



## **REGISTRATION OF BENEFICIAL OWNERS FROM JANUARY 1, 2018**

The amendment, which will introduce mandatory registration of beneficial owners, was passed by the Chamber of Deputies on 7 September 2016.

As we informed you in our Newsletter 4/2015, an amendment to Act No. 253/2008 Coll., on selected measures against the legitimisation of proceeds from criminal activity and financing terrorism, was prepared following the adoption of a new Directive (EU) 2015/849 from the European Parliament and the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing. Below you can find detailed information on the registration of beneficial owners, which will be implemented on 1 January 2018.

### **Beneficial owner**

According to the amendment, a beneficial owner is any natural person who factually or legally exercises, directly or indirectly, dominant control of a legal entity. Indirect control for the purposes of identifying a beneficial owner is understood to mean control exercised through another person or persons. In regards to individual legal entities, trusts or other legal organizations without legal personality, the amendment regulates the irrefutable legal presumptions determining their beneficial owner.

In regards to business corporations, a beneficial owner is a natural person who either:

- solely, or together with persons acting in concert with them, has more than 25% of the voting rights in the business corporation or holds a share of the registered capital exceeding 25%;
- solely, or together with persons acting in concert with them, controls the person referred to in the previous paragraph;
- receives at least 25% of the profits of the business corporation; or
- is a member of the governing body or is a representative of a legal entity in such a body or, where the business corporation does not have a beneficial owner or where the beneficial owner may not be identified according to the above paragraphs, is in a position similar to the position of a member of the governing body.

In regards to associations, public-benefit corporations, associations of apartment owners, churches and religious communities, a beneficial owner is a natural person who either:

- has more than 25% of the voting rights;
- receives at least 25% of the funds distributed by it; or

- is a member of the governing body or is a representative of the legal entity in such body, where there is no beneficial owner or where the beneficial owner may not be identified according to the above paragraphs, is or in a position similar to the position of a member of the governing body.

In regards to foundations, institutions, endowment funds, trusts or other legal organizations without legal personality, the beneficial owner is a natural person (or the beneficial owner of a legal entity) who either:

- is in the position of settlor, trustee or beneficiary;
- is the person, where no beneficiary has been appointed, in whose interest the foundation, institution, endowment fund, trust or other legal arrangement without legal personality was founded; or
- is authorized to exercise supervision over the administration of the foundation, institution, endowment fund, trust or other legal arrangement without legal personality.

### **Registration of beneficial owners**

Beneficial owners of legal entities and trusts will be recorded in an electronic registry of beneficial owners. The following data will be recorded in the registry:

(i) name and address of the place of residence of the beneficial owner (or, where applicable, their address if different from the address of the place of residence);

(ii) date of birth of the beneficial owner and their personal identification number (if they have such a number);

(iii) nationality;

(iv) information on:

a) their share of voting rights where the position of the beneficial owner is based on direct participation in a legal entity,

b) their share of the distributed funds where the position of the beneficial owner is based on being the beneficiary, or

c) any other facts where the position of the beneficial owner is based on other facts.

Beneficial owners will be registered on the basis of applications and entered by registry courts as well as notaries. The fee for entering a beneficial owner's data will be 1,000 CZK. The registered data will not be available to the public, with the exception of persons or bodies exhaustively listed in the Act (e.g. courts, criminal proceedings authorities, tax administrators, the Czech National Bank, etc.).

Legal entities and trustees (or persons in a similar position) will be required to maintain and regularly record current data to identify and verify the identity of their beneficial owner, including data on the fact that establishes the position of the beneficial owner or other grounds for why the person is the beneficial owner. All this data shall be kept for the entire time the person is a beneficial owner and for at least 10 years after terminating such relationship.

The bill is yet to be passed by the Senate and signed by the President of the Czech Republic. It is therefore possible that the amendment will undergo minor changes in the legislative process.

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## **LEGISLATIVE NEWS**

We would like to draw your attention to the following selected legislative news from the previous quarter:

### **CRIMINAL LIABILITY OF LEGAL ENTITIES**

As we already pointed out in our special Newsletter in June 2016, an amendment to the Act on Criminal Liability of Legal Entities will go into effect on 1 December 2016. This amendment significantly extends the scope of crimes legal entities may be convicted for and will reduce the possibility of applying effective repentance. At the same time, however, the amendment will allow companies to exculpate themselves from criminal liability if they can prove that they had made all possible effort to prevent the unlawful conduct.

In regards to this amendment, we recommend that companies adopt compliance programs, make relevant changes in their existing internal regulations and, where applicable, create new internal regulations. We also recommend providing all employees with thorough instructions.

### **GOVERNMENT DRAFT OF AMENDMENT TO THE BUILDING ACT**

On 21 September 2016, the Government approved an amendment to the Building Act, which is expected to help builders, investors and building authorities. The purpose of the amendment is primarily to shorten and simplify permitting procedures. Below are some of the major changes the amendment will bring.

#### **Coordination of proceedings conducted under the Building Act**

A fundamental change the amendment will bring is the possibility of consolidating zoning proceedings with EIA proceedings or even consolidating zoning and building proceedings with EIA proceedings into a single coordinated permitting proceeding. The final decision in these new, coordinated permitting proceedings will be called a “joint permit“.

This integration of proceedings will not be mandatory, but by selecting this option it is expected that the permitting process will be significantly shortened and streamlined as redundant steps and processes will be removed. Simplifying the process is based on the cooperation of the competent authorities such that only the building authority will communicate with the investor.

The zoning permit or joint permit, which will be the result of the above proceedings, will then be valid for two years (with the possibility of setting a longer period, up to a maximum of five years). The joint permit could subsequently be extended in justified cases.

Moreover, the amendment to the Act will introduce the possibility of having joint zoning and building proceedings. Under the current legislation, zoning and building proceedings may be conducted jointly only where the respective building authority is competent to conduct both proceedings. The amendment will also allow single proceedings for structures that currently fall under the competence of several building authorities deciding separately, which will mainly simplify proceedings for line constructions.

### **Streamlining of construction proceedings**

To build a single-family house or a building for family recreation (e.g. a cottage), a building permit is currently needed, but once the Building Act is amended, it will be sufficient for the builder to only notify the building authority of the construction of these structures. This makes it much simpler and shorter than obtaining a building permit.

Moreover, a building permit or notification of building will no longer be required for swimming pools or greenhouses including related technical equipment on a built-up plot of land of a single-family house or a building for family recreation.

Construction of fencing will also be simpler as fencing under 2 meters in height will not require a decision on the location of the construction or a zoning permit.

### **REGULATION OF ADVERTISING BY THE NEW PRAGUE BUILDING REGULATIONS**

Regulation of the City of Prague No. 10/2016, laying down general requirements for the use of space and technical requirements for constructions in the City of Prague ("Prague Building Regulations") came into effect on 1 August 2016. For the most part, the Regulation takes the wording of the suspended 2014 Prague Building Regulations but regulates some requirements concerning construction and equipment for advertising differently.

The Regulation specifies in greater detail the surface of advertising panels, which does not include the supporting structure unless it also serves to display the advertising content (for example, by drawing attention to the advertising content by deliberate highlighting). The Regulation also specifies that where advertising content is displayed on opposite sides, the panel surface is calculated only as one projection of these sides.

The new building regulations completely rule out placing structures with surface areas exceeding 4 m<sup>2</sup> in heritage preservation reserves and heritage preservation zones, which will prohibit placing big boards, billboards and other major advertising spaces in most of the Prague city centre. The building regulations also accurately define the minimum distance between these large advertising spaces, which will depend on the size of the advertising spaces but will not be less than 100 meters (calculated for one side of a road). There is an exception for structures designating a particular company or institution that are placed on the company's or institution's own premises or in the immediate vicinity.

Furthermore, it will no longer be possible to place advertisements exceeding 4 m<sup>2</sup> on fencing (except temporary construction site fencing) with the same exception as above.

Finally, the new building regulations have reduced the existing maximum dimensions of advertising structures placed on the facade or in front of the facade to 2 metres for horizontal advertising structures and 1.5 metres for vertical advertising structures and, conversely, extended the allowed surface of advertising structures located on retaining walls to 6 m<sup>2</sup>.