

Beneficial ownership in Ukraine. Description and road map.

EITI requirements and status of beneficial ownership implementation in Ukraine

EITI Guideline for developing a roadmap for beneficial ownership disclosure includes the following requirements:

- 4.1. Consider how beneficial ownership disclosure can support national reform priorities;
- 4.2. Consider the institutional framework for beneficial ownership disclosure;
- 4.3. Consider how to develop a definition of beneficial ownership;
- 4.4. Consider reporting obligations for politically exposed persons;
- 4.5. Consider the level of detail to be disclosed;
- 4.6. Consider data collection procedures;
- 4.7. Consider how to develop a methodology for assuring the accuracy of the data;
- 4.8. Consider data timeliness;
- 4.9. Consider data accessibility;
- 4.10. Consider capacity building needs;
- 4.11. Consider needs for technical and financial assistance;
- 4.12. Consider deadlines and responsibilities for roadmap activities.

Analysis of available legislation in Ukraine and status of implementation thereof witness that the aforementioned provisions are already regulated and practically implemented.

(4.1) According to provisions of State Anticorruption Policy of Ukraine (Anticorruption strategy) for 2014-2017, solving the problem with corruption is one of the priorities for Ukrainian society at today's stage of state's development.

One of the tasks defined by the Anticorruption strategy was adoption of legislative and regulatory acts aimed at ensuring transparency in doing business and economic relations, namely related to establishing the obligation of fixation of individuals - real beneficiaries of legal entities during their registration and respective including of information to the Unified state register of legal entities and individual entrepreneurs. The aforementioned document also foresees ensuring free access to the data of the Unified state register of legal entities and individual entrepreneurs via Internet, namely to the data on final beneficiaries of legal entities, financial reports and statute documents.

Currently in Ukraine exists the legislative base for implementation of beneficial ownership disclosure. The following laws regulate the previously mentioned issue:

1. Law of Ukraine "On State registration of legal entities, private entrepreneurs and public institutions";
2. Law of Ukraine of 14.10.2014 №1702 " On prevention and counteraction of legalization (laundering) of incomes to be obtained through criminal actions, terrorism financing and financing distribution of weapons of mass destruction ";
3. Economic Code of Ukraine (Art. 64¹);
4. Law of Ukraine of 21.05.2015 № 475-VIII "On amendments to certain legislative acts of Ukraine on information on final beneficial owner (controlling interest) of legal entity";
5. Law of Ukraine of 14.10.2014 № 1701-VII "On amendments to certain legislative acts of Ukraine on defining the final beneficiaries of legal entities and public figures".

These documents stipulate the definition of final beneficial owner, establish institutional base for implementation of beneficial ownership disclosure, provide information about

politically exposed persons, level of detail to be disclosed, data collection procedure, ensuring data accuracy, their timeliness and accessibility.

(4.3, 4.5) Final beneficial owner is defined according Ukrainian legislation as follows: final beneficial owner (controlling interest) is natural person that independently from formal ownership has right to execute the decisive influence on management or economic activity of legal entity directly or via other persons, which is fulfilled by means of realization of ownership right or right to use all active assets or significant part thereof, right of decisive influence on forming the composition, results of voting and consummation of deals that give a possibility to define conditions of economic activity, give binding instructions or fulfil functions of managing body, or that has possibility to exert influence by direct or indirect (via other individual or legal entity) ownership by one person singly or together with other related individuals or legal entities of share in legal entity in amount 25% or more percent of authorized capital or voting rights in legal entity.

Along with this, final beneficial owner (controlling interest) cannot be the person that has 25% or more percent of authorized capital or voting rights in legal entity, but is an agent, nominal holder (nominal owner) or is only a mediator in regard to such right.

(4.4) The question with politically exposed persons* is regulated as follows. The Law provides the following definition: “National public office holders – private individuals that fulfilled or have fulfilled during the last three years the defined public functions in Ukraine, namely:

President of Ukraine, Prime Minister of Ukraine, members of Cabinet of Ministers of Ukraine;

First deputy ministers and deputy ministers, heads of other central executive bodies, their first deputies and deputies;

Members of Parliament of Ukraine;

Head of Board and Members of the Board of the National Bank of Ukraine, members of Council of the National Bank of Ukraine;

Heads and judges of Constitutional Court of Ukraine, Supreme Court of Ukraine and higher specialized courts;

Members of Higher Council of the Judiciary, members of Higher Qualifying Committee of Judges, members of Qualifying and Disciplinary Committee of prosecutors;

General prosecutor of Ukraine and his deputies;

Head of the Security Service of Ukraine and his deputies;

Director of the National Anticorruption bureau of Ukraine and his deputies;

Head of the Antimonopoly Committee of Ukraine and his deputies;

Head and members of the Accounting Chamber of Ukraine;

Members of the National Council on television and broadcasting of Ukraine;

Ambassadors Extraordinary and Plenipotentiary;

Chief of General Staff - Commander-in-chief of the military forces of Ukraine, chief of ground forces of Ukraine, air forces of Ukraine, naval forces of Ukraine;

State servants, whose positions belong to category "A";

Heads of regional territorial bodies of central executive bodies, heads of prosecution agencies, heads of regional territorial security service bodies, heads and judges of appeal courts;

Heads of administrative, managerial or supervisory bodies of state enterprises, business entities, state share in authorized capital of which exceeds 50%;

Heads of managerial bodies of political parties and members of their central statutory bodies.”

It is important to note that the previously mentioned persons must submit electronic declarations to the Unified state register of electronic declarations of persons that are authorized for execution of functions of state or local government. It is mandatory to include to these declaration information on companies (business) owned or co-founded by aforesaid persons.

(4.2) Institutional framework for beneficial ownership disclosure. Ministry of Justice is defined in Ukraine as a responsible body. Ministry of Justice is a holder of the Unified state register of legal entities and individual entrepreneurs. Technical administrator of Unified state register is a defined by the Ministry of Justice of Ukraine state unitary enterprise that belongs to its area of management, which performs actions on establishing, improving and support of software of the Unified state register, electronic services portal and is responsible for their technical and technological maintenance, safekeeping and protection of data contained in the Unified state register, provides, blocks and revokes access to Unified state register and conducts trainings related to work with this register;

(4.9) According to legislation, data contained in the Unified state register are open and publicly accessible (except for registration numbers of taxpayers card and passport information), in some cases foreseen by the law additional fees may be required for providing the data.

(4.6) Respective provision is stipulated by Article 14 of the law of Ukraine “On State Registration of legal entities, private individuals and public institutions”;

(4.6) According to Article 17 of the aforementioned Law (documents that are submitted by applicant for state registration of legal entity): information about final beneficial owner (controlling interest) of legal entity, including final beneficial owner (controlling interest) of its founder, if the founder is a legal entity (except for public institutions, advocate associations, chambers of commerce, unions of co-owners of apartment buildings, religious organizations, state bodies, local governments, their associations, state and communal enterprises, institutions, organizations): name, surname and patronymic (if available), date of birth, citizenship, series and number of passport of citizen of Ukraine or passport of a foreigner, place of residence, registration numbers of tax payers card (if available), and full name and identification code (for resident) of founder of legal entity, where this person is a final beneficial owner (controlling interest). If the legal entity has no final beneficial owner (controlling interest) of legal entity, including final beneficial owner (controlling interest) of its founder, if the founder is a legal entity, the note on reason of absence hereof should be included.

If founders of the legal entity are only natural persons that are final beneficial owners (controlling interests) of legal entity, information about final beneficial owner (controlling interest) of legal entity shall not be submitted.

(4.6) These data are included to the registration card for state registration of legal entity.

For state registration of changes to data on the legal entity that are contained in the Unified state register, including changes to the constitutive documents of legal entity, the following documents should be submitted:

1) Written request for state registration of changes to data on the legal entity that are contained in the Unified state register;

2) Original copy (notarially certified copy) of decision of the authorized body of legal entity management on changes to be introduced to the Unified state register, except for changes to information on final beneficial owners (controlling interests) of legal entity, including final

beneficial owners (controlling interests) of its founder, if the founder is a legal entity, on place of residence and relation to the legal entity.

(4.7) According to the law, the written request for state registration should be signed by the applicant. If the written request is sent via post, the validity of the signature should be notarially certified.

Roadmap for improvement of beneficial ownership disclosure in Ukraine

To further improve normative regulation and implementation of legislation related to beneficial ownership disclosure, the activities should be focused on following directions:

№ п/п	Planned activities	Responsible entity	Timeframe	Funding
1	Gap analysis and identifying challenges in beneficial ownership implementation in Ukraine	CSO “Centre of corruption counteraction”	By December 2016	International Renaissance Foundation
2	Improving the functioning of Unified state register of legal entities and individual entrepreneurs in the part related to beneficial owners: <ul style="list-style-type: none"> - Improvement of search; - Possibility to search if the final beneficiary changed; - Ensuring timely data update 	Ministry of Justice	By June 2018	International Renaissance Foundation, NRGi
3	To strengthen the responsibility for not providing or providing of not full data to Unified state register of legal entities and individual entrepreneurs in the part related to beneficial owners	Parliament of Ukraine, Ministry of Justice	By December 2020	GIZ, EBRD, World bank, NRGi
4	Decrease the minimal share in authorized capital or voting rights in the legal entity	Parliament of Ukraine, Ministry of Justice	By December 2020	GIZ, EBRD, World bank, NRGi
5	Ensure that the Unified state register of legal entities and individual entrepreneurs provides information about natural persons that are final beneficial owners,	Ministry of Justice	By June 2020	GIZ, EBRD, World bank, NRGi

	not the legal entities			
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