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Cyprus launches UBO register

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Introduction

Cyprus has elevated its ultimate beneficial owner (UBO) reporting status by implementing all of the mechanisms for the creation, operation and maintenance of a UBO register. The UBO register is a requirement emanating from the amended Fourth EU Anti-money Laundering Directive (4AMLD). The 4AMLD was transposed into national legislation on 3 April 2018 by the Prevention and Suppression of Money Laundering and Terrorist Financing Law (13(I)/2018), Article 61A(4)(a) of which specifically provides for the introduction of a UBO register. According to a 21 December 2020 announcement by the Companies Registrar Department, as amended, relevant entities must submit information on their UBOs for inclusion in a newly created and centralised UBO register within six months of 22 February 2021.

The 4AMLD imposes certain minimum standards for all member states. As part of the European Union's efforts to curtail the flow of illicit funds, these standards were recently enhanced by the Fifth EU Anti-money Laundering Directive (5AMLD). Similar initiatives are also in the process of being implemented in all Organisation for Economic Cooperation and Development countries and may become accepted practice internationally.

Implementation of 4AMLD

The 4AMLD aims to prevent the EU financial system from being used for the purposes of money laundering and terrorist financing activities. In order to combat such activities, the 4AMLD sets out numerous measures to help member states bolster their defences through the identification and mitigation of associated risks. The verification of the UBOs of legal entities is considered to be an essential factor in the pursuit of this aim and will create a system of transparency.

Each member state must establish two central UBO registers in which adequate and accurate information is registered for legal entities within their jurisdiction:

- a Company Register for corporate and other legal entities; and
- a Trust Register for trusts and other types of legal arrangement.

For each register, the 4AMLD establishes certain standards on matters such as:

- the information that is required;
- the accessibility of the registers; and
- the definition of 'beneficial owner'.

The deadline for implementing the 4AMLD into Cypriot law was 26 June 2017.

Company Register

Cyprus has announced that steps have already been undertaken to create a fully integrated UBO register system. As per the latest announcement, the Company Register will be maintained by the Registrar of Companies and the Official Receiver of the Ministry of Energy, Trade and Industry (RoC).

The relevant legal entities incorporated in Cyprus must submit the information required by the Prevention and Suppression of Money Laundering and Terrorist Financing Law to an interim system within six months of 22 February 2021. This follows the latest announcement by the RoC on 15 January 2021, which revised the previous start date of 18 January 2021. During this period, access to the UBO register will be granted only to the designated competent authorities through a request lodged with the RoC.

Information collected in the interim six-month period will be transferred to a final platform, which has yet to be developed, in the second half of 2021.

UBO definition and applicable thresholds

Information required

Accessibility

The law defines a 'UBO' as any natural person who:

- ultimately owns or controls a legal entity through direct or indirect ownership of a shareholding of 25% plus one share; and/or
- has an ownership interest of more than 25% in the customer on whose behalf a transaction or activity is being conducted.

Therefore, natural persons who own 25% or less of a qualifying legal entity, whether directly or indirectly, will not be subject to the Cyprus UBO register requirements.

Said legal entities must ensure that the following information on their beneficial owners is kept in their records and submitted to the RoC:

- name;
- date of birth;
- nationality;
- country of residence; and
- the nature and extent of the interest held.

The aforementioned information will be accessible by the competent authorities, the Cyprus Bar Association, the Central Bank and the Cyprus Securities and Exchange Commission (CySEC). Moreover, the Unit for Combating Money Laundering and Terrorist Financing, the police, the customs department and the tax department are eligible for access. In addition, any person or organisation that can prove a legitimate interest and provide sufficient evidence will have access to information held by the UBO register.⁽¹⁾

The 5AMLD, which entered into force on 19 June 2018 and was meant to be transposed into Cyprus law by 10 January 2020, will extend this access by making the Company Register available to the general public.

Trust Register

Section 61(b) of the Prevention and Suppression of Money Laundering and Terrorist Financing Law provides for the creation of a register specifically for trusts and similar legal arrangements. The Trust Register will be maintained and supervised by CySEC.

Information required

The following information must be recorded in the Trust Register with respect to trusts and similar arrangements:

- the identity of the settlor;
- the trustee;
- the protector;
- the beneficiaries; and
- any other natural person exercising effective control over the trust.

Accessibility

The above information will be accessible to the competent authorities, as stated in Section 2A. Unlike with the Company Register, access will not be granted to the general public.

However, 5AMLD expands on the accessibility of the Trust Register by recommending access to obliged entities in the context of customer due diligence, natural or legal persons that can demonstrate a legitimate interest and natural or legal persons that hold or own a controlling interest in certain defined corporate or other legal entities.

European Central Platform

Once the Cyprus UBO register platform is operational, as per the 4AMLD, it will be linked with all EU UBO registers through an interconnected and centralised platform by 10 March 2021. Information classified as not being accessible to the public will be available to the competent authorities and financial intelligence units of each member state.

Shielding UBO information

According to the 4AMLD, Cyprus can provide for publicly available UBO information to be shielded if the UBO is a minor or legally incapable. Protection against disclosure can also be extended if it is deemed that the information to be revealed could lead to a disproportionate risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation.

If a request is lodged for the restriction of access to UBO information, said information will automatically be shielded from the public until a formal decision is reached by the relevant authority.

Complementary legislation

The UBO registers are closely linked with mandatory disclosure rules and are highlighted through hallmark category D of the amendment to EU Directive 2011/16/EU on mandatory automatic exchange of information in the field of taxation, in relation to reportable cross-border arrangements (DAC6).

This category of hallmarks was specifically introduced to address arrangements designed to circumvent reporting under the Common Reporting Standard (CRS) and arrangements aimed at providing beneficial owners with the refuge of non-transparent structures.

For example, a cross-border arrangement will be reportable under DAC6 if it is reasonable to conclude that it was devised to undermine reporting obligations under Cyprus law relating to EU Directive 2014/107/EU (DAC2) and the CRS or if said arrangement takes advantage of the absence of such laws.

UBO registers are thus considered to be a central tool in the fight against opacity and must be understood as being interconnected with a multitude of laws. Structures aimed at evading the requirements associated with UBO registers may therefore trigger the application of other legislation such as DAC6 and any other long-running series of directives designed to encourage cross-border information exchange in the European Union.

Comment

The creation of UBO registers has been protracted, but entities must now prepare for their introduction in Cyprus. The relevant announcements by the RoC highlight that implementation is imminent and that legal persons will have six months from 22 February 2021 to file the requested information.

Corporate and other legal entities incorporated in Cyprus must review their structures and ascertain which individuals will qualify as their UBOs. This exercise should be undertaken on a case-by-case basis and must be conducted before the imposed deadline.

Guidelines expanding on the UBO registration process, as well as applicable penalties for non-compliance, are expected to follow in due course, but it is suggested that the process of ascertaining and collecting UBO information be commenced without delay. It is nevertheless important to keep in mind that law firms and other professionals have been legally required to keep such information for many years. The real novelty in this latest step towards transparency will be the eventual public access to UBO registers and how this will intertwine with privacy and data protection concerns.

Endnotes

(1) The term 'legitimate interest' is to be defined by each member state. In Cyprus, it is defined as a genuine interest in suppressing money laundering activities and offences prescribed under the Prevention and Suppression of Money Laundering Activities Law 2007, as amended.

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