

Corporate Flash

April 2019

Obligation to register beneficial owners in the Commercial Register (or other registers)

With effect from 1 November 2018, an amendment to Act No. 297/2008 Coll., on the Prevention of Legalization of Proceeds of Criminal Activity and Terrorist Financing (AML Act), has introduced a new obligation on Slovak legal entities to register their beneficial owners ("BOs") in the individual registers in which such legal entities are registered. Existing legal entities must comply with this obligation by no later than 31 December 2019. Thus, the obligation to register BOs does not only apply to companies registered in the Commercial Register, but also to legal entities active in the non-profit sector, i.e. foundations, non-profit organizations and non-investment funds (special-purpose property associations). At the same time, those exempt from this obligation are public administration entities or issuers of securities admitted to trading on a regulated market, as well as entities registered in the Public Sector Partner Register.

Who is a beneficial owner?

A beneficial owner¹ means any natural person who ultimately owns or controls a legal entity, as well as any natural person for the benefit of whom the legal entity carries out its business activity or transaction, in particular a natural person who (i) has a direct or indirect shareholding of at least 25% in the legal entity, (ii) has a right to an economic benefit of at least 25% of the legal entity's business or activities, or (iii) directly or indirectly controls the legal entity (e.g. has the right to appoint or recall corporate statutory bodies).

If no natural person meets the BO definition criteria mentioned above, the members of the top management of the company being registered (i.e. the so-called statutory body, a statutory body member, the proxy holder, or an officer directly reporting to the statutory body) are considered to be BOs.

A natural person who alone does not meet the criteria set out above, but who together with another person, acting with such a natural person in accord or jointly, meets at least some of such criteria is also considered to be a BO.

By when must BOs be registered in a respective register?

Newly registered legal entities have been obliged to register their BOs already as of **1 November 2018**. These data are part of the relevant forms for registration of legal entities in a register; therefore, it will not be possible to register a new company, foundation, non-profit organization or fund without providing such information. **Existing legal entities** registered in the relevant registers before 1 November 2018 are obliged to register their BOs **by 31 December 2019**.

Fees, fines, and mandatory attachments

As for existing legal entities registered in the relevant registers before 1 November 2018, the data on a BO must be indicated on a special form. The application to register a BO or a change in the data on the BO is **exempt from administrative and court fees. No attachments need to be enclosed** with the application.

A fine may be imposed on a person acting on behalf of a legal entity for failure to comply with the obligation to register a BO in a relevant register, or for providing false data; in the event of failure to comply with this obligation in the Commercial Register, a fine of up to EUR 3,310 may be imposed.

At the same time, a legal entity is obliged to enter in the relevant register any change related to the data on a BO and to continuously update these data.

What data on a BO must be registered and who will have access to such data?

The relevant registers will include data on one or more identified BOs in the following extent: name, surname, personal identification number (or date of birth if birth number not assigned), permanent address or other residence address, nationality, and identity document type and number.

¹ The BO definition is laid down in Section 6a of Act No. 297/2008 Coll., on the Prevention of Legalization of Proceeds of Criminal Activity and Terrorist Financing.

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Data on BOs are not publicly available, and they will not therefore be part of the common extracts from the Commercial Register or other register. Data on BOs will be provided only to selected public administration entities for the purpose of performing tasks under special regulations, or to a person who proves a legitimate interest.

Duplicated registration in the PSPR

The obligation to register BOs in the relevant Commercial Register or other register applies in parallel with the specific modification of the Public Sector Partner Register (“PSPR”) effective from 1 February 2017.

The obligation to register BOs in the relevant register applies to all Slovak legal entities (with the above exceptions). On the contrary, the obligation to identify and register BOs in the PSPR arises for both Slovak and foreign legal entities, but only in certain cases, especially in the case of trading with the state or receiving public funds in Slovakia. Data on BOs published in the PSPR are public.

An important warning, therefore, is that **the registration of a BO in the Commercial Register or other register does not replace the obligation to register a BO in the PSPR.**

However, these changes to the legislation in this area are not final. At the European level, a so-called fifth AML Directive was adopted and must be effectively transposed by the Member States into their legal systems by 10 January 2020. In relation to BO registrations, this should entail the introduction of a public list of BOs and better interconnection of individual national registers, but in particular the introduction of stricter sanctions for breaches of individual obligations.

Our corporate team is ready to assist you not only with the identification of BOs, but also with their registration in the relevant Commercial Register or other register, or in the PSPR.

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