

# Corporate & Public Flash

February 2018

## Looking for the beneficial owner!

On January 1, 2018, the last (for now) part of the amendment of Act No.253/2008 Coll., on measures for preventing the legalisation of income from criminal activities and the financing of terrorism, as amended ("**AML Act**"), came into force, on the basis of which a register of ultimate beneficial owners was established in the Czech Republic (the "**Register**"). A new duty arises for the statutory 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 arises for particular third persons to look into the Register. Included in the list of these persons are also contracting authorities. The Register is to 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.

### Tightening of the legislation

The reason for making the AML legislation stricter is the effort to prevent the abuse of the financial system and the interest in disclosing unclear ownership structures, as well as keeping 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 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.

### The definition of the beneficial owner

The definition fully follows IV. AML directive, stating that the ultimate beneficial owner is a **natural person** who directly or indirectly controls the company – this being the material corrective, giving the companies the indicators to follow in order to identify the ultimate beneficial owner. Basically, the indicators state that the ultimate beneficial owner is a person holding a 25% share of the rights in the company (voting, share in the registered capital, in the profit distribution). If no such person exists, then the ultimate beneficial owner is a member of the statutory body of the company.

### New Register of beneficial owners

The amendment of the AML Act established the duty of the legal entities registered in public registers to enter their beneficial owner in the Register (from January 1, 2018). The Register is administered by the registry courts.

The establishment of the Register also has an impact on the Public Procurement Act, according to which the contracting authority has to investigate who the contractor's (legal entity's) beneficial owner is before entering into a public procurement contract. The previous duty of the contractors to submit the information and proof of the beneficial ownership is replaced as of January 1, 2018 by the duty of the contracting authority to look into the Register first. Only when the contracting authority is unable to determine the beneficial owner from the Register does it call upon the contractor to submit a listing from a similar registry or to identify the beneficial owner with the relevant documents.

### Who identifies the beneficial owner?

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

In exceptional cases, when the beneficial owner cannot be identified because there is no person who fulfils the indicators, a member of the statutory body would 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 statutory body has the duty to identify the ultimate beneficial owner, not only look for him.

Legal entities registered in the public registers before January 1, 2018 have to register their beneficial owner into the Register by January 1, 2019. In this first year of the new obligation, the registration will be free of charge for these entities.

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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 the public registers would not apply. Not registering can however have negative impacts. The legal entity imposes on itself the risk of suspiciousness 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.

The application to register the beneficial owner into the Register can only be submitted via a given form. The documentation necessary to prove the identity of the beneficial owner is not given by the law, therefore the practice of the registry courts may differ in what each court would require to register the beneficial owner (usually it is going to be a declaration of the company describing the ownership structure in detail). Also, if the beneficial owner is not Czech citizen, the courts would request a document proving his identity (e.g. extract from the register of citizens from his country of citizenship). The registry court then has 5 business days to register the beneficial owner into the Register.

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

The following information on the beneficial owner is registered into the Register: (i) name and address, (ii) date of birth and birth no. (ID No.), (iii) citizenship, (iv) reason on which the position of beneficial owner is based.

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 for a closed group of institutions listed in the Public Registers Act. Contracting authorities fall into this group.

Our teams specialising in Corporate Law and Public Procurement are ready to assist you with identifying, documenting and registering the beneficial owner into the Register.

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