

Central Register of Beneficial Owners in light of COVID-19

April 1, 2020

Monday 13 April 2020 was originally the deadline for submitting applications to the Central Register of Beneficial Owners (“CRBO”) for those companies registered in the KRS before 13 October 2019. **Owing to the “Anti-Crisis Shield”, a set of legal regulations has been promulgated to facilitate business operations in Poland in connection with the COVID-19 epidemic, extending the aforesaid deadline until 13 July 2020.**

Any companies registering in the KRS after 13 October 2019 are required to submit their CRBO filings within 7 business days from the date of the registration.

The following are some of the important issues relating to the CRBO.

What is the CRBO?

The CRBO is an IT system operated by the Ministry of Finance to process data on the beneficial owners of certain entities (in practice, these are almost all companies and partnerships registered in the Polish National Court Register – KRS).

The CRBO was set up on the basis of Chapter 6 of the Anti-Money Laundering Act of 1 March 2018 (the “AML”) and became operational on 13 October 2019. It is available to the public and its content is presumed to be true.

The Register is available at: <https://crbr.podatki.gov.pl>

Who is a beneficial owner?

For CRBO purposes, a beneficial owner is any natural person with direct or indirect control over the entity concerned, based on powers arising from legal or factual circumstances that allow them to exercise decisive influence over the entity's actions or activities. An entity may have more than one beneficial owner.

The beneficial owner(s) of a corporate entity other than a publicly traded company may be:

- any natural person who is a shareholder of the entity and owns more than 25% of its shares;
- any natural person who holds more than 25% of all voting rights in the decision-making body of the entity, including as a pledgee or usufructuary or under agreements with other vote holders;
- any natural persons in control of the entity who jointly own more than 25% of its shares or jointly hold more than 25% of all voting rights in the decision-making body of the entity, including as pledgees or usufructuaries or under agreements with other vote holders;
- any natural person who is the “parent undertaking” of the entity for the purposes of the Accounting Act (meaning, inter alia, that the person has the right to appoint a majority of the members of its management or supervisory body

or the right to direct its financial and operating policies).

If no natural person from the above can be identified, or if there is any doubt concerning their identity, natural person(s) holding the position of senior managing official(s) in the organization (e.g. management board members) will be considered to be the beneficial owner(s).

Who is required to file CRBO notifications?

All registered partnerships, limited partnerships, partnerships limited by shares, limited liability companies, joint-stock companies (other than publicly traded companies) must file notifications with the CRBO. The above obligation will also apply to simple joint stock companies, as soon as they are introduced in the Polish legal system.

Moreover, the obligation referred to above is scheduled to apply, as of Q2 2020, to trusts, professional partnerships, economic interest groupings, societates Europaea, cooperatives, Societas cooperativa Europaea, associations which must be mandatorily registered in the National Court Register, as well as to foundations. The AML amendment bill is currently in its consultations phase, which means that the group of entities listed above may change.

What disclosures need to be made and when?

The required CRBO disclosures include:

- company or partnership identifying particulars (name; type of organization; registered office; KRS number; and NIP taxpayer identification number);
- identifying particulars of beneficial owners and of members of governing bodies or shareholders with representation authority (full name; nationality; country of residence; PESEL identification number or, if PESEL is unavailable, date of birth; information about size and nature of interest held or about beneficial owner's authority).

Any companies or partnerships registering with the KRS on or after 13 October 2019 have seven days to submit their CRBO filings. Those registered on 12 October 2019 or earlier will have until 13 July 2020 to make the relevant disclosures.

If there are any changes to previous CRBO disclosures, an update is needed within seven days of the change.

The two seven-day periods do not include Saturdays, statutory non-working days, and days on which there are any CRBO operating disruptions or failures (as announced in the Bulletin of Public Information, or BIP).

If a filing contains a manifest error, the entity is allowed three more business days after the error is discovered to correct it.

What format is used for CRBO filings?

Both original and updated CRBO filings are submitted online via the website <https://crbr.podatki.gov.pl> and signed with a qualified electronic signature or ePUAP trusted profile. An official acknowledgment of receipt (UPO) will be issued once a notification is submitted successfully.

The application also contains a statement by the filer, signed under the penalties of perjury, that the CRBO disclosures are true.

The CRBO allows to prepare a "draft" version of the application and then import it again and sign it by the authorised persons.

Who must submit CRBO filings?

Filings must be made by authorised representatives of a company or partnership. Primarily, these would be management board members and proxies. According to the official position of the General Inspector of Financial Information, it is not possible to make submissions by holders of powers of attorney.

What are the legal and business risks associated with the CRBO?

AMLA provides for a fine of up to PLN 1,000,000 to be imposed if an entity fails to make its CRBO filings or updates on time. Currently, companies are not responsible for the accuracy of information reported to the CRBR. However, the proposed AML amendments, scheduled to take effect in Q2 2020, will bring changes in this area. The fines referred to above will also apply to companies reporting untrue information to the CRBO.

Moreover, persons making CRBO filings on behalf of companies will be liable in two ways for the correctness of disclosures, namely: (i) under criminal law as regards their mandatory statements that disclosures are true, and (ii) under civil law for any damage caused if disclosures are not true or if they were not made or updated within statutory deadlines.

Given the complicated ownership arrangements of many entities, especially those in multinational groups, identifying beneficial owners can be a difficult process in practical terms. Also, more often than not, there are considerable delays in Polish entities learning of matters of relevance to beneficial owner identification (e.g. of changes to their parent's ownership structures), which might prevent them from complying with the statutory seven-day period for CRBO updates.

Last but not least, given that the CRBO will be open to scrutiny and publicly available, a lot of investors may feel uncomfortable and reluctant to disclose the level of their financial involvement in specific business entities.

Our lawyers will be happy to answer any questions you might have about the CRBO and can help you in compliance matters to make sure your organization is prepared for the new regulations.

Your Key Contacts



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