Inveil
corporate law practice

Companies must disclose information about beneficiaries

On December 21, 2016, the law[1] that lays companies under obligation to possess information about their beneficial owners and, therefore, take measures to collect such information becomes effective. In this case, speaking of beneficiaries, the legislator implies individuals only, meaning that the companies have to know their major holders, which is not always practicable, not to mention the undesirability of such openness for some business segments.

In fact, such amendments obviously continue the policy on increasing business transparency and deoffshorization underway in Russia, and, thus, are no great surprise.

Who should be considered a beneficiary

In order to sort out what is required now in the context of the new regulations, one needs to understand who is considered a beneficiary by the legislator. Firstly, as stated above, it is an individual, i.e. a person, not a company. Secondly, such person should be the owner of more than 25% of the company capital.

Besides, beneficiaries are the persons who are able to control the activities of the company, however the law does not specify what is meant under such "control" and the conditions thereof. It should be noted that there has been a similar provision of "control" in the law for several years now, which is going to be amended as described in this article but has not been explained yet. Rosfinmonitoring commented on the issue, and its opinion was also shared by the Bank of Russia[2], – those agencies claimed that in order to recognize a person as a beneficial owner such person had to be provided with a contractual opportunity to influence, whether directly or indirectly, the company's decisions. In other words, it is reputed that there are some legal relations.

Companies affected by the new rules

The new rules will apply to almost all organizations with the exception of the following:

- ✓ Government bodies, local self-governing bodies and their relevant institutions;
- ✓ Government extra-budgetary funds;
- ✓ Government-owned corporations;

- ✓ Organizations more than 50% of assets of which are owned by the government;
- ✓ International organizations;
- ✓ Issuers of listed securities;
- ✓ Foreign organizations whose securities are listed on a foreign stock exchange.

As is obvious, most members of the business community still need to be prepared to the new rules, so below we will review what should be done in the context of this preparation.

Required measures

In accordance with the new standards, the company must possess the following information about its beneficiaries:

- ✓ Full name, i.e. surname, name and patronymic (if any);
- ✓ Nationality;
- ✓ Date of birth;
- ✓ Details of identity documents;
- ✓ Details of migration card, the document confirming the right to stay or reside in the Russian Federation (for foreigners and stateless persons);
- ✓ Temporary or permanent residence (registration) address;
- ✓ INN (if any).

The above information (and the description of measures taken to collect it) must be kept for at least five years and updated annually.

In order to collect such information, the company was provided with the right to request the necessary information from its owners and persons controlling a company – all of them are obliged to provide such information, and according to the legislator such provision will not constitute a breach of rules governing personal data management.

All collected information should be documented, however the law does not specify the form of such documentation. Therefore, until any official clarifications or comments of the supervisory bodies concerning the form of provision of information about beneficiaries are available, we recommend that you make up a simple table containing all the information listed above. Such table signed by the company director should be maintained together with constituent, registration and any other internal documents of the company.

Purpose and liability

We have already mentioned the policy under which the amendments are going to be introduced. On the basis of the amendments, the information will be collected so as to be further provided to the appropriate regulatory authorities (including tax authorities) – a company will have to provide the information collected upon their request. In addition, the information will be disclosed in accounts and records, if such disclosure is required by law.

In response to the pivotal question concerning the liability for violation of the new rules, which is raised by many business representatives in such cases, the legislator introduced new article number 14.25.1 into the Administrative Violations Code. Currently, if a company breaches its duties related to collection, update, storage and provision of information about its beneficiaries, it may entail a penalty in the maximum amount of RUB 500 thousand.

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[1] Federal Law No. 215-FZ "On Amendments to the Federal Law "Concerning the Counteraction of the Legitimization (Laundering) of the Proceeds of Crime and the Financing of Terrorism" and Administrative Violations Code of the Russian Federation" dated June 23, 2016

[2] See website http://fedsfm.ru/companies/messages/935 for the opinion of Rosfinmonitoring, and Letter № 14-T dated January 28, 2014 f a similar opinion of the Bank of Russia.