

Ascertaining beneficial owners of limited business corporations and the legal consequences of discrepancies in their register

Abstract

The ongoing EU regulatory developments in the area of anti-money laundering and combating the financing of terrorism have brought obligations to identify and register data on beneficial owners of legal persons and legal arrangements. Beneficial owners are, in the most general sense, natural persons who, on a factual or legal basis, directly or indirectly, control a legal person or legal arrangement, own a significant share in it or draw a substantial part of funds from its capital resources. The main purpose and objective of these obligations is to ensure increased transparency of these legal entities so that they cannot be easily exploited for the perpetration of (financial) crime.

In order to implement the latest European legislation into the Czech legal system, the Czech legislator adopted (and is currently amending) Act No. 37/2021 Sb., on the Register of Beneficial Owners, which regulates this legal matter in a general and comprehensive manner. The object of this thesis is the analysis of the new statutory regulation and the assessment of whether it is capable of achieving its objective, which is to ensure increased transparency of legal persons, specifically in the context of limited business corporations.

The thesis is divided into 4 parts. The first part discusses the reasons supporting the necessity of legal regulation of beneficial ownership registration and assesses its impact on the right to privacy of registered natural persons. The first part also includes an introduction to sources of law relevant to the topic.

The second part is dealing with the concept of beneficial owner, both from the theoretical perspective and from the perspective of the legislative implementation of this concept into law. The focus is concentrated on the current legal definition of beneficial owner in the Act on Register of Beneficial Owners and its comparison with the previous definition in the anti-money laundering statute. The proposed amendment to the Act on Register of Beneficial Owners, which substantially revises and broadens the current definition of beneficial owner, is also taken into account.

The third part analyses the fundamental obligations of private persons and other entities involved in ascertaining beneficial owners. The current statutory framework places the burden of the obligations on the registering legal persons as they are the primary source of information on their beneficial owner. They must therefore make all reasonable efforts to ascertain them. The author then focuses on the content of this obligation and its limits.

The legal consequences of non-compliance with the registration obligations are the subject of the final, fourth part. The Czech legislator provides for consequences of a public and private law nature. While the complicated legislative construction of the facts of the respective administrative offences does not have much of a deterrent effect on the recipients of the obligations, the private-law sanctions have a direct impact on the property sphere of the beneficial owners themselves. Private law sanctions suspend the fundamental rights associated with a shareholder's share in a limited business corporation. They may also indirectly impose liability on the members of the governing body of such companies who, as a result of neglecting their registration obligations and ignoring the sanctions, cause damage to the company.

Key words:

beneficial owner, beneficial ownership register, transparency, business corporation, profit share, voting right, discrepancy, private law sanctions