

## Beneficial Owners Register

Practical guide

May 2021

### Ultimate Beneficial Owner (“UBO”)

#### Who is the UBO of a company under the new legislation?

UBO is **every individual** who is **the ultimate beneficiary** or a **person with ultimate influence**. In case it is **not possible to identify** the actual UBO, a UBO is every individual in the position of **senior managing official**.

**The ultimate beneficiary** = a person who may directly or indirectly have a significant benefit from the company’s activities or liquidation and does not share the benefit to anyone else. A person with a share in profit, other own resources or liquidation balance exceeding 25% will always be the ultimate beneficiary

**The person with ultimate influence** = a person who may, without the instructions of another person, directly or indirectly, exercise decisive influence in the company. The ultimate influence is a characteristic for a controlling person (within a group of companies under the Business Corporations Act), or a person whose direct or indirect share in voting rights is greater than others’ share, typically greater than 25%.

#### How to identify the UBO?

The company is obliged to know its UBO and must exercise **all reasonable efforts** to identify them.

The UBO, the ultimate beneficiary, the person with ultimate influence and the person through whom the ultimate beneficiary benefits/exercises its influence, are obliged **to inform the company of the grounds the UBO’s position** and **provide necessary cooperation** to fulfil the registration obligation.

### What should your company do?

#### If you have registered the UBO on time\* according to the current legislation

- Verify the current UBO
- Check the entry in the UBO Register and ensure that the information entered complies with the new legislation **by 1 December 2021** (exempted from court fees)

#### If you have not registered the UBO yet, or you have not registered the UBO on time\* according to the current legislation

- Identify the UBO
- Register the UBO **without any delay after 1 June 2021**

*\*until 1 January 2019, if a company was incorporated by 31 December 2017; within 15 days from the company incorporation if it was incorporated after 1 January 2018*

#### In both cases

- Keep complete, accurate and current information about the UBO (for as long as the person is the UBO and 10 years after he/she ceases to be the UBO)
- Update the information so that it always corresponds to the actual state (it is necessary to register changes without undue delay).

## If your company does not have/cannot identify the UBO

- **Every senior managing official** will be registered, i.e. persons who ensure **day-to-day** or **regular management** of the company and who are:
  - members of the statutory body/ persons in a similar position / persons who represent another legal entity in such body, or
  - directly subordinate to the statutory body or its member.
- If an entity that is the person with ultimate influence does not have any UBO or the UBO cannot be identified, and a senior managing official is identified as the UBO as a result, such senior managing official is considered to be the UBO of **all companies in the subordinate ownership structure**.
- The company is obliged to record steps taken to identify the UBO.

## Registration process

### What data will be entered in the new UBO Register?

- Details about the UBO (name, address of residence or domicile, date of birth, birth certificate number, citizenship)
- Details about the nature of the UBO's position (size of the UBO's share or information about other grounds constituting the UBO's position)
- Description of the structure of relationships, including identification data
- The date of establishment and termination of the UBO's position
- Details about the company (business name and identification number)
- Other information (date of the automatic transfer of data, time of making valid data available or a note of discrepancy)

### How does the registration process work and what documents should you provide?

Registration through a court or notary public	Automatic transfer of data in some cases
<p><b>Court</b></p> <ul style="list-style-type: none"><li>• A court fee of <b>CZK 4,000</b> must be paid along with the application.</li><li>• The regional court, in whose district the company's registered office is located, has territorial jurisdiction over such registration.</li></ul> <p><b>Notary</b></p> <ul style="list-style-type: none"><li>• It will no longer be necessary to prepare a notarial deed for registration as has been the case so far.</li><li>• The fee for notarial registration should be lower than the court fee, typically <b>CZK 2,500</b>.</li></ul>	<p>The following will <b>be automatically registered</b> as a UBO (if being an individual):</p> <ul style="list-style-type: none"><li>• <b>a shareholder</b> in a limited liability company with a share of at least <b>25%</b>;</li><li>• UBO of a legal entity which is a shareholder in a limited liability company with a share of at least <b>25%</b>;</li><li>• <b>a sole shareholder</b> of a joint-stock company;</li><li>• UBO of a legal entity which is a sole shareholder of a joint-stock company.</li></ul> <p>Companies that have registered their UBO under the previous legislation may <b>request automatic transfer of data in the future</b>.</p>

### Required documents

- If the data entered **cannot be verified in other registers**, the registration application to a court or notary public must be supported by simple copies of documents proving the **identity and position of the UBO**, typically an extract from foreign public registers, Articles of Association, list of shareholders, decision of a company's body on dividend payment, shareholder's declaration of acting in concert, affidavit of the UBO or the company itself, and relevant identification documents to prove identity.
- Documents in a foreign language must be supported by a simple translation into the Czech language (unless the court or notary states that the translation is not required).

## Who has access to the UBO Register?

Publicity of certain data	Full access
<ul style="list-style-type: none"> <li>• Details about the company</li> <li>• Details about the UBO (name, state of domicile, year and month of birth, citizenship)</li> <li>• Details on the nature of the UBO's position and size of the share, if it constitutes the UBO's position</li> <li>• The date of establishment and termination of the UBO's position</li> <li>• Other data if their publication has been approved or if they were automatically transferred</li> <li>• Information that no details about the UBO have been entered.</li> </ul>	<ul style="list-style-type: none"> <li>• UBO</li> <li>• The company whose UBO is involved</li> <li>• A person authorised to act on behalf of the company prior to its incorporation</li> <li>• Public authorities and other authorized entities (e.g. courts, insolvency administrators, notaries, bodies active in criminal proceedings, tax administrators, Czech National Bank, Ministry of Finance, or persons obliged under the AML Act).</li> </ul>

## Solution of discrepancies in the UBO Register

The company must ensure that the valid data about its UBO correspond with the actual state.

Public authorities and persons obliged under the AML Act will inform the court which maintains the UBO Register that they have discovered discrepancies in the registered data in the course of their activities. The court will request the company to correct or refute the discrepancies within an adequate period, and if the company fails to do so, the court will initiate the **proceeding on discrepancies**. The court will record a **note of discrepancy** into the UBO Register. If the **discrepancy is refuted** in the proceedings, the court will mention the judgment in the UBO Register and delete the note. If the **discrepancy is confirmed**, the court will mention the judgment in the UBO Register, delete incorrect data and enter new data if they have been revealed in the proceedings (or the company is obliged to do so).

## Sanctions for non-compliance

Corporate sanctions if the UBO is not registered	Administrative sanctions
<ul style="list-style-type: none"> <li>• Neither the UBO, nor the shareholder which has the same UBO, <b>will be able to exercise their voting rights</b> at the General Meeting or to make decisions as a sole shareholder.</li> <li>• A company without a registered UBO <b>will not be able exercise its voting rights</b> at the General Meeting or to make decisions as a sole shareholder.</li> <li>• A company <b>will not be able to pay dividends</b> to the unregistered UBO or shareholder which has the same UBO.</li> <li>• A company <b>will not be able to pay dividends</b> to a shareholder who does not have a registered UBO in the UBO Register.</li> <li>• <b>The right</b> to such unpaid dividend <b>will cease</b> after the end of the accounting period in which it was decided on its payment.</li> <li>• A dividend paid in violation of this prohibition may lead to <b>unjust enrichment</b> on the side of the beneficiary and a <b>breach of the duty to act with due managerial care</b> on the side of company's statutory body.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>A company</b> commits an administrative offence if it does not enter any data in the UBO Register or does not correct or refute identified discrepancies, at the request of the court within a given period.</li> <li>• <b>UBO</b> may commit an administrative offence if he/she does not provide the company with necessary cooperation for his/her identification and entry of the data in the UBO Register.</li> </ul> <p><b>Fines</b></p> <p>A fine up to <b>CZK 500,000</b> may be imposed for both administrative offences.</p>

- Rights and obligations arising from an act **concealing the UBO** at a time when the UBO was not registered (typically contracts with a fictitious owner, “dummy directors”, who can no longer rely on being paid for the provided services, eventually the company can no longer rely on provision of such services despite the contract or on transfer of benefits from a formal exercise of rights of a company’s body by such fictitious owner).

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