

News Flash

21 May 2021



New rules for the ultimate beneficial owners in the Czech Republic

New rules for the ultimate beneficial owners in the Czech Republic

The new Act on the Registration of Beneficial Owners will come into force on 1 June 2021 and it will completely replace the current concept of the ultimate beneficial owner existing under the Act on Public Registers. The new rules will bring numerous changes and, above all, introduce significant sanctions for a breach of the obligation to register the ultimate beneficial owner.

1. What is changing with the new legislation?

Broader definition of ultimate beneficial owner

Until now, the ultimate beneficial owner was defined as a natural person who is able to exercise decisive influence in a legal entity – either directly or indirectly. The legal title under which the ultimate beneficial owner exercised his/her decisive influence was not essential since it was sufficient for him/her to have a factual power to exercise such control.

Although the new concept of the ultimate beneficial owner is still tied to the factual situation, it shall be noted that the new definition of ultimate beneficial owner recognizes not only a person who has **the ultimate control**, but also a person who is **the ultimate beneficiary** (of a share in the benefit).

It is to be emphasized that the ultimate beneficial owner is any natural person who meets the above criteria. Thus, more than one ultimate beneficial owner may exist in relation to the legal entity according to the new rules.

Person with ultimate control

A person exercising the ultimate control is a natural person who can, directly or indirectly, exercise decisive influence in the legal entity without passing it on to another person.

Ultimate beneficiary

An ultimate beneficiary is a natural person who may acquire, directly or indirectly through another entity, a substantial part of a share in the benefit generated by the activity or liquidation of the legal

entity or generated by the administration or dissolution of a legal arrangement (hereinafter the "benefit"), and does not pass on this benefit.

What to do if the ultimate beneficial owner cannot be determined?

If the ultimate beneficial owner cannot be identified, **any person in the top management** of the entity on top of the ownership structure is to be registered. However, if such person in the top management is to be registered as the ultimate beneficial owner, it is necessary to record all steps taken while identifying the ultimate beneficial owner. Until now, the members of the statutory body of a Czech entity have been registered as the ultimate beneficial owners in such situations.

What is to be registered?

In the Register of Ultimate Beneficial Owners, the following information relating to the ultimate beneficial owner (who is always a natural person) will be registered:

- identification of the ultimate beneficial owner (name, surname, residential address, date of birth, birth number, citizenship);
- information establishing the position of the ultimate beneficial owner;
- description of the structure of relations;
- date when the person became the ultimate beneficial owner;
- discrepancy note (a discrepancy between the registered information and the real situation; partial or complete absence of the registration).

Who will have access to the registered information?

A part of the registered information relating to the ultimate beneficial owners will be now accessible to public. The Ministry of Justice will allow anyone to obtain partial excerpts from its website.

What sanctions can be imposed?

If the Registrant (the Czech company) does not register the ultimate beneficial owners in the Register of Ultimate Beneficial Owners or it enters information that does not conform to the real situation, the following sanctions may be imposed:

- unenforceability of rights and obligations arising from any legal acts that obscure the ultimate beneficial owner;
- suspended distribution of a share in the benefit (eg. the impossibility of paying out a share of profit); if the statutory body nevertheless agrees to the distribution of profit, such conduct would give rise to a rebuttable presumption of conduct that is contrary to the care of a prudent businessperson;
- inability to exercise the voting rights of the ultimate beneficial owner not registered in the Register of Ultimate Beneficial Owners;
- relative invalidity of the resolutions of the sole shareholder who is in the position of the ultimate beneficial owner (for a declaration of invalidity, it is necessary to challenge such a decision in the court proceeding);
- fine of up to CZK 500,000 on the Registrant for a failure to register the ultimate beneficial owners and on the ultimate beneficial owner for a failure to cooperate.

When a discrepancy is found, the Reporting person within the meaning of the AML Act (eg. notaries, banks, lawyers) shall invite the Registrant to explain or eliminate the discrepancies. If the Registrant does not explain or eliminate the discrepancy, the Reporting person may not carry out the transaction in

question and must report the discrepancy to the applicable court.

In practice, the discrepancy or absence of the registration in the Register of Ultimate Beneficial Owners may result in the following situations:

- the bank will refuse to open a bank account or provide financing to a legal entity;
- the Registrant will not be allowed to use legal, notarial or bank custody;
- the bank or other Reporting person will refuse to carry out the transaction.

2. Deadlines for registration

The new rules will come into force on 1 June 2021:

- Business corporations that have duly registered their ultimate beneficial owner in the existing Register of Ultimate Beneficial Owners in accordance with the existing legislation, shall review and amend the registration within the **"protection" period of 6 months**.
- Business corporations which have not yet registered their ultimate beneficial owner in the existing Register of Ultimate Beneficial Owners shall proceed with the registration **without undue delay** after 1 June 2021.

3. Our recommendations

✓ If you have already met the obligation to register the ultimate beneficial owner and the ultimate beneficial owner has been identified as:

- **a person with ultimate control** → we recommend assessing whether any other person can be identified who would meet the new definition of ultimate beneficial owner;
- **the members of the statutory body of a legal entity** → we recommend

updating the registration of the ultimate beneficial owner as this legal fiction will no longer apply..

- ✓ If no other ultimate beneficial owner is identified within the meaning of the broader definition, we recommend updating the information relating to the already registered ultimate beneficial owner to the extent required by the new legislation (eg. a date when the natural person became the ultimate beneficial owner, a description of the structure of relations).

- ✓ If you have not yet registered the ultimate beneficial owner with the existing Register, the ultimate beneficial owners may be registered automatically in the form of a so-called automatic entry of the information, provided that certain conditions are met. However, the automatic entry does not prevent a legal entity from the obligation to update the registration of the ultimate beneficial owners, if the automatically registered information does not conform to the information of the real ultimate beneficial owner, or if it conforms only partially.

We will be happy to assist you with the registration of the ultimate beneficial owners in the Register. Please do not hesitate to contact us.

Disclaimer

Please note that our publications have been prepared for general guidance on the matter and do not represent a customized professional advice. Furthermore, because the legislation is changing continuously, some of the information may have been modified after the publication has been released. Accace does not take any responsibility and is not liable for any potential risks or damages caused by taking actions based on the information provided herein.

Want more news like this?

Subscribe!

Contact

Lenka Brummerová

Corporate Services Manager

Email: Lenka.Brummerova@accace.com

Phone: +420 222 753 480

Karel Ryšavý

Legal Partner

Email: Karel.Rysavy@accace.com

Phone: +420 222 753 480



About Accace Czech Republic

Accace Czech Republic was founded in 2007 in Prague, while the branches in Brno and Ostrava followed in 2009 and 2016. Accace ranks among the leading outsourcing and consultancy providers on the Czech market with almost 270 professionals and more than 500 clients. As a part of the Accace Group, we provide a comprehensive range of accounting, payroll, tax, legal and corporate services to over 2,000 customers, from local companies to large multi-country outsourcing projects.

About Accace Circle

Accace operates internationally as Accace Circle, a co-created business community of like-minded BPO providers and advisors who deliver outstanding services with elevated customer experience. Covering almost 40 jurisdictions with over 2,000 professionals, we support more than 10,000 customers, mostly mid-size and international Fortune 500 companies from various sectors, and process at least 170,000 pay slips globally.

Please visit www.accace.com and www.circle.accace.com for more information.

