

Changes of the rules governing proving and registration of beneficial owners

Brief overview

On June 1st, 2021, the new Act on registration of beneficial owners will become effective, fully replacing the current legislation. Main aim of the Act is to compel entities, that have yet to register their beneficial owner, to do so.

This goal should be achieved through the newly introduced sanction mechanism. The Act further expands scope of the information registered and requires their substantiation. Some of the recorded information will be publicly available.



Beneficial owner

Beneficial owner of a business corporation is any natural person who is a final recipient of benefits or a person with ultimate influence over a company:

- Definition of a **final recipient of benefits** is based on the amount of property benefits which one may gain from a corporation → i.e. the possibility to participate in the corporation's benefits (e.g. dividends or liquidation balance) to the extent of **more than 25%**
- The definition of a **person with ultimate influence** over a company aims at the possibility of having the decisive influence over a corporation (i.e. control over it) → which is indicated by having **more than 25% of voting rights**

In case the beneficial owner cannot be determined by using the definitions above, persons in the top management of a company and persons in the top management of its (ultimate) parent company, which exercises decisive influence over such subsidiary, are considered the beneficial owners – i.e. any natural person who is responsible for handling the day to day business and at the same time is:

- member of a statutory body,
- person in a similar position, or
- direct subordinate to the statutory body of a legal entity.

The Act stipulates special rules for determination of beneficial owner of legal entities which are not corporations (e.g. foundations) and also for entities without legal personality (e.g. trust funds).

Recorded information

The **extent of recorded information** is expanded compared to the previous legislation. In addition to the identification of the beneficial owner, the following information (among others) will be entered:

- description of the structure of relationships (i.e. the relationships, based on which the beneficial owner may exercise influence or gain benefits),
- nature of position of the beneficial owner, or
- days at which one gains and loses the position of beneficial owner.

Newly, some of the recorded information will be publicly available. It will take only few clicks on the internet to learn name of the beneficial owner, information about his or hers position or about the day on which he or she became the beneficial owner.

Sanctions

A fine of up to CZK 500,000 may be imposed upon:

- obliged entity, unless it ensures entry of the information required by law in the register of beneficial owners, or
- beneficial owner, given that he or she does not provide the obliged entity with the necessary cooperation in connection with the registration.

On the top of the fines, business corporations with no registered beneficial owner, will be prohibited to pay benefits (e.g. dividends or share of other resources) to such owner, whose voting rights within the corporation will be suspended as well.

Deadlines and Implementation

The Act becomes effective on 1st June 2021. Business corporations which, in accordance with the deadlines set by the current legislation, have duly registered information about their beneficial owner, are required to implement the new rules by 1st December 2021. To corporations which failed to obey the current legislation or failed to follow the deadlines set by it, the Act will apply immediately with its effectiveness.

The automatic transcript should help comply with the new rules. This tool allows for automatic transfer of some of the information (e.g. in case of natural persons who are partners of limited liability companies with a share of more than 25% or sole shareholders) from the other public registers to the register of beneficial owners.

Recommendation

How to comply with the requirements of the new regulation? Considering the above mentioned, we recommend taking especially following steps:

- In cases where a statutory body is registered as the beneficial owner, consider involvement and possibly the registration of other persons, in particular top managers and persons in the top management of the parent company
- Register the information, registration of which has not been required under the current legislation (e.g. the date on which one gained the position of beneficial owner)
- Register the information, which will not be automatically transferred under the automatic transcript (e.g. automatic transcript will not apply to minority shareholders acting in concert with the majority shareholder)

We will be happy to assist with the above.

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