

CHANGES TO THE REGISTRATION OF UBO UNDER CZECH LAW

As a reaction to the proceedings conducted by the European Commission against the Czech Republic due to the incorrect implementation of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing ("**AMLD V**"), which is partially implemented in the Czech Act No. 37/2021 Coll., on the Register of Beneficial Owners (the "**UBO Act**"), an amendment to the UBO Act was adopted to fully align Czech legislation with AMLD V (the "**Amendment**"). The Amendment will become effective as of 1 October 2022 and, for some companies, it may bring an obligation to change the registration of their ultimate beneficial owner (the "**UBO**").

NEW DEFINITION OF THE UBO

The Amendment abandons the current duality of the definition of the UBO through the concepts of "ultimate beneficiary" (in Czech *koncový příjemce*) and "person with ultimate control" (in Czech *osoba s koncovým vlivem*) and replaces it with a general UBO definition taken from AMLD V in order to enable a uniform, harmonized interpretation and implementation within all EU member states.

Under the Amendment, any natural person who ultimately "owns or controls" a legal entity or a legal arrangement meets the definition of the UBO. According to the explanatory report to the Amendment, the terms "own" and "control" should be interpreted as a form of possession of a legal entity (or legal arrangement) reaching a specified intensity. The amended Section 4 of the UBO Act sets out the criteria for determining which natural person owns or controls a given entity.

In contrast to the current wording of the UBO Act, the new criteria will no longer merely point to a person with ultimate influence and establish a rebuttable presumption but will unconditionally indicate that the given person is the UBO. Under the Amendment, a corporation is ultimately owned or controlled by any natural person who directly or indirectly (a) has an interest in the corporation or an interest in voting rights greater than 25%, (b) is entitled to a share in the profit, other equity distributions or liquidation balance of more than 25%, (c) exercises a decisive influence in a corporation or corporations that individually or jointly hold an interest in the corporation greater than 25%, or (d) exercises a decisive influence in the corporation by other means.

The law sets out these criteria alternatively, so it is sufficient to meet at least one of them for a person to be identified as the UBO. Moreover, the exercise of decisive influence is no longer a necessary condition for a person to be identified as the UBO, but now it is only one of the alternative criteria.

Decisive influence in a corporation is exercised by such person who, at his/her own discretion, can directly or indirectly make the decisions of the corporation's supreme body to conform to his/her will. The UBO Act stipulates that a person with decisive influence over a business corporation is the natural person who controls that business corporation within the meaning of Act No. 90/2012 Coll., on Business Corporations. According to the explanatory report to the Amendment, the exercise of decisive influence also includes a veto right enabling its holder to block decisions, in particular, any decisions regarding the distribution of profit, other company's resources or liquidation balance. The decisive influence does not have to be actually exercised. The ability to exercise decisive influence is sufficient to fulfil the UBO criteria.

NARROWING OF EXEMPTIONS FROM THE REGISTRATION OBLIGATION

Section 7 of the UBO Act defines which entities have no UBO. Pursuant to the Amendment, the exception under Section 7 applies mainly to the state and territorial self-governing bodies and entities financed by them or decisively influenced by them. There is also a rebuttable presumption of non-existence of the UBO in relation to certain entities, such as state-owned enterprises, public schools and public research institutions. In the case of business corporations, direct or indirect ownership of shares in them by the state or territorial self-governing entity is required for the exemption to apply. Under the Amendment, the exception no longer applies to certain types of entities such as political parties, churches, associations of housing unit owners, and trade unions, unless they meet the condition of being under decisive influence or being financed by the state or territorial self-governing body.

For the sake of completeness, companies listed on the stock exchange remain subject to the obligation to register UBO even after the Amendment. The European Commission has confirmed that AMLD V does not imply that the UBOs of listed companies should not be identified and registered. Not all EU Member States/EEA countries have implemented the possible UBO exemption for listed companies in the same manner. Some jurisdictions (e.g. the Netherlands) provide for an exemption in the case of listed companies and their subsidiaries which are subject to disclosure requirements as referred to in AMLD V or to equivalent international standards. A number of jurisdictions have introduced the exemption only for listed companies themselves, but not for their subsidiaries (e.g. Slovakia). The Czech Republic does not provide for any form of an exemption for listed companies.

COMPLIANCE WITH THE AMENDED LEGISLATION

The good news is that, in practice, the change in the UBO definition introduced by the Amendment should not bring any material changes for the majority of companies which have already identified and registered their UBOs in accordance with the UBO Act. The terminology will be adjusted automatically in the Register of UBOs within one month of the Amendment having entered into force. Nevertheless, companies should still examine whether their entry in the Register of UBOs complies with the applicable law as amended by the Amendment. In particular, it is advisable to check whether there are more corporations which individually or jointly hold an interest in the registering person which is greater than 25% and whether any persons exercising a decisive influence in such corporation or corporations need to be registered as the UBO; as in such situations it might be necessary to register new UBOs after the Amendment enters into force.

Entities that have fulfilled their UBO registration obligation under the current legislation will have six months to bring their registered data in compliance with the Amendment, if needed. In practice, the obligation to update the data in the Register of UBOs should only concern the cases where the UBO is not registered although such person should be registered in light of the Amendment. If a registered UBO is no longer considered the UBO based on the Amendment, it will not be necessary to remove such person from the Register of UBOs, but such entry will be disregarded. The six-month deadline for complying with the registration obligation also applies to entities that have so far been considered as having no UBO (see above). The Amendment does not introduce any changes to the sanctions for missing UBO registration.

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