

Amendment to the Czech Act on Ultimate Beneficial Owners

September 2022

Only one year has passed since the new law on the registration of ultimate beneficial owners, i.e. Act No. 37/2021 Coll. ("UBO Act") became effective in the Czech Republic. However, the Czech government has already enacted an amendment to the UBO Act (i.e. Act No. 245/2022 Coll.) which will become effective on 1 October 2022 (the "Amendment").

Although changes brought by the Amendment do not fundamentally change the scope of the UBO Act, it is nonetheless an opportunity for companies operating in the Czech Republic to check if their UBO registration is up-to-date¹. Companies which do not comply with the UBO legal framework will not only face risks of potential sanctions from the Czech authorities, but more importantly such companies and their statutory bodies could face potential risks and liabilities.

What is new in the Amendment

Before the Amendment, a UBO was defined as a natural person who is an (i) ultimate beneficiary or (ii) a person who exercises ultimate control over a legal entity. The Amendment changes this two-component definition of the UBO and newly defines the UBO as a natural person who ultimately owns or controls a legal entity.

In relation to this new definition, the Amendment provides for a set of criteria upon which the UBO can be identified i.e.:

- if a person controls a share in the corporation or a share in the voting rights of more than 25%,
- if a person is entitled to a share in profit/equity funds, or the liquidation balance of more than 25%,
- if a person exercises decisive influence in the corporation, or in corporations which individually or collectively hold a share of more than 25% in the erstwhile corporation,
- if a person otherwise exercises decisive influence in the corporation through other means.

Apart from the changes to the UBO definition above, the Amendment brings other changes such as new rules in relation to ensuring automatic entries of UBOs and certain exemptions regarding entities which do not need to register the UBO (such as state bodies).

What does it mean in practice?

Although the Amendment does not fundamentally change the definition of a UBO, companies should verify if their UBO registration is up to date and should be able to demonstrate that their currently registered UBO continues to fulfil the UBO definition under the Amendment.

Companies should be aware that if they are not compliant with the UBO regime, they face potential sanctions of up to approximately 20,000 EUR (500,000 CZK). But what is potentially more severe, companies with an unregistered UBO (or wrongly registered UBO) will not be allowed to distribute profits either to this UBO or to a legal entity with the same UBO. Additionally, this UBO will not be allowed to exercise its voting rights at a general meeting.

¹ An obligation to register the UBO generally applies to all companies which are registered in the Czech Commercial Register and Czech trusts registered in the Czech Register of Trusts.

Also, in practice, there are more cases where banks are reluctant to provide loans to clients with an unregistered UBO since the company with an unregistered or incorrectly registered UBO is not able to meet required AML/KYC checks. Also, notaries might be reluctant to evidence certain legal acts (such as evidence from a meeting of shareholders) in this case.

When should companies make sure that their UBO is compliant?

Although the Amendments will come into effect soon, i.e. 1 October 2022, final provisions provide for specific time periods by which the companies should verify if their UBO is compliant with the new regime.

In general, companies which have duly registered their UBO pursuant to the previous legal regulation will be required to ensure compliance of the data in the UBO Register with requirements under the Amendment within 6 months after its effective date, i.e. by 1 April 2023.

Although the Amendment to the UBO Act does not fundamentally change its scope, companies should verify if their UBO registration is up to date to avoid possible adverse consequences.

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