

September 2021

UKRAINE: UBO DISCLOSURE COMPLIANCE

10 October 2021 is the final deadline for the submission of information and documents with respect to the Ultimate Beneficiary Owners (UBO) of Ukrainian legal entities. There is a possibility, however, that this deadline may be extended (presumably to July 2022) if the Parliament of Ukraine adopts the draft law which, among other things, provides for a possibility to postpone the deadline.

Given the approaching deadline and uncertainty around a possible extension, **it is advisable to prepare the required package of information and documents**. We will highlight below the principal requirements and issues to be addressed.

Entities concerned

All private business entities that are required to disclose their UBOs (or information on their absence) in the companies' register must submit the extended UBO information based on the restated AML Law enacted in 2020. Even if the information on the UBO which is already reflected in the companies' register remains unchanged, *a legal entity is still required to submit the full package of documents* that is now required for the UBO disclosure.

Among other new regulations, the definition of the UBO was amended in 2020, and **it is therefore advisable to check the new AML Law requirements** to make sure that the UBOs are correctly identified.

Under the new law, the UBO is defined as: an individual (natural person) exercising a decisive influence over an entity. Like the previous AML law, a direct or indirect holding of over 25% of shares or voting rights over the entity is one of the types of decisive influence. Apart from this criterion, the law basically repeats other types of the decisive influence (such as e.g. control over assets) and provides for one new type - the right to receive an income. Another important novelty is that the AML Law also provides a definition of the UBO of trust (and a similar legal structure) covering inter alia the founder, trustee, defender (if any), beneficiary (beneficiary) or group of beneficiaries (beneficiaries). Hence, it is now expressly provided in the law that these individuals must be identified and disclosed.

Where to file?

The UBO documents must be submitted **with state registrars or notaries** which have access to the companies register and which are authorised to perform registration actions therein.

It is recommended to *contact the state registrar or notary in advance* with which the documents will be filed in order to discuss and clear their requirements for the information and documentation. In our practice, we have seen different, and sometimes contradictory approaches of registrars and notaries regarding the scope of this information and the documents.

This is particularly true for the entities with complex shareholding structures and numerous intermediary shareholders located in jurisdictions where excerpts/certificates from companies (court registers) do not provide for information with respect to the percentage of shareholding and other information required for an extended UBO disclosure in Ukraine.

Documents to be filed

The following documentation must be provided:

1. An application form based on the template adopted by the Ministry of Justice of Ukraine.
2. The shareholding structure of a legal entity – applicant (details below).
3. An extract/statement or another document from the trade, banking, or court register confirming the registration of a non-resident legal entity in a respective jurisdiction – if the founder of the Ukrainian entity concerned is a non-Ukrainian legal entity.
4. A notarised copy of an ID of the UBO(s) for non-Ukrainian citizens or a copy of a paper-form passport for Ukrainian nationals (if Ukrainian nationals received their IDs using the Unified State Demographic Register, their copies are not required).

The documents issued/executed outside of Ukraine must be apostilled/legalised (and accompanied by the Ukrainian translation certified by a notary). The last requirement, i.e. obtainment of a notarised copy of IDs, *may give rise to complexities in certain jurisdictions*. Hence, apart from the Ukrainian notary, a foreign notary may need to be contacted in advance to coordinate the solution acceptable in both the foreign jurisdiction and in Ukraine.

Shareholding structure and supporting documents

The requirements for the shareholding structure have been approved by the order of the Ministry of Finance of Ukraine. There is no adopted form for this structure; rather the Ministry of Finance of Ukraine has developed the template shareholding structures and placed them on its website (available in Ukrainian [here](#)).

A shareholding structure is a document prepared in writing by a Ukrainian legal entity (and officially executed on its behalf) and reflecting all persons, directly or indirectly, owning such legal entity independently or jointly with other persons. Hence, the structure must identify all shareholders in the shareholding chain, indicate their stakes/significant influence on the entity's management or activities and describe the nature of decisive influence by each UBO. The mentioned order provides the list of information with respect to corporate and individual shareholders which must be indicated on the structure.

Most importantly, apart from the information, **the shareholding structure must be supported with official documents (copies thereof) that confirm the non-residents' shareholding in a Ukrainian entity**, the provision of which is sometimes interpreted as a requirement to provide official documents with respect to all non-resident intermediary shareholders on the structure. In addition, if the UBO(s) is(are) identified, an entity is required to submit official documents (copies thereof) that confirm their ability to exercise a decisive influence over the entity's management or activity.

The supporting documents in the order of the Ministry of Finance of Ukraine are defined in rather general terms. Hence, it is another reason to have them discussed with a state registrar or notary, in particular if there are collective investment institutions, trusts or similar establishments present on the structure, *for which the obtainment of the documents required by the Ministry may be complicated*.

Ongoing UBO obligations and recommendations

Now, Ukrainian private entities are required by law to identify their UBOs, keep the information on their UBOs and ownership structure up to date, update it and notify the state registrar of any changes **within 30 working days** (including by submitting the required documents). Ukrainian entities will be also required to confirm their UBOs on an annual basis.

The law does not impose any specific obligations on how a Ukrainian entity must comply with the above ongoing obligations and how it must monitor its UBO situation. As a best practice, the Ukrainian entity may consider implementing an **internal procedure for the verification of the UBO information** e.g. with its direct shareholder.

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