

Corporate Flash

January 2019

The search for the beneficial owner continues! Have you made a timely registration of your beneficial owner?

As we covered in one of the earlier issues, on January 1, 2018, the last (for now) part of the amendment to Act No.253/2008 Sb., on Certain Measures against the Legitimation of Proceeds of Crime and Financing of Terrorism, as amended (“AML Act”), came into force, on the basis of which a register of ultimate beneficial owners (the “Register”) was established in the Czech Republic. As a result, a new duty arose for the executive bodies of all legal entities in the Czech Republic – to ensure the registration of the ultimate beneficial owner in the Register; at the same time, the right arose for particular third persons to look into the Register. Included in the list of these persons are also all contracting authorities. The Register has thus gradually become an important element for all legal entities competing in public procurement. Therefore, we do recommend becoming familiar with these new duties and with the functioning of the Register, especially since the deadline for registration of all corporations was 1 January 2019. This duty applies not only to joint-stock companies but also to limited liability companies whose members registered in the Commercial Register are individuals.

Tightening of the legislation

The reason for making the AML legislation stricter is to prevent the abuse of the financial system and to uncover unclear ownership structures, as well as to keep track of ownership transfers leading to particular persons owning or handling the property. The primary purpose in the area of public procurement is to verify and/or avoid a conflict of interest of persons having, in particular procurement proceedings, connections to contracting authorities and to the contractor. The tendency towards tightening the AML rules is a worldwide phenomenon, not unique to the Czech Republic.

A beneficial owner is always a specific individual (individuals); for a more detailed definition of the beneficial owner, please refer to our article in the Právní rádce monthly (issue 4/2017) available (only in Czech) [here](#).

The tightening of the regulation in this area, however, is not final. The V. AML Directive has already been adopted at the EU level, and the Czech Republic has to effectively transpose it to the national system of laws by 10 January 2020. Further tightening will consist of introducing the Register as public (at least to a certain extent), establishing effective (material) sanctions as well as monitoring compliance with the duty to register.

Register of beneficial owners

The valid amendment of the AML Act established the duty of legal entities registered in the Commercial Register to enter up-to-date information on their beneficial owners in the non-public part of the public registers (from 1 January 2018). The Register is administered by the registry courts.

Who identifies the beneficial owner?

The company itself or its executive body. The amendment to the AML Act places the new obligation on each company to keep an up-to-date record of its current beneficial owner – his/her identification data and the reason establishing his/her position as the beneficial owner.

In exceptional cases, when the beneficial owner cannot be identified using available means, a member of the executive body may register himself as the beneficial owner of the company. However, this person cannot in any way facilitate the identification of the beneficial owner and simply register himself as the beneficial owner. According to the judicial practice of the Czech courts, the member of the executive body has the duty to identify the ultimate beneficial owner, not only to look for him.

Legal entities registered in the public registers before 1 January 2018 have to register their beneficial owners in the Register by 1 January 2019, i.e. one year after the amendment became effective.

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There are no direct sanctions for not registering the beneficial owner into the Register, neither under the AML Act nor under the Public Registers Act. The Register is not a public register in the meaning of the Public Registers Act, so the sanctions for not registering into public registers would not apply. Not registering can, however, have negative impacts. The legal entity risks being considered suspicious in customer due diligence (according to the AML Act) or expulsion from public procurement proceedings after failing to provide the information on its beneficial owner. At the same time, the company's executive body that has failed to comply with the statutory duty may be acting in breach of due managerial care.

The application to register the beneficial owner into the Register can only be submitted on a given form. The particulars of the form are laid down in an amendment to the implementing decree issued under No. 459/2017 Sb. The registry court has to register the beneficial owner into the Register within 5 business days from receiving the application.

What information can be found in the Register and who has access to it?

The following information on the beneficial owner is entered in the Register: name and residence address, date of birth and birth no. (ID No.), citizenship, the grounds for beneficial ownership (i.e. information on the proportion of voting rights).

The extract from the Register is available for the registered entity and to a limited extent for those who prove an interest in preventing the crimes listed in the AML Act. Remote access is provided to courts, investigative, prosecuting and adjudicating bodies, the tax administrator and other bodies laid down by the law. The beneficiaries also include contracting authorities.

Our Corporate Law team is ready to assist you with identifying, documenting and registering the beneficial owner into the Register.

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