



NEWSFLASH

The correct identification of the ultimate beneficial owners

As already communicated several times, companies, associations and foundations must register the ultimate beneficial owners (in short UBO) either with the Commercial Register or with the Ministry of Justice by November 1st, 2020.

The correct identification of the UBO caused difficulties for some companies because the legal definitions are not easy to implement in a multi-level international group structure.

Our law firm directed several inquiries to the Anti-Money Laundering authorities in order to find out how the definitions were interpreted in certain cases, especially since the practice of the commercial register is inconsistent. In comparison with the published guidelines of other European anti-money laundering authorities, the answers were often short and sweet, mostly superficial .

Shortly before the statutory submission deadline had expired, we received detailed explanations indicating that the authority was changing its view:

1. Controll by other means

The authority recommends checking all control relationships “de facto” in order to correctly identify the UBO.

The answer contains detailed examples of how an individual can control a company “by other means”, even if that person holds less than 25% of the shares / voting rights. This is e.g. then if an individual can influence the appointments in management positions or have a significant financial influence towards the Romanian target company. The same is true, to our knowledge, in Germany in connection with unanimity regulations and veto rights held by certain individuals.

2. Virtual UBO

In the opinion of the authorities, the catch-all element of the so-called virtual UBO only applies in exceptional cases. It would therefore be wrong to automatically register the local manager of a Romanian company as a virtual UBO in the absence of a clear participation of more than 25%. If, in practice, another member of management exercises control “de facto”, this would have to be indicated accordingly.

It is important, however, that the managing director of the local company is obliged to collect and store all evidence for the verification of the UBO. Under no circumstances may this

evidence be drafted internally, but must come from independent third parties (auditors, notaries, lawyers) and, if necessary, have an official character (stamp, signature, apostille).

We would be pleased to answer any questions you might have.

Sincerely,
STALFORT Legal. Tax. Audit.

Contact and further information:



STALFORT Legal. Tax. Audit.

Bucharest – Bistrița – Sibiu

Office Bucharest:

T.: +40 – 21 – 301 03 53

F: +40 – 21 – 315 78 36

M: bukarest@stalfort.ro

www.stalfort.ro