



# MEMO

## UBO RULES IN ALBANIA

31 August 2020

On 29 July 2020, the Parliament of the Republic of Albania passed the law no. 112/2020 "On the Register of Beneficial Owners" (the "Law"), which has been partly approximated with the EU Directive 2015/849 of the European Parliament and Council of May 20, 2015. The main purpose of the Law is the determination of the subjects to whom the obligation arises for the registration in the Register of Beneficial Owners. Among other things, it determines the registration procedure, the manner of keeping the beneficial owners' data as well as sets out the punitive measures in case of non-registration of the beneficial owners.

### I. REPORTING ENTITIES

The Law is applicable to legal entities registered in the Republic of Albania, including limited liability companies, joint stock companies, representative offices, branches of foreign companies, associations, foundations, etc.

The Law does not apply to natural persons (entrepreneurs registered in the commercial register), legal entities and enterprises, whose sole shareholder is the central and / or local institution of the Republic of Albania, religious communities and political parties.

### II. BENEFICIAL OWNER

"Beneficial owner" is defined as a natural person who ultimately owns or controls a legal entity, and/or the natural person, on whose behalf a transaction or activity is being conducted and includes, in case of corporate entities, the natural person who ultimately

owns or controls a legal entity through direct or indirect ownership 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, or benefits from the transactions performed by the legal entity on his behalf.

Beneficial owner in regards to trusts or other legal agreements would be considered (i) the founder of the trust, trustee, trust protector, if any, as well as 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; (ii) any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means.

The Law also recognizes the founder or legal representative or the natural person who exercises the ultimate effective control over the administration and control of non-profit organizations (NGOs such as foundations, associations, etc). The effective control means the relationship in which a person (i) determines the decisions taken by the non-profit organization; (ii) controls in any way the election, appointment and removal of most of the decision-making bodies and / or executive bodies of the non-profit organization.

“Direct ownership” is defined as the ownership, where a natural person owns 25% or more of shares / equity interests or ownership interests in a reporting entity.

“Indirect ownership” is defined as the ownership held or the control exercised by the same natural person in one or more legal entities, which separately or jointly own 25% or more of shares / equity shares or ownership interests in a reporting entity.

### **III. REGISTER OF BENEFICIAL OWNERS (RBO)**

RBO is a state electronic database, which records the data of the beneficial owners of the reporting entities. It is administered by the National Business Center (the “NBC”). The RBO shall be established no later than 31 January 2021.

For Albanian citizens, it contains data such as name and surname, personal identification number, date of birth, citizenship, address of permanent residence. Meanwhile, for foreign citizens, data such as name and surname, personal identification number, date of birth, citizenship, address of permanent residence, the passport number and the issuing country, the passport’s issuing date and expiration date.

In all cases, the RBO contains also data on the date in which the natural person has acquired the capacity of beneficial owner, type and percentage of ownership, whether direct or indirect.

In addition, the RBO contains also data on the name and the tax identification number of the reporting entity.

### **IV. ACCESS TO THE REGISTER OF BENEFICIAL OWNERS**

After registration with RBO, the following data will become available to the public domain; name and surname of the beneficial owner, citizenship, year and month of birth, date in which the natural person has acquired the capacity of beneficial owner,

type and percentage of ownership, whether direct or indirect. Other data will be accessible only under special legal conditions. Exceptionally, state authorities will have unrestricted access in order to fulfill their legal duties related to the inspection of the RBO as well as the collection of data of beneficial owners.

The data of beneficial owners shall be kept for a term of 10 years following the deregistration of reporting entity from the Albanian competent authority.

## **V. DEADLINES OF REGISTRATION IN RBO**

- a) For existing reporting entities, they need to – (i) identify the beneficial owners as well as create and keep the documentation regarding the beneficial owners within 31<sup>st</sup> December 2020; (ii) register the data required by the Law on their beneficial owners with RBO no later than 60 calendar days from the creation of RBO (which as indicated above, shall be established no later than 31 January 2021).
- b) Whereas the reporting entities, established after the entry into force of the Law, need to register the data required by the Law on their beneficial owners with the RBO within 30 calendar days from their registration with the Albanian competent authority.
- c) The reporting entities should register any change of data related to the beneficial owners with RBO 30 calendar days from the date of occurrence of the actual change.

The initial registration of data in the RBO is done by the person authorized to represent the reporting entity, mainly the administrator of a company. Regarding the updating or change of the data registered in the RBO, it is done by (i) the person authorized to represent the reporting entity; (ii) the NBC, based on data obtained from the competent state authorities in cases where the data recorded in the register do not match the data in possession of the competent state authorities.

On the other hand, the NBC approves or rejects the registration of data no later than two working days from the receipt of the application by the reporting entities.

## **VI. THE RIGHTS OF THE REGISTERED BENEFICIAL OWNER & INTERESTED PARTY**

The beneficial owner registered with RBO can file a lawsuit against the reporting entity in the competent court, in order to prove that he is not the beneficial owner of this entity. Upon the conclusion of court proceedings, the court or the interested party submits to the NBC the final court decision, and the NBC shall, within 2 working days, correct the data of the beneficial owner.

Beyond that, any interested party has the right to appeal administratively against the actions or omissions of the NBC for registrations and publications as per the Law.

## **VII. ADMINISTRATIVE PENALTIES**

Law stipulates that they will constitute administrative penalties, violations such as:

- a) initial non-registration of data for its beneficial owner, within 30 days from the initial registration, is fined with an amount of ALL 500,000;

- b) non-registration of any change in the registered data and accompanying documents, which are deposited in the RBO, within 30 days from any factual change of the previously registered data, is fined with an amount of ALL 250,000;
- c) the existing reporting entity that does not report the data for its beneficial owner, within 60 days from the establishment of RBO, is fined with an amount of ALL 250,000.

For the subjects that commit the violations foreseen in sections "a" and "b", more than once, the fines will be doubled.

For the violations foreseen above, the legal representative of the registered subject is also fined with an amount of ALL 150,000.

The fine is issued by the head of NBC, whose decision may be appealed to competent administrative court. However, the NBC and relevant authority authorized to keep the NGO's register will not provide any service until the payment of the fine and registration of the data related to the beneficial owner.

In addition to the above, the reporting entity that does not keep accurate and up-to-date data and documents regarding its beneficial owners, may be fined by the tax authority, with an amount of ALL 50,000.



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