

Identifying beneficial owners: mission (im)possible

(2) (3/44/20)

This article completes what we wrote [last week](#).

How does the Enterprise Registry verify registered UBOs for compliance and truthfulness?

Under [section 18.2\(1\) of the Anti Money Laundering and Counter Terrorism and Proliferation Financing \("AML/CTPF"\) Act](#), the Enterprise Registry ("ER") has the power to request documentary evidence of control being exercised and a copy of the document identifying the UBO. In practice, such documentary evidence is always requested. So when the company is preparing an application for registering its UBO details, it might just as well prepare and file documentary evidence to shorten the examination and decision-making process.

Documentary evidence is requested for each person or legal arrangement forming part of the company's shareholding structure, whether directly or indirectly. Documentary evidence acceptable in standard cases includes a statement from the commercial registry of the company's country of incorporation giving details of its shareholders, or any other equivalent public document. In some cases the country of incorporation refuses to issue a document disclosing the company's shareholders. This situation can be resolved by filing a document that shows the authorisation of the company's board members or other authorised signatories to act for the company, along with its share register signed by one of those authorised signatories.

Since the UBO disclosure requirement came into force, we have observed some key features of how the ER verifies the accuracy of details presented.

Firstly, the ER will not rely on details entered on foreign registers. Even if UBO details are available from an EU member state's register, the ER will still request documentary evidence to verify the type of control and persons through whom the UBO exercises that control. As the obligation to file full documentary evidence can be a heavy burden on companies, it is necessary to ensure mutual cooperation and recognition of UBO details between member states.

Secondly, we cannot always rely on the consistency of practices and opinions of ER public notaries. In some cases the notary examining an application postponed its registration and asked for more documents. Although the decision to postpone the registration in most cases states what additional documentation/information needs to be filed, the notary examining the application for the second time might find some shortcomings he had not noticed earlier. To avoid this, the applicant should have a good understanding of UBO identification procedures and make sure the application and all the required documentary evidence have been filed.

Thirdly, the ER has become much more helpful in verifying the details you have filed. If ER public notaries have any questions, they will not automatically postpone the registration of changes, as they might have done earlier. Instead, they will carefully examine the documents filed, search the publicly available information, and phone the applicant before making the decision in order to clear any issues. If the publicly available information is sufficiently reliable, ER public notaries tend to verify the accuracy of information also in this way, something they would not do a year ago.

Steps to take on discovering discrepancies between UBO details held by the company and the ER

The AML/CTPF Act requires the company to notify the ER of any changes in its UBO details immediately but no later than the 14th day after learning the relevant information. So the company should constantly monitor its shareholding structure and file updated UBO details.

Discrepancies can also be detected with other persons subject to the AML/CTPF Act or with supervisory and control institutions. To handle this, the ER has drawn up guidelines approved on 27 March 2020.¹ As a result, any discrepancies or even suspicions that a company's registered details are out of line with the actual situation can be emailed to kluda@ur.gov.lv.

Summary

Despite having experience and understanding the procedures for identifying and registering UBOs, any potential complications should be identified early. For example, the ER has announced plans to switch to electronic filing only. This move will certainly add to the existing burden on traders because all documents will have to be converted into electronic copies. And foreign documents must be translated into Latvian and the translations must be notarised. In some cases, dozens of documents need to be filed during UBO registration. So we are in for new challenges in addition to the existing obstacles.

¹ The guidelines are available here:

<https://www.ur.gov.lv/lv/patieso-labuma-guveju-skaidrojums/vadlinijas-zinosanai-par-iespejams-nepatiesu-plg/>

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