

The Administrative Measures for Beneficial Ownership Information (Measures), which were released by the People's Bank of China (PBOC) and the State Administration for Market Regulation (SAMR) earlier this year, has become effective from 1 November 2024. The Measures, for the first time, require the filing of beneficial ownership information with the Chinese authorities, which may create greater transparency of beneficial ownership. This article provides an overview of the general filing requirements under the Measures, including the scope of entities that are required to make a UBO filing, the information that must be filed, and the time for such a filing.

Which Entities Are Required To Make a UBO Filing?

The scope of the entities that are required to make a UBO filing under the Measures (Filing Entities) is very broad, generally including all the companies, partnerships, branches of foreign companies registered in China, and other entities as may otherwise be specified by PBOC and SAMR, with the following exceptions:

- A company or partnership of which (i) the registered capital does not exceed CN¥10 million (or equivalent thereof in a foreign currency), and (ii) all the shareholders or partners are natural persons, may be exempted from a UBO filing provided that the company or partnership undertakes that no natural person other than its shareholders or partners has actual control over, or receives benefits from, such entity and that such control or benefits are established or obtained only through the equity or partnership interest (e.g. control by a contractual arrangement is excluded).
- Self-employed individual businesses, noncorporate enterprises, sole proprietorship enterprises, and branches of domestic companies and partnerships are not subject to a UBO filing requirement.

How To Identify a UBO?

Whereas the "actual controller" of a company defined under the Company Law of the PRC may be a natural person or a legal entity, a UBO must be a natural person, who ultimately owns, benefits from, or exercises actual control over the entity. There may be one or more natural persons for a specific Filing Entity. According to the Measures and the guidelines issued by PBOC and SAMR, a UBO of a given Filing Entity must be identified in accordance with the following criteria:

- Any natural person who ultimately owns, directly or indirectly, 25% or more of the equity interest, shares or partnership interest of the Filing Entity is a UBO.
- Any natural person who does not meet the criterion set forth in (a) above but is otherwise ultimately entitled to 25% or more of the proceeds or voting power of the Filing Entity is a UBO as well.
- UBOs also include any natural person who, either individually or with others, exercises *de facto* control over the Filing Entity through a contractual arrangement, associated person, or otherwise, which might include the right to appoint or remove the legal representative, directors, executive officers, or managing partner of the Filing Entity and the right to make major operation, finance or management decisions, even if such person does not meet the criterion set forth in (a) above.
- In the absence of any person meeting any criterion set forth in (a), (b) or (c) above, the person responsible for day-to-day operations and management of the Filing Entity, who might be the legal representative, director or general manager (as the case may be), will need to be recorded as the UBO.
- Notwithstanding the foregoing, the legal representative of a wholly state-owned company or a state-controlled company will be deemed as the UBO of such entity.
- With respect to a branch of a foreign company, its UBO must be the UBO of such foreign company determined in accordance with the above criteria and at least one senior executive of the branch. The exemptions enjoyed by a foreign company in its home country in relation to a UBO filing will not apply in China.

When and How To Make a UBO Filing?

For any Filing Entity established on or after 1 November 2024, a UBO filing must be completed upon its establishment. Any existing entity is required to complete a UBO filing by 1 November 2025. Any subsequent change to UBO information must be filed within 30 days of such change. PBOC and SAMR have already launched an online system for UBO filings.

The UBO information that must be submitted for the filing includes the name, gender, nationality, date of birth, residential address or business address, contact information, identity document information and type of beneficial ownership (including dates on which the beneficial ownership is acquired or terminated, if any). For a Filing Entity that may have significant influence on market and financial transparency, the PBOC and other competent authorities may require the submission of additional documents and information, including those in relation to its equity, partnership interest, right to proceeds, voting right, and control relationship, for the purpose of determination of its UBO.

The filed information will not be disclosed to the public but may be made available to (i) other governmental authorities, and (ii) to the extent required for fulfilling anti-money laundering and anti-terrorism financing duties, financial institutions and specific nonfinancial institutions. The governmental authorities, financial institutions and specific nonfinancial institutions that may be granted access to the filed information are obligated under the Measures to keep such information confidential.

Consequences of Failure To Make a UBO Filing

According to the Measures, if a Filing Entity fails to make a UBO filing, or any filed information is incorrect, such entity may be required to rectify within a designated period, failing which, a fine of up to CN¥50,000 may be imposed.

As a matter of practice, local counterparts of SAMR in some locations may require the local Filing Entities to complete UBO filings prior to the deadline prescribed by law, e.g. when the Filing Entities need to register any change of their company particulars, such as registered addresses and officers. MNCs operating in China need to be prepared to identify their UBOs, collect the required UBO information, and complete the filing in accordance with the Measures.

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