

D|B|S NEWSLETTE

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NEWSLETTER TOPIC

Adoption and entry into force of the new Law on Central Register of Beneficial Owners

Law on Central Register of Beneficial Owners

In the Official Gazette of the Republic of Serbia no. 41/2018 as of 31 May 2018, a new **Law on Central Register of Beneficial Owners** has been published, which entered into force on 8 June 2018. The base for adoption of the Law was the Directive (EU) 2015/849 of the European Parliament and of the Council, whose Article 30 stipulates the obligation of the States to ensure that incorporated legal entities are required to obtain and hold adequate, accurate and current information on their beneficial ownership, including the details of the beneficial interests held. In addition, this is also an action under Recommendation 24 of the FATF (Financial Action Task Force) on the need to obtain and hold data on beneficial owners of legal persons with the aim to prevent money laundering and financing of terrorism.

To date, it was uncommon in Serbia not to disclose the beneficial owners of legal entities, however, it was not forbidden by law (so it has happened in practice), either where the owners of legal entities were foreign companies with nominated nominees/trustees, where depending on the territory on which they were incorporated, the beneficial owners were known to certain bodies in accordance with local legislation (Cyprus, for example) or where the beneficial owners were generally unknown, except to the beneficial owner and nominated nominees/trustees (Liberia, for example), or where the beneficial owners have concluded contracts on nominated power of attorney with the nominated owners (on grounds of some sort of commission business, where the ownership is held on behalf of another party). Now, under the Law on Central Registry of Beneficial Owners, this is **forbidden by law**, and the registration of the person who is not the beneficial owner of the legal entity in the registry of owners (i.e. the nominated nominee/trustee, or any other person) constitutes a **criminal offence** punishable by imprisonment of three months to five years. Therefore, the potentially granted nominated powers of attorney may no longer be used (even in case of emergency) as proof of beneficial ownership, since the disclosure thereof after 31 January 2019 [which is the deadline for the registration of beneficial owners of legal entities in a specially created register] shall constitute grounds for criminal prosecution for criminal offence referred to in Article 13 of the Law on Central Register of Beneficial Owners.

As from 31 January 2019, the failure to register data on beneficial owners and the registration of untrue data in the Register of beneficial owners kept by the SBRA shall constitute a criminal offence.

Obligations of legal persons

under the Law on Central Register of Beneficial Owners

The central register of beneficial owners shall be kept by the Serbian Business Registers Agency and shall serve as a public, unique, central, electronic database on natural persons who are the beneficial owners of registered entities. The Ministry of Trade shall oversee the implementation of this Law. The Central register shall be established no later than by 31 December 2018, and all registered entities incorporated before 31 December 2018 shall be obliged to register their data set forth in Article 5(2) (registered address) in the register no later than by 31 January 2019.

The minister in charge of commercial affairs shall adopt a subordinate legislation to regulate in more detail the contents of the Central register of beneficial owners, in order to implement the registration of beneficial owners of the Registered entity in accordance with the Law.

The violation of the obligations stipulated by the Law on Central Register of Beneficial Owners may constitute a criminal offence, and in certain cases a misdemeanour punishable by a monetary fine in the range between RSD 500,000 and RSD 2 million for the legal person, and in the range between RSD 50,000 and RSD 150,000 for the responsible person of the legal person.

The Central register shall incorporate the following information about the beneficial owner of the registered entity:

- i) for a resident natural person - name and surname, unique citizen number and country of residence;
- ii) for a non-resident - name and surname, passport number and issuing country and/or personal number of a foreign person and/or ID card number of a foreign person and issuing country in accordance with the regulations regulating the conditions for entry, movement and stay of foreign citizens on the territory of the Republic of Serbia, the date, month and year and place of birth, country of residence and nationality; and
- III) grounds for acquisition of beneficial owner capacity of the Registered entity.

All registered entities incorporated before 31 December 2018 shall be obliged to register their data set forth in Article 5(2) (registered address) in the register no later than by 31 January 2019.



To whom the Law relates?

The Law shall apply to all legal persons registered in Serbia, which includes: companies, other than public joint stock companies; cooperatives; branches of foreign companies; business associations and associations, other than political parties, trade unions, sport organizations and associations, churches and religious communities; foundations and endowments; institutions; and representative offices of foreign companies, associations, foundations and endowments (however, not including the companies where the sole member or the founder is the Government, province or unit of local self-government).

who is a “beneficial owner”?

The term beneficial owner used in this Law means the following **natural persons**: [1] a natural person who directly or indirectly holds 25% or more share, shares, voting rights or other rights, based on which he/she participates in the management of the Registered entity, i.e. participates in the capital of the Registered entity with 25% share or more; [2] natural person with a prevailing direct or indirect influence on managing the business of a company and decision-making within the company; [3] a natural person that provides, or has provided, funds for a Registered entity and therefore has a substantial influence on decision making process in a company with regard to finance and business decisions; [4] a natural person who is the founder, trustee, protector or user, if appointed, as well as a person having a dominant position in a trust or another entity established under foreign laws; [5] a natural person registered to represent a cooperative, association, foundation, endowment or an institution if the person authorized for representation did not report another person as the beneficial owner.* Exceptionally, if it is not possible to determine the natural person from the previous items in the manner described above, the beneficial owner of the Registered entity is a natural person authorised for representation or registered as the member of the body of such entity.



What needs to be prepared

The data on the business entity (company) from the Business Registers Agency or other registration body (when it is not a company), so that the data could be registered in the register of beneficial owners.

Copies of documents based on which the personal data were registered (passport, ID card) - “documents used to identify the beneficial owner”. In principle, due to other needs related to the implementation of the Law on Prevention of Money Laundering, it would be good to also submit the last bill for utility services in the name of the person whose data is being registered, which relate to the actual residential address of such person (electricity, Infostan, phone, mobile phone, tax or alike).

More precise instructions on what should be prepared and what the appendices would exactly look like shall be known after the adoption of the subordinate regulation, which is expected by the end of the year.

WHICH CERTIFICATES SHALL BE ISSUED?

At the request of the interested party, SBRA shall issue certificates on the beneficial owners of legal persons, historical excerpts (with changes of ownership) and whether a natural person is or was registered in the central register.

**For all further information,
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