



# Factsheet

How Ownership Intelligence Helps Credit  
Management

BAKERING.GLOBAL

# UBO

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## Introduction

The COVID-19 pandemic has changed the landscape of risk for credit management professionals. This new paradigm necessitates increased real-time financial information to take account of rapid structural changes. Moreover, given its truly worldwide impact and the globalisation of credit, international supply chains are vulnerable. Credit professionals, in turn, are advised to identify the Ultimate Beneficial Owner (UBO) of all companies to which they extend credit. Undertaking this research may help guard against an increased risk of bad actors attempting to misuse complex global structures to escape their payment responsibilities.

Whilst the critical objective of UBO remains protection from bad actors and their illegal activities, credit management nonetheless stands to benefit a great deal in the coming months from identifying the layers of ownership, group structures and 'family trees'. Furthermore, gaining an appreciation for the legal jurisdictions one may be subject to in any dispute, can be invaluable in assessing risk profiles.

Adding this data to the credit management toolkit will help to mitigate the risk of 'strategic insolvency' and the transfer of assets as regards Retention of Title. Credit and collections should assess the group structure of every client and determine the ultimate owner, as well as each relevant legal jurisdiction.

## What is UBO?

The term 'Ultimate Beneficial Owner' (UBO) originates as far back as 1933 (the United States Securities Act of 1933, implemented during the Great Depression, after the stock market crash of 1929). Since the late 1980s, there has been a focus on UBO in the prevention of financial crime. It is still very relevant today and describes those natural persons who ultimately own or control a legal entity or arrangement, such as a company, a trust, or a foundation, to name a few.

FAFT provides the following useful definition;

*"Beneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf the transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement."*

### EMAIL

admin@bakering.global

### TELEPHONE

+44 (0)20 1234 5678

### WEBSITE

bakering.global

### REGISTERED OFFICE

Office 7, 35 Ludgate Hill,  
London, EC4M 7JN

### REGISTERED COMPANY

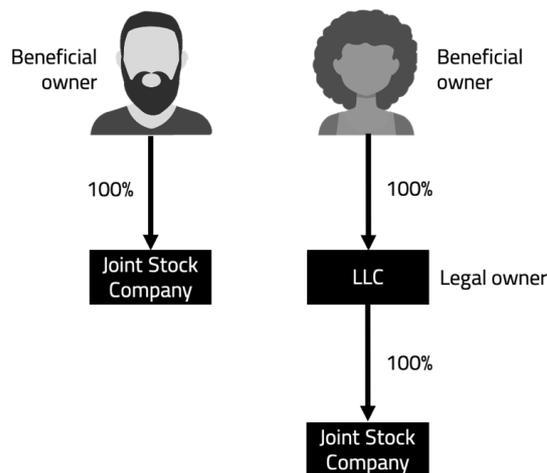
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## What is the purpose of UBO?

UBO helps to prevent the misuse of legal entities to obscure beneficial ownership. As opposed to a natural person being a shareholder in a company, it is also possible, of course, for companies and other legal entities to be shareholders in other companies/entities. The risk arises when individuals use layers of these legal entities (i.e., companies, which own companies, which own companies) to obscure their involvement or use such legal entities based in jurisdictions with poor transparency of beneficial ownership.



### EMAIL

admin@bakering.global

### TELEPHONE

+44 (0)20 1234 5678

### WEBSITE

bakering.global

### REGISTERED OFFICE

Office 7, 35 Ludgate Hill,  
London, EC4M 7JN

### REGISTERED COMPANY

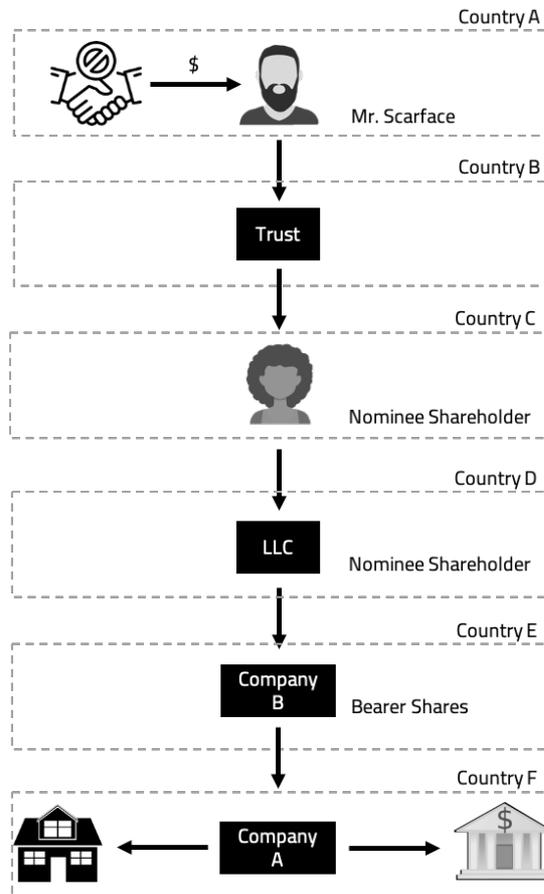
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Through these 'chains of ownership' beneficial owners may exercise their influence via a controlling interest directly or indirectly. Some common methods of exerting a controlling interest are;

- 👉 Ownership of shares
- 👉 Ownership of voting rights
- 👉 Nominees and joint ownership arrangements
- 👉 Contractual associations or personal connections with management or directors
- 👉 Management control (e.g., the right to appoint/remove a majority of directors)
- 👉 Recipient of loan or other benefits (e.g., tenancy or licence to property) having conditions granting control
- 👉 Other abilities to exert significant influence (e.g., veto rights, decision rights, rights to profit, etc...)



Primarily, these measures seek to tackle tax avoidance and money laundering. Ultimately, UBO attempts to enforce accountability of individuals by removing the possibility of their remaining anonymous and thus separate from the actions they undertake via their legal entities.



**EMAIL**

admin@bakering.global

**TELEPHONE**

+44 (0)20 1234 5678

**WEBSITE**

bakering.global

**REGISTERED OFFICE**

Office 7, 35 Ludgate Hill,  
London, EC4M 7JN

**REGISTERED COMPANY**

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The more companies (or 'layers') used, across more jurisdictions, the harder it is to identify the UBO that wishes to hide.

In addition, some jurisdictions allow nominee shareholders – that is, companies which enable their names to be listed as shareholder/owner of companies on behalf of their clients. Trusts also present challenges, given they do not always have to be registered, unlike 'legal persons' such as companies and foundations.

Finally, although not such an issue in 2020, bearer shares were used in some jurisdictions (those that allow immobile bearer shares (as opposed to registered) are increasingly rare). Such shares further complicated matters, as they granted ownership of the company in question to whosoever held the paper bearer shares at any given time, creating obvious problems in establishing UBO.

The goal, therefore, for international compliance organisations, is that each jurisdiction maintains publicly accessible information on UBOs.

## International comparison

There are six main international stakeholder groups concerned with UBO;

- 👉 The G20
- 👉 FAFT (Financial Action Task Force)
- 👉 OECD (Organisation for Economic Co-operation and Development)
- 👉 United Nations
- 👉 The European Union
- 👉 Individual country governments

Great strides have been made in improving transparency of ownership in many jurisdictions throughout the world. Indeed, arguably, only those countries on the periphery of the viable commercial world now have a genuinely opaque commercial environment. As of 2020, FAFT lists only Iran and North Korea on its 'call to action' list (previously named its 'blacklist'). However, it lists many others as 'grey list' countries.

That said, what we are most concerned about from a credit perspective is those countries which present a risk – not just as concerns compliance or opaque ownership – but those which will require additional investment/resource to ascertain ownership. With this in mind, we here present a list of the most easily accessible countries.

Please note, these matters are updated frequently, and other countries may hold online registers in addition to these. URLs are also subject to change. However, as of July 2020, these are the live online registries which we were able to access. Other countries in addition to this list will hold central registers, and this list does not preclude 'loopholes' which bad actors may employ in such jurisdictions so as to avoid identification on said registries. That said, we believe this list, as of July 2020, represents those countries most easy to identify UBO (click the links to access the websites – you will likely need to download this paper to do so):

### EMAIL

admin@bakering.global

### TELEPHONE

+44 (0)20 1234 5678

### WEBSITE

bakering.global

### REGISTERED OFFICE

Office 7, 35 Ludgate Hill,  
London, EC4M 7JN

### REGISTERED COMPANY

09787114

|          |   |
|----------|---|
| Austria  | <a href="https://www.usp.gv.at/Portal.Node/usp/public/content/online_verfahren/48606.html">https://www.usp.gv.at/Portal.Node/usp/public/content/online_verfahren/48606.html</a> |
| Bulgaria | <a href="https://portal.registryagency.bg/">https://portal.registryagency.bg/</a>   |
| Croatia  | <a href="https://rsv.fina.hr/RSV-OnLineUnos-web/login">https://rsv.fina.hr/RSV-OnLineUnos-web/login</a>   |



**EMAIL**

admin@bakering.global

**TELEPHONE**

+44 (0)20 1234 5678

**WEBSITE**

bakering.global

**REGISTERED OFFICE**

Office 7, 35 Ludgate Hill,  
London, EC4M 7JN

**REGISTERED COMPANY**

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|----------------|---|
| Czech Republic | <a href="https://issm.justice.cz/">https://issm.justice.cz/</a>   |
| Denmark        | <a href="https://register.openownership.org/data_sources/dk-cvr-register">https://register.openownership.org/data_sources/dk-cvr-register</a>   |
| Estonia        | <a href="https://ariregister.rik.ee/index?lang=eng">https://ariregister.rik.ee/index?lang=eng</a>   |
| Finland        | <a href="https://virre.prh.fi/novus/home?execution=e1s1">https://virre.prh.fi/novus/home?execution=e1s1</a>   |
| France         | <a href="https://www.infogreffe.fr/">https://www.infogreffe.fr/</a>   |
| Germany        | <a href="https://www.transparenzregister.de/wartung/?0">https://www.transparenzregister.de/wartung/?0</a>   |
| Indonesia      | <a href="https://www.kemenkeu.go.id/">https://www.kemenkeu.go.id/</a>   |
| Ireland        | <a href="https://rbo.gov.ie/">https://rbo.gov.ie/</a>   |
| Latvia         | <a href="https://www.ur.gov.lv/lv/">https://www.ur.gov.lv/lv/</a>   |
| Lithuania      | <a href="https://www.registrucentras.lt/p/673">https://www.registrucentras.lt/p/673</a>   |
| Luxembourg     | <a href="https://www.lbr.lu/mjrsc-rbe/jsp/IndexActionNotSecured.action?time=1595938219027&amp;loop=2">https://www.lbr.lu/mjrsc-rbe/jsp/IndexActionNotSecured.action?time=1595938219027&amp;loop=2</a> |



**EMAIL**

admin@bakering.global

**TELEPHONE**

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**WEBSITE**

bakering.global

**REGISTERED OFFICE**

Office 7, 35 Ludgate Hill,  
London, EC4M 7JN

**REGISTERED COMPANY**

09787114

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|-------------------------------------|---|
| Malta                               | <a href="https://registry.mbr.mt/ROC/index.jsp#companySearch.do?action=companyDetails">https://registry.mbr.mt/ROC/index.jsp#companySearch.do?action=companyDetails</a> |
| Myanmar                             | <a href="https://bo.dica.gov.mm/en/beneficial-ownership-disclosures">https://bo.dica.gov.mm/en/beneficial-ownership-disclosures</a>                                     |
| Nigeria                             | <a href="https://bo.neiti.gov.ng/">https://bo.neiti.gov.ng/</a>   |
| Poland                              | <a href="https://crbr.podatki.gov.pl/adcrbr/#/">https://crbr.podatki.gov.pl/adcrbr/#/</a>   |
| Portugal                            | <a href="https://rcbe.justica.gov.pt/">https://rcbe.justica.gov.pt/</a>   |
| Slovakia                            | <a href="http://www.orsr.sk/search_subjekt.asp?lan=en">http://www.orsr.sk/search_subjekt.asp?lan=en</a>   |
| Slovenia                            | <a href="https://www.ajpes.si/eRDL/Iskalnik/Javni">https://www.ajpes.si/eRDL/Iskalnik/Javni</a>   |
| Sweden                              | <a href="https://www.bolagsverket.se/pb/etjanster/verklig-huvudman/sok">https://www.bolagsverket.se/pb/etjanster/verklig-huvudman/sok</a>                               |
| Ukraine                             | <a href="https://usr.minjust.gov.ua/">https://usr.minjust.gov.ua/</a>   |
| United Kingdom                      | <a href="https://beta.companieshouse.gov.uk/">https://beta.companieshouse.gov.uk/</a>   |
| United Kingdom Overseas Territories | <a href="https://ubosearch.egov.gi/Login?ReturnUrl=%252f">https://ubosearch.egov.gi/Login?ReturnUrl=%252f</a>   |



In addition to the above, and as an indication of the possible risk, we found that only the following countries have committed to establishing a central register (not necessarily online and not necessarily yet in existence) as of the beginning of 2020:

**EMAIL**

admin@bakering.global

**TELEPHONE**

+44 (0)20 1234 5678

**WEBSITE**

bakering.global

**REGISTERED OFFICE**

Office 7, 35 Ludgate Hill,  
London, EC4M 7JN

**REGISTERED COMPANY**

09787114

- 👉 Austria
- 👉 Bulgaria
- 👉 Croatia
- 👉 Czech Republic
- 👉 Denmark
- 👉 Estonia
- 👉 Finland
- 👉 France
- 👉 Germany
- 👉 Indonesia
- 👉 Ireland
- 👉 Latvia
- 👉 Lithuania
- 👉 Luxembourg
- 👉 Malta
- 👉 Myanmar
- 👉 Nigeria
- 👉 Poland
- 👉 Portugal
- 👉 Slovakia
- 👉 Slovenia
- 👉 Sweden
- 👉 Ukraine
- 👉 United Kingdom
- 👉 United Kingdom Overseas Territories



## Risks

Although we are examining this topic from the perspective of credit management, where we believe it can serve as a vital tool for reducing risks of non-payment, it is worth considering the compliance perspective as a means to understand the topic's importance.

Failure to comply with UBO obligations as part of AML/KYC policy carries enormous risks – both insofar as the nefarious actions you may negligently help to facilitate and also the penalties if found to be in breach of such UBO obligations.

Nobody wants to be a cog in funding terrorism or drug trafficking. Moreover, penalties for such compliance breaches extend to jail time and significant fines for those found responsible.

Finally, the economic consequences of any UBO breach can be just as harsh, if not more so, insofar as damaged reputation and the severing of business relationships by those wishing to insulate themselves from such risks.

From a credit management perspective, there is a common misperception that a company that is part of a large integrated group structure represents less credit risk by default. However, unless a creditor has signed a Holding Company Guarantee for its debt with the trading company, then the Holding Company has no liability to pay its integrated trading companies' debts.

Credit managers should seek to understand how much impact a holding company structure has on their individual companies' credit scores and ratings with their chosen Credit Reference Bureaus (CRB). Some CRB's inflate a company's credit scores significantly if they are part of a large group of companies. Many of the most experienced credit professionals ask for information about their chosen CRB's algorithm so they can learn how much weight they place on group structure.

Companies will inevitably and rightly take measures to protect their business in response to COVID-19 and to survive the economic downturn. Group holding companies will be in communication with their integrated trading companies. They are making strategic decisions to save money and, where needed, to protect the companies from insolvency and liquidation.

### EMAIL

admin@bakering.global

### TELEPHONE

+44 (0)20 1234 5678

### WEBSITE

bakering.global

### REGISTERED OFFICE

Office 7, 35 Ludgate Hill,  
London, EC4M 7JN

### REGISTERED COMPANY

09787114

***"We have seen an increase in what many refer to as 'strategic insolvency', whereby individual trading companies, within a group structure, are deliberately allowed to fail with their bad debts funnelled through poor performing companies".***

Lisa Baker-Reynolds, CEO, Baker Ing International



It is imperative that credit management risk-assess each trading company on its financial merit for the requested line. Consider the credit score and ratings of each trading company within the group structure to identify weaker and inferior performing companies.

If you trade with multiple companies within a group, it is advisable to be cautious when you observe changes to purchasing habits (e.g., an increase in purchase requirements from one business and a drop in purchasing through others).

It is advisable to monitor a collective group credit exposure and to know what the combined risk is at any time. Should a client's credit risk increase, and they be part of a larger integrated group, then consider asking for holding company guarantees.

It is the Directors' shareholding linkage across common companies which provides the most insight when assessing whether a company is at risk of a planned or 'strategic' insolvency.

## Opportunities

It is advisable to credit check every case assigned to the company for debt collection. This check should form part of your propensity-to-pay assessment which will incorporate a wide range of relevant data.

Credit scores provide an insight into the financial position. However, it is the Directors and group structure which often offer a more insightful view of the debtor's situation and why the debt is in default.

In undertaking this work, it is possible to avoid, reduce and mitigate the risks associated with UBO. Moreover, gaining this extra insight can often help to augment credit strategy and lead to necessary leverage in negotiating collections.

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admin@bakering.global

### TELEPHONE

+44 (0)20 1234 5678

### WEBSITE

bakering.global

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### REGISTERED COMPANY

09787114

## Case study

### Hong Kong Debtor / Chinese Beneficiary and the Transfer of Intellectual Property via Common Directorships:

Our client assigned Baker Ing a \$250,000 Hong Kong debt. Credit assessment identified the debtor had few assets and was high risk.

During our propensity-to-pay analysis, we learned this debtor company was a commercial front (for sales and marketing purposes) of another more robust business in the group structure, based in mainland China. Mediation attempts with the debtor company failed, and they advised they had no assets or liquidity, so we could 'go legal' if we wished.

The integrated group trading company had two major shareholders, who were also major shareholders in the debtor company, owning 42% each. It is this intelligence gained through analysis of Ultimate Beneficiary Ownership, which enabled the mediator to cite transfer of our client's Intellectual property through linked Directorship.

We proposed litigation against the parent company, which was asset-rich with a strong cash position. The debt was successfully paid, with a contract transfer agreed between our client and the two companies.

#### Key learning:

When trading Internationally, be aware of the local financial filing laws and what data fields must be filed by law. Countries which are not heavily regulated can prove challenging to assess for credit as there can be scant information on record. In the absence of accounts, look at the company directors, their shareholder percentage, what other business interests they have, and who forms the majority stakeholding in associated companies.

Should a debtor be flippant towards the threat of litigation or winding up proceedings, try to understand the motivation for their confidence and whether there may be any assets to recover the monies owed. Be aware that in some countries, it may prove beneficial to a debtor to have a business wound up, as it would take with it significant associated debt.

Retention of Title (ROT) and Intellectual Property (IP) are tools which can be leveraged to motivate such default debtors, as these are likely the remaining tangible benefits such a debtor can retain.

Within mediation, understand how much of a primary creditor your company is to the debtor and if your ROT is more significant than other suppliers. A company's IP remains until goods and services are paid for, and T&Cs of signed contracts have been duly served.

#### EMAIL

admin@bakering.global

#### TELEPHONE

+44 (0)20 1234 5678

#### WEBSITE

bakering.global

#### REGISTERED OFFICE

Office 7, 35 Ludgate Hill,  
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#### REGISTERED COMPANY

09787114





## Conclusion

The COVID-19 pandemic has shifted the paradigm of global trade and credit lines. We are all having to adapt to a greater or lesser extent. The swift structural changes in global credit risk are of fundamental importance in our role as a key defender of our companies' and clients' cashflow. Ultimately, we must ensure they survive and that we insulate them from the inevitable adverse commercial effects of the pandemic so far as possible.

Adapting, however, more often than not, means 'forced improvement'. It is only now that risk profiles have shifted dramatically that many have the impetuosity to examine how much more effective they can be.

There are many risks but, equally, there are great opportunities in ways of working, new techniques and new data sources. Incorporating compliance best practice in determining UBO, we believe, is a vital tool made even more so by virtue of the new commercial environment. We hope we have demonstrated the opportunity which this robust dataset represents, as well as highlighting the risks associated with the topic.

UBO is something we have included in our propensity-to-pay models since our inception, along with a host of other data points. If we can be of any assistance in helping you incorporate this into your best practice, please do not hesitate to contact us.

### EMAIL

admin@bakering.global

### TELEPHONE

+44 (0)20 1234 5678

### WEBSITE

bakering.global

### REGISTERED OFFICE

Office 7, 35 Ludgate Hill,  
London, EC4M 7JN

### REGISTERED COMPANY

09787114

Sincerely,

Lisa Baker-Reynolds, CEO  
Sarah Ing, COO