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## NEWSLETTER 2/2021

New legislation regarding the registration of  
beneficial owners

## NEW LEGISLATION REGARDING THE REGISTRATION OF BENEFICIAL OWNERS

- **As of 1<sup>st</sup> June 2021, the new legislation** regarding the registration of beneficial owners (Act No. 37/2021 Coll., on Registration of Beneficial Owners) **becomes effective.**
- The new legislation implements the **5<sup>th</sup> AML Directive**, i.e. Directive (EU) 2018/843 of the European Parliament and of the Council of 30<sup>th</sup> May 2018.
- It is a complex regulation covering the given issue, which replaces the existing legal regulation divided into several acts (on Public Registers, on Public Procurement, the Insolvency Act or the so-called AML Act).
- The obligation to register its beneficial owners shall apply to:
  - **legal entities with its registered office in the Czech Republic** (with exceptions listed below); and
  - **trusts** or designated **foreign trusts**.

## BASIC SUMMARY OF THE NEW LEGISLATION

### I. More precise and detailed definition of a beneficial owner

- **The beneficial owner** shall always be any **natural person** who is *the ultimate beneficiary* or *the person who exerts ultimate influence*, or *top management representative*, whereas this rule will apply also to holdings. Thus, there may be more than one beneficial owner of one legal entity or trust fund.

- (i) ***The ultimate beneficiary*** is generally a person who may, directly or indirectly (through another legal entity or trust), have a substantial part of the total benefit generated by activities or the liquidation of the legal entity, or by the management or termination of the trust, and who does not pass on this benefit.

**In case of a business corporation**, it is any natural person who directly or indirectly has the right to a profit **share**, share to other own resources or liquidation proceeds of the business corporation **higher than 25 %** of the total benefit, and who does not pass on this benefit.

- (ii) **The person with ultimate influence** is generally a person who may, without instructions from another person, directly or indirectly exercise a decisive influence over a legal entity or the management of a trust fund.

**In case of a business corporation**, it is any natural person who is a **controlling person** in accordance with the Business Corporations Act. In this case, the fact that she/he is a person with ultimate influence is indicated by her/his direct or indirect **share in voting rights**, if this significantly exceeds the shares in voting rights of other persons, especially if it is **higher than 25 %**.

- (iii) **The person in top management** is any natural person who provides day-to-day or regular management of activities of a legal entity, such as business management, and is:
- a member of the statutory body of a legal entity, a person in a similar position, or represents a legal entity in the statutory body, or
  - directly subordinated to the statutory body of the legal entity or its member (e.g. top manager, even in an employment relationship).

The person in top management of **a business corporation** is a **beneficial owner thereof, unless any beneficial owner can be identified** with the use of all reasonable efforts, or if the person with ultimate influence in the business corporation is the legal entity, which has no beneficial owner (see below).

## II. Legal entities without a beneficial owner

- The new legislation also contains **a list of legal entities that do not have a beneficial owner**. These are, for example:
  - the state, regions, municipalities and contributory organizations established by them,
  - a legal entity established by law or by an international agreement,
  - trade unions and employer's organizations,
  - a community of housing owners, or
  - legal entities in which the state, region or municipality has, directly or indirectly, all shares in the property benefit and voting rights.

### III. Basic obligations of registrants and beneficial owners

- A legal entity with a beneficial owner, or a trustee in case of a trust fund, are **so-called registrants** with the following obligations:
  - **to ensure for the registration** of beneficial owner(s) into the relevant register, whereas the registered information must correspond to the actual state,
  - **to obtain and record** complete, accurate and up-to-date **data** on beneficial owner(s),
  - **to record steps** which have been taken **in respect of identification of the beneficial owner** in cases where a person in top management is designated as the beneficial owner,
  - **to archive the data** for the period the natural person concerned is the beneficial owner, and thereafter for a period of 10 years from the expiry of his/her status as beneficial owner,
  - **to provide data** on its beneficial owner(s) upon request **to entities authorized by law to access such data**, e.g. the courts, the bodies active in criminal proceedings, financial and customs administration bodies and other so-called obligated persons according to the so-called AML Act.
- **The beneficial owners** are obliged **to provide the registrants with assistance** in respect of their fulfilling the abovementioned obligations. Failure to comply with this obligation may result in financial sanctions (see below).

## IV. Entry in the register of beneficial owners

- The entry in the register is made by **the register court / or a notary** by direct registration, at the proposal / or the request of the registrant. However, if the registrant does not submit the proposal within 15 days from the date on which this obligation arose, anyone who proves a legal interest in it may submit the proposal instead of the registrant. The court fee for the registration of the beneficial owner in case of a **business corporation** will be CZK 4,000 (approx. EUR 155).
- In some cases the entry in the register will be made automatically via an **automatic transcription of data** (i.e. without the registrant's obligation to submit a proposal), if the beneficial owner is already apparent from the entry in other public register (e.g. in case of a limited liability company a natural person registered in the Commercial Register as a shareholder with a share higher than 25 % shall be registered as a beneficial owner; in case of a joint stock company a natural person registered as the sole shareholder shall be registered). However, the registrant is obliged to ensure the correction of the registration if it does not correspond to an actual state.

## V. Public access to the register of beneficial owners

- **A partial excerpt from** the beneficial owner register shall be publicly available to anyone; however, only the following information will be available: name, state of residence, year and month of birth, citizenship, information on the nature of the beneficial owner's position, size of his/her share, date of becoming and ceasing to be a beneficial owner.
- **Anyone** will be further entitled to obtain an electronic **confirmation** that there is **no information** about the beneficial owner in the register.
- **A full excerpt** of all data regarding the beneficial owner (including their history) will be available to the person registered as the beneficial owner and also the registrant, as well as entities stipulated by the law (e.g. the courts, the bodies active in criminal proceedings, tax administrators, the Financial Analytical Office, the Czech National Bank and others).



## VI. Proceedings to remove irregularities, financial sanctions

- **Proceedings to remove irregularities:** if an irregularity is found (i.e. incorrect or missing data in the register), the court will ask the registrant to rectify it or refute it. After a futile summons, the court shall commence the proceedings to remove irregularities and enter **an irregularity note** in the register. If the irregularity is refuted the court shall delete the note. However, if the irregularity is confirmed, the court shall enter the date on which the irregularity occurred and delete the incorrect data, or enter new data (if it becomes known in the proceedings).
- **A financial sanction up to CZK 500,000 (approx. EUR 19,200)** may be imposed on:
  - **a registrant** who, even within the time limit set by the court within irregularities proceedings, does not fix the problem within 15 days from the effectiveness of the court decision on irregularities,
  - **a beneficial owner** who does not provide the necessary assistance to the registrant and such a breach has been confirmed by the court.
- **Other consequences of a failure to register the beneficial owner:**
  - **unenforceability of rights and obligations** arising from legal acts concealing the person of the beneficial owner, which arose at the time when the beneficial owner was not registered,

- **ban on payment of a share in a property benefit** (e.g. a profit share): a business corporation may not pay out this share to a beneficial owner who is not registered, or to a legal entity or a trust fund in which that person is also a beneficial owner, or to a legal person or a trust fund that has no beneficial owner registered (the members of the statutory body who agree to the payment of the share in violation of such prohibition, shall be deemed to not have acted with due care),
- **ban on exercise of voting rights**: a beneficial owner not entered in the register may not exercise his/her voting rights at a General Meeting. The same also applies to a legal entity or a person acting on behalf of the trust fund in which this person has also the position of the beneficial owner, and further to a legal entity or a person acting on behalf of the trust fund who has no beneficial owner registered (if the General Meeting resolution was made in violation of the abovementioned prohibition, it is possible to apply to the court and demand its invalidity, or to demand from the statutory body compensation for damage caused to the corporation by failing to ensure the registration of the beneficial owner. In particular, minority shareholders may apply to the court).

## VII. Transitional provisions

- **A registrant who is not a business corporation** and has not yet ensured for the entry of any data on its beneficial owner in the register under the existing legislation, is obliged to fulfil this obligation **within 6 months** from the effective date of the new legislation, i.e. **until 1<sup>st</sup> December 2021**. If there has been made an entry in the register, the registrant is obliged to ensure that the registered data comply with the requirements of the new legislation within **1 year**, i.e. **until 1<sup>st</sup> June 2022**.
- **A registrant who is a business corporation** and has ensured for the entry of data on its beneficial owner in the register according to the existing legislation, is obliged to ensure that the entered data meet the requirements of the new legislation **within 6 months** from the effective date of the new legislation, i.e. **until 1<sup>st</sup> December 2021**.
- **A proposal** to enter data on the beneficial owner of **a business corporation** in the register, which ensures that already registered data meet the requirements of the new legislation, **will be exempt from court fees** but not longer than **6 months** from the effective date of the new Act, i.e. **until 1<sup>st</sup> December 2021**.

We hope the above summary will ease your orientation in the new legislation. We are available for any of your additional requests or information or legal assistance in this area.

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