



Zakon o centralnoj evidenciji stvarnih vlasnika – usklađivanje domaćeg zakonodavstva sa uslovima Direktive (EU) 2015/849 vezane za sprečavanje pranja novca i finansiranje terorizma

✓ Ključne novine:

1. Obaveza ovlašćenog zastupnika da registruje u Evidenciji podatke o stvarnom vlasniku Subjekta u roku od 15 dana od nastupanja osnova za registraciju.
2. Obaveza posedovanja i čuvanja tačnih, ažurnih i odgovarajućih podataka i dokumenata o stvarnim vlasnicima Subjekata u periodu od 10 godina od dana registracije u Evidenciji.
3. Obaveza dostavljanja predmetnih dokumenata i podataka (o stvarnim vlasnicima Subjekata) nadležnim državnim organima bez odlaganja.
4. Obaveza određivanja stvarnih vlasnika Subjekata najkasnije do 08. jula 2018. godine.
5. Obaveza registracije stvarnih vlasnika u Evidenciji najkasnije 31. januara 2019. godine.

Narodna skupština Republike Srbije je 25. maja 2018. godine usvojila Zakon o centralnoj evidenciji stvarnih vlasnika („*Zakon*“), u cilju usklađivanja domaćeg zakonodavnog okvira sa uslovima propisanim u Direktivi 2015/849 o sprečavanju korišćenja finansijskog sistema u svrhu pranja novca ili finansiranja terorizma („*Direktiva*“), usvojenoj 20. maja 2015. godine od strane Evropskog parlamenta.

Članom 30. Direktive određena je obaveza za države članice da osiguraju da poslovni i drugi subjekti koji se registruju na njihovoj teritoriji pribave i čuvaju odgovarajuće, tačne i ažurne informacije o njihovim stvarnim vlasnicima i udelima koje poseduju.

✓ Obveznici Zakona:

Zakon se primenjuje na privredna društva (osim javnih AD i onih u kojima je Republika Srbija član), ogranke stranih privrednih društava, zadruge, fondacije, zadužbine, ustanove, poslovna udruženja i predstavništva stranih privrednih društava, udruženja, fondacija i zadužbina (svi zajedno: „*Subjekt*“).

✓ Pojam „stvarnog vlasnika“:

Za potrebe ovog Zakona, **stvarnim vlasnikom** Subjekta se smatra fizičko lice:

- a. koje je posredno ili neposredno imalac 25% ili više udela, akcija, prava glasa ili drugih prava, na osnovu kojih učestvuje u upravljanju Subjektom;

Law on Central Record of Beneficial Owners – Harmonization of Domestic Legislation with the terms of Directive (EU) 2015/849 related to the prevention of money laundering and terrorist financing

✓ Key Notes:

1. Authorized representative's obligation to register in the Record data on beneficial owner of the Entity within 15 days as of occurrence of grounds for registration.
2. Obligation of possessing and keeping true, updated and relevant data and documents on beneficial owners of Entities within 10 years' period as of date of registration in the Record.
3. Obligation of delivery of respective documents and data (on beneficial owners of Entities) to competent state authorities, without delay.
4. Obligation of determining beneficial owners of the Entities at the latest by 08 July 2018.
5. Obligation of registration of beneficial owners in the Record at the latest by 31 January 2019.

National Assembly of Republic of Serbia adopted on 25 May 2018 the Law on Central Record of Beneficial Owners (the "*Law*"), for the purpose of harmonization of domestic legislation with the terms defined in the Directive 2015/849, on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (the "*Directive*"), adopted on 20 May 2015 by the European Parliament.

Article 30 of the Directive defines obligation for member states to ensure that business and other entities registered in their territories, to obtain and hold adequate, accurate and current information on their beneficial owners as well as interest possessed.

✓ Obligors of the Law:

The Law applies to companies (other than public stock companies and those with shareholding interest of Republic of Serbia), branches of foreign companies, cooperatives, foundations, endowments, business associations and representative offices of foreign companies, associations, foundations and endowments (jointly: the "*Entity*").

✓ The term "beneficial owner":

For the purposes of this Law, the beneficial owner of the Entity is considered a natural person:

- a. who directly or indirectly possess 25% or more share, stocks, voting rights or other rights, based on which he/she participates in management of the Entity;

- b. koje posredno ili neposredno ima preovlađujući uticaj na vođenje poslova i donošenje odluka;
 - c. koje Subjektu posredno obezbedi ili obezbeđuje sredstva, na osnovu čega bitno utiče na donošenje odluka Subjekta o finansiranju i poslovanju;
 - d. koje je osnivač (engl. „settlor“), poverenik (engl. „trustee“), zaštitnik (engl. „protector“), korisnik (engl. „beneficiary“), kao i lice koje ima dominantan položaj u upravljanju trustom;
 - e. koje je registrovano za zastupanje zadruga, udruženja, fondacija, zadužbina i ustanova – pod uslovom da ovlašćeno lice nije prijavilo drugo fizičko lice kao stvarnog vlasnika.
- b. who directly or indirectly has dominant influence in the management of the Entity and decision-making process;
 - c. who provides or is providing to the Entity indirectly funds, based on which he/she has significant impact on decision-making process of the Entity in relation to financing and management;
 - d. who is a settlor, trustee, protector, beneficiary as well as person having dominant position in management of trust;
 - e. registered for representation of cooperatives, associations, foundations, endowments and institutions – under condition that such person failed to register other natural person as beneficial owner.

Ukoliko se stvarni vlasnik Subjekta ne može utvrditi na jedan od načina određenim u tačkama „a“ do „d“ iznad, stvarnim vlasnikom će se smatrati fizičko lice koje je registrovano za zastupanje odnosnog Subjekta.

If the beneficial owner cannot be determined in one of manners defined in items “a” to “d” above, natural person registered for representation of respective Entity shall be considered as beneficial owner.

✓ Centralna evidencija:

✓ Central Record:

Za potrebe vođenja evidencije o stvarnim vlasnicima Subjekata kod Agencije za privredne registre („APR“) će biti osnovan poseban registar – centralna evidencija stvarnih vlasnika („Evidencija“), i to najkasnije do 31. decembra 2018. godine.

For the purpose of keeping records on beneficial owners of the Entities, Business Registers Agency (the “BRA“) shall establish central record of beneficial owners (the “Record“) at the latest by 31 December 2018.

Pored uobičajenih podataka o Subjektu, Evidencija će sadržati i osnovne podatke o stvarnom vlasniku, i to između ostalog lično ime, JMBG/broj pasoša i državu prebivališta odnosnog fizičkog lica, kao i osnov za sticanje svojstva stvarnog vlasnika.

In addition to regular information on the Entity, the Record shall include basic information on the beneficial owner - name, personal identification number / passport number and resident state of that person, as well as legal ground for becoming the beneficial owner.

✓ Registracija u Evidenciji:

✓ Registration in the Record:

Registraciju osnovnih informacija o Subjektima u Evidenciji vrši APR, dok je ovlašćeni zastupnik Subjekta dužan da izvrši registraciju podataka o stvarnim vlasnicima Subjekata i to u roku od 15 dana od dana nastupanja osnova za registraciju.

Registration of basic information on the Entities in the Record makes the BRA, while an authorized representative of the Entity is obliged to make registration of data on beneficial owner of the Entity within 15 days' period as of occurrence of the grounds for registration.

Za razliku od Direktive koja trećim licima omogućava uvid u podatke iz evidencije pod uslovom postojanja pravnog interesa za dobijanje odnosnog podatka, Zakon daje mogućnost APR-u da samostalno uredi pitanje pristupa internet portalu Evidencije i načina korišćenja podataka koji će biti registrovani u Evidenciji.

Unlike the Directive, which allows third parties access to data from the record under condition of existence of legal interest for gaining respective data, the Law provides the BRA possibility to independently determine the issue of accessing to internet page of the Record and manner of use of data that will be registered in the Record.

✓ Obaveza čuvanja podataka:

✓ Obligation of keeping records:

Subjekti su dužni da poseduju i čuvaju odgovarajuće, tačne i ažurne podatke i dokumenta o njihovim stvarnim vlasnicima u periodu od 10 godina od dana registracije podataka o stvarnom

The Entities are obliged to possess and keep true, updated and relevant data and documents on beneficial owners of the Entities within 10 years' period as of date of registration of respective

vlasniku u Evidenciji. Dodatno, na zahtev Narodne banke Srbije ili nadležnog državnog organa, Subjekti su dužni da ova dokumenta i podatke bez odlaganja dostave odnosnim organima.

✓ Osporavanje registracije u Evidenciji:

Fizičko lice koje je registrovano u Evidenciji kao stvarni vlasnik Subjekta je ovlašćeno da podnese sudu tužbu protiv Subjekta, radi utvrđivanja da to lice nije stvarni vlasnik Subjekta. U slučaju uspeha u sporu, sud nalaže APR brisanje odnosnog lica iz Evidencije.

✓ Kaznene odredbe:

Za povrede obaveza utvrđenih ovim Zakonom, zakonodavac je predvideo krivično-pravnu kao i prekršajnu odgovornost.

Kazna zatvora u trajanju od 3 meseca do 5 godina zaprećena je za ono lice koje u nameri da prikrije stvarnog vlasnika Subjekta u Evidenciju:

- ne upiše podatke o stvarnom vlasniku Subjekta, ili
- upiše neistinit podatak o stvarnom vlasniku Subjekta, ili
- promeni ili izbriše istinit podatak o stvarnom vlasniku Subjekta.

Dodatno, za Subjekta je zaprećena novčana kazna u iznosu do 2 miliona dinara u slučaju da ne izvrši registraciju podataka o stvarnom vlasniku Subjekta u roku od 15 dana ili ukoliko ne poseduje ili ne čuva podatke i dokumenta na osnovu koju je registrovao stvanog vlasnika Subjekta.

✓ Rokovi za usklađivanje:

Svi postojeći Subjekti su dužni da u roku od 30 dana od dana stupanja na snagu Zakona (tj. najkasnije do 08. jula 2018. godine) interno odrede stvarnog vlasnika kao i da obezbede dokumenta i podatke neophodne za utvrđenje identiteta stvarnog subjekta.

Ovlašćeni zastupnici Subjekata su dužni da najkasnije do 31. januara 2019. godine registruju podatke o stvarnim vlasnicima Subjekata osnovanim do 31. decembra 2018. godine.

information in the Record. In addition, upon request of the National Bank of Serbia or competent state authority, the Entities are obliged to deliver respective documents and data without delay to those authorities.

✓ Disputing registration in the Record:

Natural person being registered in the Record as the beneficial owner of the Entity is authorized to file a lawsuit against the Entity, for the purpose of determining that such person is not the beneficial owner of the Entity. In case of successful outcome of dispute, the court orders the BRA deletion of respective person from the Record.

✓ Penalties:

For violation of obligations determined by this Law, the legislator has determined criminal and misdemeanour liability.

Penalty of imprisonment from 3 months to 5 years is confined for a person, who with the intention of concealing the beneficial owner of the Entity in the Record:

- fails to register information on beneficial owner of the Entity; or
- registers false information on beneficial owner of the Entity; or
- changes or deletes true information on beneficial owner of the Entity.

In addition, the Entity may be charged with a fine of up to RSD 2 million, in case of: (i) failure to register information on beneficial owner of the Entity within 15 days' period, or (ii) failure to possess and keep data and documents based on which it registered beneficial owner of the Entity.

✓ Harmonization deadlines:

All existing Entities are obliged internally to determine beneficial owner as well as to prepare documents and data necessary for determining identity of beneficial owner within 30 days' period as of entering into a force of the Law (i.e. at the latest by 08 July 2018).

Authorized representatives of the Entities are obliged to register information about beneficial owners of the Entities incorporated until 31 December 2018 at the latest by 31 January 2019.

Za više informacija o ovome kontaktirati / For more information about this please contact:

Miloš Pandžić

Senior Associate - Dokleštic & Partners

milos.pandzic@dokleštic.law

T. +381.11.414.33.60