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PREDLOG ZAKONA O CENTRALNOJ EVIDENCIJI STVARNIH VLASNIKA

UVOD

Vlada Republike Srbije je 25. aprila 2018. godine Skupštini Republike Srbije dostavila predlog Zakona o centralnoj evidenciji stvarnih vlasnika na dalje razmatranje i usvajanje.

Predlog Vlade Republike Srbije je da donošenje navedenog Zakona bude po **hitnom postupku** uz obrazloženje da je neophodno da se u najkraćem roku izvrši napredak u sistemu za borbu protiv pranja novca i finansiranja terorizma, što je bio i razlog donošenja novog Zakona o sprečavanju pranja novca i finansiranja terorizma, koji je u primeni počev od 01.04.2018. godine. (*“Službeni glasnik RS” br.113/2017*).

Predlog navedenog Zakona ima uporište u Direktivi (EU) 2015/849 Evropskog parlamenta i Saveta od 20.05.2015. godine, kojom su sve države članice EU bile u obavezi da do 26.06.2017. godine usklade svoje zakonodavstvo sa odredbama navedene Direktive EU i u tom cilju preduzmu sve potrebne aktivnosti kojima će osigurati da pravni subjekti koji se registruju na njihovoj teritoriji pribave i čuvaju odgovarajuće, tačne i ažurne informacije o njihovim stvarnim vlasnicima i udelima koje poseduju.

Takođe, države članice EU su po osnovu Direktive (EU) 2017/1132 bile obavezane da informacije o stvarnim vlasnicima pravnih subjekata čuvaju u privrednom registru, registru privrednih društava ili javnom registru.

Ovim prikazom će se predstaviti osnovne informacije koje sadrži predlog navedenog Zakona u pogledu uspostavljanja, sadržine, osnova evidentiranja i

DRAFT LAW ON THE CENTRALISED RECORDS OF BENEFICIAL OWNERS

INTRODUCTION

On 25 April 2018 the Government of the Republic of Serbia submitted to the Republic of Serbia Parliament a Draft Law on the Centralised Records of Beneficial Owners for review and adoption.

The Republic of Serbia Government proposed that the said Law **should be passed urgently**, explaining that progress is needed with regard to anti money laundering and counter-terrorism financing as soon as possible, which has resulted in adopting a new Law on Anti Money Laundering and Counter-Terrorism Financing, which has been in effect since 1 April 2018 (*“Official Gazette of the Republic of Serbia”, No. 113/2017*).

The Draft Law is based on the Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015, which stipulates that all EU member states were obligated to harmonise their legislation with the provisions of the said EU Directive until 26 June 2017. In that regard, they were supposed to undertake all necessary actions ensuring that legal entities that are registered in their territories are to provide and keep adequate, accurate and updated information on their beneficial owners and the shares they own.

Furthermore, on the basis of the Directive (EU) 2017/1132, the EU member states were obligated to keep the information on the beneficial owners of legal entities in the Business Register, the Companies Register or Public Register.

This abridgement shows the main information contained in the said Draft Law on the set-up, contents, bases of recording and manner of keeping the Centralised Records of the Beneficial Owners of

načina vođenja Centralne evidencije stvarnih vlasnika pravnih lica i drugih subjekata registrovanih u Republici Srbiji.

Nakon usvajanja konačnog teksta Zakona, odnosno donošenja Zakona od strane Skupštine Republike Srbije, novim prikazom će se predstaviti konačne odredbe Zakona, s tim da se ne očekuju veća odstupanja, posebno ne u pogledu suštinskih odredbi definisanih predlogom Zakona, imajući u vidu pre svega da je definiciju pojma stvarnog vlasnika regulisao navedeni Zakon o sprečavanju pranja novca i finansiranja terorizma, koja je identična pojmu stvarnog vlasnika datom u predlogu Zakonu o centralnoj evidenciji stvarnih vlasnika.

PREDLOG ZAKONA

I Primena Zakona

Zakon će se primenjivati na sledeća pravna lica i druge subjekte registrovane u Republici Srbiji i to na:

- privredna društva, osim na javna akcionarska društva;
- zadruge;
- ogranke stranih privrednih društava;
- poslovna udruženja i udruženja, osim na političke stranke, sindikate, sportske organizacije i udruženja, crkve i verske zajednice;
- fondacije i zadužbine;
- ustanove;
- predstavništva stranih privrednih društava, udruženja, fondacije i zadužbine.

Zakon se neće primenjivati na privredna društva i ustanove u kojima je Republika Srbija, autonomna

Legal and Other Entities registered in the Republic of Serbia.

After the Republic of Serbia Parliament adopts the final text of the Draft Law, a new abridgement will describe the final provisions of the Law, but no substantial departures are expected, particularly with regard to the main provisions defined under the Draft Law, taking into consideration that, above all, the concept of a beneficial owner is defined under the Law on Anti Money Laundering and Counter-Terrorism Financing, which is identical with the concept of the beneficial owner provided in the Draft Law on the Centralised Records of Beneficial Owners.

DRAFT LAW

I Law Application

The Law will apply to the following legal and other entities registered in the Republic of Serbia:

- companies, except public joint stock companies;
- cooperatives;
- branch offices of foreign companies;
- business associations and associations, except political parties, unions, sports organisations and associations, churches and religious communities;
- foundations and endowments;
- institutions;
- representative offices of foreign companies, associations, foundations and endowments.

The Law will not apply to such companies and institutions whose only member and/or founder is the Republic of Serbia, an autonomous province or a self-government unit.

pokrajina ili jedinica lokalne samouprave jedini član, odnosno osnivač.

II Pojam Centralne evidencije

Centralna evidencija je javna, jedinstvena, centralna, elektronska baza podataka o fizičkim licima koja su stvarni vlasnici registrovanog subjekta.

Centralnu evidenciju vodi Agencija za privredne registre (u daljem tekstu: APR) u elektronskoj formi, od strane registratora.

III Sadržina Centralne evidencije

Centralna evidencija u zavisnosti od pravne forme ili oblika organizovanja privrednog subjekta **sadrži sledeće podatke o registrovanom subjektu:**

- 1) poslovno ime (naziv subjekta);
- 2) adresu sedišta;
- 3) datum upisa, promene ili brisanja podataka;
- 4) matični broj;
- 5) poreski identifikacioni broj;
- 6) status registrovanog subjekta;
- 7) pravnu formu, odnosno oblik registrovanja;
- 8) šifru pretežne delatnosti, odnosno oblast ostvarivanja ciljeva;
- 9) podatak o zastupniku;
- 10) fizičko lice koje je registrovano kao član organa;
- 11) osnovni (registrovani) kapital;
- 12) podatke o članovima (osnivačima) i procentu njihovog udela, odnosno broju i procentu njihovih akcija;
- 13) skraćeno poslovno ime;
- 14) poslovno ime na stranom jeziku;
- 15) skraćeno poslovno ime na stranom jeziku;
- 16) adresu za prijem pošte;

II The Concept of Centralised Records

Centralised records are a public, uniform, centralised and electronic database about natural persons who are beneficial owners of registered entities.

The centralised records are kept in the Serbian Business Registers Agency (“the BRA”) in an electronic format by an authorised registrar.

III The Contents of Centralised Records

Depending on the legal form or status of a business entity, the centralised records contain **the following data on a registered entity:**

- 1) business/entity name;
- 2) head office address;
- 3) the date of entering, modifying or removing the data;
- 4) company registration number;
- 5) tax identification number;
- 6) status of the registered entity;
- 7) legal and/or registration form;
- 8) the code of the main business activity and/or the area of achieving objectives;
- 9) data on the representative;
- 10) a natural person registered as a body member;
- 11) share (registered) capital;
- 12) data on the members (founders) and the percentage of their interest and/or the number and percentage of their shares
- 13) abbreviated business name;
- 14) business name in a foreign language;
- 15) abbreviated business name in a foreign language;

- 17) adresu za prijem elektronske pošte;
- 18) brojeve računa u bankama;
- 19) kontakt podatke, ako su registrovani.

- 16) address for receiving post;
- 17) email address;
- 18) bank account numbers;
- 19) contact data, if recorded.

Centralna evidencija o stvarnom vlasniku će **sadržati sledeće podatke o stvarnom vlasniku:**

- 1) za domaće fizičko lice - lično ime, jedinstveni matični broj građana i državu prebivališta;
- 2) za stranca - lično ime, broj pasoša i državu izdavanja i/ili lični broj za stranca i/ili broj lične karte stranca i zemlju izdavanja u skladu sa propisima kojima se uređuju uslovi za ulazak, kretanje i boravak stranaca na teritoriji Republike Srbije, dan, mesec, godina i mesto rođenja, državu prebivališta i državljanstvo;
- 3) za izbegla ili prognana lica - lično ime, broj legitimacije, dan, mesec, godina i mesto rođenja i državu boravišta;
- 4) osnov za sticanje svojstva stvarnog vlasnika registrovanog subjekta:
 - fizičko lice koje posredno ili neposredno imalac 25% ili više udela, akcija, prava glasa ili drugih prava, na osnovu kojih učestvuje u upravljanju registrovanim subjektom, odnosno učestvuje u kapitalu registrovanog subjekta sa 25% ili više udela;
 - fizičko lice koje posredno ili neposredno ima preovlađujući uticaj na vođenje poslova ili donošenje odluka;
 - fizičko lice koje registrovanom subjektu posredno obezbedi ili obezbeđuje sredstva i po tom osnovu bitno utiče na donošenje odluka organa upravljanja registrovanog

The centralised records of the beneficial owner will contain the following **data on the beneficial owner:**

- 1) local natural person - personal name, a national identification number and the state of domicile;
- 2) foreign natural person - personal name, the passport number and country of issuance/or foreigner's personal number and/or the number of the foreigner's identity card and the country of issuance in accordance with the regulations that govern the entrance, movement and stay of foreigners in the territory of the Republic of Serbia, day/month/year and place of birth, the state of domicile and citizenship;
- 3) refugees or displaced persons - personal name, ID card number, day/month/year and place of birth, the state of domicile and citizenship;
- 4) a basis for acquiring the status of the beneficial owner of a registered entity:
 - a natural person who directly or indirectly holds 25% or more of interest, shares, voting or other rights, based on which it participates in managing the registered entity and/or has a 25% or more equity interest in the registered entity;
 - a natural person who has direct or indirect prevalent influence over doing business or making decisions;
 - a natural person that directly or indirectly has provided or provides funds to the registered entity and in that regard has an

subjekta prilikom odlučivanja o finansiranju i poslovanju;

- fizičko lice koje je osnivač, poverenik, zaštitnik, korisnik ako je određen, kao i lice koje ima dominantan položaj u upravljanju trustom, odnosno u drugom licu stranog prava;
- fizičko lice koje je registrovano za zastupanje zadruga, udruženja, fondacija, zadužbina i ustanova, ako ovlašćeno lice za zastupanje nije prijavilo drugo fizičko lice kao stvarnog vlasnika.

Ukoliko nije moguće da se utvrdi fizičko lice iz prve četiri prethodno navedene tačke, smatraće se da je stvarni vlasnik registrovanog subjekta fizičko lice koje je registrovano za zastupanje, odnosno fizičko lice koje je registrovano kao član organa tog subjekta.

IV Osnovi evidentiranja

Osnovi evidentiranja podataka u Centralnu evidenciju su:

- 1) osnivanje registrovanog subjekta;
- 2) promene vlasničke strukture i članova organa registrovanog subjekta, kao i druge promene na osnovu kojih se može ceniti ispunjenost uslova za sticanje svojstva stvarnog vlasnika.

Ovlašćeno lice je dužno da evidentira podatke u Centralnoj evidenciji najkasnije u roku od **15 dana** od dana nastupanja osnova evidentiranja.

V Način vođenja Centralne evidencije

Evidentiranje podataka u Centralnu evidenciju vrši:

important impact on decisions made by the registered entity's managing bodies during the decision-making process regarding financing and doing business;

- a natural person who is a founder, a trustee, a data protection officer, a beneficiary if specified, as well as a person who has a prevalent influence in managing the trust and/or in other foreign legal entity;
- a natural person who is registered to represent cooperatives, associations, foundations, endowments and institutions if the person authorised for representation has not reported other natural person as a beneficial owner.

If it is not possible to determine the natural person, the person registered for representation and/or the natural person registered as a body member of such an entity will be deemed to be the beneficial owner of the registered entity.

IV Bases of Recording

The bases of recording data in the Centralised Records are:

- 1) incorporation of a registered entity
- 2) changes in the ownership structure and body members of the registered entity, as well as other changes that will serve to estimate the fulfilment of the conditions for acquiring the status of a beneficial owner.

The authorised person is obligated to record data in the Centralised Records not later than **15 days** from the day when the bases of recording occur.

- 1) registrar, na osnovu preuzetih podataka od nadležnih državnih organa o registrovanom subjektu koji su ovim prikazom dati u delu III stav 1 ovog prikaza;
- 2) lice koje je ovlašćeno za zastupanje u registrovanom subjektu i to podataka koji su dati u delu III stav 2 ovog prikaza.

VI Vremenski okvir primene Zakona i rok čuvanja podataka i dokumenata

Postojeći registrovani subjekti dužni su da najkasnije **u roku od 30 dana** od dana stupanja na snagu Zakona odrede stvarnog vlasnika registrovanog subjekta, kao i da obezbede i čuvaju odgovarajuće, tačne i ažurne podatke i dokumenta na osnovu kojih se određuje stvarni vlasnik registrovanog subjekta **u roku od deset godina** od dana evidentiranja podataka o stvarnom vlasniku.

VII Krivično delo

Počiniocem krivičnog dela će se smatrati lice koje u nameri da prikrije stvarnog vlasnika registrovanog subjekta, u Centralnu evidenciju ne upiše podatke o stvarnom vlasniku registrovanog subjekta, upiše neistinit podatak o stvarnom vlasniku kao istinit i promeni ili izbriše istinit podatak o stvarnom vlasniku registrovanog subjekta i kazniće se **kaznom zatvora od tri meseca do pet godina**.

VIII Prekršaji

Novčanom kaznom od **500.000 do 2.000.000 dinara** kazniće se za prekršaj registrovani subjekat - pravno lice:

- 1) ako ne izvrši evidentiranje podataka o stvarnom vlasniku registrovanog subjekta u

V Manner of Keeping Centralised Records

The data in the Centralised Records are recorded by:

- 1) a registrar, on the basis of the data taken from the competent state authorities on the registered entity, which are indicated in section III, paragraph 1, of this abridgement;
- 2) a person authorised for representation in the registered entity with regard to the data provided in section III, paragraph 2, of this abridgement.

VI Time Frame for the Law Application and for Keeping Data and Documents

The existing registered entities are obligated to appoint the beneficial owner of the registered entity **within 30 days** at the latest from the day when the Law comes into force and to provide and keep the adequate, accurate and updated data and documents, which are used to determine the beneficial owner of the registered entity, **within ten years from the day of recording** the data on the beneficial owner.

VII Criminal Offence

A criminal offender will be deemed to be a person who, with the intention of concealing the beneficial owner of the registered entity, does not enter the information on the beneficial owner of the registered entity into the Centralised Records and who records inaccurate data or removes accurate data on the beneficial owner of the registered entity and will be punished with a **custodial penalty of three months to five years**.

Centralnoj evidenciji u roku iz dela IV ovog prikaza;

- 2) koji nema i ne čuva odgovarajuće, tačne i ažurne podatke I dokumenta na osnovu kojih je evidentirao stvarnog vlasnika registrovanog subjekta u roku iz dela VI ovog prikaza.

Za prekršaj definisan prethodnim stavom kazniće se odgovorno lice u pravnom licu novčanom kaznom od **50.000** do **150.000 dinara**.

IX Uspostavljanje Centralne evidencije

APR će Centralnu evidenciju uspostaviti najkasnije do **31.decembra 2018. godine**.

Ovlašćeno lice je dužno da najkasnije do 31.01.2019. godine evidentira podatke o stvarnom vlasniku registrovanog subjekta osnovanog do 31.decembra 2018. godine.

REZIME

Izvesnost donošenja navedenog propisa u najkraćem vremenskom roku je nesporna i svi **privredni subjekti kod kojih** u postojećoj centralnoj evidenciji pri APR-u nije kao stvarni vlasnik upisano fizičko lice će biti u obavezi da u relativno kratkom roku pod pretnjom kaznenih **odredbi izvrše evidentiranje stvarnog vlasnika u Centralnoj evidenciji stvarnih vlasnika**.

Postupak prikupljanja dokumenata će biti kompleksniji za subjekte čiji je osnivač strano pravno lice, kao i za **ogranke i predstavništva stranih pravnih lica**, jer pored obezbeđenja dokumenata iz stranih privrednih registara, značajno vreme će biti potrebno za obezbeđenje zvaničnog prevoda svakog dokumenta na srpski jezik, a za

VIII Misdemeanour

A registered/legal entity will be punished for a misdemeanour with a fine of **RSD 500.000 to RSD 2.000.000**:

- 1) if it does not record the data on the beneficial owner of the registered entity in the Centralised Records within the time period referred to under section IV of this abridgement;
- 2) if it does not have and does not keep adequate, accurate and updated data and documents that the entity used to record the beneficial owner of the registered entity within the time period referred to under section VI of this abridgement.

The authorised person in the legal entity will be punished for the misdemeanour defined under the previous paragraph with *a fine of RSD 50.000 to RSD 150.000*.

IX Setting Up Centralised Records

The BRA will have set up the Centralised Records by **31 December 2018 at the latest**.

The authorised person is **obligated** to record the data on the beneficial owner of the registered entity, incorporated until 31 December 2018, by **31 January 2019** at the latest.

SUMMARY

The certainty of passing the said enactment in the timeliest manner possible is indisputable and **all business entities, whose beneficial owner is not recorded as a natural person in the existing centralised records with the Business Registers**

određene subjekte (u zavisnosti od zemlje izdavanja dokumenta) obezbeđenje i Haškog Apostila.

Takođe se i kod subjekata kod kojih se do stvarnog, odnosno krajnjeg vlasnika dolazi kroz više subjekata u okviru vlasničke strukture ili se u vlasničkoj strukturi pojavljuje trust može očekivati da postupak obezbeđenja dokumenata traje duže i bude složeniji.

U vezi svega navedenog, u ovom trenutku svi subjekti koji će biti obveznici ovog propisa moraju imati svest o njegovom donošenju u najskorijoj budućnosti i u tom smislu je potrebno da započnu pripreme radi ispunjenja zahteva o evidenciji stvarnih vlasnika u skladu sa Zakonom.

Agency, will be obligated to record the beneficial owner in the Centralised Records of beneficial owners in a relatively short time period under the menace of penalty.

The procedure of gathering documents will be more complex for those entities whose founder is a foreign legal person and for branch and representative offices of foreign legal entities, since apart from providing documents from business registers from their respective countries, an official translation of each of those documents into the Serbian language will take a significant amount of time, and some entities will even require the Apostille Convention (depending on the country that issues the document).

Moreover, it can also be expected that the procedure of providing documents will be time-consuming and more complex with the entities whose beneficial and/or ultimate beneficial owner is obtained through a number of entities in the ownership structure or if a trust occurs within the ownership structure.

In relation to the above-mentioned, all entities that are supposed to adhere to the said regulation have to be aware of its adoption in the foreseeable future and thus, they need to start with the necessary preparations in order to meet the requirements regarding the records of beneficial owners in accordance with the Law.



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