Central Register of Beneficial Owners to be launched on 13th October 2019

On 13th October 2019 the public Central Register of Beneficial Owners will be launched (hereinafter: „UBO Register“) in Poland.

Introduction of the UBO register for Polish commercial law companies is dictated by the pursuit of transparency of capital structures and prevention of money laundering and terrorist financing.

UBO Register will be public (available on-line in the National Court Register).

**Beneficial owner in the meaning of the AML Law**

Beneficial owner in the meaning of the article 2 section 2 item 1 of the Act on money laundering and terrorist financing of 1st March 2018 (Journal of Laws 2019 item 1115, hereinafter: „AML Law“) is a natural person or group of individuals exercising direct or indirect control over a given entity (company). To determine the beneficial owner of a given company, it is necessary to check first whether there are natural persons who possess at least 25 percent shares/voting rights in a given company (directly or indirectly through other companies). If the structure of the capital group includes entities other than companies (e.g. investment funds), determining who is the beneficial owner requires more detailed analysis.

**Entities required to disclose beneficial owners**

The majority of Polish commercial law companies are obliged to disclose and update information about beneficial owners:

- general partnerships,
- limited partnerships,
- limited joint-stock partnerships,
- limited liability companies,
- joint-stock companies, excluding public companies.

The information that should be notified to the UBO Register includes, among others, identification data of the beneficial owner as also a member of the board or partner authorized to represent the company/partnership.

**Notifying persons**

Notifications are made by persons authorized to represent the company – in accordance with the given entity’s general rules of representation. The notification is submitted in the form of an electronic document and contains a statement by the person making the report that the data contained therein is true. The statement is made under the sanction of criminal liability for submitting a false statement. Whereas failure to comply with this obligation on time will be punishable with a fine of up to PLN 1 million.

**Deadline for notifications**

Existing companies are obliged to notify the UBO Register within 6 months as of its launching, i.e. until 13th April 2020.

Whereas newly established companies are obliged to notify the UBO Register no later than within 7 days from the date of entry of the companies to the National Court Register.

The 7-day limit will also apply in the event of a change in the information provided to the UBO Register. Therefore, constant monitoring of the capital structure of the company and its actual beneficial owner are strongly recommended.

**Beneficial owner in the meaning of AML Law and beneficial owner of payments in the CIT Act**

We underline that the terms beneficial owner in the AML Act and in the CIT and PIT Acts are not identical. Beneficial owner within the meaning of the AML Act is a natural person, and the most important criterion for determining it is the fact that it controls the entity. In turn, the beneficial owner of receivables for withholding tax (hereinafter: “WHT”) purposes may also be an entity other than a natural person (very often legal persons, including commercial law companies), and the main identification criteria relate to: (i) receiving receivables for their own benefit, (ii) not transferring receivables to another entity, and (iii) conducting real business activity.

**Other duties under the AML Law**

It is worth pointing out that the AML Law, the provisions of which have mostly entered into force on 13th July 2018, imposes numerous obligations on qualified entities, among which are, besides financial institutions, other entities that provide bookkeeping services or provide access to the registered office and address. One of the most important duties is the need to implement an internal anti-money laundering and anti-terrorist financing procedure.
The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

Recommendations
If you are interested in details on how to determine the beneficial owner, assistance in the preparation and implementation of appropriate procedures, verification of the status of the beneficial owner of receivables for the purposes of WHT, please contact us.

Contact

Rafał Ciołek
Partner
Tel.: +48 22 528 11 97
rciolek@kpmg.pl

Anna Sińczuk
Partner
Tel.: +48 22 528 11 92
asinczuk@kpmg.pl

Wojciech Majkowski
Director
Tel.: +48 22 528 16 80
wmajkowski@kpmg.pl

Przemysław Szywacz
Director
Tel.: +48 22 528 10 03
pszywacz@kpmg.pl

KPMG Offices

Warszawa
ul. Inflancka 4a
00-189 Warszawa
Tel.: +48 22 528 11 00
Fax: +48 22 528 10 09
kpmg@kpmg.pl

Kraków
ul. Opolska 114
31-323 Kraków
Tel.: +48 12 424 94 00
Fax: +48 12 424 94 01
krakow@kpmg.pl

Poznań
ul. Roosevelta 22
60-829 Poznań
Tel.: +48 61 845 46 00
Fax: +48 61 845 46 01
poznan@kpmg.pl

Wrocław
ul. Szczytnicka 11
50-382 Wrocław
Tel.: +48 71 370 49 00
Fax: +48 71 370 49 01
wroclaw@kpmg.pl

Gdańsk
al. Zwycięstwa 13a
80-219 Gdańsk
Tel.: +48 58 772 95 00
Fax: +48 58 772 95 01
gdansk@kpmg.pl

Kraków
ul. Francuska 36
40-028 Katowice
Tel.: +48 32 778 88 00
Fax: +48 32 778 88 10
katowice@kpmg.pl

Poznań
ul. Składowa 35
90-127 Łódź
Tel.: +48 42 232 77 00
Fax: +48 42 232 77 01
lodz@kpmg.pl

Łódź
ul. Szczytnicka 11
50-382 Wrocław
Tel.: +48 71 370 49 00
Fax: +48 71 370 49 01
wroclaw@kpmg.pl

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