

Changes in Enterprise Registry's approach to ultimate beneficial owners 3/39/22



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Section 18.2(1) of the Anti Money Laundering and Counter Terrorism and Proliferation Financing Act requires a company to notify the Enterprise Registry of its ultimate beneficial owner (UBO) and how UBO control is exercised.

The Act provides for exceptions where a company is released from the obligation to file UBO details.

Section 18.2(6) of the Act defines one of such cases, where the UBO is a shareholder in a public limited company whose shares are listed on a regulated market, and the exercise of control over the company arises only from shareholder status. In other words, if a shareholder or any of the companies within the shareholding structure is listed on a stock exchange, it has so far been possible to withhold UBO details after proving that the shareholding structure includes a listed company.

However, the Enterprise Registry has changed its approach to applying this exception: it's now available only if shares are listed on a stock exchange in an EU or EEA member state. If they are listed on a stock exchange in a non-EU/EEA country, the company's UBO details must reported.

The Enterprise Registry's approach was changed to secure uniform interpretation of the provisions of law governing UBO registration (at member state and EU level). This means that the substance of this exception does not extend to cases where the UBO cannot be identified for objective reasons. It applies to cases where UBO details have already been disclosed according to the requirements of the regulated market. So the application of this exception is limited, as it's impossible to check the UBO identification and reporting requirements of all regulated markets in the world, nor whether those are consistent with the EU's uniform approach.

Accordingly, if this exception is claimed by a company that has not filed UBO details before, it will be required to update and file information with the Enterprise Registry. If this is not done and the company later files an application for corporate changes (e.g. changes to its board), the Enterprise Registry may set an additional deadline for rectifying deficiencies and ask for a UBO update.

When it comes to reporting UBO details in a company whose shareholding structure includes a listed company, there are two options:

1. Naming the person (or persons) who is the company's UBO through indirectly owning or controlling more than 25% of its voting share capital; or
2. Stating that all possible means have been used but the UBO cannot be identified.

In either case, documentary evidence must be filed to confirm that the reported information matches the actual situation (statements about companies within the structure showing their shareholder lists).

It's option 2) that will often apply to companies whose shareholding structure includes a listed company because listed companies tend to have a fragmented shareholding structure. A listed company may not have an identifiable individual who owns or controls more than 25% of shares. So the reporting company

must prove that the listed company has no individual owning more than 25% of share capital.

Shares in companies that are part of a global group are often listed on a US stock exchange. In practice, there are difficulties in obtaining documentary evidence because certain US states will not issue typical company statements showing its shareholders. In that case, you can file a statement from the company at the end of the chain, giving full information on the shareholding structure, and file statements issued by attesting secretaries of US corporations.

In summary, companies that have been taking this exception but no longer meet its criteria should make changes to their reported UBO details (if this has not been done already). This is necessary for ensuring that the reported information matches the actual situation and for preventing any future difficulties in making other changes to be entered on the Commercial Register.