further 14 days.
- Update the information on the company's own PSC register when it changes within 14 days, and update the information at Companies House within a further 14 days.
- Confirm to Companies House that information on the public register is accurate, where it has not been updated in the previous 12 months.

Before a PSC can be entered on the register, their details must be confirmed. Such details are the PSC's:

- Name.
- Date of birth.
- Nationality.
- Country, state or part of the UK where they usually live.
- Service address.
- Usual residential address (this must not be disclosed when making the register available for inspection or providing copies of the PSC register).
- Date when he or she became a PSC in relation to the company.

It must also be confirmed which conditions for being a PSC are met and whether an application has been made for the individual's information to be protected from public disclosure.

Failure to provide accurate information on the PSC register and failure to comply with notices requiring someone to provide information are criminal offences, and may result in a fine and/or a prison sentence of up to two years.

On February 28, 2022 the UK Government issued a White Paper on "Corporate transparency and register reform" which included 58 proposed reforms to the UK company (including the PSC) regime. These reforms are set out in the Economic Crime and Corporate Transparency Bill which, at the time of writing, is making its way through Parliament. Among other things the Bill seeks to introduce new identification and verification measures. These include that all new and existing registered company directors, PSCs, and those delivering documents to the registrar will have to have a verified identity with Companies House, or have registered and verified their identity via an anti-money laundering supervised authorised corporate service provider.

The Register of Overseas Entities came into force in the UK on August 1, 2022 through the new Economic Crime (Transparency and Enforcement) Act 2022. Overseas entities who want to buy, sell or transfer property or land in the UK, must register with Companies House and tell it who their registrable beneficial owners or managing officers are. The Act also applies retrospectively to overseas entities who bought property or land on or after January 1, 1999 in England and Wales and December 8, 2014 in Scotland. Overseas entities had to register with Companies House and tell them who their registrable beneficial owners or managing officers were by January 31, 2023.

In terms of what is an overseas entity for the purposes of the register, this includes companies, partnerships, governments and public authorities that have a legal personality under the non-UK law by which they are governed. Beneficial owners are those that: (i) hold directly or indirectly more than 25% of the shares in the overseas entity or other legal entity; (ii) hold directly or indirectly more than 25% of the voting rights in the overseas entity or other legal entity; (iii) hold the right, directly or indirectly to appoint or remove a majority of the board of directors of the overseas entity or other legal entity; or (iv) has the right to exercise, or actually exercises, significant influence or control over the overseas entity or other legal entity. It is possible for a party to become a beneficial owner by virtue of a joint arrangement between parties.

There are certain situations where an individual or legal entity may not meet the conditions of being a registrable beneficial owner, or they may have previously disclosed their identity as a beneficial owner through another means. In these situations, they do not have to register. Part 4 of Schedule 2 to the Economic Crime (Transparency and Enforcement) Act 2022 describes this further.

Section 16 of the Economic Crime (Transparency and Enforcement) Act 2022 requires the Secretary of State to make regulations requiring the verification of information before an overseas entity makes an application for registration, complies with the updating duty, or makes an application for removal. The Register of Overseas Entities (Verification and Provision of Information) Regulations 2022 sets out the details of the verification system. The verification system has been designed to strike a balance between providing assurance to users of the Register that information is accurate, whilst avoiding placing onerous burdens on overseas entities and professionals performing the verification checks. The Register of Overseas Entities (Verification and Provision of Information) (Amendment) Regulations 2022 (Amendment Regulations) came into force on January 12, 2023. The Amendment Regulations address practical difficulties that were identified in the verification regime.

For further information on the Register of Overseas Entities please refer to our briefing note 'A new register of overseas entities owning UK land.'

The Economic Crime and Corporate Transparency Bill also makes certain changes to the Register of Overseas Entities including expanding the circumstances whereby an overseas entity is not considered to be registered. It also amends the information requirements for this register.

In Scotland a register similar to the Register of Overseas Entities has been operational since April 1, 2022. Landowners and tenants have a 12-month grace period to register before incurring penalties.

In February 2023 it was noted in the media that an analysis of the Register of Overseas Entities showed that almost half of the companies required to declare their ownership have failed to do so.

The register of trusts was introduced in June 2017 and at that time trusts were only required to be registered where there was a UK tax liability. The UK Government's view on July 2020 was that the Fifth Anti-Money Laundering Directive would come into force on (and therefore all trusts within its scope would need to be registered by) March 10, 2022 and that updates for new trusts would need to be registered within 30 days. However, due to delays in IT development the online system for registering trusts (the Trust Registration System) only became available for registrations on September 1, 2022. The UK Government also extended the time period to register new or updated trusts from 30 days to 90 days.

On January 30, 2023, the UK Government published a memorandum setting out its European Convention on Human Rights (ECHR) re-evaluation of aspects of the Economic Crime and Corporate Transparency Bill. The UK Government stated that it was prompted to re-evaluate the Bill's amendments to the PSC regime, following the CJEU decision on November 22, 2022 regarding Luxembourg Business Registers, in which the CJEU held that the Fifth Anti Money-Laundering Directive created a beneficial ownership register regime which did not comply with Article 7 of the EU Charter on Fundamental Rights because a person wishing to view the data no longer had to demonstrate a "legitimate interest", so allowed privacy intrusions more than strictly necessary; and Article 7 is equivalent to Article 8 ECHR. The UK Government stated that it still considered that the PSC and Register of Overseas Entities regimes to be compliant with Article 8. The UK Government's reasons for adopting this view are set out in the memorandum.

# United States

Corporate registries have been in place in many jurisdictions around the world to enable local authorities to understand the ownership of closely held corporate entities and to discourage anonymity provided by such entities to be used by those seeking to engage in criminal acts, including terrorist financing. The United States (US), however, has lagged behind many jurisdictions in this regard, with many states, most notably Delaware, enabling corporate entities to be formed with no public disclosure about their ownership structures. This was identified by the Financial Action Task Force as a deficiency in the US legal structure that could be exploited by criminals and terrorists.

The Corporate Transparency Act (CTA) was enacted by Congress in January 2021 as part of the Anti-Money Laundering Act of 2020. The purpose of the CTA is to bolster the US' corporate transparency framework and address deficiencies in the US anti-money laundering framework. It does this by requiring certain types of corporations, limited liability companies (LLCs), and other similar entities incorporated in the US or incorporated in another country but registered to do business in the US (reporting companies) to file a beneficial ownership information report with the Financial Crimes Enforcement Network (FinCEN). In the CTA, Congress directs FinCEN to enact regulations to provide the details as to how the corporate registry will be organized and to whom access will be permitted.

The CTA also authorises FinCEN to permit access to beneficial ownership information under specific circumstances to five general categories of authorized recipients:

- US Federal, state, local, and Tribal government agencies requesting beneficial ownership information for specified purposes.
- Foreign law enforcement agencies, judges, prosecutors, central authorities, and competent authorities (foreign requesters).
- Financial institutions using beneficial ownership information to facilitate compliance with customer due diligence (CDD) requirements under applicable law;
- Federal functional regulators and other appropriate regulatory agencies acting in a supervisory capacity assessing financial institutions for compliance with CDD requirements.
- The US Department of the Treasury (Treasury).

On September 29, 2022 FinCEN issued a final rule establishing a beneficial ownership information reporting requirement pursuant to the CTA. The final rule, which Acting FinCEN Director Himamauli Das described as a "significant step forward in our efforts to support national security, intelligence, and law enforcement agencies in their work to curb illicit activities", will require reporting companies to report information about their beneficial owners, including a control person, to FinCEN. The new rule is effective from January 1, 2024, however reporting companies created or registered before January 1, 2024, will have one year (until January 1, 2025) to file their initial reports, while reporting companies created or registered after January 1, 2024, will have 30 days after creation or registration to file their initial reports. Once the initial report has been filed, both existing and new reporting companies will have to file updates within 30 days of a change in their beneficial ownership information.

The final rule, which closely tracks the language of the CTA, describes two types of reporting companies, a domestic reporting company, and a foreign reporting company. A domestic reporting company is a corporation, LLC or other entity that is incorporated in the US as the result of a filing with the Secretary of State or similar office of a State or Indian Tribe. A foreign reporting company is a corporation, LLC or other entity formed under the laws of a foreign country that is registered to do business in the US through the filing of a document with the Secretary of State or similar office. FinCEN has also indicated that it expects other entity types to be within scope including limited liability partnerships, limited partnerships and business trusts.

A wide range of corporations are exempt, in total 23 types of entities are exempt from the definition of a reporting company including public companies, large operating companies, banks, bank holding companies, securities brokers or dealers, insurance companies, registered investment companies and advisers and pooled investment vehicles, among others. While the final rule authorizes the Secretary of the Treasury to exempt additional entities from the definition of a reporting company, FinCEN has expressed reluctance to expand the exemptions as doing so would require a finding that requiring such entities to submit beneficial ownership reports would not serve the public interest and would not be highly useful in furthering the objectives of the CTA.

The final rule defines a beneficial owner as a person who, directly or indirectly, either:

- Exercises substantial control over a reporting company.
- Owns or controls at least 25 per cent of the ownership interests of a reporting company.

Significantly, if a reporting company has no persons who directly own or control more than 25% of the company, that reporting company would not be required to report its beneficial owners but it would nevertheless be required to identify a control party as described below. The final rule also provides five exceptions to the beneficial owner definition for (i) minor children; (ii) nominees or other intermediaries; (iii) employees; (iv) inheritors; and (v) creditors.

In terms of what may constitute "exercising substantial control over a reporting company" the final rule describes this as one of the following:

- Providing service as a senior officer of a reporting company.
- Having authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar body) of the reporting company.
- Directing, determining or having substantial influence over important matters of the reporting company, such as, for example, the reorganization, dissolution or merger of the reporting company, the selection or termination of business lines or ventures of the reporting company and the amendment of any governance documents of the reporting company.
- Having any other form of substantial control over the reporting company.

A reporting company will be required to report its full legal name (including the names under which it does business), its business street address, jurisdiction of formation and taxpayer identification number. It will also need to identify and report information concerning its beneficial owners. Such information includes their full legal name, date of birth, residential address, and their identification number from an acceptable identification document (e.g., a driver's license or passport) together with a scanned copy of such document.

The final rule also provides that reporting companies may in certain circumstances report a FinCEN identifier, where such has been assigned to a person, instead of the personal identification information associated with a particular beneficial owner. A FinCEN identifier is a unique identifying number that FinCEN may issue to individuals who submit an application that contains all of the information that would have to be provided in an initial report on the individual. While the personal information would be available to FinCEN it may be shielded from certain disclosure. The final rule provides for a process for obtaining, updating and using FinCEN identifiers, but reserves for further consideration certain provisions concerning the use of a FinCEN identifier issued to an entity.

The reporting rule was one of three rulemakings planned to implement the CTA. The second rulemaking was published for comment on December 15, 2022. In a Notice of Proposed Rulemaking FinCEN sought public comment on draft rules to govern who would have access to beneficial ownership information as well as provisions to safeguard information maintained by FinCEN in the CTA registry (Access NPRM).

The regulations proposed by FinCEN impose upon each category of authorized recipient of beneficial ownership information certain requirements and restrictions. For example:

- FinCEN will disclose beneficial ownership information to Federal agencies engaged in national security, intelligence, or law enforcement activity if the requested beneficial ownership information is for use in furtherance of such activity. Only "authorized users" could access registry information and agencies seeking access would have to justify the need for obtaining such information. Federal agency justifications for access to CTA registry information would be subject to oversight and audit by FinCEN. "Law enforcement activity" would include both criminal and civil investigations and actions, such as actions to impose civil penalties, civil forfeiture actions, and civil enforcement through administrative proceedings.
- FinCEN would be permitted to disclose beneficial ownership information to state, local, and Tribal law enforcement agencies if "a court of competent jurisdiction" has issued a subpoena or otherwise authorized the law enforcement agency to seek the information in a criminal or civil investigation. A "court of competent jurisdiction" would be any court with jurisdiction over the criminal or civil investigation for which the state, local, or Tribal law enforcement agency requests beneficial ownership information. Authorized users from these agencies would be required to upload a document issued by a court of competent jurisdiction authorizing the agency to seek beneficial ownership information from FinCEN. After FinCEN has reviewed the relevant authorization and approved the request, an agency could then conduct searches within the beneficial ownership IT system.
- Foreign requesters would be required to make their requests for beneficial ownership information through intermediary Federal agencies. In addition to meeting other criteria, requests from foreign requesters would have to be made either (1) under an international treaty, agreement, or convention or (2) via a request made by law enforcement, judicial, or prosecutorial authorities in a trusted foreign country. Requests made under international treaties or other agreements would be subject to different requirements and procedures than requests made in situations when no such agreements apply. In neither case would foreign requesters have direct access to the beneficial ownership IT system. They would instead rely on the intermediary Federal agencies through which they route their requests to retrieve and furnish them with requested beneficial ownership information.
- Financial institutions would only request beneficial ownership information from FinCEN for the purposes of complying with their CDD requirements under applicable law, and only with the consent of the reporting company to which the beneficial ownership information pertains. FinCEN anticipates a more limited information-retrieval process whereby the financial institution would submit identifying information specific to a reporting company and receive in return an electronic transcript with that entity's beneficial ownership information. What remains unclear is the extent to which US regulated financial institutions (including branches of foreign financial institutions) will be able to fulfil their Bank Secrecy Act mandated due diligence obligations solely by virtue of beneficial ownership information maintained by FinCEN in the CTA registry.
- Federal functional regulators and other appropriate regulatory agencies would be able to request from FinCEN beneficial ownership information that the financial institutions they supervise have already obtained from the bureau for the purposes of assessing a financial institution's compliance with CDD requirements under applicable law. To the extent regulators also engage in law enforcement activity, they would be able to access beneficial ownership information for this purpose as well. Under the proposed rule, certain self-regulatory organizations (SROs) would be able to receive beneficial ownership information to facilitate CDD compliance reviews under certain circumstances.

FinCEN's proposed CTA access rule tracks other Treasury specific protocols mandated by the CTA for making beneficial ownership information available to any Treasury officer or employee (1) whose official duties require beneficial ownership information inspection or disclosure or (2) for tax administration.

FinCEN's proposed rule also builds on the CTA's strict access-control protocols on requesting agencies. FinCEN proposes comparable requirements for financial institutions, SROs and others who may receive beneficial ownership information, including contractors and other agents acting on an authorised recipient's behalf. Whilst protocols vary by recipient category, they address potential re-disclosure of beneficial ownership information and generally require the recipient of beneficial ownership information to adopt standards and procedures for storing the information in a secure system to which only authorised personnel have access. FinCen proposes requiring authorised recipients to maintain for review key information about specific beneficial ownership information searches or requests. For regulated financial institutions, these protocols no doubt will eventually be subject to supervisory examination procedures.

Security protocols will be supported by a range of civil and criminal penalties for violations. It is unlawful for any person to knowingly disclose or knowingly use beneficial ownership information obtained from a report submitted to, or an authorized disclosure made by, FinCEN, unless such disclosure is authorized under the CTA. Under FinCEN's proposed rule, "unauthorized use" would include any unauthorized access of beneficial ownership information submitted to FinCEN, including any activity in which an employee, officer, director, contractor, or agent of an authorized recipient knowingly violates applicable security and confidentiality requirements in connection with accessing such information. The CTA provides civil penalties in the amount of US$500 for each day a violation continues or has not been remedied. Criminal penalties include fines of not more than US$250,000 or imprisonment for not more than 5 years, or both. The CTA also provides for enhanced criminal penalties, including a fine of up to US$500,000, imprisonment of not more than 10 years, or both, if a person commits a violation while violating another law of the United States or as part of a pattern of any illegal activity involving more than US$100,000 in a 12-month period.

Furthermore, the Access NPRM proposes specifying when and how reporting companies may report FinCEN identifiers tied to entities. FinCEN believes that the proposed requirements are necessary to prevent over- or under-reporting of beneficial owners. The NPRM Access proposes that a reporting company would be permitted to satisfy its reporting obligations by reporting another entity's FinCEN identifier with respect to the beneficial owners of the reporting company when each of the following are satisfied:

- The intermediate entity has obtained a FinCEN identifier and provided it to the reporting company.
- The individual is a beneficial owner by virtue of an interest in the reporting company that the individual holds through the intermediate entity.
- Only the individuals that are beneficial owners of the intermediate entity are beneficial owners of the reporting company, and vice versa.

The Access NPRM also describes certain aspects of the information technology system that FinCEN is building to store beneficial ownership information and manage disclosures. FinCEN states that the IT system will be cloud based and will meet the highest Federal Information Security Management Act (FISMA) level – FISMA High. The target date for the IT system to begin accepting beneficial ownership information reports is January 1, 2024, the day the reporting rule takes effect.

The deadline for comments on the Access NPRM was February 14, 2023.

The third FinCEN rulemaking will seek to harmonize FinCEN's existing CDD rule with the requirements of the CTA, no later than one year after the effective date of the beneficial ownership information reporting rule (January 1, 2024).

# Canada

Since June 13, 2019, corporations governed by the Canada Business Corporations Act (CBCA) are required to maintain a securities register of all individuals with "significant control" over the corporation (ISC Register). Previously, CBCA corporations were only required to maintain a securities register of registered or legal shareholders. In order to provide increased transparency to the corporate landscape, CBCA corporations are now required to actively collect and maintain certain information regarding both registered and beneficial shareholders with "significant control" over the corporation. Exempt from these requirements are CBCA corporations that are reporting issuers and CBCA corporations that are listed on a designated stock exchange.

An individual has "significant control" of a CBCA corporation if they own 25% of the voting rights attached to the corporation's shares, or 25% of the shares based on the fair market value of the shares. Individuals acting "jointly or in concert" that meet the 25% threshold as a group, and individuals who have the ability to exert influence that would result in "control in fact" over the CBCA corporation will also be considered individuals with "significant control".

The ISC Register is not available to the public. However, certain parties may request the information on the register including the Director of Corporations Canada, investigative bodies (i.e. any police force or the Canada Revenue Agency) and shareholders and creditors of the CBCA corporation who provide a sworn affidavit.

On June 23, 2022, amendments to the CBCA requiring private corporations to regularly report beneficial ownership information to Corporations Canada received royal assent. The relevant provisions have not yet been proclaimed into force but are expected to be implemented in two phases. The first set of amendments will oblige CBCA corporations that are required to maintain an ISC Register to:

- Send the information contained in the ISC Register to Corporations Canada on receiving a CBCA certificate of incorporation, amalgamation or continuance.
- Annually send to Corporations Canada the information contained in the ISC Register.
- Within 15 days of any updates being made to the ISC Register, send such updates to Corporations Canada.

The changes required to make beneficial ownership information collected by Corporations Canada public and searchable by way of a publicly accessible registry will be covered by a second phase of CBCA amendments. A Government of Canada press release dated March 3, 2023 suggests that the public and searchable beneficial ownership registry will be accessible before the end of 2023.

# Europe

The Fourth Anti-Money Laundering Directive (4MLD) entered into force in June 2017. Among other things the Directive required EU Member States to set up a central register of beneficial ownership for companies. Articles 30 and 31 of 4MLD provided that EU Member States have to ensure that legal entities incorporated within their territory have to obtain and hold adequate, accurate and current information on their beneficial ownership. In addition, EU Member States have to ensure that the information on beneficial ownership is held in a central register in that EU Member State. Initially, EU Member States did not have to make their registers public.

The term "beneficial owner" is defined in Article 3(6) of the 4MLD as any natural person(s) who ultimately owns or controls the customer, or the natural person(s) on whose behalf a transaction or activity is being conducted, or both, and includes at least:

- In the case of corporate entities:
  - the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that entity, including through bearer share holdings, or through control via other means, other than a company listed on a regulated market that is subject to disclosure requirements consistent with EU law or subject to equivalent international standards that ensure adequate transparency of ownership information; or
  - if, after having exhausted all possible means and provided there are no grounds for suspicion, no person mentioned in the bullet above is identified, or if there is any doubt that the person(s) identified are the beneficial owner(s), the natural person(s) who hold the position of senior managing official(s), the obliged entity shall keep records of the actions taken to identify the beneficial ownership under this bullet and the bullet above.

  A shareholding of 25% plus one share or an ownership interest of more than 25% in the customer held by a natural person shall be an indication of direct ownership. A shareholding of 25% plus one share or an ownership interest of more than 25% in the customer held by a corporate entity that is under the control of a natural person(s), or by multiple corporate entities that are under the control of the same natural person(s), shall be an indication of indirect ownership. This applies without prejudice to the right of member states to decide that a lower percentage may be an indication of ownership or control. Control through other means may be determined, inter alia, in accordance with the criteria in Articles 22(1) to (5) of the Accounting Directive (2013/34/EU).

  (Obliged entities shall keep records of the actions taken to identify the beneficial ownership under the aforementioned bullets.)

- In the case of trusts, all the following persons:
  - the settlor(s);
  - the trustee(s);
  - the protector(s), if any;
  - the beneficiaries, or where the individuals benefiting from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates; and
  - any other natural person exercising ultimate control over the trust by means of direct or indirect ownership, or by other means.

- In the case of legal entities such as foundations and legal arrangements similar to trusts, the natural person(s) holding equivalent or similar positions to those relating to trusts listed above.

Whilst the Fifth Anti-Money Laundering Directive (5MLD) was going through trilogue amendments were agreed between the European Parliament and the European Council to make beneficial information in the registers public. The European Council's analysis of the final compromise text with a view to agreement (dated December 19, 2017) stated:

> *Confidence in financial markets from investors and the general public depends in large part on the existence of an accurate disclosure regime that provides transparency in the beneficial ownership and control structures of corporate and legal entities as well as certain types of trusts and other legal arrangements. Member States should therefore allow access to beneficial ownership information in a sufficiently coherent and coordinated way, by establishing clear rules of access by the public, so that third parties are able to ascertain, throughout the Union, who are the beneficial owners of corporate and legal entities as well as certain types of trusts and other legal arrangements.*

The 5MLD entered into force on July 9, 2018. EU Member States had to transpose the 5MLD into their national law by January 10, 2020. 5MLD brought certain crypto-asset services providers within the scope of 4MLD. It also requires public access to data on beneficial owners of legal entities such as companies. Recital 30 to 5MLD states that public access to beneficial ownership information facilitates the timely and efficient availability of information for obliged entities involved in combatting money laundering and terrorist financing. Recital 33 adds that EU Member States should allow access to beneficial ownership information in a sufficiently coherent and co-ordinated way by establishing a clear public access rule, so that third parties can ascertain throughout the EU who beneficial owners are. The data made available should minimise the potential prejudice to the beneficial owners. However, the position is different for trusts. Members of the public who wish to access trust data need to demonstrate a legitimate interest. The European Commission's factsheet on the main changes of the 5MLD provides that:

> *The access to data on the beneficial owner of trusts will be accessible without any restrictions to competent authorities. Financial Intelligence Units, the professional sectors subject to anti-money laundering rules (banks, lawyers...) and will be accessible to other persons who can demonstrate a legitimate interest.*

Recital 42 of the 5MLD states that EU Member States may define legitimate interest themselves, but the definition is to include "preventive work in the field of anti-money laundering, counter terrorist financing and associate predicate offences undertaken by non-governmental organisations and investigative journalists".

Being a directive rather than a regulation, the 5MLD has led to considerable divergence in how beneficial ownership registers have been implemented and varying levels of accessibility.

Pursuant to the 4MLD as amended by 5MLD the EU has established the beneficial ownership registers interconnection system (BORIS) which contains links to EU Member States beneficial ownership registers

Following its May 2020 anti-money laundering (AML) and countering the financing of terrorism (CTF) action plan, the European Commission adopted a package of measures to strengthen the EU's AML and CTF regime, on July 20, 2021, which included among other things a Sixth Anti-Money Laundering Directive (6MLD) and a First Anti-Money Laundering Regulation. The 6MLD will repeal and replace the 4MLD and contains provisions concerning rules applicable to EU Member State supervisors and financial intelligence units and how beneficial ownership information is exchanged between registers across the EU.

The Regulation also contains directly applicable requirements on customer due diligence and beneficial ownership. These requirements will form part of a new EU AML and CTF Single Rulebook which will include rules that are directly applicable across the EU. The legislative proposals are being considered by the European Parliament and the European Council.

On November 22, 2022 the Court of Justice of the European Union (CJEU) issued a decision with respect to a matter regarding the public beneficial ownership register in Luxembourg which was challenged by the beneficial owner of a company. Referring to the Charter of Fundamental Rights of the European Union (Charter), the CJEU decided that the provision of the 4MLD requiring EU Member States to ensure that information on the beneficial ownership of companies and of other legal entities incorporated within their territory is accessible in all cases to any member of the general public, is invalid.

The CJEU first acknowledged that the general public's access to information on beneficial ownership provided for in the 4MLD constitutes an interference with the fundamental rights to respect for private life and the protection of personal data. Second, one of the questions at stake was to assess whether such interference could be proportionate or not. Hence, while the CJEU considered "that access by the general public to information on beneficial owners is suitable for contributing to the attainment of the general interest objective", it made it clear that public access to information on beneficial owners is not limited to what is strictly necessary therefore it is not proportionate and does not offer sufficient safeguards enabling beneficial owners to effectively protect their personal data against the risks of abuse.

The CJEU's judgment caused some EU Member States to place some further restrictions on their register's accessibility.

# The Netherlands

The Dutch Act on the registration of ultimate beneficial owners of corporate entities and other legal entities was adopted on June 23, 2020 in light of the Fourth Anti-Money Laundering Directive (4MLD). From September 27, 2020, Dutch corporate and other legal entities have had to register information on their ultimate beneficial owners in the Dutch ultimate beneficial owners register (Register) maintained by the Dutch Chamber of Commerce. A separate register for trusts subsequently entered into force on November 1, 2022. The delay was due to Dutch law not providing for a legal concept of the trust (although it acknowledges certain foreign trusts).

Corporate and other legal entities that are incorporated or established under Dutch law and that are registered in the Dutch Trade Register are required to obtain, hold and register certain personal information on their ultimate beneficial owners. Such corporate and other legal entities cover:

- Private limited companies (besloten vennootschappen met beperkte aansprakelijkheid, BVs) and public limited companies (naamloze vennootschappen, NVs).
- Foundations (stichtingen), associations (verenigingen), mutual insurance associations (onderlinge waarborgmaatschappijen) and cooperatives (coöperaties).
- Various partnerships (maatschappen, vennootschappen onder firma and commanditaire vennootschappen).
- EU public limited companies (S.E.s) and EU cooperatives that have their statutory seat in the Netherlands and EU economic partnerships in the Netherlands.
- Shipping companies (rederijen).
- Churches and spiritual organizations.

Legal constructions such as trusts, where the trustee (or a person in a similar position for comparable legal constructions) is either (1) established in the Netherlands or (2) established outside the EU but enters into a business relationship or acquires immovable property in the Netherlands on behalf of the trust, must acquire, maintain, and register specific personal information about their ultimate beneficial owners. The fund for joint account (fonds voor gemene rekening, FGR) is the most pertinent comparable legal construction in the Netherlands.

Dutch publicly listed companies that are subject to the disclosure requirements of the Transparency Directive or comparable international standards are not required to register information on their ultimate beneficial owners. The same applies to such listed companies' 100% direct and indirect subsidiaries. Non-Dutch corporates and other legal entities are not required to register their ultimate beneficial ownership information even if they have a principal place of business or a branch in the Netherlands or are registered in the Dutch Trade Register.

The following are considered to be ultimate beneficial owners:

- **BV or NV:** A natural person who (i) directly or indirectly holds more than 25% of the shares, voting rights, or ownership interest in the company, or (ii) has ultimate control over the company through other means (i.e. is authorised to appoint or dismiss more than half of the management board or supervisory board members).
- **Dutch foundation, association or co-operative:** A natural person who (i) owns directly or indirectly more than 25% of the ownership interest; (ii) can exercise directly or indirectly more than 25% of voting rights in respect of an amendment of the articles of association; or (iii) can exercise ultimate control over the legal entity.
- **Dutch partnership:** A natural person who (i) owns directly or indirectly more than 25% of the ownership interest; (ii) can exercise directly or indirectly more than 25% of voting rights in respect of an amendment of the partnership agreement; or (iii) can exercise ultimate control over the partnership; or

- **Dutch religious body (kerkgenootschap):** A natural person who is designated in the religious body's statute as legal successor in case of the religious body's dissolution.
- **Trust or similar legal construction (trust of vergelijkbare juridische constructie):** (i) the founder(s) (ii) the trustee(s), (iii) the protector(s), (iv) the beneficiaries and (v) any other natural person who exercises ultimate control over the trust by direct or indirect ownership or by other means. Where it concerns a similar legal construction, the persons in an equivalent position to the above must be registered as ultimate beneficial owners.

Not only natural persons who directly have ultimate ownership or control are considered ultimate beneficial owners. Indirect holdings are also looked at and with any layered structure involving intermediate entities, the percentage held indirectly is calculated on a weighted basis.

In instances where it cannot be determined that a natural person is the ultimate beneficial owner, the members of the management board (in case of companies with limited liability, foundations, religious bodies, associations and co-operatives), or the general partners (in case of limited partnerships), respectively, are considered to be the ultimate beneficial owners and their details need to be inserted into the Register. These ultimate beneficial owners are referred to as pseudo-ultimate beneficial owners.

The following information on each ultimate beneficial owner has to be registered: full name, month and year of birth, state of residence, nationality, and nature and size of interest held. The Register is publicly accessible (but see below) for a fee. The identity of the person requesting inspection will be registered by the Dutch Chamber of Commerce. In certain circumstances a request for information may be blocked although this may not relate to the nature and size of the interest as this cannot be traced back to the natural person.

Each ultimate beneficial owner's citizen service number (BSN) or tax registration number and their date of birth, place of birth, country of birth and residential address must also be registered although this is only accessible by the Netherlands Financial Intelligence Unit and other competent authorities, such as the Dutch Tax and Customs Administration (Belastingdienst), the Dutch Fiscal and Investigation Service and the Dutch Authority for Financial Markets.

As mentioned in the Europe wide section of this update, in November 2022 the Court of Justice of the European Union (CJEU) issued a decision with respect to a matter regarding the public beneficial ownership register in Luxembourg which was challenged by the beneficial owner of a company. The CJEU held that the 4MLD's requirement for EU Member States to have their register of beneficial ownership of companies publicly available was invalid.

In light of the aforementioned CJEU ruling, the Dutch Minister of Finance ordered the Dutch Chamber of Commerce to temporarily stop providing information extracts from the Register with immediate effect. At present whilst the Register may be consulted by authorities such as the Public Prosecution Service, the general public cannot consult it. Entities are, however, still required to register their ultimate beneficial owners. In a recent update provided to the Dutch parliament, the Dutch Minister of Finance indicated that the Dutch provisions implementing the 4MLD (as amended by the 5MLD) need to be amended so that access to the Register will be limited to competent authorities and the Netherlands Financial Intelligence Unit, obliged entities and individuals and organisations that can demonstrate a legitimate interest. A legislative proposal will be prepared soon.

# France

In France, a trust registry has been operational since 2013, the "fiducies" register since 2010 and a register of beneficial owners of legal entities since 2017. This update focuses on the latter.

Ordinance No. 2016-1635 of December 1, 2016 on the strengthening of the French system for the prevention of money laundering and the financing of terrorism, which transposed Article 30 of the Fourth Anti-Money Laundering Directive, created a central register of beneficial owners of legal entities (registre des bénéficiaires effectifs) that records identification data on their beneficial owner(s), his/her/their place of residence as well as the way in which he/she/they exercise(s) control over the relevant company or entity.

Article L. 561-46 of the French Monetary and Financial Code sets out those entities that are required to provide information concerning their beneficial owners:

- All unlisted companies (civil and commercial) and economic interest groupings that have their registered office in France and have "legal personality".
- Foreign commercial companies if they have one (or several) branch(es) located in France.
- All other legal persons required to be registered under French law (i.e., certain associations).
- Collective investments.
- Associations, foundations, endowment funds, sustainability funds, joint-interest organisations established on the French territory as well as fiduciaries and administrators in other comparable legal framework subject to foreign law.

Listed companies are excluded. However, an unlisted company may be required to search and declare the identity of its ultimate beneficial owner(s) even if its listed parent company is not required to do so.

Article R.561-1 of the French Monetary and Financial Code defines the term 'beneficial owner' as: "Natural person(s) who either hold, directly or indirectly, more than 25 per cent of the share capital or voting rights of the company, or who exercise, by any other means, a power of control over the corporation within the meaning of Article L. 233-3 I §3 and §4 of the French Commercial Code". Under these articles, the power of control is characterized when a person can determine, using their voting rights, the decisions during the general assemblies, or where they are a partner or shareholder of the company and have the right to nominate or revoke the majority of its administration or surveillance board members.

France also has the concept of "beneficiary of last resort". This is where no natural person has been identified according to the criteria set out in Article R. 561-1 of the Monetary and Financial Code and the entity has no suspicion of money laundering or terrorist financing. The beneficial owner of last resort is the legal representative of the company (e.g. the chief executive officer of public limited companies with a board of directors or the chairman of simplified joint-stock companies). If the legal representative is a legal entity, the beneficial owner is the natural person or persons who legally represent the legal entity.

The information on beneficial owners that must be disclosed are:

- Corporate name or trade name of the company, its legal form, the address of its registered office and its unique identification number.
- Identity (name, name used, pseudonym, first names), date and place of birth, nationality, personal address of the natural person(s).
- Date on which the natural person(s) became beneficial owner(s) of the relevant company or legal entity, as well as the nature and modalities of the control exercised over this relevant company or legal entity.

Previously, the register of beneficial owners was not available to the public. Article L.561-46 §3 of the French Monetary and Financial Code, in its original wording derived from Ordinance No. 2016-1635 of December 1, 2016, or as amended by Law No. 2019-486 of May 22, 2019 on business growth and transformation, known as the "PACTE" Law, provided that only the following entities/authorities could be given access to beneficial ownership information:

- The company who had filed the declaration.
- Certain authorities, including judicial magistrates, customs agents, officers of the General Directorate of Public Finance and investigators of the French Financial Markets Authority.
- Entities subject to obligations concerning the fight against money laundering and terrorism.
- Any person with a legitimate interest, pursuant to an order of the judge in charge of supervising the Register of Trade.

However, Article L.561-46 §3 of the French Monetary and Financial Code was amended by Article 8 of Ordinance No. 2020-115 of February 12, 2020 on the strengthening of the national system for combating money laundering and the financing of terrorism. This amendment provided that certain beneficial ownership information, namely the identity, month and year of birth, country of residence and nationality of the beneficial owners as well as the nature and extent of the beneficial interests they held in the relevant company or legal entity, could be accessible by the public. This information became freely accessible via the website "DATA INPI" managed by the Institut National de la Propriété Industrielle (French Trademark and Patent Office, commonly known by the acronym "INPI").

Previously, France had numerous websites offering to register businesses. From January 1, 2023 all business registrations and notifications have to go through the site managed by INPI. Also, as of January 1, 2023 the different registers relating to companies merged into a single national register of companies – "Registre National des Entreprises" (RNE).

As of now, more than 3.5 billion companies and legal entities have declared their beneficial owners on the INPI register.

As mentioned in the Europe wide section of this update, in November 2022 the Court of Justice of the European Union (CJEU) issued a decision with respect to a matter regarding the public beneficial ownership register in Luxembourg, which was challenged by the beneficial owner of a company. The CJEU held that the Fourth Anti-Money Laundering Directive's requirement for EU Member States to have their register of beneficial ownership of companies publicly available was invalid.

Following this CJEU judgment, the central register regarding beneficial ownership was suspended on January 1, 2023. On January 19, 2023 Bruno Le Maire, Minister of the Economy, Finance and Industrial and Digital Sovereignty, issued a press release stating that he had decided to maintain public access to the data of the register of beneficial owners pending drawing in all the consequences of the CJEU's judgment.

The press release added:

> *"The future modalities of access to the data of the register of beneficial owners taking into account the decision of the CJEU will be defined soon, in conjunction with the stakeholders. In particular, they will allow media outlets and civil society organisations with a legitimate interest to continue to access the register.*
>
> *France is strongly committed to the fight for transparency of the beneficial owners of companies. The publication and free use of the register of beneficial owners has been guaranteed as part of the transposition of the Fifth European Directive on combatting money laundering and terrorist financing. France will continue to take ambitious positions on the Sixth Directive currently under negotiation, which will have to be adapted to take into account the CJEU's ruling.*

# Germany

Since 2017 the German Anti-Money Laundering Act (Geldwäschegesetz/GWG), has provided that all legal entities (juristische Personen) under private law as well as all registered partnerships are obliged to file beneficial ownership information with the German transparency register (Transparenzregister/Transparency Register). However, this filing requirement was deemed fulfilled if the relevant beneficial ownership information was available in electronic form in certain other German registers (shareholders lists retrievable via the German commercial register) or the company was listed on a regulated market with adequate transparency requirements with regard to voting rights. In these instances no separate entry in the Transparency Register was required. This was known as the "notification fiction".

However, on August 1, 2021 the Transparency Register and Financial Information Act (Transparenzregister- und Finanzinformationsgesetz/TraFinG) came into force. The TraFinG changed the position significantly in the sense that it obliged companies to identify their beneficial owners and declare them on the Transparency Register. In particular, legal entities could no longer claim the notification fiction, that registration in the Transparency Register was not necessary because the required data was already available from entries in other official registers such as the commercial register.

Also, the obligations of foreign entities to collect, keep up-to-date, and file information on their beneficial owners with the Transparency Register were expanded to cover share deals and other transaction structures resulting in an indirect acquisition of German real estate. The TraFinG also clarified the position regarding companies listed on regulated markets placing a notification requirement on them too. The only exception is for registered associations (eingetragene Vereine). Essentially, via the TraFinG the Transparency Register became a full register so that Germany could comply with the Fifth Anti-Money Laundering Directive whereby various EU Member State transparency registers were to be interconnected via a central European platform.

In summary, the GWG provides that a beneficial owner is any natural person who directly or indirectly holds more than 25 per cent of the share capital or voting rights of a company or exercises control over the company in a comparable manner. Both direct and indirect participation are considered.

If there is no natural person who directly or indirectly ultimately owns or controls the legal entity or partnership, the legal representative, managing shareholder or partner of the legal entity or partnership must be filed as a "fictional beneficial owner" for registration with the Transparency Register. The fact that the relevant legal representatives are already registered in the commercial register (or another recognized public register, respectively), is not sufficient.

For each beneficial owner the legal entity or partnership has to file the following information with the Transparency Register: the first and last name, date of birth, residence, nature and extent of beneficial interest and all nationalities. In addition, there is an obligation placed on the legal entity or partnership to keep this information up to date.

For entities that had previously invoked the notification fiction, the TraFinG provided for the following deadlines by which they had to file their beneficial ownership information with the Transparency Register:

- March 31, 2022 – stock corporations, European corporations (SEs) and partnerships limited by shares.
- June 30, 2022 – limited liability companies, (European) cooperatives or partnerships.
- December 31, 2022 for all other companies.

On December 28, 2022 the German Sanctions Enforcement Act II (Zweites Sanktions¬durch¬setzungs¬gesetz) introduced a number of new provisions that enhance sanctions enforcement and the fight against money laundering:

- Since January 1, 2023 companies newly registered in the Transparency Register have been required to disclose whether there is no actual beneficial owner or (if a fictitious beneficial owner is being reported) whether no beneficial owner could be identified.
- As of April 1, 2023 it will no longer be permitted to pay for real estate with cash, crypto currencies or commodities.
- By June 30, 2023 foreign entities that newly acquire real estate in Germany or that already own real estate in Germany (in each case directly or indirectly) shall make beneficial owner entries in the Transparency Register.
- By July 31, 2023 the Transparency Register shall also include information on real estate owned (directly or indirectly) by such entities. For these purposes the Transparency Register will receive relevant information from the German land registry office that will also automatically transmit to the Transparency Register any future changes to land register entries.

Finally, as of January 1, 2024 German civil law partnerships that are registered with the newly established specific register (eingetragene Gesellschaften bürgerlichen Rechts) will also be under the obligation to disclose their beneficial owner in the Transparency Register.

The Transparency Register may be inspected by certain authorities, obligated parties under the GWG as well as all members of the public (but see below). However, inspections by local authorities may only be carried out for the fulfillment of statutory duties and inspections by obligated parties may be carried out exclusively for the fulfilment of due diligence obligations. Also, the possibility of inspection can be restricted at the request of beneficial owners where they can show an interest worthy of protection within the meaning of the GWG.

Beneficial owners may also request information on which members of the public have inspected the Transparency Register entries.

As mentioned in the Europe wide section of this update in November 2022 the Court of Justice of the European Union issued a decision with respect to a matter regarding the public beneficial ownership register in Luxembourg which was challenged by the beneficial owner of a company. The CJEU held that the Fourth Anti-Money Laundering Directive's requirement for EU Member States to have their register of beneficial ownership of companies publicly available was invalid.

In light of this ruling members of the public must now justify their request for inspections of the Transparency Register and demonstrate a legitimate interest in the inspection.

# Luxembourg

The Grand-Duchy of Luxembourg has introduced a register of beneficial ownership of companies. The register, known as the Registre des Beneficiaires Effectifs (RBE), can be consulted in French, English and German but the excerpts are in French or German depending on the language used for the filling. The law implementing the RBE was enacted on January 13, 2019 and published in the Luxembourg Official Gazette on January 15, 2019 (the RBE Law). The RBE Law entered into force on the first day of the second month following the month of its publication in the Luxembourg Official Gazette, i.e. March 1, 2019.

The RBE Law applies to all Luxembourg entities registered with the Luxembourg Trade and Company Register (RCS). Luxembourg branches of foreign entities registered with the RCS also fall within the scope of the RBE Law, and they must therefore also obtain and register relevant information on their beneficial owner(s) in the RBE.

By way of derogation, listed companies whose securities are admitted to trading on a regulated market are excluded from the obligation to provide information regarding their beneficial owner(s), but they must nevertheless register in the RBE the name of the regulated market on which their securities are admitted.

The definition of "beneficial owner" in the RBE Law is cross-referenced to the Luxembourg law of November, 12 2004 on the fight against money laundering and terrorist financing, as amended, (AML Law) which defines a beneficial owner as "any natural person(s) who ultimately owns or controls an entity or any natural person(s) on whose behalf a transaction or activity is being conducted".

Each entity within scope of the RBE Law must obtain and maintain internally adequate, accurate and up-to-date information regarding its beneficial owner(s). Beneficial owners are also legally required to provide beneficial ownership information to the entity. The information must be held by the entity at its registered office in Luxembourg. Entities must file with the RBE relevant, adequate, accurate and up-to-date beneficial ownership information as kept at their registered office.

Public access to the RBE is restricted in the sense that a beneficial owner's address and identification number are not disclosed. Entities or beneficial owners may also ask for a restriction of access in specific circumstances as detailed in the RBE Law: exposition of the beneficial owner to a disproportionate risk, a risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation, or where the beneficial owners were minors or incapable persons.

As mentioned in the Europe wide section of this update in November 2022 the Court of Justice of the European Union issued a decision with respect to a matter regarding the public beneficial ownership register in Luxembourg which was challenged by the beneficial owner of a company. The CJEU held that the Fourth Anti-Money Laundering Directive's requirement for EU Member States to have their register of beneficial ownership of companies publicly available was invalid.

The CJEU's decision led to the RBE's temporary suspension by its operator, Luxemburg Business Registers (LBR).

However, on December 19, 2022 Luxembourg Business Register issued Circular LBR 22/01 in which it restored access to the RBE albeit on a restricted basis. The Circular provides that only professionals as referred to under article 2 of the AML Law as well as the internal user(s) the professional has designated (designated users) may consult the RBE. In order for professionals to access the RBE, they must first enter into a permanent agreement with the LBR which governs the terms and conditions of access and also complete a technical appendix. Upon validation of the permanent agreement and the technical appendix, a specific account is created for the professional and the designated users, allowing the LBR to verify the identity of such professional and designated users when they wish to consult the RBE. To create such a specific account, the profession and its designated users must use a Luxtrust certificate and consult the RBE only as part of his/her anti-money laundering and terrorist financing obligation.

# Italy

While Italy has adopted the legislative measures aimed at introducing the beneficial ownership register, in the context of transposing the Fourth Anti-Money Laundering Directive into Italian law, the register has not yet been activated.

The current regulation on filing, access and consultation of the register (Decree no. 55 of March 11, 2022) allows full access to the data recorded in the register to: the Ministry of Economy and Finance, sector supervisory authorities, the Financial Intelligence Unit for Italy, the Anti-Mafia Investigative Directorate, the financial police when investigating anti-money laundering (AML) violations, the National Anti-Mafia and Anti-Terrorism Directorate, the judicial authority (including public prosecutors), in accordance with their institutional attributions. Moreover, access is granted (subject to payment of a fee) to entities that must perform customer due diligence under AML legislation.

Ordinary members of the public may access (subject to the payment of a fee) only a limited set of information about the ultimate beneficial owner (first name, last name, month and year of birth, country of residence and citizenship of the beneficial owner, and the conditions from which the status of beneficial owner is derived), unless there are specific risks for the beneficial owner.

In respect of the beneficial ownership of trusts, access by the public is limited to individuals or organizations holding a relevant and specific legal interest, in instances where the knowledge of beneficial ownership is necessary in order to care for or defend an interest corresponding to a legally protected situation, if they have concrete and documented evidence of a mismatch between beneficial ownership and legal title.

It remains to be seen how public access will be restricted following to the CJEU ruling of November 22, 2022.

# United Arab Emirates (outside the DIFC and ADGM)

On August 28, 2020 Cabinet Resolution No.58 of 2020 'On the Regulation of the Procedures of the Real Beneficiary' (Resolution) came into force. The Resolution introduced a new requirement for companies licensed in the UAE to maintain a register of beneficial owners, shareholders and nominee board members (in-scope entities). Excluded from this requirement are corporate entities and their subsidiaries that are either wholly owned by the federal or local government or incorporated in the financial free zones of the UAE, namely the Abu Dhabi Global Market and the Dubai International Financial Centre, where separate regulations for beneficial ownership registers exist.

In terms of who is a beneficial owner, the Resolution provides that it is anyone who has one or more of the following:

- Owns or controls 25% or more of an in-scope entity's shares.
- Has the right to vote shares representing 25% or more of an in-scope entity's shares.
- Controls the in-scope entity through any other means, such as by appointing or dismissing the majority of directors.

The Resolution provides that the beneficial owner may be traced through any number of companies or arrangements of whatsoever kind and this includes any joint or co-owners of shares. Both direct and indirect ownership/control are to be considered. As per the UAE anti-money laundering definition of beneficial ownership, where it is not possible to identify a natural person as a beneficial owner, the beneficial owner will be the natural person deemed to exercise control over the in-scope entity by other means (i.e. senior management official).

In-scope entities have 60 days from the date on which they come into existence in which to establish a beneficial ownership register (entities previously in existence had 60 days from the date the Resolution came into force) and file it with the registrar and licensing authority that has jurisdiction over it (the Registrar). An in-scope entity needs to update and record any changes to the data contained in the register of beneficial ownership within 15 days of becoming aware of such change.

The register of beneficial ownership should contain the following information in respect of each beneficial owner:

- Full name, nationality, date and place of birth.
- Residential address or the address which notices shall be sent.
- Number of passport or identity card, the country of issuance, date of issuance and expiry.
- Basis and date on which the person became a beneficial owner of the in-scope entity.
- Date on which the person ceased to be a beneficial owner of the in-scope entity.

If a beneficial owner is licenced or registered in the UAE or is listed (or owned by a company that is listed) on a recognised stock exchange that has disclosure requirements which ensure sufficient transparency on its beneficial owners, an in-scope entity can rely on the information that such a company may have filed or disclosed to the relevant regulators without having to make further investigations as to the validity of such information.

Where an in-scope entity believes that a person could be a beneficial owner but whose data is not correctly recorded on the register of beneficial ownership, the in-scope entity must inquire as to that person's status as a beneficial owner. If the person fails to respond to such inquiry within 15 days, an in-scope entity must issue a notice which among other things asks the person to confirm whether or not they are a beneficial owner. If the person fails to respond to the notice within 15 days, then the details of that person must be entered on the register of beneficial ownership.

Any concerned or interested person may make an application to the court to rectify the register of beneficial ownership in certain circumstances. This includes that the name of a person is, without sufficient cause, omitted from the register.

In addition to the register of beneficial ownership, an in-scope entity must maintain a register setting out details of each partner or shareholder. The register needs to be filed with the Registrar within 60 days. Any changes must be reflected in the shareholder register within 15 days from the date of such change. In-scope entities are also required to maintain a register listing details of directors or nominee members as set out for beneficial owners above, and any changes shall be reflected within 15 days.

The Resolution provides that the Ministry of Economy and the Registrar must not disclose the data within the register of beneficial ownership or the register of shareholders without the written consent of the beneficial owner or the nominee board member. However, the Resolution provides an exception to this being anything provided for by international laws and conventions in force in the UAE, particularly the provisions of anti-money laundering and combating the financing of terrorism and financing of illegal organisations. Disclosure may also be mandated pursuant to a court order.

At present the UAE has not published any plans to update the Resolution.

# Australia

The Australian Corporations Act 2001 (Corporations Act) currently requires entities listed on a prescribed Australian financial market to collect and disclose beneficial ownership information. Other regulations also facilitate varying levels of beneficial ownership disclosure. For example, Australia's Anti-Money Laundering and Counter Terrorism Financing Act 2006 (AML Act) requires regulated entities to identify and verify customers and their beneficial owners. The rationale for this requirement is that identifying the true owner of an asset enables the regulated entity, the Australian Transaction Reports and Analysis Centre and law enforcement, to investigate, confiscate and prosecute the movement of the proceeds of crime. In addition, proprietary companies must also notify the Australian Securities and Investments Commission (ASIC) of changes to the beneficial ownership status of their top 20 members. These notices are available to the public for a fee.

However, despite these measures Australia does not have a framework for the systematic collection, verification and release of beneficial ownership information, including for unlisted corporations, unlisted registered managed investment schemes (MISs) and unlisted corporate collective investment vehicles (CCIVs).

In November 2022, the new Labor Government released a consultation paper regarding 'Multinational tax integrity: Public Beneficial Ownership Register' in which it announced that it will implement a public registry of beneficial ownership to improve transparency on corporate structures, in order to show who ultimately owns or controls a company or other legal entity. This follows the Senate Standing Committee on Legal and Constitutional Affairs (Committee) Inquiry into the Adequacy and Effectiveness of the AML/CTF regime (Inquiry). The Committee made recommendations prior to the May 2022 election, that the Commonwealth Government should pursue a beneficial ownership register.

The Law Council of Australia conveyed to the Inquiry that if the ASIC collected beneficial ownership information in the annual statement for Australian companies and made this information available it would reduce the regulatory burden imposed on regulated entities under the AML Act. Additionally, the Australian Taxation Office could perform a similar function for trusts with an ABN, as part of the annual reporting obligation of the trusts.

The Committee in handing down the Inquiry report acknowledged that the development of a robust beneficial ownership register would both mitigate the burden on small businesses by enhancing and simplifying know-your-customer searches and at the same time would reduce Australia's vulnerability to money laundering.

In light of this, the consultation paper discusses a phased approach to implementing beneficial ownership disclosure requirements. In the first phase, it is proposed that the following entities will be in scope as they are currently regulated under the Corporations Act – Australian proprietary companies, unlisted Australian public companies, unlisted Australian registered MISs and unlisted CCIVs. The consultation defines these entities as "regulated entities".

Entities listed on Australian financial markets (including companies and MISs) are expected to continue to identify their beneficial ownership through the substantial holding notice and tracing notice regimes. It is therefore proposed that listed entities would not be required to maintain a beneficial ownership register. However, the Australian Government is considering opportunities to expand and harmonise these regimes. Notwithstanding this the Australian Government is also proposing to extend ASIC's restriction powers under the Australian Securities and Investments Commission Act 2001 to non-compliance by listed entities with substantial holding notice and tracing notice requirements.

The consultation states that a regulated entity's beneficial ownership register would include details of:

- All natural persons who satisfy at least one of the threshold requirements for registration as a beneficial owner of a regulated entity.
- All companies, registered MISs, CCIVs, or trusts that would satisfy at least one of the threshold requirements if they were a natural person.

In terms of the beneficial ownership chain, it is proposed that Australia largely adopts the UK approach to beneficial ownership (albeit with a lower minimum threshold) and requires a regulated entity to include on their beneficial ownership register any entity or individual who either:

- Holds, directly or indirectly, 20% of the shares or units in the regulated entity.
- Holds, directly or indirectly, 20% of the voting rights in the regulated entity.
- Holds the right, directly or indirectly, to:
  - appoint or remove a majority of the directors of the regulated entity (where the regulated entity is an unlisted proprietary or unlisted public company);
  - appoint or remove the regulated entity's responsible entity (where the regulated entity is a registered unlisted MIS); or
  - appoint or remove the regulated entity's corporate director (where the regulated entity is a CCIV)
- Has the right to exercise, or actually exercise, significant influence or control over the regulated entity.

As noted above the proposed threshold of 20% is lower than the UK's which stands at 25%. It also differs from the AML Act threshold for beneficial ownership which also stands at 25% and there is already a view in the market that if the register is adopted the thresholds should be harmonised to avoid confusion. The Australian Government's reason for opting for a threshold of 20% is that it is consistent with existing corporate control and takeover thresholds in Australia, and that existing guidance and stakeholder understanding could be leveraged.

It is also proposed that ultimate beneficial owners identify themselves and provide relevant information to the relevant regulated entity.

It is proposed that the beneficial ownership register include the following information:

- Natural persons: full name, full date of birth, address for communication and service and residential address, nationality, nature of control or influence and the date the person became or ceased to be a beneficial owner.
- Companies, registered unlisted MISs and unlisted CCIVs: name, registered office address, electronic address, entity type, date of registration, country of registration, registration number, nature of control or influence and date the person obtained or ceased to have control or influence.
- Trusts: name, unique superannuation identifier (for regulated superannuation entities), date of creation and information on trustees, beneficiaries, appointors, settlors and any other member of the trust.

In future phases, the Government would seek to collate information from each regulated entity's register onto a public, central register. The public register would be considered at a later date and require consideration of technical feasibility.

The closing date for responses to the consultation paper was December 16, 2022.

# Hong Kong

Prior to March 2018, the Companies Ordinance focussed on the disclosure of legal ownership rather than beneficial ownership by requiring a company incorporated in Hong Kong to disclose information on its members, directors and companies, by keeping the information in the relevant registers kept by the company at its registered office and filing the information with the Companies Registry via an annual return, for public inspection.

Separately, the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance required a financial institution to take reasonable measures, as part of the customer due diligence (CDD) process, to verify the identity of the ultimate beneficial owner in relation to a customer, including measures to enable the financial institution to understand the ownership and control structure of the corporate customer. However, the information gathered under this process was not normally accessible to law enforcement agencies, unless a court order was obtained.

The Financial Services and the Treasury Bureau conducted two consultation exercises from January 6, to March 5, 2017 on legislative proposals to enhance anti-money laundering and counter-terrorist financing (AML/CTF) regulation in Hong Kong. The public was consulted on a proposal to amend the Companies Ordinance to require companies incorporated in Hong Kong to maintain beneficial ownership information. Stakeholders were also consulted on a proposal to amend the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance to require designated non-financial businesses and professions (DNFBPs) to observe statutory CDD and record-keeping requirements. Following these consultations the Hong Kong Government published the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Ordinance 2018 and the Companies (Amendment) Ordinance 2018.

The Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Ordinance 2018 applies statutory CDD and record-keeping requirements to designated non-financial businesses and professions when they engage in specified transactions, and introduced a licensing regime for trust or company service providers to require them to apply for a licence from the Registrar of Companies and satisfy a "fit-and-proper" test before they can provide trust or company services as a business in Hong Kong.

As from March 2018, the Companies (Amendment) Ordinance 2018 requires companies incorporated in Hong Kong to maintain beneficial ownership information by way of keeping a "significant controllers register" for inspection upon demand by law enforcement officers. This requirement applies to all private limited companies incorporated in Hong Kong but not public limited companies nor companies incorporated in other jurisdictions (even if the company is registered as a business in Hong Kong).

The Ordinance provides that the company is to take reasonable steps to ascertain its significant controllers. Significant control means that an individual or corporate entity meets one or more of the following:

- Holds, directly or indirectly, more than 25% of the issued shares in the company or, if the company does not have a share capital, holds, directly or indirectly, a right to share in more than 25% of the capital or profits of the company.
- Holds, directly or indirectly, more than 25% of the voting rights of the company.
- Holds, directly or indirectly, the right to appoint or remove a majority of the board of directors of the company.
- Has the right to exercise, or actually exercises, significant influence or control over the company.
- Has the right to exercise, or actually exercises, significant influence or control over the activities of a trust or a firm that is not a legal person, but whose trustees or members satisfy any of the first four conditions (in their capacity as such) in relation to the company.

In terms of what details need to be registered, this includes: the person's full name and address, a correspondence address, their Hong Kong identity card, or in the case of someone from overseas, their passport number and the name of the country that it pertains to, the date when the person became a registrable person with respect to the company and the nature of the person's control over the company.

When the significant controllers register was consulted on the Financial Services and the Treasury Bureau (Bureau) proposed that the public could inspect the register on payment of a fee. The Bureau noted the Financial Action Task Force (FATF) requirements on beneficial ownership and stated that it believed that its proposals "strikes a balance between the relevant transparency, privacy and business efficacy considerations which our proposed regime on beneficial ownership seeks to address". However, in its consultation conclusions there was a significant shift in approach with the Bureau stating that "having regard to privacy considerations, international practices and the FATF recommendation, we agree that access to PSC [people with significant control] registers should be restricted to the competent authorities only." In addition to privacy concerns the Bureau argued that the relevant FATF recommendation required only that beneficial ownership information be made available for access by competent authorities, and that among the countries requiring beneficial ownership disclosure, the UK was the only exception of allowing public access.

At the time of writing there are no proposals to update the requirements concerning the significant controllers register.

# Singapore

In March 2017, the Companies (Amendment) Act 2017 and the Limited Liability Partnerships (Amendment) Act 2017 (the Amendment Acts) were passed. The Amendment Acts were designed to improve transparency regarding ownership of entities and to enhance the competitiveness of Singapore as a business hub. A key element of the Amendment Acts is the requirement placed on all companies incorporated in Singapore, foreign companies and limited liability partnerships (LLPs) registered in Singapore (save for certain companies set out in the Fourteenth and Fifteenth Schedules to the Companies Act 1967 and certain LLPs set out in the Sixth Schedule to the Limited Liability Partnerships Act 2005) to maintain a register of registrable controllers (RORC). Such controllers of companies are individuals or legal entities that have a significant interest in or significant control over the company (with broadly similar criteria to be applied in the context of LLPs):

- A controller who has significant interest in a company may include an individual or legal entity with interest in more than 25% of the shares or shares with more than 25% of total voting power in the company.
- A controller who has significant control over a company includes an individual or legal entity who:
  - holds the right, directly or indirectly, to appoint or remove directors (or equivalent persons of the company who hold a majority of voting rights at meetings of the directors on all or substantially all matters); or
  - holds, directly or indirectly, more than 25% of the voting rights for matters to be decided upon by a vote of the members of the company; or
  - has the right to exercise, or actually exercises, significant influence or control over the company.

Listed companies, Singapore financial institutions, and companies that are wholly owned by the government and the subsidiaries of such government companies (or LLPs which partners consist only of such companies) are examples of entities exempted from the requirement. The RORC is to be maintained in electronic or paper format and be kept at the registered office of the entity or at the registered office of its appointed registered filing agent. A company must notify the Accounting and Corporate Regulatory Authority (ACRA) on the location of the register when filing its annual returns. The RORC is not made public, although public agencies and public officers must be given access to the register when required.

From July 30, 2020, following ACRA's Practice Direction No. 3 of 2020, entities not only have to maintain their own RORC but they must also lodge the same information in the RORC with ACRA's central register. Information in the central RORC is only made available to law enforcement agencies; members of the public do not have access. There have been no recent announcements from the Singapore Government or ACRA regarding any change of this position. In the press it was reported that when asked if ACRA plans to make the central RORC publicly accessible in the future, the regulator said in a statement that Singapore will "continue to work with the international community on the needed international standards to promote transparency and combat money laundering and other financial crimes." While there are no late filing fees, failure to lodge information to the central RORC may lead to prosecution for the offence and the offender can face a fine of up to S$5,000 upon conviction.

Recently, the Corporate Registers (Miscellaneous Amendments) Act 2022 came into force on October 4, 2022. The purpose of the Act is to further align Singapore's regime on transparency and beneficial ownership of Singapore-incorporated companies, foreign companies and LLPs with the international standards set by the Financial Action Task Force. The Act amends the Companies Act 1967 and the Limited Liability Partnerships Act 2005 and introduces certain new disclosure obligations including:

- Companies (including foreign companies) are required to maintain a register of nominee shareholders at their registered office or at the registered office of their appointed registered filing agent.
- Companies and LLPs which are unable to identify a registrable controller who has a significant interest in or significant control over the company or LLP are required to identify individuals with executive control as their registrable controller(s).

Finally, the Business Trusts (Amendment) Act 2022 was passed by Parliament on October 3, 2022 but has yet to come into force. The business trust (BT) regime was developed in 2004 to establish a new type of business structure for business enterprises. It was envisaged that BTs would be a new asset class for investors and would add depth and vibrancy to Singapore's capital markets. The Business Trusts Act 2004 (BTA) provides a framework for the governance of BTs registered under the BTA. Among other things the Act will align the provisions under the BTA with the relevant provisions under the Companies Act 1967. This includes requiring unlisted BTs to obtain and maintain information on beneficial ownership of their units.

# Shanghai

Chinese laws and regulations did not require legal entities to maintain information on their beneficial ownership until a recent regulatory change (as explained below). Although under the PRC Company Law (most recently amended in 2018), both limited liability companies and joint stock companies are required to maintain a shareholder register containing the names (and some other basic information) of shareholders, a company does not typically keep information on its beneficial owner(s) especially when there are several layers of entities in the corporate structure above the subject company or there are nominees holding the shares/equity on behalf of others.

Listed companies in China are required under applicable laws and listing rules to disclose their "actual controllers", which is essentially defined to mean someone who actually controls the acts of the company through investment relations, agreements or other arrangements. Regulated entities (primarily financial institutions) which are subject to anti-money laundering (AML) obligations are required to collect information on the beneficial owners of their clients as part of the client identification exercise but they must keep such information strictly confidential and may only provide it to the competent regulatory authorities when the latter exercises administrative or supervisory powers.

Along with the regulatory change introduced under China's Foreign Investment Law (effective from January 1, 2020), foreign investors and foreign-invested enterprises (FIEs) are required to report investment information to the PRC regulatory authorities. To implement this requirement, the Ministry of Commerce (MOFCOM) and the State Administration for Market Regulation (SMAR) issued the Measures on the Reporting of Foreign Investment Information effective from January 1, 2020 pursuant to which a foreign investor or the FIE that has been set up in China shall report, through the designated reporting system, some basic information on the foreign investor and its actual controller when setting up the FIE, in the FIE's annual filings or upon the occurrence of any change to such information. According to the reporting form published by the MOFCOM, "actual controller" in this context refers to a listed company or natural person who actually controls the foreign investor through holding 50% or more shares/equity interest, voting rights or other similar rights or otherwise (e.g. through contractual or trust arrangements) being able to exercise substantial influence on its decision-making exercise e.g. the rights of appointing the majority of the board directors (or similar decision-making body).

Fairly recently the above requirement has been expanded to cover not just FIEs. According to the Administrative Regulations on the Registration of Market Entities promulgated by the State Council on July 27, 2021 and its implementation rules subsequently issued by the SAMR, both effective from March 1, 2022 (Market Entities Registration Regulations), information on the beneficial ownership of a market entity shall be submitted to the competent local counterpart of SAMR, when the market entity is set up. It is further provided in the implementation rules of the Market Entities Registration Regulations that the People's Bank of China (PBOC, being the central bank of China in charge of, inter alia, China's AML and counter terrorism financing (CTF) regimes) will, together with SAMR, formulate rules on the administration of information of beneficial ownership of market entities in due course.

The above is consistent with the message in the draft new Anti-Money Laundering Law which was published by PBOC on June 1, 2021 for public consultation (the Draft AML Law). The Draft AML Law requires market players in China to report the information of their beneficial owners through an information reporting platform hosted by SAMR. China's AML regulator and other government agencies may use such information when performing their regulatory functions.

On December 27, 2021 PBOC and SAMR published the draft Interim Measures on Information Filing of Ultimate Beneficial Owners of Market Entities (Draft Interim Measures) for public consultation.

The Draft Interim Measures were due to take effect from March 1, 2022 but this has obviously been delayed and the timing for its official promulgation is unclear. Under the Draft Interim Measures, companies, partnerships, and branch offices of foreign companies are required to file information relating to their ultimate beneficial owners with SAMR through a designated online filing system.

An exemption from filing information relates to a company or partnership with a registered capital of not more than RMB 10 million and whose shareholders or partners are all natural persons. If there is no natural person other than a shareholder or partner exercising control over it or deriving proceeds from it, or no natural person exercising control over it or deriving proceeds from it in a manner other than through holding equity interests or partnership interests, such company or partnership will be exempt from filings. To avail itself of the exemption, the company or partnership must provide an undertaking that it meets the requirements.

"Beneficial owner" of a company or partnership is defined under the Draft Interim Measures to mean a natural person who ultimately (directly or indirectly) owns 25% or more of the shares/equity/partnership interest in the company/partnership, or otherwise is able to (individually or jointly with others) exert actual control over the company/partnership or to ultimately (directly or indirectly) enjoy 25% or more of the proceeds of the company/partnership.

SAMR shall share the beneficiary ownership information collected through its online filing system with PBOC. Other regulatory authorities in China may seek such information from PBOC if it is necessary in fulfilling their AML/CTF related functions. In addition, financial institutions may also search the beneficial ownership information of market entities through PBOC when performing AML/CTF obligations. SAMR, PBOC, other relevant regulatory authorities and financial institutions shall keep the information strictly confidential and must not disclose such information to the public or provide it to any other party unless in accordance with laws.

# South Africa

In 2015 the South African Government made a commitment to the G20 high level principles on beneficial ownership transparency. In 2016 the Open Government Partnership made a commitment to a central, public, beneficial ownership register and during the same year the Cabinet of South Africa approved the establishment of an inter-departmental committee on beneficial ownership transparency.

South Africa also has commitments regarding beneficial ownership under the Financial Action Task Force (FATF) Recommendations and underwent a mutual evaluation between April 2019 and June 2021. In its 2021 Mutual Evaluation Report on South Africa's anti-money laundering (AML) and counter-terrorist financing (CFT) measures (2021 MER Report), the FATF acknowledged that while South Africa has a good framework for combatting money laundering and terrorist financing, significant shortcomings remain in some areas, including beneficial ownership. The FATF found that enforcement agencies were unable to obtain accurate and updated beneficial owner information, and that there was an inadequate focus by accountable institutions to implement a risk-based approach to money laundering and terrorist financing, and to obtain ultimate beneficial ownership when conducting customer due diligence.

Subsequent to the 2021 MER Report, South Africa implemented the General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act, 2022 (Amendment Act) to address deficiencies and improve the country's AML and CFT regime.

The Amendment Act amends five different Acts:

- Trust Property Control Act, 1988.
- Non-profit Organisations Act, 1997.
- Financial Intelligence Centre Act, 2001.
- Companies Act, 2008.
- Financial Sector Regulation Act, 2017.

The amendments to the Trust Property Control Act, 1988 and the Companies Act, 2008, lay the basis for South Africa to develop a mechanism to bring transparency to the beneficial ownership of corporate vehicles such as trusts and companies. The majority of these amendments commenced on April 1, 2023.

The changes to the Trust Property Control Act, 1988 includes the definition of an accountable institution and beneficial owner. An accountable institution has the same meaning as defined in section 1(1) of the Financial Intelligence Centre Act, 2001. The beneficial owner of a trust includes:

- The natural person who directly or indirectly owns the trust property.
- The natural person who exercises control of the administration of the trust arrangements.
- It includes the founder of the trust or if the founder is a legal person, a person acting on behalf of the partnership or the natural person who directly or indirectly ultimately owns or exercises effective control of that legal person or partnership.
- Each trustee of the trust and if the trustee is a legal person acting on behalf of the partnership or the natural person who directly or indirectly ultimately owns or exercises effective control of that legal person or partnership.
- Each beneficiary referred to by name in the trust instrument or founding statement or if a beneficiary is referred to by name is a legal person, a partnership or a person acting on behalf of the partnership or a person acting in pursuance of the provisions of the trust instrument, the natural person who directly or indirectly exercises effective control of the legal person or partnership of relevant trust property.

Trustees must establish and record the beneficial ownership of the trust, keep a record of the prescribed information, lodge a register of the prescribed information with the Master's office and ensure that the information is kept up to date. The Master in turn needs to keep the register containing the prescribed information. The trustee and the Master must make the information available to any person as prescribed.

In addition to the Amendment Act South Africa has also passed the Constitutional Democracy Against Terrorism and Related Activities Amendment Act, 2022. This latter Act amends the Protection of Constitutional Democracy Against Terrorism and Related Activities Act, 2004 by strengthening its provisions and expanding it to include aspects such as cyber-terrorism.

The Companies Act, 2008 was amended with the inclusion of a definition of an affected company and a beneficial owner. An affected company means a regulated company as set out in section 117(1)(i) and a private company that is controlled by or a subsidiary of a regulated company as a result of circumstances contemplated in section 2(2)(a) or 3(1)(a). A beneficial owner is defined in respect of a company as an individual who directly or indirectly ultimately owns the company or exercises control through various options including holding of beneficial interest, exercise of control of the voting rights, exercise or control of the right to appoint or remove members of the board of directors.

When filing its annual return companies will be required to submit a copy of their securities register and a copy of the register of disclosure of beneficial interest. The annual return must also be made available to any person as prescribed. In addition to the securities register, a company that does not fall within the meaning of an "affected company" must record in its securities register prescribed information regarding the natural persons who are the beneficial owners of the company, and must ensure that this information is updated within the prescribed period after any changes in beneficial ownership have occurred. An affected company must establish and maintain a register of persons who hold beneficial interest equal to or in excess of 5% of the total number of securities issued by the company, which register must be updated as per the information received via a notice. The Companies and Intellectual Property Commission (Commission) must keep a register of the information where required – the purpose of such is to ensure that ultimate beneficial owners of entities on the corporate register is known and that abuse of corporate vehicles as a means to facilitate money laundering and the financing of terrorism is reduced and mitigated.

Although recognising that tangible progress was made by South Africa in addressing the FATF identified AML and CFT deficiencies, it was ruled as not being sufficient enough to warrant the avoidance of placing the country on the FATF grey list. South Africa was placed on the FATF grey list on February 24, 2023. The effect of the grey-listing is that South Africa will continue to actively work with the FATF to address strategic deficiencies in its anti-money laundering, terrorist financing and proliferation financing, regime.

# Turkey

In Turkey, there is not yet an official platform announced as a registry. However, a notification requirement is being applied from a tax perspective. With the enforcement of General Communiqué on Tax Procedure Law on July 13, 2021, corporate taxpayers and managers, trustees or representatives of trusts and similar entities established in a foreign country that have their headquarters in Turkey or have a resident manager in Turkey are obliged to make an ultimate beneficiary owner information notification to the Revenue Administration.

Furthermore banks, financing and factoring companies, authorized institutions specified in the foreign exchange legislation, payment institutions and electronic money institutions, insurance, reinsurance and pension companies and insurance and reinsurance brokers, financial leasing companies, parties engaged in the purchase and sale of real estate for commercial purposes and parties acting as intermediaries in these transactions, sports clubs, certified public accountants, independent audit institutions authorized to audit financial markets, and other persons and institutions listed in the relevant legislation are obliged to notify the Revenue Administration of the ultimate beneficiary owner information of the transactions carried out by their customers when requested by the Revenue Administration.

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