

Legal Alert

Beneficial Ownership Register

On 1 January 2018, part of an amendment of Act No. 253/2008 Coll. on selected measures against the legitimisation of proceeds of crime and financing of terrorism, as amended, and as implemented by Act No. 368/2016 Sb. (the “amendment”), entered into effect. We would like to draw your attention to certain changes to the Act on Public Registries of Legal Entities and Natural Persons (the “Registry Act”), the Public Procurement Act and the Insolvency Act introduced by the above amendment.

Beneficial Ownership Register

- ▶ The establishment of a registry of information about the beneficial owner of a legal entity entered in a public registry and a trust fund entered in a trust fund registry is effective as of 1 January 2018. The Beneficial Ownership Register is kept in electronic form by the competent regional court, i.e. the court responsible for administering the commercial register. It is not a public registry and information on beneficial owners is not published or included in any public registry extracts.
- ▶ Beneficial Ownership Register entries are effected by a competent regional court or notary. In the case of an entry with a regional court, the petition to enter must be filed in the prescribed electronic form.

Deadlines/registered information

- ▶ The prevailing opinion is that legal entities entered in a commercial register are obliged to register their beneficial owners by 1 January 2019; other legal entities entered in other public registries, including trust fund registries, are obliged to register their beneficial owners by 1 January 2021. This conclusion is based on the wording of a transitory provision of the amendment, which stipulates a one- or three-year period in which to register a beneficial owner, which begins to run the moment the amendment enters into effect. As the change pertains to a part of the amendment that entered into effect on 1 January 2018, the period is assumed to begin at that date. Unfortunately, the Act fails explicitly to indicate the deadline by which legal entities are obliged to register their beneficial owners, and other interpretations cannot be ruled out.
- ▶ Entry of a beneficial owner will not be subject to court fees for a period of one year from the Act's effective date; thereafter, the court fee will be CZK 1,000.
- ▶ Notwithstanding the above transitory provision pertaining to the deadline for entry of a beneficial owner, it remains the case that a petition to enter information about a beneficial owner must be submitted without undue delay after the decisive event.
- ▶ The following information about a beneficial owner shall be entered in the Beneficial Ownership Register: name and address of place of stay and, where applicable, residence, if this differs from the address of place of stay; date

of birth and personal ID number, where one has been assigned; nationality; information on a) share in voting rights, if the position of the beneficial owner is based on direct participation in the legal entity, b) share in distributed funds, if the position of beneficial owner is based on being a recipient thereof, or c) other facts, if the position of beneficial owner is established in another manner.

Penalties for failure to register a beneficial owner

- ▶ At present, no special penalty has been established for failing to comply with the obligation to register a beneficial owner of a legal entity within the one- or three-year period (except as indicated below); presumably, nor will any sanction, e.g. a procedural fine or company dissolution and liquidation, be imposed under the Registry Act.
- ▶ Aside from the Registry Act, noncompliance with the obligation to register information about a beneficial owner can have certain consequences for a legal entity under other laws, in particular the Public Procurement Act, Insolvency Act and Anti-Money Laundering Act.

Public Procurement Act

- ▶ When choosing a contractor under a tender procedure pursuant to the Public Procurement Act, the contract-awarding party is obliged to obtain information from the Beneficial Ownership Register about the beneficial owner of a vendor that is a legal entity, i.e. for this purpose, the contract-awarding party is provided remote access to information about the vendor's beneficial owner. Where the information cannot be ascertained from the Beneficial Ownership Register, a supplementary procedure is used to obtain the information pursuant to the Public Procurement Act, i.e. the contract-awarding party, among other things, also asks the tenderer to provide this information. If the tenderer fails to submit the information when asked, the contract-awarding party is obliged to exclude this tenderer from the tender procedure.

Insolvency Act

- ▶ A creditor that registers a claim in an insolvency proceeding by lodging an application, and that incurred the claim by

assignment or a similar method after the beginning of the insolvency proceeding or in the 6-month period prior to the beginning of the insolvency proceeding, is obliged (with certain exceptions) to attach an affidavit to the application providing information about who its beneficial owner is and the reason it considers such entity to be its beneficial owner. Until the creditor fulfils this obligation, it may not exercise any voting rights associated with the application. If information about the beneficial owner is to be found in the Beneficial Ownership Register, the creditor does not incur the above obligation to substantiate the information about the beneficial owner, including the affidavit.



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The information in this bulletin is correct to the best of our knowledge and belief at the time of going to press. Specific advice should be sought, however, before investment and other decisions are made. Nor should the information in this bulletin be considered an exhaustive description of the given matter and its possible ramifications. We also note that legal opinion varies regarding some of the issues raised in this bulletin due to ambiguities in the relevant provisions. Thus, it is possible that an interpretation other than the one presented here will prevail in future.

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