

LAW ON THE CENTRAL REGISTER OF BENEFICIAL OWNERS

CURRENT SITUATION

The Law on Central Register of Beneficial Owners ("Official Gazette of the Republic of Serbia", Nos. 41/2018 and 91/2019) (hereinafter: Law) came into force on 8 June 2018.

In accordance with this Law, two rulebooks have been adopted that regulate its matter in more detail: Rulebook on the Content of Central Register of Beneficial Owners for Purpose of Registration of Ultimate Beneficial Owners of Registered Entity and Rulebook on Manner and Conditions for Electronic Exchange of Data between Business Registers Agency (hereinafter referred to as: BRA), other State Authorities and the National Bank of Serbia in order to register Beneficial Owners. Both rulebooks began to apply on 15 December 2018.

Central Register is a public, unique, electronic and centralised database of natural persons who are beneficial owners of a legal entity or another entity registered in the Republic of Serbia (hereinafter referred to as: registered entity). Central Register was established on 31 December 2018.

The Law applies to the following registered entities: (i) legal entities, other than public joint stock companies; (ii) cooperatives; (iii) branches of foreign companies; (iv) business associations and associations other than political parties, trade unions, sport organizations and associations, churches and religious communities; (v) foundations and endowments; (vi) institutions; (vii) representative offices of foreign companies, associations, foundations and endowments.

The latest amendments to the Law, which came into force on 1 January 2020, prescribe that the supervision over the recording, accuracy and updating of recorded data and storage of data and documents is performed by the BRA, the National Bank of Serbia, competent state bodies - Tax Administration, Administration for Prevention of Money Laundering, market inspection, as well as that in case of determining irregularities, they can initiate misdemeanour proceedings against the registered entity and the responsible person in the registered Entity - legal entity. Supervision over the implementation of this Law and supervision over the work of BRA in connection with the Central Register is performed by the ministry in charge of economic affairs.

With these amendments the deadline for the registration of beneficial owners of registered entities in Serbia was extended until 31 January 2020.

The Draft Law on Amendments to the Law, which is under preparation, intends to expand the concept of an authorized person in the sense that the founder in the process of establishing a registered entity electronically is considered an authorized person, in addition to the person who is a legal representative of a registered entity. The Draft Law defines the responsible person in the registered entity as an authorized person designated in the above manner.

Also, the Draft Law on Amendments to the Law envisages a new misdemeanour in case of establishing a registered entity electronically.

COVID-19

State of emergency in the Republic of Serbia caused by the COVID-19 pandemic was introduced on March 15, 2020 by the Decision on the introduction of the state of emergency ("Official Gazette of the Republic of Serbia", No. 29/2020).

Bearing in mind the obligation to personally take over the qualified electronic signature certificate (hereinafter: the Certificate) by the authorized representative, the state of emergency caused by the COVID-19 pandemic had a negative impact to those registered entities where the obligation to record or change the data on the beneficial owner arose during the state of emergency, and whose legal representatives are foreign citizens who found themselves outside the borders of our country during the pandemic.

POSITIVE DEVELOPMENTS

There was no improvement of the Law during the previous year.

REMAINING ISSUES

When the basis for registration is the establishment of a registered entity, it is necessary to register the data in the Central Register using the certificate of a legal representative of a registered entity, not later than 15 days upon the establishment of a registered entity. This means that in cases when the legal representative is a foreign citizen, who does not have a residency address on the territory of Serbia, his/her visit to Serbia is required, since the takeover of the certificate from an authorized body for issuing qualified electronic signature certificates has to be performed exclusively by the personal presence of the legal representative, which may represent an additional logistical challenge for potential investors.

In addition, the last remaining issue are the strict sanctions prescribed for failure to comply with the provisions of the Law, which are completely disproportionate to the actions and consequences of the sanctioned action.

FIC RECOMMENDATIONS

- Significant changes should be made to the procedure of registration of the respective data in the Central Register using the certificate. (3)
- The sanctions prescribed by the Law should be reduced. (3)