

Mercator Focus

Insights from across the Entity Portfolio
Management Industry

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Foreword

1 | Foreword

2 | Topic 2: Modernizing corporate governance process to fit the digital age

3 | Topic 3: Entity Management in China – 3 things to be aware of

4 | Topic 4: Complying with Swiss Ultimate Beneficial Owner Registers

5 | Topic 5: What to look out for in 2023

6 | Disclaimer



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2022 has been an exceptional year for the Mercator® by Citco (Mercator) team, as we have celebrated significant milestones and continued our growth journey. A key highlight of Q4 was the issuance of our Mercator Entity Management 2022 report, which is gaining acceptance as a true data-driven resource for the Entity Portfolio Management (EPM) industry. We dedicate two articles in this issue to the report's findings – the first giving an overview on the global trends observed from this year's data and the second looking at the nuances of entity management in China.

The data used for these reports is itself a reflection of the rapid evolution of EPM, which is growing more technology-enhanced and supported every day. I have been struck by the growing acceptance that EPM is indeed a specialism or, as I like to say, its own discipline, that needs its own specialist approach. We are proud to be at the forefront of this evolution in further developing Entica™ as a cutting-edge workflow, data- and reporting tool to assist our clients.

We are pleased to bring new functionalities to Entica on a quarterly basis, informed by ongoing dialogue with our clients, which allows us to optimize, adapt and meet ever-changing needs. In this way, a collaborative Entica community is starting to grow, something that we

will nurture going forward. Our latest functionality relates to jurisdictional updates – these are now incorporated into Entica (as a supplement to e-mail distribution), making the platform even more central to our communications and information sharing with clients.

Notwithstanding the importance of technology, the stakeholders within our clients' organizations are people. People with whom our client service teams have built a rapport and a close relationship over the years. In that respect, what stands out from 2022 is that we are now able to once again, meet our clients face to face, at conferences or in Steering Committee Meetings, something that has been sorely missed during the pandemic and that we will intensify next year.

It has been hugely gratifying to hear from our clients and the wider market that Mercator is increasingly perceived as being the market leader in EPM. All our efforts, every day, are aimed towards maintaining and strengthening that position.

Elsewhere in this edition we summarize five key regulatory updates to keep an eye out for in 2023 and our Swiss business partner – Lalive Law – provides us with an overview on UBO rules in Switzerland.

Now, as we look ahead to an exciting year, I would like to thank our clients for their partnership and look forward to growing our relationships and specialism even further in 2023.

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Modernizing corporate governance processes to fit the digital age



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Flexible legal regulations introduced during the COVID pandemic saw multinationals reduce the time spent on managing their entities over the past year by almost a fifth (17%), according to the latest report published this year by Mercator® by Citco (Mercator) as part of the 'Entity Portfolio Management Report Series'.

Findings from our Mercator Entity Management Report 2022 show that, on average, Europe is the cheapest region for multinationals to base entities. This is due to the permitting of digital filing processes for corporate related actions.

Pre-pandemic adoption of simplified and digitalized processes including online filings, counterparts, virtual meetings and e-signatures reinforced APAC's position as the quickest region to operate – with the average time for completing activities reducing by 21% compared to last year.

Ranked per individual jurisdiction, Bermuda emerges as the most favorable location overall in which to base entities in 2022, followed by Luxembourg and Germany. All three jurisdictions have the ideal combination of low-cost levels and competitive timelines, and are well regarded as global financial centers, with competitive legal markets and long-established corporate governance processes.

Bermuda scores favourably due to a range of factors including the availability of electronic filings, wide acceptance of e-signatures, ability for service providers to act as a company secretary and the fact that in most cases, corporate changes can be approved internally without any requirement to file with the authorities – all of which streamline activity.

Luxembourg's wide-ranging use of



e-signatures, attractive legal framework and business-friendly policies propelled the jurisdiction into the top spot for speed of business in 2022 – up from 16th place last year. Another factor adding to its shorter timeframes is that entities in Luxembourg have tended to rely more on local directors and other local representatives for Corporate Secretarial support since the pandemic.

The People's Republic of China ranks lowest when combining cost and time, followed by South Korea and Taiwan. All documents must be translated into local languages and multinationals face complex regulatory environments, with often-detailed local requirements to complete changes.

These three jurisdictions also have decentralized local authorities; to complete just one change, this means that companies will have to make several filings to different governmental institutions.

As multinationals continue to modernize company processes to fit this new digital age and stay ahead of the ever-evolving regulatory landscape, we hope this data will serve as a benchmark for their expenditure and efficiency – while supporting in-house counsels on evaluating the management of their entities. It will also provide internal stakeholders with the assurance that each entity is properly managed and compliant.

Entity Management in China – 3 things to be aware of



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China remains a key location for many multinationals to base entities. However, despite its popularity, it is one of the most complex and costly jurisdictions for multinationals to navigate when it comes to entity management.

Indeed, data from the Mercator® Entity Management Report 2022 saw China rank the second the most expensive and 12th slowest jurisdiction to complete corporate secretarial tasks.

Here we take a closer look at the areas multinationals need to be aware of when doing business in China:

1. NAVIGATING A DE-CENTRALIZED GOVERNANCE SYSTEM

China operates via a de-centralized governance model with more than one authority for corporate governance. This means that for just one corporate change, companies will need to make several filings to different government institutions. This can include filings with the local Administration for Industry and Commerce



(AIC), filings with the Tax Bureau, updating the Customs Registration Certificate, Foreign Trade Business Operation Filing Record, Self-Inspection Declaration Record and notifying local banks.

Filing for one change can also trigger another necessary change – for example an address change will also require a business license change – and the varying discretionary powers of different authority officers often leads to additional documents or information requests.

2. APPRECIATING LOCAL NUANCES

China has 31 provincial-level administrative regions and more than 600 cities. Whilst the same legal system applies throughout China, in practice the processes between cities and provinces vary greatly. Some authorities accept online filings (for example Shanghai AIC) but others in more rural cities still require documents to be filed in person and pre-approval forms are often required. Supporting documentation can range from original licenses, leases, floor maps and full height pictures.

There are also strict rules on the presentation and format of the documentation itself. A company seal always has to be affixed, only black ink pen to be used, single page printing on A4 size paper, signature must match the signature in the passport and all documents must be submitted in principal language of commerce – Chinese.

3. KEEPING UP TO DATE WITH THE EVOLVING REGULATORY ENVIRONMENT

In recent years, the Chinese government has made steps to improve the speed and efficiency of entity management to further

encourage international investment. For example, annual filings has been simplified by combining the Annual Joint Report and the Administration for Industry Annual Report into one.

Most recently, the Shanghai AIC has been working towards utilising technology to realize online/remote filings, including the testing of e-signatures for legal representatives/directors. In September 2022, a unique 'Entity Code' was introduced and printed on the business licence for all types of entities. The code can be used for AIC filing purposes and by scanning it anyone can access and view the basic information of the entity including its approved business scope, past AIC checking record and administrative punishment record.

China operates via a de-centralized governance model with more than one authority for corporate governance.

Complying with Swiss Ultimate Beneficial Owner Registers



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In 2015, Switzerland introduced provisions on the disclosure of ultimate beneficial owners (UBO) of a Swiss company into the Swiss Code of Obligations (CO). The legal change followed the recommendations of the Financial Action Task Force (FATF), an inter-governmental organization dedicated to the combat of global money laundering and terrorist financing. The following article provides an overview of the rules currently in force for companies limited by shares ("Aktiengesellschaften", "Société anonyme") as well as limited liability companies ("Gesellschaften mit beschränkter Haftung", "Société à responsabilité limitée").

THE UBO REGISTER

Any Swiss company listed by shares or with limited liability must keep an internal register of its beneficial owners (Art. 697f CO). In the register, the name of the company, surname and address of the beneficial owner must be included (Art. 967f (2) CO).

This register is neither public nor has to be submitted to a governmental body for central storing. However, the register **must at any time be accessible to the authorities** in Switzerland (Art. 967f (3) CO).

THE ULTIMATE BENEFICIAL OWNER

Anyone who alone or together with a third party acquires shares in an unlisted Swiss company that either reach or exceed **25% of the entire share capital** or voting rights must inform the company about the person for whom the acquirer is ultimately acting (the "UBO"; Art. 697j and Art. 790a CO). The deadline to provide this information

is **one month after acquisition**. If any of these information changes, the share- or quotaholder must inform the company within three months accordingly.

Under Swiss law, the UBO is always a **natural person**. If the (direct) shareholder is a legal entity or partnership, each natural person that controls the said shareholder must be recorded. If no such person with control can be identified, the share- or quotaholder needs to notify the lack of a UBO to the company.

If the shares or quotas are (ultimately) held by a **listed company, no UBO has to be identified**. The share- or quotaholder must merely inform the company about the fact that it is listed and provide its name and address. The rationale is that the disclosure rules of the stock exchanges already ensure the desired transparency.

GROUP OF COMPANIES AND ULTIMATE BENEFICIAL OWNERS

In a group of companies, any natural person that controls the share- or quotaholder must be reported. This rule only applies on the condition that the first tier of control between the two companies reaches or exceeds the threshold of 25% of the share capital or voting rights. Control is assumed when the natural person (Art. 963(2) CO by analogy):

- Directly or indirectly holds a majority of votes in the supreme management body;
- Directly or indirectly has the right to appoint or remove a majority of the members of the supreme management or administrative body; or
- Is able to exercise a controlling influence based on the articles of association, the foundation deed, a contract or

comparable instruments.

If these means of control are present it is irrelevant whether control is in fact exerted or not.

SANCTIONS

Whilst it is the duty of the company and members of the board of directors to have an UBO registry, the UBO reporting obligation is primarily a duty of the shareholder with strict consequence if not complied with. Failure to comply with it results in membership rights of the share- or quotaholder (voting rights, etc.) are dormant until due notice of the UBO was given to the company (Art. 967m (1) CO). Similarly, the rights to dividends or other financial gains can only be exercised after the notification was made (Art. 967m (2) CO). If the share- or quotaholder misses the one-month deadline to notify the company about the UBO, the property rights (e.g., dividends and other entitlements to proceed, etc.) are forfeited (Art. 967m (3) CO). In addition, an intentional non-notification may be fined pursuant to Art. 327 of the Swiss Criminal Code.

OUTLOOK

On the 12th of October 2022, the Federal Council mandated a bill to increase the transparency in UBOs of legal entities. To that aim, the bill shall introduce a central UBO register. This register shall, however, not be public and only made accessible to the relevant authorities. The departments must submit the draft bill to Parliament by June 2023. The possible entry into force of the new law is not yet determined but, in any event, unlikely to occur before 2024 (at the earliest).

What to look out for in 2023



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2023 brings with it a new year of deadlines, process and regulations to be aware of. Here are 5 items to keep an eye out for in 2023:

1. UK ECONOMIC CRIME AND TRANSPARENCY BILL

Expected to receive Royal Assent in spring 2023, the bill will make significant changes to the UK's Companies House Register including changes to identity verification for UK Directors, persons of significant control (PSCs) and those delivering documents to Company House.

This follows the Economic Crime (Transparency and Enforcement) Act 2022 introduced in August – [click here for further information](#).

2. EU DIGITALIZATION DIRECTIVE DRIVE

By August 1, 2023, it should be possible to fully incorporate a company online without having to register physically with any authority in EU member states.

[Click here for a detailed look](#) at all

changes introduced by the directive

3. USA PREPARES FOR BENEFICIAL OWNER REPORTING RULES

The Financial Crimes Enforcement Network (FinCEN) of the Treasury Department published final regulations on the UBO reporting requirements on September 29, 2022. In 2023, companies will need to evaluate whether their legal entities and beneficial owners are subject to reporting and ensure the correct systems and procedures are in place to capture data and prepare the filing, ahead of the requirement taking effect on January 1, 2024.

For more insights into the practice and dynamics of Entity Portfolio Management in the USA [download our special report here](#).

4. CHINA MAKES STEPS TOWARDS FURTHER DIGITALIZATION

The Shanghai Administration for Industry and Commerce (AIC) has been working towards utilizing technology to realize

online/remote filings, including the testing of e-signatures for legal representatives/directors. In September 2022, a unique 'Entity Code' was introduced. The code can be used for AIC filing purposes and by scanning it anyone can access the basic information of the entity including its approved business scope, past AIC checking record and administrative punishment record.

[Find out more about navigating entity management in China here.](#)

5. FURTHER ADOPTION OF ULTIMATE BENEFICIAL OWNER LAWS

Increased demand for transparency and growing regulatory scrutiny has seen many jurisdictions across the world introduce Ultimate Beneficial Owner (UBO) reporting requirements and this trend is set to continue. In total there are now approximately 109 countries around the world with some kind of UBO regulation. Jurisdictions with new changes for 2023 include Panama, **Spain** and Ukraine.

[To find out more on UBO compliance click here.](#)

[Follow Mercator® by Citco's social accounts to stay up to date with the latest regulatory updates and changes, covering 170 jurisdictions.](#)





Find Out More

For further information on how we can assist you,
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