

Determining ultimate beneficial owners (UBOs) of a Ukrainian company

On 19 September 2023, the Ukrainian government adopted Resolution No. 1011 "On Approval of the Methodology for Determining the Ultimate Beneficial Owner by a Legal Entity".

Pursuant to the adopted Methodology, when determining the ultimate beneficial owner or establishing the fact of its absence, a legal entity shall take the following steps:

studying the attributes, nature, and extent (level, degree, share) of direct decisive influence on the legal entity's activities;

studying the attributes, nature (benefit, interest) and extent (level, degree, share) of indirect decisive influence (control);

researching information about the founders, trustees, representatives (if any), benefit recipients (beneficiaries), as well as any other individuals who exercise a decisive influence on the activities of the trust or other similar legal entity;

systematising, summarising, analysing, and documenting the information established in relation to the three points above;

monitoring and revising (updating) information about the ultimate beneficial owner (hereinafter also referred to as the UBO).

Related article: New rules for filing information on ultimate beneficial owners in Ukraine

In order to establish the nature and extent (level, degree, share) of beneficial ownership (benefit, interest, influence), the following shall be identified:

all persons (founders, participants, shareholders, members) of a legal entity that directly own a key share of the authorised (share) capital or voting rights of a Ukrainian legal entity;

all persons (founders, participants, shareholders, members) in the chain of control/ownership of a legal entity who indirectly own a key share of the authorised (share) capital or voting rights of a legal entity, in particular through affiliated individuals or legal entities, trusts, or other similar legal entities;

all persons exercising decisive influence through implementation of their right to control, own, use, or dispose of all assets or a part thereof,

the right to receive income from the activities of a legal entity, trust, or other similar legal entity;

all persons exercising decisive influence on the composition of the governing bodies, their voting results, as well as on the execution of legal transactions that make it possible to determine the basic conditions of the business activities of a legal entity or the activities of a trust or other similar legal entity, to make binding decisions that have a decisive influence on the activities of a legal entity, trust, or other similar legal entity, regardless of formal ownership.

In order to obtain data allowing to identify the ultimate beneficial owner and evidence of direct decisive influence on the activities of a legal entity through direct ownership of a key share of the authorised (share) capital or voting rights of a legal entity in Ukraine, the information contained in the following sources is used:

- the accounting system of shares of limited liability companies maintained by the Central Securities Depository – for limited liability companies;
- the data on a legal entity in the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organisations regarding the size of the authorised (share) capital (open-end fund) and the size of the share of each founder (participant) – for a limited liability company and an additional liability company, a private enterprise, a limited and general partnership, a farm with the status of a legal entity;
- the data on the founders, participants, shareholders, members of legal entities contained in the registers of foreign countries;
- official documents (duly certified copies) confirming that foreigners own foreign legal entities, trusts, foreign investment funds, and other similar legal entities;
- the ownership structure of a legal entity, drawn up in the form and content prescribed by Ukrainian law, and the calculation of the ownership share in the authorised (share) capital to establish evidence of decisive influence on the legal entity's activities.

The data allowing to identify the ultimate beneficial owners and evidence of indirect decisive influence on the activities of a legal entity, may be found using information, in particular, contained in:

- internal (local) documents of a legal entity that regulate the procedure for its establishment and operation, provisions on the governing bodies of a legal entity;
- the minutes of the meetings of a legal entity's governing bodies, namely the constituent/general meeting of the founders/participants/shareholders/members, decisions of sole/collegial bodies (orders, instructions, decisions);
- a corporate agreement, under which a company's shareholders undertake to exercise their rights and powers in a certain way or refrain from exercising them;
- written agreements on the execution of legal transactions on proprietary/non-proprietary rights management on behalf of a legal entity or an individual, acquisition/termination of property/non-property rights of a legal entity or an individual and documents on their execution

- status;
- the accounting and statistical (administrative), financial, and tax reports maintained and disclosed by a legal entity in line with the requirements of the law, audit reports, and the results of audits of financial and economic activities;
 - open information systems, registers, and databases of public authorities, public oversight bodies, mass media, social networks, other open sources and publicly available information, foreign state registers that ensure the collection, accumulation and recording of information about legal entities, individual entrepreneurs and public structures;
 - explanations of officials, founders/participants/shareholders/members of a legal entity, other documents confirming the possibility of decisive influence on the activities of a Ukrainian legal entity, whether provided voluntarily or at the request of the legal entity;
 - appeals (letters, notifications) received from individuals or legal entities, government, judicial, law enforcement, or intelligence agencies regarding the activities of a legal entity;
 - documents confirming state registration of civil status acts (certificate or extract from the State Register of Civil Status Acts of Citizens on birth, marriage, divorce, change of name, death);
 - documents confirming the person's citizenship (a subject's status), registration of a foreign legal entity in the country of its location (extract from trade, banking, court registers, etc.) – in case of establishment of a legal entity whose founder(s) is (are) a foreign legal entity (entities), or in case of changes related to the entry of a foreign legal entity as a founder of a legal entity if the founder of the legal entity in Ukraine is a non-resident legal entity.

It is also important that the Methodology establishes, in particular, the peculiarities of determining UBOs for:

non-profit organisations

When determining the UBO of a non-profit organisation – a legal entity – information is examined for indicators of direct or indirect (through affiliated individuals or legal entities) decisive influence of an individual on the activities of such a non-profit organisation by exercising the right to control, use, or dispose of all its assets or a share thereof, the right to decisively influence the composition and voting results of governing bodies, as well as the execution of legal transactions, and the adoption of binding decisions that have a decisive influence on the non-profit's activity.

Related article: Charitable organisation and public association in Ukraine

partnership established under the laws of a foreign jurisdiction

The determination of UBOs of a partnership formed under the laws of a foreign jurisdiction is based on the type of partnership (general partnership, limited partnership, or limited liability partnership), the specific features of its formation and operation, and the terms of an agreement between the partners.

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In a general partnership, information is examined for indications of decisive influence in relation to all partners who bear unlimited property liability for the partnership's obligations and participate in the governance of the partnership.

In a limited partnership, information is examined for indications of decisive influence in relation to each general partner who bears unlimited liability for the partnership's obligations and manages the partnership's activities. As a general rule, limited partners in a limited partnership do not participate in the partnership governance, but it is necessary to determine whether the activities of such partners show indications of indirect decisive influence on the partnership contrary to the requirements of the law or the agreement governing the partnership.

If a partner of a general partnership or a general partner of a limited partnership is a legal entity, the ultimate beneficial owners of such a partner must be identified.

In the case of a limited liability partnership, information is examined for indications of decisive influence in relation to all partners, in particular, the ability of a partner to participate in the governance of the limited liability partnership.

With respect to a partnership, information on any other individuals who exercise indirect decisive influence over the partnership (in particular through the chain of control/ownership) is additionally investigated.