



NEWSLETTER 4/2017

The beneficial owner of a legal entity
Novelization of the AML Act

I. Definition: the beneficial owner

- The new **definition** of the beneficial owner is embodied in **the Act No. 253/2008 Coll., on the prevention of money laundering and terrorist financing** („the AML Act“), amended by the Act No. 368/2016 Coll., which became effective as of **1st January 2017**.
- The new definition is based on the Art. 3 (6) of so-called AML Directive – Directive (EU) 2015/849 of the European Parliament and of the Council of 20st May 2015¹.
- The beneficial owner is newly defined in Section 4 (4) of the AML Act as **any natural person** who **may de facto or legally directly or indirectly control the legal entity**, the trust fund or other legal organization(s) without legal personality, whereas it is thought that **the beneficial owner of a business corporation is such natural person**,
 - (i) who himself or together with others, who are acting in agreement with this natural person, **controls more than 25% of the voting rights of the business corporation or owns an ownership interest exceeding 25% of the registered capital**,

¹ Directive (EU) 2015/849 of the European Parliament and of the Council of 20st May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC

- (ii) who himself or together with others, who are acting in agreement with this natural person, controls the entity mentioned in the point (i) above,
 - (iii) who will **receive at least 25 % of the profit** of such business corporation, or
 - (iv) who is **a member of the statutory body**, a representative of a legal entity in this statutory body or who is in the position similar to the position of the member of the statutory body, provided that the beneficial owner does not exist or cannot be identified pursuant to any of the points (i) to (iii) above.
- The beneficial owner is defined by his **material characteristics**. It is a natural person (individual), who de facto or legally, directly or indirectly, controls the legal entity. Information stated under the points (i) to (iv) above only indicate who may be in the position of the beneficial owner. At the same time it is considered that the fulfilment of the characteristics stated under the points (i) to (iv) shall not automatically lead to the determination of such person being the beneficial owners. It is essential to meet the material characteristics.
 - In the point (iv) above addresses the situation, when no person can be identified as the beneficial owner according to the material definition. In such case **the legal fiction** will be applied that the beneficial owner is **the natural person, who is the member of the statutory body** or the representative of a legal entity in this statutory body or a natural person in the position similar to the position of the member of the statutory body.

II. Retention of the data of a beneficial owner

- The novelization of the AML Act (Section 29b) imposed a statutory obligation upon all legal entities and trust funds **to keep actual data** allowing the **determination** and **verification of their beneficial owner**, including the data about the facts which establish or justify the position of the beneficial owner.
- These data must be retained for all the time of the duration of the position of the beneficial owner plus the minimum of additional 10 years.

III. Register of the beneficial owners

- The novelization also amends **the Act No. 304/2013 Coll., on Public Registers of legal entities and natural persons**, which newly demands the establishment of the Register of the beneficial owners of legal entities and trust funds, whereas the new legislation will be **effective as of 1st January 2018**.
- **The new Register of beneficial owners** (Sections 118b -118j of the Act No. 304/2013 Coll.) will be kept by register courts, for every registered legal entity and every registered trust fund.

- The Register will maintain the following **data**:
 - a) name and place of residence (permanent and temporary);
 - b) date of birth and birth certificate number; if any,
 - c) citizenship; and
 - d) information about
 - (i) interest in voting rights, if the position of the beneficial owner is based on direct participation in the legal entity,
 - (ii) interest in profits, if the position of the beneficial owner is based on the fact that the person is the beneficiary of it, or
 - (iii) other facts, if the position of the beneficial owner is determined in another way.
- Data about the beneficial owner **shall not be open to public**, i.e. they will be kept in the non-public section of the Register.
- The data will be **accessible only** to the respective registered entity and via Internet also to state authorities and subjects determined by the law (Section 118g (3) of the Act No. 304/2014 Coll.), especially to:
 - a) Czech courts,
 - b) criminal authorities and prosecutor's offices,
 - c) tax administrators,

- d) Intelligence Service,
 - e) Financial Analytical Office,
 - f) Czech National Bank,
 - g) National Security Office or Ministry of the Interior,
 - h) Supreme Audit Office,
 - i) authorities or subjects according the Regulation (EU) 1303/201318 of the European Parliament and the Council and the Regulation (EU) 1306/201319 of the European Parliament and the Council,
 - k) other subject set by the law (e.g. contracting authority of public procurement).
- Legal entity already incorporated will be obliged to file with the Register the relevant data about the beneficial owner **without undue delay** after the date of the effectiveness of the new legislation, i.e. **after 1st January 2018**. Other liable subjects (e.g. business companies established after 1st January 2018) will be obliged to register their beneficial owner with undue delay after their establishment.
 - In case of breach of the abovementioned obligation and if the remedy cannot be reached in other way, the respective register court will call upon the liable subject to remedy the situation. If the legal entity does not comply with this call, it may lead to the commencement of the court-ordered liquidation process of the legal entity.

- The data about the beneficial owner must be filled with the Register using the official form prescribed by the law, however, the detailed conditions and requirements will be regulated by the relevant **regulation**, which is being currently prepared by the relevant state authorities.

IV. Court fees

- Furthermore, the novelization of the AML Act amends also **the Act No. 549/1991 Coll., on court fees**, which newly set the court fee for incorporation of the beneficial owner with the Register in the amount of CZK 1,000. This change will become effective also **as of 1st January 2018**.
- Nevertheless, the obligation to pay this court fee will relate only to legal entities incorporated with the Commercial Register, other liable subjects will be **exempted** from it.
- The legal entities registered with the Commercial Register till 31st December 2017 (i.e. before the new legislation become effective) will be **exempted** from the court fee for the time period of **one year** from the date of the effectiveness of the new regulation (i.e. from 1st January 2018 to 31st December 2018).
- By this regulation the legislator intends to motivate relevant legal entities to carry out the registration of their beneficial owners with the Register in the set time period of one year.

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

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