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Anti-money laundering and beneficial ownership

A report by the International Regulatory Strategy Group in
association with Eversheds Sutherland (International) LLP

APPENDIX 1



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APPENDIX 1

TABLE OF LEGAL PRINCIPLES UNDERPINNING BENEFICIAL OWNERSHIP

	Relevant law governing beneficial ownership registration	Threshold for significant ownership or control	Caveats to threshold	Register(s) of beneficial ownership	Who can access the register(s)?	How is data privacy and beneficial ownership transparency balanced?
FRANCE	AML 5 is transposed into French law by Ordonnance 2010-115 and Décrets 2020-118 and 2020-119 (of 12 February 2020).	<p>A beneficial owner is “the natural person or persons: either who ultimately control, directly or indirectly, the customer; or for whom a transaction is carried out or an activity is performed”²⁴</p> <p>A person holding more than 25% of a company’s capital or voting rights²⁵.</p>	<p>A person who does not hold more than 25% of a company’s capital may still be considered to have significant control as be registered as a beneficial owner where the following criteria is met²⁶:</p> <ul style="list-style-type: none"> • The person determines, in fact, by the voting rights at their disposal, the decisions in general meetings; and • The person is a partner or shareholder of the company and has the power to appoint or dismiss the majority of the administrative, management or supervisory bodies. 	<p>The register is attached to the Trade and Companies Register (“RCS”) and is kept by the clerks of the commercial courts, who check the accuracy of information provided by companies.</p> <p>The register contains the following details on beneficial owners:</p> <ul style="list-style-type: none"> • Name (including forename, surname and nicknames); • Date and place of birth, nationality and personal address; • Nature, manner and extent of control over company; and • Date on which the person became the beneficial owner 	<p>The general public can access all non-confidential data relating to beneficial owners for free on DATA INPI²⁷.</p> <p>Free licences to access and download all information on beneficial ownership is available to two categories of persons:</p> <ul style="list-style-type: none"> • Supervisory authorities (judges, police, customers etc); and • Persons subject to AML/CTF obligations, required to identify beneficial owners of their customers. 	<p>Information on the RCS is centralised by INPI²⁸ in accordance with the Code de commerce and the Intellectual Property Code. The register is available to the public free of charge and for re-use by third parties, and does not require consent.</p> <p>A beneficial owner may object to the dissemination of their data in certain conditions. If approved, the data must be deleted unless demonstrated that there are overriding compelling and legitimate reasons.</p> <p>If no response is received, a complaint can be made to the Data Protection Regulator.</p> <p>The Minister of the Economy declared that public access to data in the register would be maintained pending full consequences of the November 2022 CJEU ruling²⁹.</p>

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GERMANY	The German Money Laundering Act (Geldwäschegesetz, "GwG")	<p>A beneficial owner is any natural person who, directly or indirectly³⁰:</p> <ul style="list-style-type: none"> • Holds more than 25% of the stock capital; • Controls more than 25% of the voting rights' or • Exercises control in a comparable manner. 	<p>Even if the threshold is not met, a natural person may control a legal person indirectly and be deemed a beneficial owner.</p> <p>Indirect control is deemed to exist when the corresponding percentages of shares are held by one or more associations which are controlled by a natural person.</p> <p>If after extensive investigations no natural person is identified, or if there are doubts as to whether the person identified is the beneficial owner, the beneficial owner is assumed to be the legal representative, managing partner or partner of the contracting party.</p>	<p>German law provides for a transparency register³¹, which sets out mandatory notification obligations for certain associations. The register is not company or entity specific, and the obligation to report applies equally to all obliged companies irrespective of size or listings.</p> <p>The Federal Office of Administration (Bundesverwaltungsamt) is the supervising entity. The record-keeping body is the Bundesanzeiger-Verlag.</p>	<p>Anyone who demonstrates to the registrar a legitimate interest, has the right to inspect the information on the register³².</p> <p>The right to inspect is limited to certain information. Inspection is further permitted for the following:</p> <ul style="list-style-type: none"> • Supervisory authorities (and authorities responsible for recognition, prevention and elimination of threats); • The German Financial Intelligence Unit; • The responsible authorities³³; • Law enforcement agencies; • The Federal Central Tax Office and local revenue authorities³⁴; and • Obligated entities, provided they can demonstrate inspection is carried out to fulfil compliance with GwG obligations. 	<p>The registrar may wholly or partially restrict inspection of the register at the request of a beneficial owner, if demonstrated that, taking into account all circumstances of each case, the overriding interests of the beneficial owner prevail.</p>

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IRELAND	<p>The Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 as amended (the “2010 Act”).</p> <p>The 2010 Act was amended in 2021 for implementation of AMLD 5.</p>	<p>Corporate entities: a beneficial owner has the meaning given in Article 3 AMLD 4.</p> <p>Trusts: a beneficial owner is:</p> <ul style="list-style-type: none"> • Any individual entitled to a vested interest in possession, remainder or reversion in the capital of the trust property; • The class of individuals in whose main interest the trust is set up or operates; • Any individual with control over the trust as per Section 28 of the 2010 Act; • The settlor, trustee or protector. <p>Certain financial vehicles:</p> <ul style="list-style-type: none"> • A natural person who owns or is ultimately entitled to control more than 25% of the units in the trust, or has an entitlement to ultimate control of such %; • Any other natural person exercising ultimate control over the trust, by direct or indirect ownership or other means. <p>Partnerships:</p> <ul style="list-style-type: none"> • Any individual who ultimately is entitled to or controls (directly or indirectly) more than 25% of the share capital or profits, or of the voting rights; or • Otherwise controls the partnership. 	<p>There are no Ireland-specific caveats, the threshold derives from Article 3 AMLD 4.</p>	<p>Corporate entities: Central Register of Beneficial Ownership of Companies and Industrial and Provident Societies (“CRBO”).</p> <p>The Registrar of Companies was appointed as the Registrar of Beneficial Ownership of Companies and Industrial and Provident Societies (the “RBO”) – the CRBO is maintained and administered by the RBO³⁵.</p> <p>Trusts: Central Register of Beneficial Ownership of Trusts (“CRBOT”), accessible through the ‘Trust Register’ portal on the Revenue Online Service.</p> <p>The CRBOT is maintained and administered by the Revenue Commissioners.</p> <p>Certain Financial Vehicles: Central Register of Beneficial Ownership of Certain Financial Vehicles. The Central Bank of Ireland is responsible for maintaining and administering the Register.</p> <p>Common contractual funds: Central Register of Beneficial Ownership of Common Contractual Funds is maintained and administered by the Central Bank of Ireland. Registrations of beneficial ownership in common contractual funds are contained in the Central Register of Beneficial Ownership of Certain Financial Vehicles.</p> <p>Partnerships: Central Register of Beneficial Ownership of Investment Limited Partnerships is maintained and administered by the Central Bank of Ireland. Registrations of beneficial ownership in investment limited partnerships are contained in the Central Register of Beneficial Ownership of Certain Financial Vehicles.</p>	<p>Corporate entities: access is restricted to “designated persons” (i.e. credit institutions, financial institutions and trusts required to comply with AML obligations) and competent authorities³⁶. There are two tiers of access to data in the CRBO:</p> <ol style="list-style-type: none"> 1) Unrestricted access to authorised officers of Competent Authorities; and 2) Restricted access to “designated persons”. <p>Only the entity profile is publicly available in the CRBO, but will show the number of beneficial owners filed.</p> <p>Trusts: The CRBOT is not publicly available but inspection is available to: (i) certain public bodies; (ii) relevant Competent Authorities; (iii) designated persons; and (iv) members of the public with a legitimate interest.</p> <p>The type of access will depend on the type of access request and whether the applicant can establish that they have a right of access. There are two types of access:</p> <ol style="list-style-type: none"> 1) Unrestricted access to authorised officers of Competent Authorities; and 2) Restricted access to: designated persons and members of the public with a legitimate interest. <p>Certain Financial Vehicles and Partnerships: The Central Register of Beneficial Ownership of Certain Financial Vehicles is not publicly available. The Central Bank of Ireland does, however, publish a list of institution names and certain financial vehicle types on its website.</p>	<p>The Data Protection Act 2018 applies to the access to each of the beneficial ownership registers.</p> <p>The Central Bank of Ireland’s website states that further to the judgment of the CJEU in Joined Cases C-37/20 Luxembourg Business Registers and C-601/20 Sovim, regarding public access to beneficial ownership registers, access requests by members of the public will not be processed, pending clarification of the legislative position by the law-making body.</p> <p>Further information from the Register may be provided on request to:</p> <ul style="list-style-type: none"> • Competent Authorities; and • Designated Persons.

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SPAIN	Law 10/2010 of 28 April (“10/2010”), on the Prevention of Money Laundering and Terrorist Financing	<p>The natural person(s) who ultimately hold or control, directly or indirectly, a percentage greater than 25% of the capital or voting rights, or who otherwise exercise controls, directly or indirectly of a company³⁷.</p> <p>The criteria applicable for the purposes of determining control³⁸:</p> <p>a) Holding the majority of voting rights.</p> <p>b) Power to appoint or dismiss the majority of the Board of Directors.</p> <p>c) Disposing, by virtue of agreements reached with other shareholders, of the majority of voting rights.</p> <p>d) Use of votes to appoint the majority of the Board of Directors, who hold office at the time the consolidated accounts must be drawn up, and during the two business years immediately preceding.</p>	<p>Where there is no natural person who holds or controls, directly or indirectly, a percentage greater than 25% of the capital or voting rights, or who otherwise exercises control, directly or indirectly, of a company, such control is deemed exercised by the directors.</p> <p>When the director appointed is a company, control is exercised by the natural person appointed by the company’s director³⁹.</p>	<p>The creation of a register of beneficial ownership is in process and has not yet been completed. The law provides for the creation of a Register of Beneficial Ownership (“RETIR”) which will be a general register for all entities, managed by the Ministry of Justice⁴⁰.</p> <p>A Register of Real Ownerships will also be created, and will be a central and single register containing information related to beneficial owners.</p>	<p>Information will be accessible, free of charge and without restriction to competent authorities, as well as to notaries and registrars, who will be able to access current data on the ownership of a person or entity, in addition to historical data registered⁴¹.</p> <p>“Compelled subjects” will have access to current information contained in the register.</p> <p>Third parties not included in the previous sections will have access exclusively to data consisting of name and surname, month and year of birth, country of residence and nationality of the current beneficial owners of a legal person, entity or structure without legal personality, as well as the nature of such beneficial ownership.</p> <p>Access to information available in the register will require prior identification of the applicant, confirmation of the condition under which access is requested and, in the case of information on trustees, demonstration of a legitimate interest (terms to be established by regulation).</p> <p>There will be a fee required to cover the cost of the register and, if applicable, that of the sources of the data included.</p> <p>Payment of fees will not be required for accesses made by public authorities, notaries and registrars.</p>	<p>Article 32 bis Law 20/2010 establishes:</p> <p>The processing of personal data necessary for compliance with obligations is covered by Article 8.1 and Article 6.1 of Eu Reg 2016/679.</p> <p>Data collected by regulated entities for performance of due diligence obligations cannot be used for purposes other than those related to AMLCTF without data subject consent (unless processing of data is necessary for ordinary business relationship management).</p> <p>Regulated entities must provide new customers with information containing a general notice on the legal obligations of the obligated parties re the processing of personal data⁴².</p> <p>Regulated entities must carry out a data protection impact assessment.</p>

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GUERNSEY	The Beneficial Ownership of Legal Persons (Guernsey) Law, 2017	<p>The Beneficial Ownership (Definition) Regulations, 2017 follow FATF standards and use a three-stage approach: (i) ownership; (ii) control; and (iii) management.</p> <p>Companies: the person holding, directly or indirectly, more than 25% of shares or voting rights in the company or who has the right to appoint or remove a majority of the board.</p> <p>LLP: the person holding, directly or indirectly, more than 25% of voting rights in the conduct and management of the LLP.</p> <p>Foundations: persons holding, directly or indirectly, more than 25% of voting rights, the right to appoint or remove the majority of the officials or persons who benefit or may benefit from the foundation.</p>	<p>If no person can be identified under ownership, then it is the natural person who ultimately controls the relevant legal person.</p> <p>Ultimate control likely includes decision or veto rights over the business, or exercising decisive control.</p> <p>If a beneficial owner still cannot be identified, either through ownership or control, it will be deemed to be the senior managing official (i.e. someone with strategic decision-making powers).</p>	<p>Guernsey has a centralised non-public register of beneficial ownership holding information in respect of all legal persons incorporated or created in Guernsey.</p> <p>The register is maintained by the Office of the Registrar of Beneficial Ownership of Legal Persons (the “Registrar”) and is located in the Guernsey’s Financial Intelligence Service’s (“FIS”) premises.</p> <p>The recorded information is: name, nationality, DOB, principal residential address, date of becoming beneficial owner and grounds on which they are considered beneficial owner.</p>	The register can only be accessed by specified individuals from the Guernsey Financial Services Commission, FIS and the Registrar for the purpose of discharging their statutory duty.	The register is not publicly available.

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JERSEY	<p>The Financial Services (Disclosure and Provision of Information) (Jersey) Law 2020 (the “Jersey Law”).</p> <p>Historically the reporting of beneficial owners and controllers was done under the Control of Borrowing (Jersey) Order 1958.</p>	<p>The definition of a beneficial owner covers any individual who ultimately owns or controls the entity or on whose behalf a transaction is being conducted by the entity, and includes any individual who exercises ultimate effective control over the entity, in each case whether directly or indirectly.</p> <p>Guidance from the registry suggests a general threshold of 10% or more upon incorporation, and 25% or more upon a change of beneficial ownership and control but this is not a set threshold.</p>	<p>Jersey follows FATF interpretation to identify someone other than an owner who might still have significant influence over an entity:</p> <ul style="list-style-type: none"> • Material controlling ownership interest (through (in)direct holding of interests or voting rights, or exerting control over an entity through other means). • If there is doubt as to the beneficial owner, or if none is identified, any individual exercising control through other means. • If still no individual is identified, individuals who exercise control through positions held (i.e. strategic decision taking powers or senior management). 	<p>The Jersey Law established a new, central register of beneficial owners and significant persons and is maintained by the Jersey Financial Services Commission in its capacity as the Beneficial Ownership Registrar.</p> <p>Information contained in the register (which includes name, address, nationality, occupation, DOB etc.) must be updated upon any change, and notified within 21 days to the registry.</p> <p>Information related to significant persons for relevant entities must also be supplied.</p> <p>All entities must appoint a nominated person, locally resident in Jersey, to act as the main contact with the registry. Annual confirmation statements must be submitted.</p> <p>The Jersey Law does not apply to entities that do not have separate legal personality such as trusts and Limited partnerships.</p> <p>Entities that are listed on a regulated market or registered under Jersey financial services legislation, and entities that are wholly-owned by such an entity or organisation, are exempt from the obligation to file and update beneficial owner information and confirm its accuracy in their annual confirmation statements.</p>	<p>Information on beneficial owners is not made public in Jersey but may be shared with law enforcement agencies and certain other competent authorities.</p> <p>Jersey had previously committed to provide access to obliged entities by the end of 2022 but implementation has been delayed while the Island considers the implications of the LBR Cases.</p>	<p>The register is not publicly available.</p>

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CAYMAN ISLANDS	<p>The Cayman Islands has an independent verification system.</p> <p>Beneficial ownership information must be requested by a licensed and regulated corporate service provider (“CSP”), who must disclose that information to appropriate authorities when legally mandated.</p>	<p>A beneficial owner is a person who holds, directly or indirectly, 25% or more of shares or LLC interests in the company, or voting rights, or who holds the right, directly or indirectly, to appoint or remove a majority of the board or management.</p>	<p>If no beneficial owner is determined by ownership, it is the person who has the absolute and unconditional right to exercise, or actually exercises, significant influence or control over the company.</p> <p>If no individual meets these conditions, but trustees of a trust, or members of a partnership, have the absolute and unconditional legal right to exercise, or actually exercise, significant influence or control over the activities, then they are the beneficial owners.</p>	<p>Cayman companies, LLCs and LLPs are required to maintain a register of beneficial ownership information at their registered office.</p>	<p>The contents of a company’s register are reported to a centralised data platform maintained by the Cayman Islands Competent Authority (i.e. the Registrar).</p>	

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HONG KONG	<p>The Companies Ordinance (Cap. 622 of the Laws of Hong Kong) (unlisted companies)</p> <p>The Securities and Futures Ordinance (Cap. 571 of the Laws of Hong Kong) (listed companies)</p>	<p>Unlisted companies: a significant controller is a registrable person who is a natural person or specified entity, or a legal entity, with significant control over a company as follows:</p> <ul style="list-style-type: none"> • The person holds, directly or indirectly: (i) more than 25% of issued shares or, a right to share in more than 25% of the capital/profit, (ii) more than 25% of the voting rights; • The person holds, directly or indirectly, the right to appoint or remove a majority of the board; • The person exercises, or has the right to exercise, significant influence or control over the company; or <p>The person exercises, or has the right to exercise, 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.</p> <p>Listed companies: a person owning 5% or more interest in any class of voting shares.</p>	<p>Unlisted companies: a person may still be considered a significant controller even if such person does not hold more than 25% of the issued shares of a company if the other conditions apply.</p> <p>A person will be considered as having a right to exercise significant influence or control if such person can ensure the company generally adopts the activities that person desires, or can direct the activities of a company. E.g. where such person has absolute decision or veto rights over decisions in the running of the company's business such as</p> <ul style="list-style-type: none"> • adopting or amending the company's business plan; • changing the nature of the company's business; • arranging any additional borrowing from lenders; or • appointing or removing the CEO. <p>Listed companies: even if a person does not meet the threshold of holding a 5% interest in a listed company, any interests in the same listed company held by the following individuals or entities should also be taken into account in the calculation:</p> <ul style="list-style-type: none"> • Spouse/child under 18; • Corporate the person controls, directly or indirectly; • Trust for which person is trustee, discretionary trust where person is the founder or trust for which the person is a beneficiary; and/ or • Any other person party to an agreement with the person to act in concert to acquire interests in the listed company. 	<p>There is no centralised beneficial ownership register in Hong Kong. Each company is required to keep and maintain its own register of significant controllers.</p> <p>Unlisted companies incorporated in Hong Kong (excluding companies with listed shares) are required to keep a register of significant controllers ("SCR"), which must include (not an exhaustive list):</p> <ul style="list-style-type: none"> • Required particulars of every significant controller of the company; • Particulars of any registrable change (include cessation as a significant controller); and • Statement if a company does not have a significant controller. <p>Failure to comply is a criminal offence, and both company and every responsible person are liable.</p> <p>Listed companies must keep a register of individuals/entities owning a 5% or more interest in any class of its voting shares (including beneficial ownership of such interest).</p> <p>A beneficial owner of a listed corporation comes under a duty of disclosure:</p> <ul style="list-style-type: none"> • Upon acquiring a 5% or more interest in any voting shares in a listed company; • When there are any changes in the % level or nature of the interests of that beneficial owner in such shares; or • Upon ceasing to have a 5% or more interest in such shares. <p>A listed company must also record in the register any notification of a beneficial owner of the interests it has or ceases to have in the voting shares of the company.</p>	<p>The SCR must be kept at a company's registered office or prescribed place and information must be kept up to date. The SCR must be made available for inspection by law enforcement and/or a significant controller.</p> <p>A listed company's register must be made available for inspection (HKEX News Website) to enable the public to ascertain the true owners of voting shares. Any member of the company, or other person, may acquire a copy of the register upon payment of a fee.</p>	<p>Ahead of the introduction of the SCR regime, the Financial Services and the Treasury Bureau ("FSTB") proposed that the SCR for each company should be available for inspection by any member of the company or person on the register without charge, or any other members of the public on payment of a fee.</p> <p>Upon feedback (including from the Privacy Commissioner for Personal Data in Hong Kong), the FSTB agreed to limit the accessibility of SCRs, having regard to data privacy concerns that had been raised, international practices and FATF recommendations.</p>

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INDIA	<p>The Companies Act 2013 (governing disclosure and registration of beneficial ownership) and the Prevention of Money Laundering Act, 2002 (“PMLA”) (governing disclosure and compliance requirements relating to beneficial ownership)</p>	<p>Companies Act 2013: The threshold to determine significant beneficial owner is 10%.</p> <p>Any individual who, acting alone or together, holds, directly or indirectly, 10% or more of share capital or voting rights, or has a right to receive 10% or more of the total distributable dividend in a financial year made by the company, is a significant beneficial owner of that company.</p> <p>Under PMLA, “reporting entities” (i.e. financial institutions etc.) must, at commencement of a relationship, identify the beneficial owner. The threshold depends on the type of client:</p> <ul style="list-style-type: none"> • Companies: 10% • Partnerships, unincorporated associations or bodies of individuals: 15% 	<p>Companies Act 2013: additional subjective test: an individual who has a right to exercise, or actually exercises, significant influence or control, in any manner other than through direct holdings alone, is considered to be a significant beneficial owner.</p> <p>Control includes “the right to appoint majority of the Directors or control the management/ policy decisions exercisable by person(s) acting individually/ in concert, directly or indirectly [...]”</p> <p>Significant influence means “the power to participate, directly or indirectly, in the financial and operating policy decisions of the reporting company but is not control or joint control of those policies.”</p> <p>There is similar criteria under PMLA. In addition, under PMLA, where no natural person is identified under the objective test, the beneficial owner is the relevant natural person who holds the position of a senior managing official.</p>	<p>Companies Act 2013: every company must maintain an internal register in a prescribed form, containing beneficial ownership information. Companies must also inform relevant authorities⁴³ of the information by filing in a prescribed form.</p> <p>PMLA: reporting entities must file information on beneficial ownership of clients with the Central KYC Records Registry (the “Registry”), which is administered by the Central Registry of Securitisation Asset Reconstruction and Security Interest of India.</p>	<p>The information filed by a company under the Companies Act 2013 is available in public records, and can be accessed upon payment of a nominal fee.</p> <p>The information filed by Reporting Entities with the Registry is not available publicly and is only available to Reporting Entities registered with the Registry upon payment of a fee, provided consent of the concerned client has been obtained.</p>	<p>The MCA is able to share information with other government organisations or law enforcement for the purpose of preventing and detecting fraud.</p> <p>For information maintained by reporting entities under PMLA, information must be kept confidential. However, disclosure is permitted where required under law.</p>

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SHANGHAI	<p>Measures on Filing of Foreign Investment Information</p> <p>Administrative Regulation on the Registration of Market Entities</p> <p>Implementing Rules for the Administrative Regulation on the Registration of Market Entities</p> <p>Circular of the People’s Bank of China on Strengthening Client Identification for Anti-money Laundering [2017]</p> <p>Circular of the People’s Bank of China on Further Improving the Identification of Beneficial Owners [2018]</p>	<p>At present, Chinese law does not stipulate a clear threshold for beneficial ownership.</p> <p>However, the People’s Bank of China (“PBC”) has issued circulars⁴⁴ for all Chinese banks to follow, stipulating that the threshold for a natural person who directly or indirectly holds 25% or more of the equity interests/ voting rights/benefits in an entity will be considered a beneficial owner.</p>	<p>A natural person will still be considered a beneficial owner, even if their equity interests/ voting rights/benefits fall short of the threshold, where:</p> <ul style="list-style-type: none"> • They have decisive powers over HR, financial and other key matters of an entity (e.g. the power to appoint board/ management, and the power to dispose of major and important assets) • There is no natural person who meets the 25% threshold or possesses the above-mentioned decisive powers, a person who takes charge of the entity (e.g. legal representative or senior executive managing the daily operation) could possibly be considered as beneficial owner. 	<p>All legal entities in China are required to file beneficial ownership information with Chinese banks as part of the banks’ KYC process.</p> <p>Foreign-invested enterprises are required to file information on their ultimate controller (a concept akin to beneficial owner) to the Ministry of Foreign Trade and Commerce (“MOFCOM”).</p> <p>The Administrative Regulation on the Registration of Market Entities stipulates that all legal entities in China shall file beneficial ownership information with the State Administration for Market Regulation (“SAMR”), i.e. the Chinese companies registry.</p> <p>However, SAMR has not published detailed guidance on the filing of beneficial ownership information nor required legal entities to do so. Detailed guidance is expected in the near future.</p>	<p>Beneficial ownership information is not publicly available – only the banks and Chinese authorities have access.</p>	<p>Beneficial ownership information is protected by Chinese laws on the protection of personal information. In practice, beneficial ownership information is not publicly available.</p> <p>All financial institutions in China are required to keep personally identifiable information relating to clients (including beneficial ownership information provided to banks), strictly confidential.</p>

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SINGAPORE	The Companies Act 1967 (the “CA”) and the Limited Liability Partnerships Act 2005 (the “LLPA”)	An individual or a legal entity has “significant control” if they hold the right to ⁴⁵ : <ul style="list-style-type: none"> • directly or indirectly, to appoint/remove the majority of the board (or equivalent persons) • more than 25% of voting rights⁴⁶; or • exercise, or actually exercise, significant influence or control. 	Individuals or legal entities who have “significant interest” in an entity may qualify as a controller and therefore require registration ⁴⁷ . A controller who has significant interest in a company may include any of the following: <ul style="list-style-type: none"> • an individual who has: <ul style="list-style-type: none"> (i) interest in more than 25% of shares; (ii) shares with more than 25% of total voting power; or • an individual who has the right to share in more than 25% of the capital or profits of the company. Where there is no known registrable controller, or has been unable to identify one, each director with executive control ⁴⁸ or each CEO is taken to be as such ⁴⁹ .	From 31 March 2017 all companies incorporated in or registered in Singapore must keep a register of “registrable controllers”, and lodge this information with the Accounting and Corporate Regulatory Authority’s (“ACRA”) central register ⁵⁰ . Exempt from the requirement include listed companies, financial institutions, wholly government-owned companies.	Information on the registers is not publicly available and is available only to law enforcement agencies. Even shareholders of an entity are unable to view the register.	Information on the register is not publicly available and can only be used by public agencies for administering or enforcing laws under their powers.

ANTI-MONEY LAUNDERING AND BENEFICIAL OWNERSHIP

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SWITZERLAND	Swiss Anti-Money Laundering Act (“ AMLA ”) and its implementing ordinances.	<p>AMLA does not provide a specific definition or threshold for what constitutes “significant influence or control”.</p> <p>A person is considered to have significant influence over an entity, if one or more of the following criteria are met whereby the person:</p> <ul style="list-style-type: none"> • Holds more than 25% of the capital or voting rights of the entity; • Has the right to appoint or remove the majority of the board of directors or management; • Has a contractual right to exercise a significant influence over the management or business activities of the entity; or • Has a factual influence over the management or business activities of the entity. 	<p>Indirect ownership: in some cases, an individual may exercise significant influence or control over an entity through indirect ownership or control. In such cases, the threshold for what constitutes “significant influence or control” may be lower than in cases where the individual holds a direct ownership or control interest in the entity.</p> <p>Special Purpose Vehicles (SPVs): The threshold for what constitutes “significant influence or control” may be different for SPVs. This is because SPVs are often used for specific purposes and may have limited management or business activities.</p> <p>Shareholders’ Agreement: Persons having less than the 25% threshold alone but being parties of a shareholders’ agreement are deemed to exercise significant control and must be registered.</p>	<p>Shareholders who, alone or in concert with others (by way of a shareholders’ agreement), acquire at least 25% of the capital or voting rights of a Swiss company are obliged to inform the company within one month of the name and address of the beneficial owner(s) of those shares; any change must be notified by the shareholders within three months⁵¹.</p> <p>However, there is no fully operational register of beneficial ownership, however the development of a register is underway.</p>	<p>The company must keep a list of the beneficial owners “in such a way that it can be accessed at any time in Switzerland”⁵².</p> <p>However, the register is not public and constitutes only an internal corporate document. As such there is no fully operational register of beneficial owners in Switzerland.</p> <p>In case of criminal investigation or civil proceedings, the authorities can have access to the corporate register.</p>	<p>As detailed, there is no register at present, but when the proposed register becomes operational it will only be accessible to certain authorised parties (i.e. financial intermediaries, law enforcement agencies and other entities subject to AML regulations).</p> <p>The public will not have access to the register.</p> <p>The collection, processing and disclosure of personal data in the context of the register must comply with Swiss data protection laws (based on GDPR).</p> <p>Disclosure of beneficial ownership information is limited to the minimum necessary to achieve the intended purpose (i.e. preventing ML/TF). Limited information will therefore be available to authorised parties.</p>

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UK	<p>The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 SI 2017/692 (transposes MLD4)</p> <p>The Money Laundering and Terrorist Financing (Amendment) Regulations 2019, SI 2019/1511 (transposes 5MLD)</p> <p>The Companies Act 2006</p>	<p>Schedule 1A of the Companies Act 2006 states that an individual, including legal persons, must be registered as a “person of significant control” (PSC) if one of the following conditions applies:</p> <ul style="list-style-type: none"> • Holds, directly or indirectly, more than 25% of shares • Holds, directly or indirectly more than 25% of voting rights • Holds the right, directly or indirectly, to appoint or remove a majority of the board of directors • Holds the right to exercise, or actually exercises, significant influence or control • Trustees of a trust, or members of a firm that is not a legal person that meet any of the conditions or would do so if they were individuals, and they have the right to exercise, or actually exercise significant influence or control over the activities of the trust or firm. The 25% threshold is in line with norms set by FATF. Failure to declare a person with significant influence or control is a criminal offence. 	<p>Conditions regarding significant influence or control mean a person will still be registered even if they own less than 25% of the shares in a company. Significant influence and control have different meanings: “Control” indicates that a person has the right to direct the policies and activities of a company, whereas “significant influence” allows a person to ensure that the company adopts the policies and activities that the person desires. A person may hold the right to exercise significant influence or control even if that right is not exercised. It may derive from a variety of circumstances, such as the company’s constitution, the rights attached to shares or securities, or from a shareholders’ or other agreement.</p>	<p>Companies are required to produce, keep and maintain a dedicated register of people and entities with significant control over that company (the PSC Register kept by Companies House). The intent is to ensure every method of holding significant control over a company is registrable. Companies House has also set up the Register of Overseas Entities, which requires overseas entities who own UK property to identify who their registrable beneficial owners are, register those details with Companies House and keep up to date. The conditions for a person being a beneficial owner of an overseas entity is the same as for beneficial owners (Schedule 2 Paragraph 6 Economic Crime (Transparency and Enforcement) Act 2022) (“ECTE”).</p> <p>Note that on 26 October 2023, the UK Government stated that it intends to amend ECTE via the Economic Crime and Corporate Transparency Bill to ensure that overseas entities are required to record a legal entity trustee as a registrable beneficial owner, whether or not it is “subject to its own disclosure requirements”.</p> <p>The government also intends to amend ECTA so that wherever there is a trustee in the chain of ownership of an overseas entity it would fall under the definition of “registrable beneficial owner” (“RBOs”), and intends to grant the Secretary of State the power to expand the description of RBOs further where an overseas entity is in a chain involving a trustee.</p>	<p>If a company elects to keep its persons of significant control (“PSC”) information at Companies House, then almost all information about its PSCs will be available to the public including their full date of birth.</p>	<p>A PSC can apply to protect its personal details if they (or someone living with them) are at serious risk of violence or intimidation because of the entities’ activities. For example, they could be a director LLP member or PSC that has been:</p> <ul style="list-style-type: none"> • targeted by activists • licensed under the Animal (Scientific Procedures) Act 198 • active in the defence industry • an easily traceable supplier to (or partner of) one of these organisations This is not a complete list. Each case will depend on the PSC’s individual circumstances.

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US	<p>Code of Federal Regulations: Beneficial ownership requirements for legal entity customers (31 CFR 1010.230)</p> <p>The “Final Rule” implementing the beneficial ownership information reporting requirements of the Corporate Transparency Act (“CTA”)⁵³</p> <p>CTA Section 6403 – adds new section 5336 (Beneficial Ownership Information Reporting Requirements) to subchapter II of chapter 53 of title 31, United States Code.</p>	<p>Beneficial ownership is determined under both a control test and an ownership test⁵⁴.</p> <p>The control test broadly captures anyone who is able to make important decisions on behalf of the entity, and the identification of at least one beneficial owner is required under the control test.</p> <p>Beneficial owner refers to an individual with significant responsibility to control, manage or direct a legal entity customer, and includes an individual who:</p> <ul style="list-style-type: none"> • holds the position or exercises the authority of a president, CFO, general counsel, CEO, COO, or any other officer, regardless of official title, who performs a similar function at the reporting company; • has authority to appoint or remove any senior officer or a majority of the board of directors; and/or • directs, determines, or has substantial influence over important decisions. <p>An individual may directly or indirectly, including as a trustee or similar arrangement, exercise substantial control through:</p> <ul style="list-style-type: none"> • board representation; • ownership or control of a majority of the voting power or voting rights; • rights associated with any financing arrangement or interest in a company; • control over intermediaries that exercise substantial control; • arrangements or financial or business relationships with others acting as nominees; or • any other contract, arrangement, understanding, relationship, or otherwise. 	<p>If no individual owns 25% or more of a legal entity, the ownership test does not require identification of a beneficial owner, which refers to each individual, if any, who, directly or indirectly, owns 25% or more of the equity interests of a legal entity customer.</p> <p>Furthermore, control can be established as per the tests detailed.</p>	<p>Reports of beneficial ownership must be made to the US Department of the Treasury, Financial Crimes Enforcement Network (“FinCEN”).</p> <p>The reporting requirements and register generally apply to all entities (with certain listed exclusions and exemptions).</p>	<p>The Final Rule is one of three rulemakings planned to implement the CTA.</p> <p>FinCEN will undertake additional rulemakings to set out rules to determine who may access beneficial ownership information (“BOI”), for what purposes, and appropriate safeguards.</p>	<p>FinCEN states that it will undertake a future rulemaking governing access to BOI whereby BOI will be used only for statutorily authorised purposes and will be subject to stringent use and security protocols.</p> <p>There are already significant statutory restrictions on the sharing of BOI, and FinCEN is required to promulgate appropriate protocols for protecting BOI.</p> <p>BOI is confidential under 31 U.S.C. 5336(c) and may not be disclosed.</p> <p>FinCEN may only disclose BOI upon receipt of a request, through appropriate protocols from a Federal agency engaged in national security, intelligence, law enforcement activity.</p>

ENDNOTES

- 24 Article L. 561-2-2 of the Monetary and Financial Code (“CMF”)
- 25 R.561-1 to R.561-3 CMF
- 26 Article 233-I Code de Commerce
- 27 Ordonnance No 2020-115
- 28 National Institute of Industrial Property (“INPI”)
- 29 See Chapter 4 of this report for more details.
- 30 Section 3(2) GwG
- 31 Section 18 et seq. GwG
- 32 Section 23(1) GwG
- 33 Section 13 of the Foreign Trade and Payments Act (Außenwirtschaftsgesetz)
- 34 Section 6(2) No. 5 Fiscal Code (Abgabenordnung)
- 35 Regulation 19(2) of the 2019 Regulations.
- 36 As per the CJEU cases of C-37/20 and C-601/20
- 37 Article 4(2)(b) of 10/2010
- 38 Article 42 of the Spanish Commercial Code.
- 39 Article 4(b) of 10/2010
- 40 Third additional provision of 10/2010
- 41 Fourth additional provision of 10/2010
- 42 Articles 13 and 14 EU Regulation 2016/679, Article 11 Organic Law 3/2018
- 43 Administered by the (Indian) Ministry of Corporate Affairs (“MCA”)
- 44 Circular of the People’s Bank of China on Strengthening Client Identification for Anti-money Laundering [2017] 235, Circular of the Peoples Bank of China on Further Improving the Identification of Beneficial Owners [2018] 164.
- 45 Section 386AB Schedule 16 CA, Section 43 Schedule 7 LLPA
- 46 This threshold is set in line with norms set by FATF
- 47 Section 386AB Schedule 16 CA, Section 43 Schedule 7 LLPA
- 48 For companies, this is senior management who exercise control over the daily/regular affairs, and for LLPs this is partners who exercise executive control over the daily/regular affairs.
- 49 Section 386FA CA, Section 47A LLPA
- 50 Section 386AF CA, Section 47 LLPA
- 51 Article 697j Code of Obligations
- 52 Article 697l Code of Obligations
- 53 Final Rule, issued September 2022 to come into effect on 1 January 2024
- 54 31 CFR 1010.230(d)

IRSG

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