

Identifying beneficial owners: mission (im)possible (2/43/20)

Providing information on the identity of a company's ultimate beneficial owner ("UBO") is still a hot topic even though plenty of rules, recommendations and guidelines have been issued.

Details of company UBOs are mainly needed to maintain the business environment and manage a few key risks. The UBO identity is often concealed. To hide their identity information as far as possible while enabling them to take part in running the company, UBOs and their lawyers will seek out various ownership registration methods and complex schemes for interactions between companies within the group. In some cases the UBO is not named in the company's incorporation documents and does not participate in its operations but fully enjoys UBO rights that might be legally owned by other persons.

The UBO is the company's real owner, who can only be a private individual, the person who actually runs the company, controls and disposes of its assets, and receives its profits. Every entity must know its UBOs.

If a company's shareholders are entities, then a statement should be requested and obtained from the Enterprise Registry. This should be followed by filing requests with other (including foreign) registries in order to identify UBOs – particular individuals.

We should always hold documentary evidence of the measures we have taken to identify the UBO.

Once the actual owner is identified, the next step is to figure out whether that is a nominal owner or the UBO. One of the methods is to measure the extent to which the owner is able to influence the company's decision-making.

However, this is not the last step, as we also need to check the UBO we have identified. It is important to obtain full details of the person.

If the UBO is a Latvian resident, the following details should be obtained:

- name and surname;
- personal identity number;
- day, month and year of birth;
- nationality;
- country of permanent residence;
- percentage of the customer's shares (including direct or indirect participation) the person owns and controls, whether directly or indirectly;
- type of control exercised over the customer, whether directly or indirectly.

If the UBO is a non-Latvian resident, the following details should be obtained:

- name and surname;
- day, month and year of birth;
- number and date of issue of an identity document;
- country and authority issuing the document;
- nationality;

- country of permanent residence;
- percentage of the customer's shares (including direct or indirect participation) the person owns and controls, whether directly or indirectly;
- type of control exercised over the customer, whether directly or indirectly.

If the customer uses a complex ownership structure, it is advisable to identify all UBOs (including ones whose shareholding is below 25%) and check them against sanctions lists etc.

Common UBO identification issues

A key obstacle to identifying UBOs is the fact that foreign countries can take a different approach. When doing business with foreign companies, a particular country's practice might be to link the UBO only to a shareholding. Accordingly, if nobody owns over 25% of shares in a foreign company, that company will automatically assume that it has no UBO. It is important to remember, however, that control can be exercised also on the basis of various contracts or other relationships.

In some cases a company discloses its UBO details in good faith and explains why a particular person exercises control (e.g. based on their position or powers in the company) but the Enterprise Registry's notaries tend to focus on the statutory UBO definition and linkage to a shareholding. For example, the Enterprise Registry is not always willing to accept the approach that the company's UBO can be someone serving on the board without holding shares in it, even though the UBO can by law be someone who exercises control directly or indirectly in a different way, and this type of control can be indicated on the Enterprise Registry's application form.

In other cases a person does not wish to be identified as the company's UBO for security or other important reasons. Although initially it seemed almost impossible to avoid UBO disclosure in such cases, the Enterprise Registry now also considers such applications and allows companies not to disclose their UBO in certain cases if the reasons set out make it clear that the person's interests prevail over the need to disclose the UBO.

More complex arrangements in UBO identification

The most complicated cases of UBO identification involve legal arrangements. This is because foreign legal arrangements are often different in form and structure from legal arrangements known in Latvia, which were initially new to the Enterprise Registry. Germany, for example, has foundations (*Stiftung*) and family foundations (*Familienstiftung*). We have had to explain why control in such foundations is exercised by a manager, not the founder or agent, and vice versa. However, continued communication with the Enterprise Registry has helped us resolve issues surrounding such arrangements.

There are also jurisdictions, such as certain US states and Channel Islands, where a company's secretaries are authorised to issue a statement confirming its shareholders. We have had to defend such secretary powers by asking for explanations and seeking out rules that provide for the company's right to appoint and authorise such secretaries.

Complications can also arise if the Enterprise Registry demands not only reasons for control being exercised but also reasons why control is not exercised. For instance, a company might have two shareholders, with control being in fact exercised only through one of them, as stated in the application. However, to make sure nobody is exercising control through the other one, the Enterprise Registry will

demand details and documentary evidence also for the non-controlling shareholder. This makes the burden on the company even heavier, particularly if its shareholding structure is extensive.

(to be completed)