



Legal Alert

11 July 2022

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Amendment to the Act on Beneficial Owners Register

Reasons for the amendment

On 7 July 2022, the government bill (the "**Amendment**") amending Act No. 37/2021 Coll., on the on Beneficial Owners Register (the "**UBO**") was adopted in the Chamber of Deputies on first reading by Resolution No. 309, when 145 of the 153 deputies present voted in favour of the Amendment, and none of them voted against. The Amendment is set to take effect on **1 October 2022**.

While the Amendment does not fundamentally change the established substantive rules for determining beneficial owners under the UBO, **in some cases the beneficial owners determined under the UBO as amended by the Amendment may be different** than under the existing UBO. The most important changes include:

- **Change of designation:** instead of beneficial owners as either "*ultimate beneficiaries*" or "*ultimate influencers*" (or both), there will be a single designation of beneficial owners.
- **Change in the relevant shareholding:** in some cases, the legally relevant threshold will be 25% of the shareholding instead of the current presumption of control linked to a 40% voting interest.
- **Narrowing the set of persons without beneficial owners:** new definition of persons without beneficial owners (typically public corporations).

According to the explanatory memorandum to the Amendment, the reason for the adoption of the Amendment is the pending infringement proceedings pursuant to Article 258 of the Treaty on the Functioning of the European Union due to

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 (the "**AML Directive**") through the UBO, specifically Articles 3 (6) and 30 of the AML Directive.

In the context of the UBO, the incorrect transposition of the AML Directive by the European Commission is allegedly seen in the redundancy of the so-called end beneficiary element under Article 2 (c) of the UBO, which is not supported by the AML Directive, as well as in certain exemptions from the registration obligation provided in Article 7 of the UBO.

The Czech Republic's statement on the reasonableness of the current form of the UBO was not found sufficient by the European Commission, and therefore, at the meeting on the National Recovery Plan held on 17 February 2022 with representatives of the Ministry of Defence, the adoption of the Amendment by the European Commission was allegedly a condition of the Czech Republic's ability to draw down funds under the National Recovery Plan, which amount to up to 180 billion crowns.

Changes adopted by the Amendment

The conceptual change introduced by the Amendment is the **unification** of the material nature of beneficial owners, when instead of the current dichotomous concept of beneficial owners as "*ultimate beneficiaries*" or "*persons with ultimate influence*", it will be only "*natural persons who ultimately own or control a legal person or legal arrangement*".

The second very significant change is the new definition of persons who do not have a beneficial owner, since instead of the existing exhaustive list, the proposed amendment contains a so-called substantive test, the application of which will result in a **narrowing of the set of persons who do not**



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have a beneficial owner.

In addition to the above-mentioned changes, the Amendment contains a number of other partial changes to the UBO, including, for example, the possibility for the court to issue a decision on whether a legal person has a beneficial owner, the introduction of automatic registration of members of certain public companies or the exclusion of private law consequences due to the absence of data registration on the substitute beneficial owner in relation to such substitute beneficial owners.

Changes in the determination of the beneficial owner

Despite the above conceptual change, the rules for determining the beneficial owner of business corporations remain basically unchanged in their basic parameters.

However, a certain change is the fact that **the spouse of a shareholder with a relevantly large shareholding** (over 25%) **will no longer be in the position of a beneficial owner**, as instead of the existing provision of Section 3 (1) of the UBO, which speaks of a person who

"may receive more than 25% of the total property benefit generated in the operation or liquidation of the legal entity",

uses the proposed wording of Section 4 (1) (b) of the UBO

"shall be entitled to a share of more than 25 % of the profits, other own resources or the liquidation balance"

and therefore the position of spouse of a shareholder will no longer be that of a beneficial owner.

On the contrary, **to expand the set of persons whose status will constitute the status of beneficial owner**, the proposed provision of Section 4 (1) (c) of the UBO according to

which a beneficial owner will now be anyone who

*"exercises decisive influence in a corporation or corporations which individually or jointly **hold a stake of more than 25 % in that corporation"***,

and therefore, in the event of the Amendment coming into force, it will no longer be necessary for decisive influence to be exercised in the corporation that controls the legal entity in question, as currently provided for in Section 4 (1) of the UBO (which refers to Act No. 90/2012 Coll., on Commercial Companies and Cooperatives (Business Corporations Act), in which, in simplified terms, the threshold constituting the presumption of control is the ownership of a share with which at least 40 % of the votes are attached).

Narrowing the range of persons who do not have a beneficial owner

Instead of the current wording of Section 7 of the UBO, which contains an exhaustive list of legal entities that do not have a beneficial owner using an irrebuttable presumption, is used the proposed wording of Section 7 (1) (a) of the UBO, which states that following entities do not have a beneficial owner

"the state and a local self-government unit, a voluntary association of municipalities, a state contributory organisation, a contributory organisation of a local self-government unit".

Next to it is newly proposed the substantive test contained in Section 7 (1) (b) of the UBO according to which the beneficial owner is also not

"a Czech legal entity established or set up for the purpose of satisfying needs of public interest which are not of an industrial or commercial nature, if the Czech Republic, a region or a municipality predominantly finances it, exercises decisive influence in it or appoints or dismisses a majority of persons who are members of its statutory or controlling body;



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in the case of a commercial corporation, it is always required that all shares in it are held directly or indirectly by the Czech Republic, a region or a municipality".

Section 7 (2) of the UBO then defines, by means of rebuttable presumptions, those legal persons that meet the above material test.

Conclusion

Although the Amendment does not fundamentally change the established substantive rules for determining beneficial owners under the UBO, in some cases the beneficial owners determined under the UBO as adopted by the Amendment may be different than before, and therefore, if the Amendment is approved by the Senate, it can be recommended to examine the consistency of the existing entry in the register of beneficial owners also in the light of the amended changes to the UBO.

If the registrant's entry in the Beneficial Owners Register complies with the requirements of the original version of the UBO on the effective date of the Amendment, the Amendment provides such registrants with **a transitional period of 6 months to ensure that the entry complies with the requirements** of the new version of the UBO, while the court fee is also waived for the first proposal aimed at such compliance.

The information contained in this bulletin is presented to the best of our knowledge and belief at the time of going to press. However, specific information related to the topics covered in this bulletin should be consulted before any decision is made. The information contained in this bulletin should not be construed as an exhaustive description of the relevant issues and any possible consequences, and should not be fully relied on in any decision-making processes or treated as a substitute for specific legal advice, which would be relevant to particular circumstances. Neither Weinhold Legal, v.o.s. advokátní kancelář nor any individual lawyer listed as an author of the information accepts any responsibility for any detriment which may arise from reliance on information published here. Furthermore, it should be noted that there may be various legal opinions on some of the issues raised in this bulletin due to the ambiguity of the relevant provisions and an interpretation other than the one we give us may prevail in the future.

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