

Obligation to update ultimate beneficiary data in Ukraine

On 28 April 2020, Law of Ukraine No. 361-IX On Prevention and Counteraction to the Legalization (Laundering) of Proceeds from Crime, Financing Terrorism and Financing the Proliferation of the Mass Destruction Weapons (hereinafter – the Law) came into force. Among other things, the Law has changed the procedure for disclosing ultimate beneficial owners of legal entities.

Thus, legal entities, registered before the Law has entered into force, are obliged to file with the State Registrar information about their ultimate beneficial owner(s) and ownership structure within 3 months as of the date of a regulatory legal act (such an act is an Order issued by the State Financial Monitoring Service of Ukraine) approving the form and substance of ownership structure.

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At the same time, the Law stipulates a legal entity's obligation to update the information about its ultimate beneficial owner and ownership structure and to file with the state registrar the documents evidencing any changes within 30 working days from their occurrence.

If a legal entity finds an incompleteness or inaccuracy or errors in the information about its ultimate beneficial owner and ownership structure, as previously filed with the state registrar, it should re-file an adjusted information within 3 working days from the date of their detection.

Moreover, all legal entities will be obliged, starting from 2022, to annually confirm the information about their ultimate beneficial owner within 14 calendar days as of their state incorporation date. For example, if an incorporation date is January 10, 2019, then it should confirm the information about ultimate beneficial owners each and every year between 11 and 25 January, starting from 2022.

To do this, the following documents should to be filed with the State Registrar:

- A statement confirming the information about ultimate beneficial owner(s);
- An ownership structure in the form and substance, determined in accordance with the legislation;
- An extract, excerpt or another document from a commercial, banking, court register, etc. (legalised according to the legislation of Ukraine), confirming registration of a non-resident legal entity in the country of its location (if a legal entity is founded by a non-resident legal entity);

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- A notarized copy of ultimate beneficial owner(s) passport(s), except for biometric passport holders.

If a legal entity or its founder (shareholder) has no ultimate beneficial owner, then the state registrar should be provided with the information of its/his absence, with a substantiated grounding. One of the main reasons for an ultimate beneficial owner's absence is the fact that there is no shareholder among a legal entity's membership, who would own at least 25% in the legal entity's authorised capital (voting rights).

For a failure to file or late filing of the information about a legal entity's ultimate beneficial owner(s) or their absence with the State Registrar, the Law provides for penalties to be imposed on such a legal entity head (executive body). Such penalties amount should vary from UAH 17,000 to UAH 51,000 (approx. USD 620 to USD 1,870).

It is also important to remember that an ultimate beneficial owner is:

- For legal entities: any individual(s) exercising decisive influence on a legal entity's activities (including through the control/ownership chain).
- For trusts founded under the law of their incorporation country: a founder, a trustee, a defendant (if any), a beneficiary or group of beneficiaries, and any other individual exercising a decisive influence on trust's activity (including through the control/ownership chain).
- For other similar legal entities: a person having a status equivalent or similar to the persons as listed for trusts.

A distinctive feature of a direct decisive influence on the activity is a direct ownership by an individual of the equity share (participatory interest) not less than 25% in legal entity's authorised (share) capital or voting rights.