



## **Banking transactions increasingly difficult due to bureaucratic hurdles**

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Foreign investors are often surprised by the inflexible and bureaucratic attitude of Romanian banks. They require their (prospective) customers to submit a number of forms and information on the beneficial owners (*beneficiarii reali*) both when opening an account and at regular intervals thereafter. If these are not submitted or not submitted in the required form, the account opening is quickly refused or even blocked - even if the customer has been working with the bank or credit institutions of the same group abroad for many years.

### **Trigger: UBO**

The term UBO ("ultimate beneficial owner") was introduced in the EU by the 4th EU Money Laundering Directive. In short, UBOs are natural persons who directly or indirectly control companies, even if they do not hold an official position as a shareholder or managing director. They are listed in certain registers (the German Transparency Register, the Austrian Register of Beneficial Owners, etc.) so that financial institutions, authorities, etc. can quickly check their financial circumstances and react to suspicious activities.

In practice, the extracts from these registers are not sufficient for banks, so that a separate process for identifying the UBOs must be carried out with the bank's representatives when opening an account or updating a company's data. There are different standards of experience in the respective countries/banks, which lead to problems.

### **Different interpretations of the concept of control**

In this context, a distinction is made between direct and indirect control, without there being a uniform interpretation of the relevant concept of control at EU level. As a result, each country relies on its own practice, which leads to lengthy discussions between lawyers and bank employees in the case of cross-border shareholdings. The Romanian definition of "control" means a direct or indirect holding of more than 25% of the share capital of the target company.

Practical difficulties arise in the case of multi-level participations if long international chains of participation with intermediary companies between the target company and the natural persons have to be followed. According to the German understanding, a controlling interest only exists if a natural person holds more than 50% of the capital shares or voting rights from the 2nd participation level onwards.

Romania, on the other hand, does not use this second threshold of 50%, so that the shareholding ratios are "multiplied through" at various levels in order to determine the UBO of a Romanian target company. For example, if a Romanian company (target company) is a wholly owned subsidiary of a German company (intermediate company) in which three natural persons each hold more than 25% (and less than 50%), each of these natural persons is considered a UBO of the target company according to Romanian understanding, even if none of these persons controls the intermediate company according to German interpretation.

### **Declaration by an independent third party**

If the bank is unable to make any further progress with the above review because, for example, (i) there is disagreement regarding the above-mentioned definition of control or (ii) the shareholding structure is unusual (e.g. participation of a foreign (family) foundation or trust structures), the bank often hands over the review of the UBOs to third parties. These are lawyers, notaries or

auditors who verify the shareholding structure on the basis of official documents (HR extracts) and name the UBOs. It is advisable to agree upon the submission of such a declaration with the bank in advance, especially as experience has shown that some banks insist on "magic formulas" in order to accept declarations.

## Conclusion

The term UBO, which was introduced a few years ago, continues to cause a stir. Romanian companies had hoped to resolve this issue by submitting the UBO declaration to HR on time. In practice, however, this remains an open question, especially as banks repeat the "UBO exercise" at regular intervals and very quickly block access to accounts in the event of errors.

What is often perceived as excessively bureaucratic and to the detriment of Romania as a business location is ultimately due to strict regulations imposed by the banks to avoid any (liability) problems. In practice, it can only be recommended to check the UBOs at an early stage with the support of an independent third party according to local understanding and to carefully keep all documents for the identification of the UBOs.

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