

Obligations of companies and other entities seated in Greece in relation to their beneficial owners

Earlier this year, the long-expected Law 4557/2018 re: prevention and suppress of money laundering and terrorist financing (incorporation of Directive 2015/849/EU) and other provisions was finally voted by the Greek Parliament and published in the Government Gazette (139/A/30.07.2018). The law incorporates EU Directive 2015/849/EU into the Greek legislation, and includes –among others- specific and detailed provisions in relation to the obligations of Greek entities to name and keep accurate data about their beneficial owner(s) at all times.

More specifically, according to article 20 of the law 4557/2018, the creation of two different types of registries is provided: a **“Special Registry”** which is created by companies and other legal entities having their seat in Greece and the **“Central Registry”** which is created by the General Secretariat of Information Systems (GSIS) in a national level.

Special Registry: All corporate and other entities with registered offices in Greece, are obliged to collect and keep adequate, accurate and updated information in relation to their beneficial owner(s). Such information shall be kept at a Special Registry to be incorporated at the place where such entities are seated and shall include at least the name and surname, the date of birth, the nationality and the country of residence of all beneficial owners, as well as the nature and extent of the rights conferred upon them. The legal representative or the specially authorized person following the competent corporate body's resolution is responsible to keep the Registry adequately documented and duly updated. In case of listed companies, the person responsible for corporate governance issues shall be also be responsible for keeping and updating the Special Registry. Apart from the actual data, all obliged entities shall keep records of the actions taken in order to identify their beneficial ownership pursuant to the law.

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Central Registry: All data kept at the Special Registry must be recorded at a Central Registry to be created with the General Secretariat for Information Systems of the Ministry of Finance, within a deadline of sixty (60) days as of the date that the Central Registry becomes effective. According to law 4557/2018, the Central Registry shall become fully effective until 31/1/2019 the latest. Any changes in the data of the beneficial owners kept at the various Special Registries, shall be notified at the Central Registry within sixty (60) days.

The Central Registry will be connected electronically with the Tax Identification Number (TIN) of each legal entity and each legal entity shall have access to the Central Registry by using the id/password granted by the Ministry of Finance in cooperation with the Independent Public Revenue Authority (IPRA). The Central Registry may also be interconnected with the General Commercial Registry (GEMI), with the Securities Depositories and any other body holding information relevant to beneficial ownership of companies, but it may not be substituted by any other registry or database.

Finally, matters concerning the observance and the operation of the Central Registry, the way and the appropriate order of registering data included in the Special Registries, their interconnection with other databases and systems, the process that a request for information is electronically recorded, the payment of a fee for the administrative costs of making the information available, including the development and maintenance costs of the Central Registry, shall be regulated upon decision of the Ministry of Finance (not yet issued).

The law contains similar obligations in relation to trusts. More specifically, according to article 21 of law 4557/2018, the trustees of any express trust governed by the Greek legislation, are obliged to collect and keep adequate, accurate and updated information in relation to the beneficial owner(s) of the trust. Such information shall be recorded at a Special Registry kept at the place where the trusts are seated and shall include the identity of the settlor, the trustee(s), the protector (if any), the beneficiaries or class of beneficiaries and of any other natural person that exercises effective control over the trust. The administrator of the trust is responsible to keep the Registry adequately documented and duly updated. The Special Registry is interconnected with the General Registry mentioned in article 20 par. 4 of law 4557/2018 and relevant data in the Special Registry are also registered with the General Registry in a similar way as with corporate entities.

Definition of “beneficial owner” under law 4557/2018: Pursuant to article 3 par. 17 of law 4557/2018 (which contains a definition similar to the definition contained in the respective EU Directive), a “beneficial owner” means any natural person(s) who ultimately owns or controls a legal entity, as well as, the natural person(s) on whose behalf a transaction or activity is being conducted.

(a) In particular, in case of corporate entities, the following persons are considered as the “beneficial owners”:

(aa) The natural person(s) who ultimately owns or controls a corporate entity through direct or indirect ownership or control of a sufficient percentage of the shares or voting rights or ownership interest in that entity, including through bearer shareholdings, or through control via other means.

A shareholding of 25 % plus one share or an ownership interest of more than 25 % in the corporate entity held by a natural person, shall be an indication of direct ownership. A shareholding of 25 % plus one share or an ownership interest of more than 25 % in the corporate entity held by another corporate entity, which is under the control of a natural person(s), or by multiple corporate entities, which are under the control of the same natural person(s), shall be an indication of indirect ownership.

Control through other means may be determined using any kind of criteria; these include criteria used in order to decide whether consolidated financial statements shall be made, such as, whether a shareholders' agreement exists, whether a shareholder has a dominant influence or whether a shareholder is entitled to appoint the company's senior management (the law indicates that the criteria mentioned par. 2-5 of art. 32 of law 4308/2014 re: Greek Accounting Standards could be used as means to determine the beneficial owner).

The above do not apply to any company listed on a regulated market that is subject to disclosure requirements consistent with European Union law or subject to equivalent international standards which ensure adequate transparency in relation to the beneficial owner.

(bb) If, after having exhausted all possible means and provided that there are no grounds for suspicion, no person under point (aa) can be identified as the beneficial owner, or if there is any doubt that the person(s) identified is/are the beneficial owner(s), the natural person(s) who hold the position of senior managing official(s), is/are meant to be the beneficial owner(s).

It is obvious that the law provides that only in extraordinary circumstances and only after having exhausted all means and applied all possible criteria and always under the prerequisite that no grounds for suspicion exist, a corporate entity shall be entitled to use a fallback solution in determining the beneficial owner. Therefore, it derives that the entitlement to name a director (a "senior managing official") as the beneficial owner is to be considered ad hoc, i.e. on a case-by-case basis. In any case, only directors with an adequate degree of seniority shall be named as beneficial owners. According to article 3 par. 18 of law 4557/2018, a "senior managing official" which qualifies as a beneficial owner, is a director or a highly rated employee, who has sufficient knowledge of the company's money laundering and terrorist financing risk exposure, as well as, who has sufficient seniority to take decisions that affect its risk exposure (the definition is in line with the respective EU Directive). Such director or employee does not need to be a member of the company's Board of Directors.

(b) In the case of trusts, the following persons are considered as the "beneficial owners":

(aa) the settlor;

(bb) the trustee(s);

(cc) the protector, if any;

(dd) the beneficiaries, or where the individuals benefiting from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;

(ee) any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means.

(c) In the case of other types of legal entities and legal arrangements similar to trusts, the natural person(s) holding equivalent or similar positions to those referred to in point (b) are to be considered as “beneficial owners”.

Non-compliance: According to article 20 par. 8 & 9 and article 21 par. 8 & 9 of law 4557/2018, in case of non-compliance with the above obligations in relation to the beneficial owner, the non-compliant legal entity and/or trust shall not be able to receive a tax clearance certificate. The competent Tax Authorities and the Anti-Money Laundering Authority are informed via the online electronic application of the Central Registry within a time period of sixty (60) days the latest, after the expiry of the deadline within which the relevant entities are obliged to announce the beneficial owner data to the Central Registry. In addition, in case of breach of the above obligations, a fine amounting to 10,000 euros is imposed on the liable entities upon decision of the Anti-Money Laundering Authority and a deadline for compliance is fixed. In case of failure to comply, the fine increases to 20.000 euros per breaching entity.