

SME INFO

IMPLEMENTATION OF THE ULTIMATE BENEFICIAL OWNERSHIP REGISTER (UBO REGISTER) IN HUNGARY



The purpose of SME INFO is to provide general information and to draw the attention to the current changes in law which we believe to be important for the business operation of our clients. It is not a replacement for careful review of the acts and rules, and the consultation with your tax advisor.

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In order to make the ownership of economic and social actors transparent, in May 2021, the so-called *Afad Act (Act XLIII of 2021 on the Establishment and Operation of the Data Reporting Background for the Identification Tasks of Financial and Other Service Providers)* was promulgated, which contains the steps, tasks and related obligations for the introduction and operation of the ultimate beneficial ownership register (further referred to as UBO register), thus implementing a long-awaited database in line with the *AML Act (Act LIII of 2017 on the Prevention*

and Combating of Money Laundering and Terrorist Financing).

In this newsletter, we explain

- the concept of ultimate beneficial ownership and
- what our responsibilities are as an accounting and registered office service provider in relation to the new register and
- how it will affect our Clients.

The PS SME Team

In our letter, we are referring to our clients as *registered entities* or *data providers*, while PS is considered a *service provider* as defined in the AML Act.

1. Who is considered as an ultimate beneficial owner (UBO)?

The Afad Act refers to the AML Act for the definition of UBO.⁽¹⁾

Accordingly, in case of a **legal person or an unincorporated organization** an ultimate beneficial owner shall mean any natural person who

- owns at least twenty-five per cent of the shares or voting rights in them directly or indirectly, or who is able to exercise effective control over them,
- has a dominant influence in them.

 In the absence of a natural person as defined above, the executive officer of the legal person or unincorporated organization shall be deemed to be the ultimate beneficial owner.

In the case of **foundations** UBO is the natural person

- who is the beneficiary of twenty-five per cent or more of the property of the foundation, where the future beneficiaries have already been determined;
- in whose main interest the foundation is set up or operates, where the individuals that benefit from the foundation have yet to be determined,
- who exercises control in the management of the foundation or exercises control over at least twenty-five per cent of the property of the foundation.

 In the absence of a natural person as defined above, the person who is authorized to represent the foundations shall be deemed to be the ultimate beneficial owner.

 (1) Act LIII of 2017, 3§ 38. a-b), d-f)

In case of **fiduciary asset management contract** UBO is

- the principal(s),
- the fiduciary(ies),
- the beneficiaries or class of beneficiaries,
- any natural person exercising effective control over the trust fund via other means,
- the protector(s).

 If the principal, fiduciary, beneficiary or the protector is an entity then the entity's ultimate beneficial owner shall be deemed to be the ultimate beneficial owner in respect of the fiduciary asset management contract.

2. Whose data is included in the UBO register and what does the UBO register consist of?

The UBO register is a non-public register⁽²⁾ maintained by the National Tax and Customs Administration of Hungary (further referred to as NAV) as the registration body and contains the following information of entities registered in Hungary and, under certain conditions of fiduciary asset management contracts and their beneficial owners⁽³⁾:

- National registration number (unique identifier of each entity registered in the UBO register, obtained when their data is first recorded)
- Name, abbreviated name, registered office, tax number, company registration number or similar registration number of the registered entity
- Name, nationality, place and date of birth, address, and nature and extent of interest of the UBO
- TT index of beneficial ownership data



 (2) Act XLIII of 2021, 4§ (2)  (3) Act XLIII of 2021, 4§ (1)

3. Who shall provide the above information to the UBO register?

This obligation falls on the payment service provider of the registered entity and will be introduced in two steps:

- To build the database, the payment service providers were required to provide the data they hold by 12 June 2021⁽⁴⁾;
- From 1 October 2021 onwards, the payment service provider will transmit the data on a monthly basis.⁽⁵⁾



Payment service provider: as defined in the Act LXXXV of 2009 on the Pursuit of the Business of Payment Services.⁽⁶⁾

4. What are the obligations of registered entities, i.e. our clients?⁽⁷⁾

A registered entity (or – said differently – data provider as per the definition of the AML Act) is obliged to:

- provide information on its UBOs requested by its payment service provider,
- keep and update records of the UBOs,
- ensure that the UBO notifies the registered entity within 15 days of any change in the data.

5. Who has access to the UBO register data?

Access will be introduced in several steps at different times.

Step 1 ⇒ 1 September 2021

- The registered entity and the beneficial owner may access the data stored in the UBO register free of charge in the manner determined by the registration body (NAV) within the framework of individual data provision.⁽⁸⁾

Step 2 ⇒ 1 February 2022

- a) The public authority, the public prosecutor's office, the court and the supervisory authority may, without delay and free of charge,

inspect all data stored in UBO register without notifying the data providers concerned.⁽⁹⁾

- b) In order to perform its duties as defined by law, the authority, the prosecution, the court and the supervisory authority may disclose the data obtained⁽¹⁰⁾
- to an authority, prosecutor, court or supervisory authority of another Member State of the European Union
 - to an authority, prosecutor, court or supervisory authority of a third country.
- c) The service providers designated by the AML Act, including PS, may have access to the data stored in the UBO register free of charge in the manner determined by the registration body in order to fulfil the customer due diligence measures or data verification obligations requested by the AML Act.⁽¹¹⁾

Step 3 ⇒ 1 July 2022

- a) A third party may, for charge, may obtain UBO register information (except in the case of fiduciary asset management contracts) by individual data service, as determined by the registration body.⁽¹²⁾
- b) In case of fiduciary asset management contracts:⁽¹³⁾
- A third-party may, for charge, obtain access to data relating to the beneficial owner of the data provider by individual data service, as determined by the registration body, provided that the purpose for which the data is used and the legitimate interest in obtaining access to the data are documentary evidenced
 - Where the trust fund includes an asset which directly or indirectly gives the right to majority influence in a legal person or an unincorporated organization incorporated outside the European Union, a third-party may require, by written request, information on the beneficial owner.

In these two cases, prior to the data request, a request for pre-authorization must be submitted to the Minister in charge of the money, capital and insurance markets, who will examine the request within 30 days of receipt and decide whether the purpose of the request and

§ (4) Act XLIII of 2021, 24§(2) (5) Act XLIII of 2021, 7§ (1) (6) Act XLIII of 2021, 3§ (10)

(7) Act XLIII of 2021, 5-6§ (8) Act XLIII of 2021, 8§ (4)

§ (9) Act XLIII of 2021, 8§ (1) (10) Act XLIII of 2021, 8§ (2) (11) Act XLIII of 2021, 8§ (3)

(12) Act XLIII of 2021, 8§ (5) (13) Act XLIII of 2021, 8§ (6)-(7)

the legitimate interest or the asset giving the right to majority influence exist. The authorization issued by the Minister must be attached to the request for data.

6. What happens if an organization or service provider experiences a discrepancy between the data known to them and the data recorded in UBO register, and what does the TT index indicate?

Notification of discrepancies

a) Authority, prosecution, court and supervisory body ⁽¹⁴⁾:

The authority, prosecution, court and supervisory authority may notify the registration body (NAV) if it detects a material discrepancy between the UBO data known to them and the data recorded in the UBO register.

b) Service provider ⁽¹⁵⁾:

If a service provider designated under the AML Act, including PS, records materially different data on beneficial ownership in the course of the customer due diligence or data verification procedure determined by the AML Act, it shall notify the registration body (NAV) within 5 working days.

! Discrepancies can be reported from 1 February 2022.



§ (14) Act XLIII of 2021, 10§ (15) Act XLIII of 2021, 11§

TT index ⁽¹⁶⁾

TT index indicates the degree of reliability of the UBO data stored in the database. The initial value is 10.

A discrepancy reported under *paragraph a)* reduces the TT index by 2 points, a discrepancy reported under *paragraph b)* reduces the TT index by 1 point. On the basis of the notification under *paragraph a)* and *b)*, the registration body (NAV) records the reported discrepancy, the beneficial ownership data and the revised value of the TT index.

If the value of the TT index changes from the initial 10 points

- below 8 points, the data provider's UBO data may be classified as 'uncertain';
- below 6 points, the data provider's UBO data may be classified as 'unreliable'.

! In both of the above cases, the registration body (NAV) will notify the registered entity (data provider) – i.e. our clients – within 5 working days with a description of the legal consequences under the law and will request them to confirm or amend the data stored in the UBO register within 5 working days of receipt of the notification. If the data provider confirms or modifies the beneficial ownership data, the registration body (NAV) will modify the TT index value to 10 points.

! The registered entity (data provider) is able to modify the data at its payment service provider. It is not possible for the registered entity or the beneficial owners to notify directly the registration body (NAV) about the change request.

8. Legal consequences

The registration body (NAV) will publish the name and tax number of organizations that are categorized as unreliable or categorized as uncertain by more than 180 days on its website. ⁽¹⁷⁾

§ (16) Act XLIII of 2021, 12§ (17) Act XLIII of 2021, 14§

The data provider with UBO data classified as “unreliable” by the registration body must be

- considered as high risk and must apply enhanced customer due diligence measures in accordance with the AML Act,
- refused to execute transactions exceeding HUF 4 500 000 by service providers defined in the AML Act, including PS.⁽¹⁸⁾



The described legal consequences will enter into force from 1 July 2022.



(18) Act XLIII of 2021, 13§

