



BEATOW PARTNERS

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ADOPTION OF A NEW ANTI-SHELL ACT

For more information on the topic discussed in this issue of the BEATOW PARTNERS Legal Update, please contact us at info@beatow.com.

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LEGAL UPDATE

INTRODUCTION TO THE ANTI-SHELL ACT

On October 25, 2016, the National Council of the Slovak Republic adopted a new Act on the Register of Partners of the Public Sector (in Slovak: *zákon o registri partnerov verejného sektora*) (“**Act**”), being commonly referred to as the Anti-Shell Act. The aim of the Act is to increase transparency in business relationships entered into by the public-sector entities. The Act shall become effective on February 1, 2017, with certain obligations specified in the Act becoming effective on July 31, 2017.

THE REGISTER OF PARTNERS OF THE PUBLIC SECTOR

Most importantly, the Act establishes a so-called Register of Partners of the Public Sector (in Slovak: *register partnerov verejného sektora*) (“**Register**”).

The Register is a public register containing information on the “partners of the public sector” (in Slovak: *partner verejného sektora*) and it shall be publicly accessible on the website of the Ministry of Justice of the Slovak Republic free of charge.

All entities which qualify for the “partners of the public sector” under the Act must register in the Register; otherwise, they shall not be eligible for doing business with the public entities or entities funded from the public funds.

A “partner of the public sector” shall be deemed to be any legal entity or natural person that is not a public-sector entity and which:

- (a) receives financial funds from public funds, European funds, legal entities established by law or funded or controlled by state authorities, health care insurance companies, or receives state or investment aid;
- (b) receives a performance, the subject of which is the property, right to property or other property rights from a public authority, legal entity established by law or funded or controlled by state authority or from the health care insurance company;
- (c) concludes an agreement, framework agreement or concession agreement pursuant to a separate act¹;
- (d) is a provider of health care and which has concluded an agreement on the provision of health care with a health care insurance company;
- (e) is obliged to register in the Register pursuant to a separate act²,
- (f) by way of assignment, or by other means acquired a receivable vis-à-vis state authorities or legal entities established by law, or
- (g) is a subcontractor of another partner of the public sector, which knows or should have known that its actions are related to an agreement, by which a partner receives financial funds pursuant to (a) above, or property rights pursuant to (b) above.

¹ Act No. 343/2015 Coll. on Public Procurement, as amended.

² Act No. 581/2004 Coll. on Health Care Insurance Companies and Supervision of Health Care, as amended.

(“Partner”).

However, not all Partners listed in (a) through (g) above, are subject to the registration duty under the Act. The Act sets forth financial limits, meeting of which triggers the registration duty. As such, the Partner does not have to register in the Register if:

- it is a person described in (a) and (c) – (g) above and it is provided with financial funds not exceeding EUR 100,000 at a time; or
- it is a person described in (a) and (c) – (g) above and it is provided with financial funds, in one or more transactions, not exceeding EUR 250,000 in total over a calendar year; and
- it is a person described in (b) and (f) and it shall acquire property rights, value of which shall not exceed EUR 100,000 in total.

Data that must be registered in the Register for a legal entity mainly include the following: business name, registered office, legal form, entity identification No., list of public officials who are members of the ownership or management structure of the legal entity and perform their duties in the Slovak Republic, information regarding the final beneficiaries (in Slovak: *konečný užívateľ výhod*) (the “**Final Beneficiaries**”) and information on the person authorized to represent the legal entity in the process of its registration at the Register and certain other matters under the Act (the “**Authorized Representative**”).

FINAL BENEFICIARY

The Final Beneficiary shall be every natural person, who actually (directly or indirectly) controls a legal entity, a self-employed entrepreneur or property association (in Slovak: *zdrúženie majetku*) and every natural person to the benefit of

which these entities perform their activities or business³.

The identification of the Final Beneficiary shall be performed on the basis of an authentication document (in Slovak: *verifikačný dokument*) elaborated by the Authorized Representative. Such authentication document must meet the statutory requirements set forth by the Act.

REGISTRATION IN THE REGISTER

Registration at the Register shall be done electronically free of charge via the electronic mailbox of the District Court of Žilina.

The Registration can only be done by the Authorized Representative appointed by the legal entity applying for the Registration.⁴

The Authorized Representative shall be an attorney-at-law, notary public, bank, branch office of a foreign bank or auditor, whereas their place of business or registered office must be in the Slovak Republic. The Act requires a written agreement to be entered into between the Authorized Representative and the legal entity applying for the Registration.

The registration at the Register shall be done in 5 business days after the complete petition is filed⁵.

Any person is authorized to request an excerpt from the Register free of charge, whereas the excerpt shall be provided in electronic form, without undue delay.

EXISTING LIST OF FINAL BENEFICIARIES

The Register shall replace the existing List of Beneficiaries (in Slovak: *register*

³ The final beneficiary shall be defined in more detail in Section 6a of the Act No. 297/2008 Coll. on the Prevention of Legalization of Proceeds of Criminal Activity and Terrorist Financing.

⁴ The registration petition and appendices must be signed by a qualified electronic signature.

⁵ Until July 31, 2017 the registration shall be performed within 10 business days, and after that it shall change to the above-mentioned 5 business days.

konečných užívateľov výhod) maintained by the Office of Public Procurement of the Slovak Republic (in Slovak: *Úrad pre verejné obstarávanie Slovenskej republiky*) (the “**Existing List of Beneficiaries**”).

Any legal entity or natural person already registered in the Existing List of Beneficiaries shall be automatically considered to be registered in the Register as of February 1, 2017 by operation of law.

However, any such entity or a person, has an obligation to undertake the so-called authorization process⁶ of the final beneficiaries by no later than July 31, 2017.

SANCTIONS

The Act sets forth numerous sanctions for failure to comply with the obligations set forth in the Act. These sanctions include, without limitations, the following:

- various monetary sanctions for the Partner ranging from EUR 10,000 up to EUR 1,000,000;
- various monetary sanctions for the members of the statutory body of the Partner ranging from EUR 10,000 up to EUR 100,000;
- various monetary sanctions for the Authorized Representative ranging from EUR 10,000 up to EUR 100,000;
- a deletion of the Partner from the Register;
- a prohibition for members of the statutory body of the Partner to perform duties of the members of any of the corporate bodies;⁷

- a right of the public-sector party to terminate the contract awarded to the Partner in breach of the Act; or
- criminal sanctions.⁸

⁶ The authentication process shall be performed on the basis of an authentication document.

⁷ The member of the statutory body may be prohibited to act as a member of a statutory body, supervisory body, proxy or head of branch office, for up to 3 years of any corporate entity and shall be deleted/removed from such functions in all corporate entities.

⁸ The following criminal offenses come in mind pursuant to the Act No. 300/2005 Coll. the Criminal Code, as amended: Section 221 - Fraud, Section 225 - Subsidy Fraud, Section 259 and 260 - Misrepresentation of Data of Economic and Commercial Records.