

NEWSLETTER 4/2018

Foreseen pro-active obligations of the Bulgarian companies with respect to the provisions of the new Measures against Money Laundering Act (MMLA):

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1. Announcement of the ultimate beneficial owner with the Bulgarian Commercial register/Bulstat register

The provisions of MMLA prescribe entry of identification of the ultimate beneficial owners of the Bulgarian companies in the Commercial register/Bulstat register through submission of a special declaration (Declaration under art. 63, para 4 of the MMLA). The form and the content of this declaration should be determined in the Rules for implementation of the MMLA (the “**Rules for implementation**”). The Rules for implementation should have been adopted within five months term, after MMLA provisions entered into force (by the end of August 2018). At this stage, however, there is no indication that the Rules for implementation are to be issued soon, respectively there is still no statutory approved template of the said declaration.

1.1. Statutory deadline for entry of data regarding the ultimate beneficial owners

As per the MMLA, the Commercial register/Bulstat register should have provided the technical support for starting the registration of the companies’ ultimate beneficial owners on 01 October 2018.

According to the MMLA, as of 01 October 2018 the companies should have started the announcement of their ultimate beneficial owners with the Commercial register/Bulstat register within a 4 months term (expiring at the end of January 2019).

At this stage, the Commercial register and the Bulstat register still have not activated technically the option for announcement of the companies’ ultimate beneficial owners. Alongside with the fact that the template of the Declaration under art. 63, para 4 is still not available, the announcement of the companies’ ultimate beneficial owners with the Commercial register and the Bulstat register could still not be started as of the present date.

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1.2. Companies/Entities exempted from the obligation for entry of data regarding the ultimate beneficial owners

According to the MMLA the ultimate beneficial owners shall not be announced if their names have already been registered as per the company's badge in the Commercial register/Bulstat register. In practice, this exemption is applied towards companies held by one natural person (sole owner) or two or more natural persons holding at least 25% of the company's shares.

The provisions of the MMLA do not deal with the cases where a shareholder (natural or legal person) holds less than 25% of a company's shares. More clarity on this matter shall be given in the future Rules for implementation of the MMLA.

2. Legislative amendments with respect to the announcement of the ultimate beneficial owners before the Commercial register and the Bulstat register

In order to comply with the requirements of the MMLA for announcement of the ultimate beneficial owners, the Bulgarian Ministry of Justice has adopted a Bill for amendment of the existing *Ordinance for Conducting, Storing and Access to the Commercial Register and to the Register of Non-profit Legal Persons* (the "**Commercial Register Ordinance**" or "**Ordinance**"). In accordance with the Bill for amendment of the Ordinance the procedure for announcing data for the ultimate beneficial owners includes:

- Submission of a special Application (E7) with the Commercial register;
- **Declaration under art. 63, para 4** of the MMLA for announcement of the ultimate beneficial owner (should be enclosed to Application E7);
- Submission of documents certifying the existence and the managers of **all foreign companies having direct and indirect control over the Bulgarian entity**.
 - In practice, these are all foreign companies participating in the chain of shareholders of the Bulgarian entity (e.g. sole owner of the Bulgarian entity, sole owner of the sole owner of the Bulgarian company, etc.) until the ultimate beneficial owner (a natural person actually holding the shares in the last company in the chain of shareholders) has been determined.
 - These **documents (excerpts, lists of shareholders)** have to be issued by the Commercial register in the respective country where the foreign company is located, eventually stamped with an apostille (if applicable towards the country of origin) and translated into Bulgarian by a sworn translator.
- Submission of data for a Contact person, permanently residing on the territory of the Republic of Bulgaria - in case the legal representative of the Company is not permanently residing on the territory of Bulgaria and no such data is entered in the Commercial register/Bulstat register. The Contact person shall be a natural person and shall provide a **notary certified explicit consent for accepting the position of a Contact person**.



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- The Contact person is obliged to receive, possess and provide information regarding the ultimate beneficial owners when required by the competent state authorities.

The Bill for amendment of the Commercial register ordinance with the above listed amendments has entered into force on 23.10.2018. However, as stated in item 1.1 above as of the present moment the Commercial register still has not activated technically the option for announcement of the companies' ultimate beneficial owners. Taking into account the fact that the template of the Declaration under art. 63, para 4 has not been adopted, still it remains unclear when the announcement of the companies' ultimate beneficial owners with the Commercial register and the Bulstat register could be started.

3. Penalties for noncompliance with the obligation for announcement of the ultimate beneficial owners of a company with the Commercial register/Bulstat register

For the companies, the penalty for violation of the provisions of MMLA regarding submission of information for the ultimate beneficial owners before the Commercial register/Bulstat register is in the range of BGN 1 000 to BGN 10 000. For system violation the penalty varies between BGN 5 000 and BGN 50 000.

Once the company is sanctioned, the above stated sanctions could be imposed monthly until the moment of entering the required data at the Commercial register/Bulstat register.

There is an envisaged sanction also for the Contact person who does not receive, possess and/or provide information regarding the ultimate beneficial owners when requested. It amounts from BGN 100 to BGN 1 000 (for repeated violation BGN 200 to BGN 2 000).

TPA Bulgaria is at your disposal for any assistance in the process of announcement of the ultimate beneficial owners with the Commercial register/Bulstat register. Subject to additional arrangements, TPA Bulgaria could also assist you as regards the appointment of a Contact person with the Commercial register/Bulstat register.

This Newsletter is a service of TPA

Kind regards

your TPA-Team

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