

Beneficial ownership of legal persons from the perspective of the Czech FIU

Financial Analytical Office

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IV. AML Directive

Directive EU 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

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DIRECTIVES

- Directive (EU) 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 (1) 73



IV. AML Directive

CHAPTER III BENEFICIAL OWNERSHIP INFORMATION

Article 30

1. Member States shall ensure that corporate and other legal entities incorporated within their territory are required to obtain and hold adequate, accurate and current information on their beneficial ownership, including the details of the beneficial interests held.



The Act No. 253/2008 Coll. (AML Act)

Section 29b – Record Keeping on Beneficial Owner

A legal person shall keep and continuously record the current data to determine and verify the identity of its beneficial owner including the details of the fact which is the basis for its status of the beneficial owner or another justification why is the particular person considered as the beneficial owner

- **keeps records for 10 years after termination of relationship**
- **shall be registered in the Register according to the Act on Public Registries (interim provisions 1year / 3years)**
- **informs upon request of authorized entity**



The AML Act

Section 4 para 4 – beneficial owner

Natural person having factual or legal possibility to realize directly or indirectly decisive influence in legal person, trust or other legal arrangement without legal personality

➤ for a business corporation:

- Natural person with more than 25 % of voting rights/ share in ordinary stock
- Natural persons acting in concert with more with more than 25% of voting rights
- Natural person which is on the basis of another fact beneficiary of incomer from activity over 25%



Register of Beneficial Owners

The Act No. 304/2013 Coll.

registered are:

- Name and address
- Date of birth and birth identification number
- Nationality
- Alternatively :
 1. share in the voting rights,
 2. share in profits, or
 3. any other facts if the position of beneficial owner is based otherwise



Register of Beneficial Owners

Access to the Register:

- Courts and law enforcement authorities
- Intelligence services
- Tax authorities, Financial Analytical Office (FAU)
- Obligated entities according to the AML Act
- State financial aid provider
- Czech National Bank, National Security Authority, Supreme Audit Office
- Anyone who is entitled according to another law



Expected development

- Effectiveness of the amendment to the AML Act – 1 January 2017 and its implementation
- Effectiveness of the Register of Beneficial Owners – 1 January 2018
- Filling the Register by 31 December 2018
- Revision of the IV. AML Directive ?



AML/CFT Risk Assessment - EU

Report of the Commission of 26 June 2017 SWD(2017)241

- Emphasis of the proper identification of beneficial owner
- Implementation of rules according to the IV. AML directive regarding transparency of information on a real ownership
- To ensure monitoring and control of the sectors most exposed to the risks



Impacts of the Panama Papers on Czech legislation

- Establishing of national registers of beneficial owners according to the IV. AMLD and their future interconnection (Commission has proposed public registers with the exception of „non business“ trusts)
- Draft amendment to the Directive on automatic exchange of information (DAC 5)
- Draft amendment to the Accounting Directive
- Creating of EU list of non-cooperative countries in the area of tax cooperation
- Draft of the Directive against tax evasion (anti-BEPS Directive)



Methodical Guidance of the Transparency International - Czech Republic

- We perceive every new tool very positively
- Complex concept of determination of BOs (guideline reflecting current findings)
- For its clarity wide use possibilities (both public and private sector)
- Presumption of the public national registers
- Suggests the solution – „transparent number“



A real case - FAU

- STR directed to bank employee dealing with VIP clients
- He had elicited funds in the amount of approx. 5 millions EUR from a foreign client
- According to his instructions client transferred funds to the account of foreign company in Mauritius
- FAU took steps to identify all financial flows
- Based on our request we received from Mauritius information that beneficiary of funds is a company seated in Hong Kong
- It had been determined BO of the company who was a proxy at the same time
- There had been proved a linkage between a perpetrator and bank employee and an owner of the company and solicitor of a bank employee



**Thank you for you
attention.....**

