

Beneficial Ownership Regulations and Company Registries in Southeast Asia

Analysis of Regulatory Deficiencies

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Transparency of the beneficial ownership of corporate vehicles is increasingly regarded as an essential element in the fight against corruption and as a tool for preventing money laundering and countering the financing of terrorism. As numerous case studies have shown, corporate vehicles, including companies, trusts, foundations and fictitious entities, can be misused to conceal the identities of the people involved in large-scale corruption and to hide and transfer the proceeds of corruption. The impact of corruption on economic growth is serious, wasting some 20-40% of official development assistance every year.¹

This article looks at the regulations on beneficial ownership and the company registries in Southeast Asia and identifies challenges common to the region. It also provides an overview of relevant regulations, beneficial ownership and company registries in Cambodia, Indonesia, Malaysia, the Philippines, Thailand and Viet Nam. The article concludes with recommendations for technical assistance in strengthening the reporting mechanisms on legal and beneficial ownership in Southeast Asia.

Definitions

The United Nations Convention Against Corruption (UNCAC), Article 12, requires State parties to take measures to “safeguard the integrity of private entities, (...) by inter alia (...) establish[ing] measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities”. Table 1 summarizes the international frameworks covering beneficial ownership in selected Southeast Asian countries.

The internationally accepted definition of beneficial ownership, originally developed by the Financial Action Task Force (FATF), defines beneficial ownership as “the natural person(s) who ultimately owns or controls the customer and or the person on whose behalf a transaction is being conducted”.² While there

¹ United Nations, 2019, Sustainable Development Goal 16: Focus on public institutions, *World Public Sector Report 2019*, Division for Public Institutions and Digital Government, Department of Economic and Social Affairs, New York, June.

² [United Nations Office on Drugs and Crime \(UNODC\) / World Bank Stolen Asset Recovery \(StAR\) Initiative, p. 19](#)

is no obligated threshold for determining effective control, 25% in ownership of shares is commonly considered an acceptable and practical threshold to determine effective control. As a result, this threshold is used in many definitions of beneficial ownership, including in the European Union’s Fourth Anti-Money Laundering Directive.

Table 1: International frameworks covering BO across Southeast Asia (data as of March 2022)

	United Nations Convention against Corruption (UNCAC)	Asia-Pacific Group on Money Laundering (APG)	Extractive Industries Transparency Initiative (EITI)	Open Government Partnership (OGP)	G20 Anti-Corruption Working Group (G20 ACWG)
Cambodia					
Indonesia					
Malaysia					
Philippines					
Thailand					
Viet Nam					

Green: Member States/implementing countries

The [Financial Secrecy Index](#) published in February 2020 ranks jurisdictions according to the scale of their financial transparency and their offshore financial activities. The index is composed of twenty indicators, which can be grouped into four dimensions. Ten of these relate to the dimensions of “ownership registration” and “legal entity transparency”. Table 2 provides an overview of selected indicators from the Financial Secrecy Index for Southeast Asia. It demonstrates that, while transparency in the banking sector is somewhat regulated, **countries in Southeast Asia are considered to be very secretive when it comes to the transparency of ownership of legal entities and other forms of wealth** (such as real estate, for example). For Cambodia, insufficient data was available to be able to compound the indicators. As of 2020, is on the Financial Action Task Force (FATF) list of countries with [strategic deficiencies in their AML/CFT regimes](#), and have been placed under increased monitoring by the FATF (see Table 3 below). Similarly, the reviews of the second cycle of the review mechanism under UNCAC for Indonesia and Malaysia showed that identifying beneficial owners of legal persons and other legal arrangements and ensuring transparency of information around legal ownership remain prevalent challenges.

Table 2: Selected Financial Secrecy Index Indicators and Scores for Southeast Asia

	Rank (out of 133)	Banking Secrecy	Trust and Foundation Register	Recorded Company Ownership	Other Wealth Ownership	Limited Partnership Transparency	Legal Entity Transparency
Cambodia	<i>No data</i>						
Indonesia	79	34	25	75	50	100	100
Malaysia	32	37	100	100	100	100	100

Philippines	60	50	50	25	50	100	95.8
Thailand	17	54	25	100	100	100	75
Viet Nam	37	73	25	100	100	100	100

Moderately secretive 0 < 100 Exceptionally secretive, i.e. a higher score value means that the jurisdiction in question does not publish complete and updated information at no or little cost, implying a higher level of financial secrecy. The total Secrecy Score includes 20 key financial secrecy indicators in total, which relate to the size of the global market for offshore financial services, tax evasion or international commitments. For further details, please see the [full FSI methodology](#).

Table 3: Compliance with FATF standards across Southeast Asia (data as of March 2022)

	<u>Technical Compliance: Recommendation 24</u> Transparency and beneficial ownership of legal persons. Jurisdictions should take measures to prevent the misuse of legal persons for money laundering or terrorist financing.	<u>Technical Compliance: Recommendation 25</u> Transparency and beneficial ownership of legal arrangements. Jurisdictions should take measures to prevent the misuse of legal arrangements for money laundering or terrorist financing.	<u>IO 5</u> Legal persons and arrangements are prevented from misuse for money laundering or terrorist financing, and information on their beneficial ownership is available to competent authorities without impediments.
Cambodia	PC	PC	LE
	PC	PC	LE
	PC	PC	LE
	PC	PC	LE
Indonesia	PC	PC	ME
Malaysia	PC	PC	ME
	PC	PC	ME
	PC	PC	ME
Philippines	PC	PC	LE
Thailand	PC	PC	LE
	PC	PC	LE
	PC	PC	LE
Viet Nam	PC	PC	ME

Compliant (C), largely compliant (LC), partially compliant (PC) and non-compliant (NC); High level of effectiveness (HE), Substantial level of effectiveness (SE), Moderate level of effectiveness- the immediate outcome is achieved to some extent. Major improvements needed (ME); Low level of effectiveness- the immediate outcome is not achieved or achieved to a negligible extent. Fundamental improvements needed (LE). Source: [FATF's Mutual Evaluation Reports](#), Cambodia (Aug 19), Indonesia (Sept 18), Malaysia (Oct 18), Philippines (Oct 19), Singapore (Nov 19), Thailand (Sept 18) and Viet Nam (January 2022).

Beneficial Ownership and Company Registries in Southeast Asia

Beneficial Ownership Reporting Requirements and Reporting Mechanisms

As illustrated by the second cycle of the review mechanism under UNCAC³ in Southeast Asia and [UNODC's regional consultations on beneficial ownership transparency](#) held in Malaysia in July 2019, regulations and systems on beneficial ownership transparency are unevenly developed across the region:

Indonesia is the only country in the region that so far has established a [central registry of beneficial owners](#). The registry is hosted by the Ministry of Law and Human Rights, to which all types of corporations are required to report and regularly update information on their beneficial owners. The Presidential Regulation No. 13/2018 defines a corporation as any organized group of people or assets, whether or not established as a legal entity, including limited liability companies, foundations, associations, cooperatives, limited and unlimited partnerships, and any other forms of corporations. Information on beneficial owners to be reported includes their full name, passport/ national ID registration number, place and date of birth, nationality, residential address, foreign residential address (if residing in a foreign country), tax identification number and the relationship between the legal person and the beneficial owner(s) (see [here](#) and [here](#) for relevant regulations). Beneficial ownership information must be updated annually, and any changes must be reported within 3 working days. According to [Regulation No. 21/2019](#), sanctions are applied for late submission or non-compliance, which range from removing access to the online registry portal to giving responsible Ministries and public authorities the recommendation to pause or revoke the business license⁴. Although beneficial ownership information is technically required to be accessible to the public by Presidential Regulation No. 13 of 2018, in practice it is currently only accessible among law enforcement agencies.

In 2019, the Companies Commission of **Malaysia** issued the ["Guideline for the Reporting Framework for Beneficial Ownership of Legal Persons"](#). The reporting framework introduces the requirement to hold accurate, up-to-date and verified information on beneficial owners. This requirement applies to all domestic and foreign companies incorporated or registered under the [Companies Act 2016](#), all domestic and foreign limited liability partnerships registered under [the Limited Liability Partnerships Act 2012](#) (LLPA 2012) and all government-owned or state-owned companies, unless exempted under Paragraph 17 or Annexure A of the guidelines. The following information on a beneficial owner must be obtained: full name, nationality, residential address, date of birth, passport / national ID number, type of beneficial owner (direct or indirect), category of beneficial owner⁵, date of becoming / ceasing to be a beneficial owner, the date upon which the company/partnership received the beneficial ownership information and email address. Companies/foundations must keep the beneficial ownership information, including the supporting documents used to identify and verify the beneficial ownership information, at their respective registered offices or at the same place, where the register of members or partners is kept, for a minimum of seven years. Timely access to competent authorities and law enforcement must be granted. The Companies Commission of Malaysia allow for a transitional period until the end of 2020 for existing companies and limited liability partnerships to obtain their beneficial ownership information. Once the transitional period ends, companies and limited liability partnerships are required to report this information to the Registrar within 14 days. The information must be updated at least once per calendar year. Table 4 provides an overview of beneficial ownership registries in Southeast Asia with specifications on their characteristics and references to relevant laws, regulations, and guidelines.

³ At the time of writing, the reviews for Indonesia, Lao PDR, and Malaysia for the second cycle of the review have been finalized, and the second cycle reviews of Cambodia and Vietnam were still ongoing.

⁴ From the wording of Article 12 of the Regulation, it is unclear whether the Ministries / public authorities are obliged to follow this recommendation or not.

⁵ The "Guideline for the Reporting Framework for Beneficial Ownership of Legal Persons" defines different criteria or categories of beneficial owners. For further information, see Paragraphs 27, 29 and 33 of the Guideline.

The **Philippines**, also under the Extractive Industries and Transparency Initiative, has introduced a requirement for [companies operating in the extractive industry sector to disclose their beneficial owners](#). Due to data privacy concerns, information on beneficial owners is not yet being reported under the Initiative. In 2019, the Philippine Security and Exchange Commission (SEC) has issued a [circular](#) introducing an enhanced beneficial ownership disclosure form, under which all SEC registered stock and non-stock domestic corporations are required to report their beneficial ownership information. Beneficial ownership information has to be reported annually, within 30 calendar days of an annual stockholders' or members' meeting, or within seven working days since a change in the beneficial ownership information occurred. The information to be reported includes the owner's name, residential address, date of birth, nationality, tax identification number and percentage of ownership. The SEC has the power to impose financial penalties on the corporation, directors, trustees and other senior managing officials thereof for the failure to disclose beneficial ownership information. Law enforcement and other competent authorities have access to the beneficial ownership information; the information is, however, not made publicly available.

Neither **Cambodia** nor **Thailand** have a mechanism to record or report on the beneficial ownership information of legal persons.

In **Viet Nam**, the Law on Anti-Money Laundering requires reporting entities to apply measures to know their customers, by keeping customer identification records for 5 years following transactions. When forming a company, information must be submitted for the [National Business Registration Portal](#), and published on the website of the disclosing entity. However, it is unclear how consistently the information is published in a centralized format, rather than across disparate provincial and national registration authorities. The definition of beneficial ownership given in the Law on Anti-Money Laundering is in accordance with the FATF definition. Obligations for legal persons to identify, record and share beneficial ownership information with the relevant authorities have not yet been legalized. There is no sanctioning mechanism for failing to identify, collect and retain information about beneficial ownership or for failing to provide such information to competent authorities upon request.

Table 4: Beneficial Ownership Registries in Southeast Asia

Country	Central Beneficial Ownership Registry	Legal Persons / Arrangements Included in Registry	Other Reporting Mechanisms	Verification Mechanism	Sanctions for Late Submission / Non-Compliance	Public Access	Regulations on Beneficial Ownership
Cambodia	No	n/a	Yes, under anti-money laundering regulations, reporting entities need to identify the beneficial owners of accounts and of customers, who are legal	n/a	n/a	n/a	Laws, regulations on legal persons and company registry do not cover beneficial ownership. Only laws / regulations on AML/CFT cover beneficial ownership.

			persons. This information is not reported to any public authority, however.				
Indonesia	Yes	The registry covers all forms of corporations (classed as “organized group[s] of people or assets, whether or not established as a legal entity”), including limited liability companies, foundations, associations, cooperatives, limited and unlimited partnerships, and any other forms of corporations. The requirements apply equally to foreign corporations operating in Indonesia.	n/a	Information is verified by the corporation and, if deemed necessary, by authorized public agencies. It is unclear if host of the registry conducts an independent verification of the reported information. ⁶	Yes	Yes, upon registration, for a fee	Presidential Regulation No. 13/2018 Ministry of Law and Human Rights Regulation No. 15/2019 Ministry of Law and Human Rights Regulation No. 21/2019
Malaysia	No	The new regulations require all domestic and foreign companies incorporated or registered under the Companies Act 2016, all domestic and foreign limited	No	Yes, the legal person covered by the reporting framework must verify the beneficial ownership information reported to them by corroborating this	n/a	n/a	Companies Act 2016 Companies Commission of Malaysia Act 2001 [Act 614] , Section 20C Guideline for the Reporting Framework for Beneficial Ownership of Legal Persons

⁶ Regulation No. 21 of the Year 2019 of the Ministry of Law and Human Rights gives powers to the Ministry in inspecting internal documents from the corporation to determine the beneficial owner(s). It is unclear, however, whether this is done for all beneficial ownership information reported by corporations or whether this is done based on a risk assessment of the Ministry.

		<p>liability partnerships registered under the LLPA 2012, all government- or state-owned companies to hold up-to-date information on their beneficial owners. Reporting this information to the Companies Commission of Malaysia will be introduced in the next phase of the reform process. Exemptions to hold beneficial ownership information apply under Paragraph 17 of the guidelines.</p>		<p>information with various sources of information available to them. There is no reference in the regulatory framework that host of the Registry will conduct an independent verification of reported information.</p>			
Philippines	No	n/a	Yes, all SEC registered stock and non-stock domestic corporations report beneficial ownership information to the SEC	Yes, if deemed necessary, the SEC verifies the reported beneficial ownership information on a case-by-case basis	Yes	No	Security and Exchange Commission Memorandum Circular No. 15 s.2019 – Amendment of SEC Memorandum Circular No. 17, Series of 2018
Thailand	No	n/a	No	n/a	n/a	n/a	Laws and regulations in Thailand do not cover beneficial ownership.
Viet Nam	No	n/a	No	n/a	n/a	n/a	Law on Anti-Money Laundering; Decree 88/2019/ND-CP

Comparison of Legal Definitions of Beneficial Ownership in Southeast Asia

A review of relevant laws and regulations demonstrates that the definitions of beneficial ownership applied by national laws and regulations are similar across Southeast Asia and in line with the internationally recognized definition of beneficial ownership. As Table 5 shows, most countries consistently define beneficial owners as “natural persons with direct or indirect, ultimate or effective ownership or control” of legal persons. In Cambodia meanwhile, the legal definition of a beneficial owner is unclear. While the [Central Bank Regulations Number B 7-08-089 Pro Kor, 2010](#), define beneficial owners as “the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted”, the [Anti-Money Laundering Law 2007](#) and its [Amendment of 2013](#) only refers to “a person”, thus not clarifying whether this can only be a natural or also a legal person. Laws and regulations in Thailand do not cover beneficial ownership.

In determining whether a natural person qualifies as a beneficial owner, different criteria are applied. In Indonesia, for example, a beneficial owner is a natural person, who owns at least 25% of shares. This is not the only criteria to qualify as a beneficial owner, however. Any natural person that has voting rights, invested initial capital investment or provided funding, has a right to annual profits or has the right to the assets of the legal person can be registered as a beneficial owner. In addition, any natural person who is entitled to appoint, replace, or terminate members of the board of directors / commissioners, or who is authorized or entitled to influence or control the legal person without any prior authorization from any party, also qualifies as a beneficial owner, independently of their direct or indirect ownership of shares, voting rights, or capital. Similar concepts apply in Malaysia and the Philippines, where natural persons can be identified as beneficial owners irrespective of their ownership of shares, voting rights or capital. In Indonesia, Malaysia, and the Philippines, government or state-owned companies are also covered by the reporting obligations. Malaysia was unique in giving explicit exemptions to legal persons, which are regulated under the securities laws (such as legal persons whose shares are quoted in the domestic or a foreign stock exchange). In all other countries in the region, such exemptions do not apply, meaning that individuals cannot resort to nominee shareholding, or own less than the 25% shares threshold, as a way to avoid transparency.

Table 5: Definitions of beneficial ownership in national laws and regulations

Country	Natural Person	Ultimate or Effective Ownership & Control	Direct & Indirect Ownership	Threshold	Government Exemption	Stock Exchange Exemption
Cambodia	Unclear	Yes	Not specifically mentioned	No	No	No
Indonesia	Yes	Yes	Yes	Yes, but not the only criteria to qualify as a beneficial owner	No	No
Malaysia	Yes	Yes	Yes	Yes, but not the only criteria to qualify as a beneficial owner	No	Yes

Philippines	Yes	Yes	Yes	Yes, but not the only criteria to qualify as a beneficial owner	No	No
Thailand	n/a	n/a	n/a	n/a	n/a	n/a
Viet Nam	Yes	Yes	Yes	Yes, but not the only criteria to qualify as a beneficial owner	No	No

Registries of Legal Company Ownership

When it comes to information on legal ownership across the region, a commonly identified gap is the lack of a central business registry, to which all forms of legal persons are registered. In most countries, the legal persons obligated to report information on their legal ownership to a registry are companies, partnerships and proprietorships. Only in Indonesia associations are included in the registry, with the registration of trusts also deemed a requirement.

In most countries in the region, the legal ownership information that needs to be reported to the Registrar is broadly similar, including the name of the legal person, tax identification number, date of incorporation, status of incorporation, registered business address, registered business activities, names of the company management and board of commissioners and the initially invested capital. In Cambodia, Indonesia, Malaysia, and Viet Nam, the names of shareholders also have to be reported.

In practice, however, the registries often lack accurate and up-to-date information. This is partly due to the fact that the capacity of the public administrations hosting the central registries are not always sufficiently developed to verify the reported information effectively. In the case of Malaysia, it is unclear whether the mandate of the Registrars includes the verification of the reported information. In addition, regulations to ensure that accurate information is reported and promptly updated when changes occur are not sufficiently and effectively enforced. Furthermore, the penalties for late or non-submission of information on legal ownership tend to be of insignificant value for middle or large company and are thus hardly dissuasive. In Cambodia, for example, over 50% of legal persons failed to file their annual declaration by the due date but no sanctions were applied, according to the [2017 FATF Mutual Evaluation Report of Cambodia](#). In Indonesia, the regulations did not specify which sanctions are to be applied for late or non-submission of information. In Viet Nam, infringed acts of company registration as well as provision of information about beneficial ownership obligations are not criminalized by the Penal Code.

In most countries in the region, basic legal ownership information (such as name of legal person, date and status of registration, registered business address, and registered business activities) are accessible to the public. However, information on management, members of the board of commissioners, names and number of shareholders, and initial capital invested are often not accessible by the public. In Indonesia and Malaysia, members of the public need to register and pay a fee to access legal ownership information on legal persons, which effectively restricts the access to the information. Table 6 provides an overview of company registries in Southeast Asia.

Table 6: Overview of Company Registries in Southeast Asia

Country	Central Company Registry	Legal Persons Covered by Registry	Reported Information Verified by Registrar	Sanctions for Late / Non-Submission	Public Access
Cambodia	Yes	Companies, partnerships, sole proprietorships	Yes, but challenging in practice	No	Basic company information publicly accessible Information on company management, invested capital, list of shareholders, transfer of shares, and board members is not publicly accessible
Indonesia	Yes	Companies, foundations, associations, trusts	Registrar conducts limited verification of reported information	No	Publicly accessible upon registration and paying a fee
Malaysia ⁷	Yes (here and here)	Companies, sole proprietorships, partnerships	Unclear	Penalties for late submission ranging from 12 USD to 140 USD, power to strike-off company	Publicly accessible upon registration and paying a fee
Philippines	Yes	Stock and non-stock corporations, foreign corporations, partnerships	Verification of company name upon registration, verification of submitted documents for registration	Corporation and its responsible directors/ officers can be held liable administratively, civilly and/or criminally, registration of corporation can be revoked	Not publicly accessible
Thailand	Yes (here and here)	Sole proprietorship, partnerships and limited companies, including with foreign investment	No information available	No information available	Basic legal ownership information accessible to the public
Viet Nam	Yes	Partnerships, cooperatives, companies, including with foreign investment	Yes, but challenging in practice	No	Basic company information publicly accessible

⁷ Information applicable for legal persons registered onshore, i.e. within Malaysia mainland and not within the Federal Territory of Labuan.

Implications for Due Diligence and Investigations into Corruption and Money Laundering

The analysis shows that significant progress towards collecting and disclosing information on beneficial ownership has been made in the region, most notably by Indonesia, Malaysia and the Philippines. At the same time, the overview highlights that further work needs to be done to address the current information gaps on beneficial ownership. Regarding information on legal ownership, steps need to be taken to ensure that all legal persons and legal arrangements are included in each country's central registry, that the reported information is verified by the Registrar and that sanctions for late or non-submissions are enforced to ensure that the information is reported. Without ensuring comprehensive, accurate and up-to-date information on beneficial and legal ownership of legal persons and other arrangements exists, law enforcement agencies will encounter significant challenges in detecting and investigating suspicious cases, and financial institutions will not be able to carry out reliable due diligence on their customers.

The following recommendations to strengthen reporting mechanisms on legal and beneficial ownership were developed at a meeting in Kuala Lumpur on 22-23 July 2019,⁸ organized by the Malaysian Anti-Corruption Commission, UNODC and the World Bank/UNODC Stolen Asset Recovery (StAR) Initiative, with the support of the UK Foreign and Commonwealth Office. The event brought together representatives of anti-corruption authorities, law enforcement agencies, market and financial institutions supervisory bodies, other relevant state officials and private sector representatives, practitioners and experts from Southeast Asian and other countries and international organizations, resulting in the following

1. Adopting a legislative definition of 'beneficial owner' that captures the natural person(s) who ultimately owns or controls the legal person or legal arrangement. Consider lowering the threshold for control through ownership of shares or voting rights below 25 percent.
2. Ensuring that legal persons maintain beneficial ownership information onshore and that information is adequate, accurate, and current. Legal persons should inform the state authorities about any changes regarding their beneficial owners.
3. Requiring financial institutions and designated non-financial businesses and professions (DNFBPs), including trust and company service providers, to take, based on the risk assessment, necessary measures to identify and verify the beneficial ownership of their customers and disclose any discrepancies to the relevant authorities, including the holder of the legal entity register.
4. Consider setting up a central register of the beneficial owners of all registered legal persons and legal arrangements.
5. Ensuring that competent authorities (including anti-corruption, law enforcement and prosecutorial authorities, supervisory authorities, tax authorities and financial intelligence units) have timely and direct access to adequate, accurate and current information regarding the

⁸ The outcome document of the meeting is viewable here: <https://sites.google.com/view/beneficial-ownership-sea/outcome-document>

beneficial ownership of legal persons. Consider the feasibility of making the registers of beneficial owners accessible to the public through online publication, including in open-data format.

6. Beneficial ownership registers should be searchable, regularly updated and contain all historical changes in ownership, as well as the nature and extent of the beneficial interest held.
7. Ensuring, through robust validation and verification, that the beneficial ownership information is adequate, accurate, and current. Establishing effective and dissuasive individual and corporate sanctions for violation of the obligation to obtain, hold or provide information that is accurate and current.
8. Maintaining the ultimate beneficial ownership information of high-value valuables assets so it can be accessible to the appropriate public authorities, including law enforcement.
9. Ensuring effective cooperation domestically and internationally in information exchange on beneficial ownership, including by providing the details of the beneficial ownership of legal persons or other legal arrangements in a timely manner to the competent authority lawfully requesting those details. Countries should also consider developing beneficial ownerships guides.
10. Consider to promote and support the use and monitoring of beneficial ownership data by the civil society and media, including together with other relevant information, for example, on the Politically Exposed Persons, public procurement, asset and interest disclosures of public officials.

To progress such recommendations alongside anti-corruption drives across the region, UNODC is holding a series of webinars on the implementation of the UNCAC in Southeast Asia. The next webinar, focusing on improving transparency on beneficial ownership, will take place on 29 September 2020 at 16:30-18:30 [Western Indonesia Time]. Registration for the event, which is open for all to attend, is accessible via this link: <https://forms.gle/9gYrX2GonrVBbRJR6>

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