



# UBO filings for PRC entities

10 January 2022

On 27 December 2021, the State Administration on Market Regulation (**SAMR**) of the People's Republic of China (**PRC**) and the People's Bank of China (**PBOC**) jointly published a consultation draft of the *Interim Measures on Information Disclosure of Ultimate Beneficiary Owners of Market Players* for public comment. The draft rule specifies the information disclosure requirements applicable to companies, partnerships and foreign corporations' branch offices established under PRC law (**Market Players**). The consultation period is open until 26 January 2022. The draft rule is contemplated as implementing the disclosure requirement on beneficiary owners as set forth in the *Regulations on Registrations of Market Players*, which will take effect from 1 March 2022. This note summarises a few key points of the disclosure requirements as stipulated in the draft rule that may affect private equity investors and MNCs.

## UBO disclosure requirement

Market Players will be required to file any information about their ultimate beneficiary owners (**UBO**) with SAMR through online filing systems operated by SAMR, and SAMR will share the UBO filing information with PBOC, which will use such information primarily for anti-money laundering purposes. A UBO of a Market Player refers to the individual who ultimately owns or actually controls the Market Player or who is the ultimate beneficiary owner of the Market Player, including the following individual who: (i) ultimately owns, directly or indirectly, 25% or more equity interest, shares or partnership interest of a company or a partnership (as applicable); (ii) exerts actual control over a company or a partnership individually or jointly with others where he or she does not ultimately own, directly or indirectly, 25% or more equity interest, shares or partnership interest of the company or the partnership; or (iii) ultimately enjoys 25% or more interest in the Market Player.

The term “*actual control*” is defined to include, without limitation, implementation of control through agreements or kinship, such as the power to decide the appointment and removal of legal representatives, directors, supervisors, senior management or executive partners, the power to decide and execute material operation or management decisions, the power to decide financial matters, as well as the ability to deploy or use material assets, capital and so forth.

If a Market Player does not have a UBO falling under the foregoing scope, the person responsible for its daily operation and management will be regarded as its UBO, such as the legal representative for a company or the executive partner (natural person) for a partnership.

## Scope of information disclosure

Market Players will be required to file the following information about their UBOs: (i) name; (ii) gender; (iii) nationality; (iv) date of birth; (v) principal place of business or residential address; (vi) contact information; (vii) identity document (eg copy of ID card, copy of passport); and (viii) type of beneficiary ownership (including equity or partnership ownership, ownership percentage, method of actual control or percentage of gains, where applicable) as well as commencement and termination dates. In addition, Market Players will be required to update UBO filings within 30 days of any change of the previously filed UBO information. Competent authorities such as PBOC may require Market Players to further provide supporting materials on equity, control rights, and relevant information about their UBOs.

## Exempted filing

The draft rule exempts UBO filings for a company or partnership whose registered capital does not exceed RMB10 million and whose shareholders or partners are all individuals, provided that the company or partnership should undertake that no individuals other than their registered shareholders or partners exert actual control of or gain benefits from the company or partnership by any means (other than through equity interest or partnership interest).

## China branch offices

As the rule is currently drafted, UBO disclosure requirement will apply not only to Chinese subsidiaries of foreign corporations but also to their branch offices (including representative offices) established in the PRC. The UBOs of a foreign corporation’s branch office in China will be: (i) the UBO as determined based on the foregoing rules; and (ii) the senior management personnel of the China branch office. The draft rule also specifies that any UBO exemption obtained by foreign corporations in their home jurisdictions will not be applicable in the PRC.

## Transition period

The draft rule offers a grace period for UBO filings, which will expire on 28 February 2023, for Market Players who were established before the rule came into effect.

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