



# Legal update

September 2020

## Weinhold Legal

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### News in legislation

#### Act on the Registration of Beneficial Owners

On 7 July 2020, the first reading of the government bill on the Registration of Beneficial Owners took place in the Chamber of Deputies. The bill implements the requirements of the so-called V. AML Directive, adopted by the European Parliament in 2018.

Should the bill on the Registration of Beneficial Owners be adopted, this area (both substantive and procedural regulation) will be newly concentrated in one piece of legislation. The substantive regulation, i.e. the criteria for determining who is a beneficial owner, is currently contained in the Act on Selected Measures against Legitimation of Proceeds of Crime and Financing of Terrorism and the procedural regulation, i.e. the regulation concerning the registration of beneficial owners, in the Act on Public Registers of Legal and Natural Persons.

The bill envisages two fundamental changes. One of them is the fact that according to the proposed legislation, some data entered in the register of beneficial owners will be accessible to the public (name and surname, state of residence, year and month of birth, citizenship, information on the reason for the status of beneficial owner). At the moment, the Act on Public Registers of Legal and Natural Persons grants access to such information to a small circle of people, e.g. obliged entities pursuant to the Act on Selected Measures against Legitimation of Proceeds of Crime and Financing of Terrorism or public authorities. In some exceptional cases, the bill allows for the non-disclosure of the beneficial owner (e.g. in the case of beneficial owners who are minors); however, this must be requested, it is not automatic. According to the new legislation, proceedings should be conducted for the entry in the register of beneficial owners, which is a change from the current situation, where it is only a qualified activity of the court. The consequence of this change should be that it should be possible to seek redress against incorrect decisions of registry court via appeals against decisions, which the current legislation does not allow.

The second novelty is the introduction of significant sanctions for non-compliance with the obligation to register the beneficial owner in the register of beneficial owners or for providing incorrect data. The registry court will be entitled to impose a fine of up to CZK 500,000 on an entity whose beneficial owner is concerned, as well as on the beneficial owner himself/herself, for violating the obligation to register the beneficial owner in the register of beneficial owners, or for providing incorrect data. In addition, the bill also enacts private sanctions in the form of invalidation of voting rights held by, and the right to payment of benefits in favour of a beneficial owner not registered in the register and also in respect of legal entities that have not registered their beneficial owners.

Public authorities and entities obliged pursuant to the Act on Selected Measures against Legitimation of Proceeds of Crime and Financing of Terrorism will be obliged to notify the registry court of irregularities in the register of beneficial owners, whereupon the registry court shall mark the note of the irregularity and ask the registered person to eliminate it within a reasonable period of time. If the irregularity is not remedied, the registry court shall initiate proceedings in respect of the irregularity. The irregularity will be either confirmed and corrected by the registry court or it will be proved that the entered data are correct and in that case the registry court will delete the note of the irregularity.

In addition to the above, the bill also contains other changes compared to the current legislation. For example, it is proposed to change the definition of beneficial owner, so that a beneficial owner is any natural person who is a final beneficiary or a person with ultimate influence. The final beneficiary of a business corporation is any person who has directly or indirectly the right to a share in profit, other own resources or liquidation balance of the business corporation (benefit



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share) greater than 25% and does not pass on this benefit share. It is proposed to enact a rebuttable presumption that the benefit is not passed on. A person with ultimate influence in a business corporation is any natural person who is a controlling person in accordance with the Business Corporations Act. In the event that it will not be possible to determine the beneficial owner even with all efforts, the fiction applies that every person in the top management of the corporation is its beneficial owner.

The expected effectiveness of the Act on the Registration of Beneficial Owners is the first day of the fourth calendar month following its promulgation. Therefore, if the legislative process takes place without major delays, the Act on the Registration of Beneficial Owners should enter into force in early spring next year.

## Newly published case law

### Deceptiveness of a business name containing a geographical term

*(Judgment of the Supreme Court File No. 23 Cdo 1308/2019 of 27 May 2020)*

In a recent judgment, the Supreme Court concluded that the deceptiveness of a business name containing a geographical term cannot be assessed solely in terms of the (current) location of the registered office and/or establishment in the place to which the geographical term refers. A business name could be described as misleading (untrue) if it contains false or purposefully distorting or misleading information about the real relationship of the relevant entity to the given place; however, the connection of a place contained in a person's business name with that person cannot be limited to the current location of registered office or establishment of that person. It is necessary to examine other circumstances, including the relationship of this person to the place to which it refers in its business name.

The Supreme Court in this judgment dealt with a dispute in which the plaintiff, company Původní bílovičká pekárna s.r.o., demanded the court to order the defendant, company Bílovičká perkárna s.r.o., to change its business name by removing the word "Bílovičká" and replacing it with another word. According to the plaintiff, the business names of the two entities were interchangeable and the defendant thus acted unfairly in trying to give the impression to its customers that the defendant's products came from the plaintiff. In order to illustrate the facts, it is also necessary to state that the defendant had originally its registered office in Bílovice and it has been operating there in some form since 1949, however, over time it moved the registered office to another (neighbouring) municipality.

The Court of First Instance dismissed the action on the grounds that, although the business names of the two entities were interchangeable, the defendant had the right of priority, as it was the first to register its business name in the Commercial Register.

The Court of Appeal agreed with the reasoning of the Court of First Instance regarding the interchangeability of business names of both entities. However, according to the Court of Appeal, the first instance court did not deal with the question whether the defendant's business name was not misleading, as according to the Civil Code, the business name must not be interchangeable or misleading. The appellate court concluded that, as a result of the defendant's transfer of its registered office to another municipality, its business name was misleading, since by having a word in its business name referring to Bílovice nad Svitavou, it gave consumers the false impression that it is an entity from Bílovice nad Svitavou. For this reason, the Court of Appeal considered it necessary to uphold the action and amended the judgment of the Court of First Instance by ordering the defendant to remove the word "Bílovičká" from its business name and replace it with another word.

The defendant filed an appeal against the judgment which was upheld by the Supreme Court. According to the Supreme Court, the Court of Appeal did not take into account that the defendant's real relationship with the municipality of Bílovice nad Svitavou was proven by its active involvement in this municipality for at least the period from the defendant's establishment to the relocation to a neighbouring municipality, while the history of the defendant's bakery dates back to 1949. In order for a business name containing a geographical term to meet the requirements of truthfulness, it is not necessary for the entrepreneur to have its registered office or establishment in the given geographically defined territory, if the real relation to this territory results from other facts. According to the Court of Appeal, for an average customer "Bílovičká pekárna" evokes the fact that it is an entity from Bílovice nad Svitavou. However, this does not necessarily mean that the average customer perceives only the establishment currently located in this municipality. It could be described as misleading (untrue) such a business name which would contain false or purposefully distorting or misleading information about the real relationship of the relevant entity to the given place; however, the connection of a place contained in a person's business name with that person cannot be limited to the current location of that person's registered office or establishment. In this case, there was no doubt from the findings of fact that the defendant had resided in Bílovice nad Svitavou for many years and had an establishment there, developed the production of its traditional bread, which it subsequently supplied to many other stores. Under these circumstances, in order to conclude that the defendant's business name is not misleading, it can be considered sufficient that the defendant and the municipality of Bílovice nad Svitavou share its origin and long tradition in bakery in this municipality. Moreover, at the time when the defendant chose its business name and had it entered in the Commercial Register, in addition to the above-mentioned links to Bílovice nad Svitavou, it also had its registered office and establishment in that municipality. The Supreme Court did not agree with the conclusion of the Court of Appeal, namely that if an entity (a commercial company) bearing in its business name a geographical indication referring to its origin, former registered office, place of business, place where it developed its craft, which will change its the registered office and establishment located in this place (municipality) and moves them to another geographically close place (in this case to a neighbouring municipality), it is obliged to change its business name, under which it has been doing business for a long time, due to the untruth and deceptiveness of this business name. The deceptiveness of a business name containing a geographical term cannot be assessed solely in terms of the (current) location of the registered office and/or establishment in the place to which this geographical term refers.

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