

ONLY FEW DAYS LEFT TO REGISTER YOUR UBO IN SLOVENIA: ARE YOU EXEMPTED OR NOT?

The application for registrations of beneficial owners is now operational. Deadline to register beneficial owners is 19 January 2018.

The application is available on the webpage of the Agency of the Republic of Slovenia for Public Legal Records and Related Services (AJPES). The electronical submission and registration of data can be made also through a proxy.

Slovenian corporate entities (companies and cooperative societies) and entities, whose share capital cannot be divided in shares (e.g. associations, societies, political parties, trade unions, religious groups, institutions), as well as foreign trusts, institutions or similar legal entities of foreign law (if tax liabilities arise from their business performance in the Republic of Slovenia), were obliged to identify their beneficial owners (until 19 November 2017) and are obliged to register them with AJPES until 19 January 2018.

WHO IS UBO?

The UBOs of *corporate entities* are natural persons:

- indirectly or directly holding qualified business shares, voting or other rights, based on which they participate in the management and governance of the entity (the indicator for which is deemed to be more than 25 %); or
- indirectly or directly participating in the capital with sufficient shares (the indicator for which is deemed to be more than 25 %); or
- having control over the management of assets of the respective entity; or
- indirectly providing to the corporate entity funds and consequently having a possibility to control, direct or otherwise exercise significant influence on the financial and business decision-making of the management.

If no natural person could be determined as the beneficial owner in accordance with the above, one or more persons who hold the position of management are deemed, for the purposes of the UBO registration, to be the beneficial owners of the company, provided that (i) all possible measures have been taken to determine the beneficial owner and (ii) there are no reasons for suspicion of money laundering or terrorist financing in connection with the transaction, the person or the assets.

UBO of an *entity without business shares* is deemed to be any natural person authorized to represent such entity. UBO of an institution is its founder, who has based on the foundation act controlling position with the management of assets of the institution, otherwise trustee and representative of the institution.

In case of *foreign trusts, funds or foundations*, the UBO is:

- a natural person who is its founder, trustee of assets, beneficiary of assets or protector appointed to represent and to protect the interests of the beneficiaries of assets;
- category of persons in the interest of which the foreign trust, fund or foundation was established, if the beneficiaries of the benefits are yet to be determined;

- any other natural person that directly or indirectly controls the assets of the foreign trust, fund or foundation.

EXEMPTIONS

Certain entities / persons are exempted from the above duties, e.g. sole proprietors and individuals performing business activities; direct or indirect beneficiaries of the state budget; companies on the regulated market having disclosure obligations, which provide adequate transparency of ownership.

LIMITED LIABILITY COMPANY – EXEMPTED OR NOT?

It is of particular interest that, strictly speaking, Art 44 of the AML Act seems to entirely exempt limited liability companies with a sole shareholder from the registration obligation. Notwithstanding, based on the opinion of the Slovenian AML authority limited liability companies are only exempted if they have one shareholder, who is the sole shareholder and at the same time the only director of the company. All other limited liability companies, although they have only one shareholder, should register information on their UBOs.

WHAT ABOUT BRANCHES OF FOREIGN CORPORATE ENTITIES?

The AML authority also adopted a position that the branch offices of foreign entities are obliged to register their UBOs as they are legally independent, the same rules apply to their establishment as for companies and are subject to the same obligations.

AML authority seems to broaden the definition of the "obliged entities". Namely, on the other hand the Companies Act expressly provides that a branch office is not a legal entity and thus does not fulfil the conditions under the definition of "company" under the Companies Act and consequently of "corporate entity" under the AML Act.

CALCULATION OF THE ADEQUATE SHARE

As described above, the UBOs are in principle natural persons indirectly or directly holding sufficient interests or rights, which is set at 25 % plus 1.

The AML authority provided an explanation how the sufficient percentage is calculated in case of indirect shareholdings. This is the best shown on a practical example: Company X is owned by two natural persons A and B each holding 30 %, and company Y holding 40 %, in which natural persons D holds 40 % and E 60 %. According to the AML authority, the UBOs of company X are each of A and B, and E (but not D). The reason why E is an UBO is because it owns a majority in Y and is therefore automatically considered as holding whole 40 % indirectly in X.

OUTLOOK AND RECOMMENDATIONS

We expect that the AML Act will be (soon) subject to amendments to bring it in line with AML authority's view. Due to the rather strict position of the Slovenian AML authority, we would recommend to register the UBOs in the cases mentioned above. *The AML*

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authority namely has the power to impose fines on the breaching entities in range from EUR 6,000 to EUR 60,000.

About WOLF THEISS

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