

# Track Changes

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January 2020

## COMPANIES IN SLOVAKIA MUST REGISTER THEIR UBO TO STAY IN LINE WITH LEGAL CHANGES

Slovakia's implementation of the EU's 4th AML Directive<sup>1</sup> imposed a new obligation on legal entities registered with the Commercial Register to provide information regarding their ultimate beneficial owner(s) (the "UBO"). These changes were brought about by amendments to the Act No. 297/2008 Coll. on the Prevention of Legalization of Proceeds of Criminal Activity and Terrorist Financing (the "**Slovak AML Act**").

Have you already registered your UBO(s) in the relevant Commercial Register? If not, please be advised that statutory deadline to register UBOs for companies and other legal persons registered prior to 1 November 2018 has already past and was **31 December 2019**. Even if companies have missed the deadline, they must still fulfil the legal requirements of registration.

### THE LEGAL DETAILS - WHO IS IDENTIFIED AS A UBO?

According to the Slovak AML Act, a UBO is a **natural person who ultimately owns or controls, directly or indirectly, a company** or other legal entity, or is a natural person on whose behalf a company or legal entity carries out its business activities. In most cases, a UBO will be natural person who:

- holds (directly or indirectly) at least 25% of the voting rights or a 25% share in the registered capital of the legal entity;
- has the right to appoint or recall a statutory body, executive body, supervisory body or other controlling body of the legal entity or any of its members;
- controls in practice a legal entity other than as described above;

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<sup>1</sup> Directive (EU) No. 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 purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (the "4th AML Directive")

- has at least a 25% share of the benefits from the legal entity's business (dividends and similar payments).

If there are no persons who meet the above criteria, members of top management of the company are considered to be the UBOs (i.e. executive directors, proxies and managing employees directly reporting to the executive directors).

## HOW TO REGISTER UBOs – AS SIMPLE AS SUBMITTING A FORM

The legal entities registered with the Commercial Register (e.g. limited liability companies and joint stock companies), which are neither public authorities nor issuers of securities admitted to trading on a regulated market must register their UBOs by filing the prescribed form with their local Commercial Register. Such information will be subsequently entered into the Register of UBOs (the "Central Register") which is maintained by the Slovak Statistical Authority.

The registration of UBOs in a timely fashion is **free of any court fees**.

## WHAT INFORMATION ABOUT A UBO IS REGISTERED?

The following information concerning UBO(s) will be entered in the relevant Slovak Commercial Register:

- name and surname;
- birth number (if not assigned, the date of birth);
- gender;
- address of permanent residence (or another residence);
- citizenship;
- type and number of identification document (e.g., ID card or passport);
- data establishing the status of a UBO pursuant to the Slovak AML Act (i.e., whether the UBO's identification is based on ownership, control, participation in profits, participation in the top management, etc.).

## WHAT COMPANIES ARE NOT REQUIRED TO REGISTER THEIR UBOs?

As indicated above, the obligation to register UBOs with the Commercial Register **will not apply** to:

- legal entities that have issued securities admitted for trading on a regulated market that is subject to disclosure requirements consistent with EU law or subject to equivalent international law requirements; or
- legal entities registered with the Slovak Register of Public Sector Partners.

## IS INFORMATION ABOUT THE REGISTERED UBOS PUBLICLY AVAILABLE?

The information regarding UBOS is not publicly available, which stands in contrast with the data listed in the Register of Public Sector Partners, which is publicly available. However, the data will be directly available to certain state authorities, courts, financial police, tax authorities and so-called "obliged persons" in order to fulfil their obligation to identify UBOS as set out by the Slovak AML Act (e.g. banks, financial institutions, auditors, lawyers, accountants and other relevant entities further specified in the Slovak AML Act).

## FAILURE TO REGISTER IS PUNISHABLE BY VARIOUS FINES

Failure to comply with the registration obligation is punishable by a fine of up to EUR 3,310 imposed on the company's statutory body.

Furthermore, according to the Slovak AML Act, the failure to keep and regularly update the company's internal records (in electronic or paper form) regarding its UBOS is punishable by a fine of up to EUR 200,000.

The legal team at Wolf Theiss is prepared to answer your questions about the new registration requirements or any other business and legal queries you may have.

## About WOLF THEISS

Wolf Theiss is one of the leading law firms in Central, Eastern and Southeastern Europe (CEE/SEE). We have built our reputation on a combination of unrivalled local knowledge and strong international capability. We opened our first office in Vienna over 60 years ago. Our team now brings together over 340 lawyers from a diverse range of backgrounds, working in offices in 13 countries throughout the CEE/SEE region.

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