

Track Changes

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WOLF THEISS

LAUNCH OF THE ULTIMATE BENEFICIARY OWNER REGISTER AS OF 13 OCTOBER

The Polish Anti-Money Laundering and Anti-Terrorist Financing Act dated 1 March 2018 ("**AML Act**") introduced the Central Ultimate Beneficial Owner Register (*Centralny Rejestr Beneficjentów Rzeczywistych* - "**UBO Register**"). The UBO Register was introduced in order to process information about beneficial owners of partnerships and companies and will be launched on 13 October 2019. Companies and partnerships will be obliged to provide information to the UBO Register on their Ultimate Beneficial Owners ("**UBOs**") within 7 days from the moment of entering the company into the National Court Register, or, in the case of already existing entities, within 6 months after the UBO Register regulations enter into force, i.e. until 13 April 2020. In the case of already provided information, the update to the UBO Register should be provided within 7 days from the change of information. The UBO Register will be non-confidential, publicly accessible and free of charge.

HOW TO DETERMINE A UBO?

Under the language of the AML Act, a UBO is a natural or legal person, which directly or indirectly controls an entity by holding rights which allow him to influence the actions of this entity or the actions of natural and legal persons on behalf of which a transaction is executed. In the case of corporate entities (i.e. general partnerships, limited partnerships, limited joint-stock partnerships, limited liability companies, joint-stock companies, except for public companies), it is: (i) a natural person holding at least 25% of the total number of shares in an entity, (ii) a natural person disposing of at least 25% of the total number of votes in the managing body of an entity also as a pledgee, (iii) a natural person exercising control over a legal person or persons, which together hold over 25% of the total number of shares or dispose of over 25% of votes in the managing body of an entity also as pledgee, or, (iv) a natural person exercising control over an entity as a parent company pursuant to the Polish Accounting Act. In the case of natural persons conducting business activity, this person is simultaneously the UBO. It is worth mentioning that branches of foreign entities have not been covered by the UBO reporting obligation, and UBOs of such foreign entities that set up a branch in Poland may stay anonymous.

WHAT IF THE UBO CANNOT BE DETERMINED?

If it is not possible to determine a UBO in accordance with the thresholds referred to above, a UBO shall be deemed a natural person who holds the position of senior managing official in the entity, for example the chairman of the board.

WHAT INFORMATION ON THE UBO WILL BE REPORTED TO THE UBO REGISTER?

The UBO Register will contain information available on both the given corporate entity and its UBO. With respect to a corporate entity which submits information on UBOs, it will be (i) name, (ii) legal form, (iii) registered seat, (iv) registration number in National Court Register (KRS number), and (v) tax identification number (NIP). For a UBO, it will be: (i) name and surname; (ii) citizenship, (iii) country of residence, (iv) Polish personal identification number (PESEL) or date of birth in case the person does not have a PESEL, (v) information on the percentage of the UBO's participation or on the entitlements of the UBO.

Most importantly, the processing of UBOs data is conducted without their consent or knowledge.

WHO IS OBLIGED TO REPORT INFORMATION ON A UBO?

Persons authorized to represent an entity will be responsible for the submission of information to the UBO Register. However, it is still not clear whether it will be possible for a proxy to submit an information notification about a UBO to the UBO Register.

WHAT ARE THE PENALTIES FOR NOT REGISTERING A UBO?

The penalty for noncompliance with the disclosure requirements of UBOs in the UBO Register is a monetary fine up to PLN 1,000,000 (approx. EUR 230,000).

SUMMARY

The notification regarding a UBO must be submitted to the register by means of electronic communication via a separate application, which is currently in a testing phase. The application will provide two methods for submitting of the notifications on UBO: either by way of an electronic signature, or a trusted profile ePUAP (identically as submission of the financial statements). This will be free-of-charge. Thus, as in the previous instances of digitalization of administrative procedures, many questions are yet to be answered, and functionalities will be tested in practice after the UBO Register will be operational.

About WOLF THEISS

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