

## HAVE YOU REGISTERED YOUR ULTIMATE BENEFICIAL OWNER? HEAVY PENALTIES ARE COMING!

Records of ultimate beneficial owners are required under Act No. 368/2016, amending Act No. 253/2008, on certain measures against the legalization of revenues from criminal activity and financing terrorism, as amended, and other related acts.

Since January 1, 2018 all entities in the Commercial Register are required to register their ultimate beneficial owners, but so far no financial penalties are associated with not doing so (the only penalty at present is the possibility of exclusion from a tender procedure due to failure to register the ultimate beneficial owner pursuant to Act No. 134/2016, on public tenders, as amended).

That will soon be changing, however. The Czech Chamber of Deputies is currently discussing a bill on records of ultimate beneficial owners (the "Bill"). The Bill is intended to transpose into Czech law certain new requirements regarding records of ultimate beneficial owners under the "5th AML Directive." As the transposition deadline passed in January 2020, we can expect that the Bill will soon be passed.

When the Bill is passed, the records of ultimate beneficial owners will become partially available to the public. It will be possible to acquire some data from these records in the form of an electronic excerpt, as with information from the Commercial Register. The Bill also stipulates new, significant penalties of a monetary and non-monetary nature for failure to meet the obligation to record the ultimate beneficial owner:

### 1. Monetary penalties

It will now be an administrative offense if an entity does not register any data in the records of ultimate beneficial owners even after being notified to do so, or does not complete the required entry within 15 days after entry into legal force of a court decision on the discrepancy so that new data is entered into the records of ultimate beneficial owners. Each of the cases above is subject to a separate penalty of up to CZK 500,000.

The same penalty may apply to the ultimate beneficial owner and persons in a similar position for failure to provide the necessary cooperation for entry into the records of ultimate beneficial owners.

### 2. Inability to pay share in benefits

The Bill also anticipates that if a corporation has no ultimate beneficial owner recorded in the records of ultimate beneficial owners, the corporation cannot pay a share in benefits (profits, other own resources or liquidation balance) from the corporation to that person or any other person who is also an ultimate beneficial owner.

In the same way, a corporation cannot pay a share in benefits to an entity that does not have the ultimate beneficial owner listed in the records of ultimate beneficial owners.

### 3. Inability to exercise voting rights

The Bill also anticipates that if the ultimate beneficial owner of a corporation is not listed in the records of ultimate beneficial owners, then that owner cannot exercise voting rights when the corporation's highest body is making decisions or decide as the sole shareholder; this restriction will apply to the ultimate beneficial owner, the legal entity and anyone acting on the account of the legal arrangement that is also the ultimate beneficial owner, and these persons also may not exercise voting rights in the decisions

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of the highest body or in its capacity if they do not have an ultimate beneficial owner listed in the records of ultimate beneficial owners. This leads to a significant suspension of voting rights in cases where the ultimate beneficial owner of a corporation is not listed, in contravention of the law.

Considering the above, we strongly recommend registering your ultimate beneficial owner as soon as possible, if you have not done so already, and updating obsolete information in the records if necessary. Filing a proposal for first entry of the ultimate beneficial owner / change in registered data is associated with a fee of CZK 1000. Filing this proposal can protect against a number of practical difficulties in running a corporation and avoid the risk of paying large fines for missing or incorrect information on the ultimate beneficial owner.

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