

## MANDATORY DECLARATION AND REGISTRATION OF BENEFICIAL OWNERS IN A NEWLY CREATED REGISTER

On 13 October 2019, the Central Register of Beneficial Owners will be created (the "Register"). This is when the relevant legislation will come into force. From that date, almost all companies and partnerships entered in the Polish National Court Register will be required to file with the register details of (and keep updated) their beneficial owners. The provisions are part of the Act on Combating Money-Laundering and the Financing of Terrorism (the "Act"), which implements the amended Directive on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (the "Directive").

### Key issues

- Who is a Beneficial Owner?
- Requirement to declare the Beneficial Owner
- How the Register will operate
- Assessment of the amendments

### Who is a Beneficial Owner?

The Act, defines a beneficial owner (the "**Beneficial Owner**") as a **natural person or persons directly or indirectly exercising control** over an entity through rights held that arise from legal or actual circumstances and that allow him/her to exert a decisive impact on acts (or actions taken by the entity or a natural person or persons on whose behalf commercial relations are being entered into or a casual transaction is being conducted). These include, in the case of an entity that is a legal person (other than a public company):

- a natural person who is a shareholder of that entity and who own more than 25% of the total number of shares in that legal person;
- a natural person holding more than 25% of the total number of votes in the founding authority of the entity, including as a pledgee or usufructuary or on the basis of arrangements with others holding voting rights;
- a natural person exercising control over a legal person(s) holding ownership title to a total of more than 25% of the total number of shares in the entity or jointly holding more than 25% of the total number of votes in an authority of the entity, including as a pledgee or usufructuary or on the basis of arrangements with others holding voting rights;
- a natural person who is a dominant entity in the meaning of Art. 3 sec. 1 point 37 of the Act on Accounting. Most of the criteria of being a dominant entity overlap with the criteria listed above, but such entity also includes an

entity having the right to appoint the majority of the members of the management authority or supervisory authority of another (dependant) entities and/or the right to direct the financial and operational policy of the other (dependent) entity on the basis of an agreement concluded with that entity or through provisions contained in that entity's articles of association/statutes, or

- in the event it is not possible to beneficial owner on the criteria listed above (or there are doubts as to such beneficial owners' identity) a natural person who holds the highest managerial position in that entity. For example members of the management board of the holding company.

On the basis of the criteria set out above, it is possible that an entity will have more than one Beneficial Owner.

## **Requirement to declare the Beneficial Owner**

Registered partnerships, limited partnerships, mixed joint-stock and registered partnerships, limited liability companies and joint-stock companies (except for public companies) will be required to submit information on their respective Beneficial Owner(s).

A company/partnership set up after 13 October 2019 will have to file this information within seven days of being entered in the National Court Register. A company/partnership set up before 13 October 2019 will be obliged to file information on its Beneficial Owner within six months from the Act coming into force, i.e. **by 13 April 2020**. Any change of Beneficial Owner after 13 October 2019 should be notified within seven working days of the change.

Declarations may be submitted only by persons authorised to represent the company/partnership (members of the management board or commercial proxies) through the online system, in the form of an electronic document (according to the form that the relevant minister is to make available). The declaration must be accompanied by a qualified electronic signature or a signature confirmed by a trusted ePUAP profile and must contain the statement of the person making the declaration to the Register that the information being filed with to the Register is true.

In addition, any changes to information on the Beneficial Owner must also be filed with the Register within seven working days of the change.

Under the Act, companies/partnerships that do not file the required information on their Beneficial Owner with the Register in the appropriate time limits may face **penalties of up to PLN 1,000,000**.

## **How the Register will operate**

The Register will be open to the public and the information contained in the Register will be presumed to be true. A person providing information on its Beneficial Owner(s) and updating it, i.e. members of the management board of capital companies and general partners of the partnerships, will be liable for damage incurred as a result of filing incorrect information and also for failing to update changes to the information within the statutory time limit. The exceptions to this rule are if the damage occurred because of force majeure or solely through the fault of the aggrieved party or a third party for which the person filing and updating information on the Beneficial Owners is not liable.

Excerpts from the Register may be downloaded free of charge. The Register will also enable historical changes of the Beneficial Owners of a relevant entity to be checked.

It is worth noting that under the Act, the information filed with the Register will be kept for the period necessary in order to combat money-laundering and/or the financing of terrorism. The Act does not define the term "period necessary", which could lead to lengthy and unnecessary storage of data. The information on Beneficial Owners held in the Register can be processed without the knowledge of the persons to whom the information relates.

Following information about Beneficial Owner will have to be submitted to the Register: (i) name and surname, (ii) citizenship, (iii) country of residence, (iv) PESEL number (Polish personal identification number) or date of birth if the person does not have PESEL number, (v) details about stake held in the company or personal rights attributable to the Beneficial Owner in the company.

## **Assessment of the amendments**

Obviously, the Act imposes a new administrative burden on members of the authorities of partnerships and capital companies. However, this is a step in the same direction as is being taken by all European Union member states. At present, the Act does not mention the possibility of the Beneficial Owner's being declared on the company's behalf by an attorney. Therefore, it will be necessary for the members of the management board or commercial proxies to become involved in the procedure, which in the case of persons who are not Polish citizens may necessitate obtaining an electronic identity number (PESEL) so that they can electronically sign applications to the Register.

The Polish legislator went a step further than strictly required for implementation of the Directive with regard to access to the register of beneficial owners. Under the Directive, only persons who demonstrate a legitimate legal interest with regard to information on money-laundering, financing of terrorism and related crimes, such as corruption, tax evasion and fraud, should have access to such registers. In Poland, the Register will be open to the public and a person taking an excerpt from the register will not have to demonstrate any interest. The openness and universality of the Register could therefore be negatively perceived by investors and shareholders of capital companies because not everyone may want their investment in a Polish company a company to be publicly known.

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