



INDONESIA INTRODUCES KNOW-YOUR-BENEFICIAL OWNER PRINCIPLE FOR CORPORATIONS

Introduction

In an attempt to prevent and eradicate activities related to money laundering and/or terrorism financing through corporations, the government has issued Presidential Regulation No. 13 of 2018 regarding the application of the Know-Your-Beneficial-Owner Principle by Corporations for the Prevention and Eradication of the Criminal Acts of Money Laundering and Terrorism Financing (“PR 13/2018”).

PR 13/2018, which closely reflects other “*Know Your*” regulations introduced by certain other Indonesian ministries, provides the following provisions for the application of the Know-Your-Beneficial-Owner Principle (“**Principle**”) by corporations:

1. determination of the beneficial owner(s) of a corporation;
2. application of the Principle;
3. supervision;
4. cooperation and requests for information about the beneficial owner;
5. sanctions; and
6. transitional provisions.

These will each be dealt with in turn.

Determination of the Beneficial Owner(s)

Beneficial Owner(s) is defined broadly as an individual who has the authority to appoint and dismiss the Board of Directors, Board of Commissioner, Managers, Supervisory Board, or Executive Board of Corporations (as defined below), control the Corporations, and/or entitled to or receive a direct or indirect benefit from Corporations, the real owner of the Corporations’ funds, and/or satisfies the other criteria set out in the PR 13/2018.

Under PR 13/2018, corporations, defined as groups of people and/or assets, whether legal entities or non-legal entities (“**Corporations**”), must apply the Principle by determining the identity of at least 1 (one) Beneficial Owner who meets the criteria for each type of Corporation. PR 13/2018 lists the following forms of Corporations that must apply the Principle:

1. limited liability companies;
2. foundations;
3. associations;
4. cooperatives;
5. limited partnerships;
6. firm partnerships; or
7. other forms of corporation.

In relation to limited liability companies, we believe they also include foreign investment companies since PR 13/2018 does not differentiate them from the domestic companies.

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Under PR 13/2018, the following criteria are used to determine who the Beneficial Owner(s) is, in each form of Corporation:

- a. owning more than 25% of the:
 1. shares and voting rights of a limited-liability company;
 2. initial wealth of a foundation;
 3. source of an association's funds;
 4. paid up capital and/or contribution in kind of a limited partnership; and
 5. paid up capital of a firm partnership.
- b. obtaining more than 25% of the annual profits or net income of a limited-liability company, foundation, association, cooperative, limited partnership or firm partnership, if any;
- c. being authorized to appoint, replace or dismiss members of the Corporation's organs, eg its Boards of Directors, Boards of Commissioners for limited-liability companies or Boards of Founders, Supervisors or Executives for foundations;
- d. having the power or authority to influence or control the Corporation without further authorisation from another party;
- e. receiving a benefit from the Corporation;
- f. the real owner of the Corporations' funds or shares.

To determine the Beneficial Owner(s), a Corporation can obtain the information it needs from various sources, including:

1. documents evidencing the establishment of the Corporation;
2. documents evidencing the general meeting of the Corporation's organs;
3. central or regional government institutions which have the authority to register, validate, dissolve or supervise Corporations ("**Authorized Agencies**");
4. private institutions which provide benefits to the Corporation;
5. a statement from the Corporation's organ, the truth of which can be accounted for;
6. documents evidencing that an individual is the real owner of the Corporation's funds; and/or
7. other information supplied by credible sources etc.

In the case of a limited liability company, in addition to the above, the information can be obtained from:

1. private institutions which receive or transfer funds in order to purchase shares in the limited liability company; and/or
2. documents evidencing that one individual is the real owner of shares in the limited liability company.

Under PR 13/2018, Authorized Agencies can determine Beneficial Owners other than those determined by Corporations themselves, based on:

1. the results of an audit conducted by an Authorized Agency;
2. information supplied by other government/private institutions/ certain professions that manage the funds and/or information from the Beneficial Owner(s); or
3. other information supplied by credible sources.

Application of the Principle

Corporations are required to appoint a person-in-charge who will be responsible for the application of the Principle, and who will provide information related to the Corporation and its Beneficial Owner(s) upon the request of an Authorized Agency and/or law-enforcement agency.

Applying the Principle includes (i) identification and (ii) verification. Identification is undertaken through the collection of personal information about the Beneficial Owner(s) i.e., his/her name, address, nationality, etc. during the Corporation's establishment and when the Corporation engages in its business activities.

Verification is undertaken to assess the conformity between the information about the Beneficial Owner(s) and in the supporting documents.

Details of the application of the Principle are provided in the following table:

Stage	Activities
Establishment	The Principle must be applied through any of the following activities: <ol style="list-style-type: none">1. submitting the information if the Corporation has determined the identity of its Beneficial Owner(s); or2. submitting a written statement of its willingness to provide information about the Beneficial Owner(s) to the Authorized Agency as soon as it is available, if the Corporation has not yet determined the identity of its Beneficial Owner(s). This statement must be submitted within 7 working days of the issuance of the license for its establishment from the relevant agency to the Authorized Agency through the Corporation Administration Services System.
Business activities	The Principle must be applied by reporting any change made to information related to the Beneficial Owner(s) to the Authorized Agency through the Corporation Administration Services System within 3 business days of the change.

Corporations are also required to update any information related to their Beneficial Owners every year. In addition, Corporations, their notaries or proxies, are required to maintain documents related to their Beneficial Owners for at least five years from the date of their establishment or validation. This also applies to liquidators in the event of the dissolution of a Corporation.

Supervision

The application of the Principle is supervised by the Authorized Agency based on the results of a risk assessment on money laundering and terrorism financing. The Authorized Agency has the authority to:

1. issue a regulation or guidelines as the implementation of PR 13/2018;
2. conduct an audit of a Corporation; and
3. take other administrative action within its duties and responsibilities.

The Authorized Agency may also cooperate with Indonesian Financial Transaction Reports and Analysis Center (*Pusat Pelaporan dan Analisis Transaksi Keuangan – PPAATK*).

Cooperation and requests for the beneficial owner's information

The Beneficial Owners' information that Corporations submit will be managed by the Authorized Agency and can be shared with domestic or international institutions in order to prevent money laundering and terrorism financing in accordance with the prevailing regulations and international treaties. In addition, the Authorized Agency may share such information with the 'reporting party' as defined under the laws and regulations on the Prevention and Eradication of Money Laundering.

PR 13/2018 also enables third parties to request information about the Beneficial Owner(s) from the Authorized Agency, under the prevailing laws and regulations on the transparency of public information.

Sanctions

Under PR 13/2018, any Corporations that fails to determine the identity of its Beneficial Owner(s) and submit the information is liable to certain sanctions under the prevailing laws and regulations. PR 13/2018 does not clearly state what laws and regulations they are referring to. However, PR 13/2018 was issued in consideration to Law No. 8 of 2010 on the Prevention and Eradication of Money Laundering and Law No. 9 of 2013 on the Prevention and Eradication of Terrorism Financing, we believe that the sanctions under these laws may be applicable.

Transitional Provisions

Upon the issuance of PR 13/2018, Corporations which are registered or established or in the process of registering or establishing must start to apply the Principle within 1 (one) year of the date on which PR 13/2018 comes into effect, ie by **5 March 2019**.

Conclusion

Upon the issuance of the PR 13/2018, we understand that now Corporations, including foreign investment companies (PMA) are required to identify, verify and report their Beneficial Owner(s) in accordance with the Principle and the procedure provided therein. We also expect that the relevant Authorized Agencies may issue one or more implementing regulations to PR 13/2018 that provide further guidance and procedures on this requirement.

One of the most important points of PR 13/2018 is that it defines the Beneficial Owner as an individual. This means that the regulation aims to penetrate several layers of shareholding structure or arrangements to eventually identify and verify a certain individual as the 'ultimate beneficial owner' of Corporations.

PR 13/2018 will have interesting implications where Corporations may have so-called 'nominee' shareholders. Although nominee shareholder arrangements have long relied upon a 'credit and security' arrangement, given the inability in an Indonesian company to separate legal from beneficial ownership, the provisions of PR 13/2018, and in particular those that are used to determine the Beneficial Owner, may cause some concerns for those investors that presently use or which are contemplating the use of so-called 'nominee' structures. Specifically, it is noted that one criteria to determine the Beneficial Owner of a Corporation now includes 'private institutions which receive funds in order to purchase shares in companies'.

Another item that should be closely observed is the subsequent implication of the reporting of the Beneficial Owner of the Corporations. It remains to be seen whether this report will just be another formality that Corporations in Indonesia must comply with, or whether it will provide the Authorized Agency with the power and the legal grounds to require Corporations to structure or re-structure their investment or shareholding composition in the manner acceptable to the Authorized Agency.

Taking into account the deadline of 5 March 2019 to comply with PR 13/2018, it would be prudent for Corporations to soon commence preparing the relevant documents and information that need to be provided to the Authorized Agency. Corporations may also need to inform their stakeholders of the requirements under PR 13/2018. Also, investors planning to enter the Indonesian market should take into account PR 13/2018 in structuring their investment.

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