

LEGAL ALERT, NOVEMBER 2018

MANDATORY REGISTRATION OF BENEFICIAL OWNERS OF ALL LEGAL ENTITIES

I. New Obligations

Bulgarian State Gazette No. 27 of 27.03.2018 introduced the new Measures Against Money Laundering Act (“MAMLA”), implementing Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing. The new legislation is focused on creating obligations for a large number of legal entities with respect to the money laundering prevention.

In particular, the MAMLA provides for the following new obligations:

1. **Obligation for registration of beneficial owners (“BO”)**

One of the most significant new obligations which will affect all legal entities is the obligation for registration of information about their BO with the Bulgarian Commercial Register (“CR”) and other Registers discussed in item III below.

Note: No such obligation arises for the legal entities whose sole owners or shareholders (who are holding at least 25 % shareholding) are physical persons, who are already registered on other grounds.

How to determine the BO

BO includes any individual(s) who ultimately own(s)/control(s) a legal entity and/or the individual(s) on whose behalf a transaction/activity is being conducted.

In case of corporate legal entities/other legal arrangements, the BO is the physical person who directly or indirectly holds a sufficient percentage of the shares or the voting rights therein, or exercises control by other means.

- As an indication for direct shareholding of a physical person, the law stipulates a holding of at least 25 % of the shares in the respective legal entity/other legal arrangement;
- The indication for indirect shareholding is considered when 25 % of the shares is held through other legal entities which are under the control of the same physical person.

In case of foundations, trusts and other similar foreign legal entities, other specific criteria for BO would apply.

Note: In the event that a BO cannot be determined in compliance with the statutory procedures and criteria, a person at a senior managing position is to be considered the BO of that legal entity.

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2. Obligation for registration of a contact person

This obligation arises only for those legal entities that do not have a legal representative who is a Bulgarian resident. In such case, the legal entity is to determine and register a contact person who is resident in Bulgaria.

II. Statutory term to comply with the obligations

The statutory term for compliance with both obligations as per Section I above is by **31.05.2019**.

The compliance with the obligations is also conditional on the following prerequisites:

- the Bulgarian Registry Agency which holds all the Registers discussed in item III below to have ensured the technical possibility for submission of the relevant documents by **31.01.2019**, and
- the Rules for Application of the MAMLA to have been adopted by **31.12.2018**. These Rules will further elaborate on the documents to be submitted to the Registers as regards the obligations as per Section I above.

Note: A potential delay in any of the above prerequisites may eventually lead to further delay in the statutory term for compliance with the obligations as well.

III. Register

The legal entities/other arrangements are to comply with their obligations as per Section I above, by filing the relevant documents with the following registers (“**Registers**”), held by the Bulgarian Registry Agency:

- CR - for commercial entities;
- Register of the Non-profit Legal Entities - for non-profit legal entities;
- BULSTAT Register - for others, e.g. representative offices of a foreign legal entity, a trustee operating on Bulgarian territory, etc.

Note: The recently adopted procedural rules for registration of information regarding the BO with the CR, do not currently provide for a limited access to such information once published in the CR. MAMLA currently stipulates that such access is to be limited only to the competent authorities and to the obliged entities under the MAMLA who are to perform AML checks by law (this is a large list of obliged entities such as banks, lawyers, accountants, brokers, financial institutions, etc.). If no further change is made in this respect, the information regarding BO will be public once registered in the CR as the other information appearing in the batches of the legal entities, subject to the same requirements for public access.

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IV. Procedure

For compliance with the obligations set out in Section I above, the legal entities will have to follow a procedure for compiling and submitting a number of documents to the respective Register covering the following:

1. Regarding the obligation under I.1 above:

- identification data of each BO; and
- information and documents as regards the legal entities exercising direct/indirect control over the respective entity.

2. Regarding the obligation under I.2 above:

- A notarized written consent of the contact person.

V. Sanctions for non-compliance with the obligations

The MAMLA has introduced significantly high sanctions for the non-compliance with the obligations as per Section I above.

The monetary sanction for failure to comply with the obligations is in the range of **BGN 1,000 – 20,000**.

If a sanction is once imposed and the failure continues, new sanction is subject to imposition **every month** until due compliance by the obliged entity.

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