

Register of Public Sector Partners – brief overview on duties for foreign recipients of public funds

The register of Public Sector Partners (hereinafter referred to as the “Register”) is a relatively new public register introduced to Slovak legislation in February 2017, with the aim to incorporate all companies drawing funds from public resources provided they meet set financial limits and other legal prerequisites. The Act on Register of Public Sector Partners¹ was adopted as part of the anti-money laundering and anti-letterbox company legislation. The purpose of the Register is to reveal management and ownership structure of a company entering into a contractual relationship with the public sector, which is represented mainly by state bodies, state companies, municipalities and other entities operating with public finances and properties.

The Act itself is rather unique, even when considering the legislation of European countries, so it is struggling with some practical issues, both domestically and abroad. Awareness of the Slovak legislation and recognition of the register itself abroad remains one of the bigger problems. Shortly after the introduction of the Act, reluctance of foreign partners to duly register became an issue. Their reluctance to register may be related to the absence of comparable legislation in their country of origin, remuneration for the entry into the register or forced disclosure of the company’s sensitive data.

Criteria for registration focuses on financial aspects of the contracts. However, a foreign partner is not necessarily obliged to recognize its obligation pursu-

ant to the Act. The public sector is required to monitor the conditions for registration in each and every individual case and unless the registration is completed, the representative of the public sector is not allowed to enter into the contract with the partner. On the other hand, the Act introduced an exclusive list of entities entitled to carry out the registration into the register – so called authorized persons. The role of an authorized person is quite positive for a foreign partner as such role can only be fulfilled by advocates, notaries,



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banks, branches of foreign banks, auditors and tax advisors. This list contains entities that have the greatest awareness of the law and can verify the partner’s management and ownership structure with due care. Furthermore, as practice has shown, most registrations are carried out by advocates.

The choice of authorized person is up to the partner and their subsequent relationship is regulated by a mandatory written contract concluded between the two. Both the authorized person and partner are equally liable for the truthfulness and completeness of the data entered into



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register. Considering that only subjects situated in the territory of the Slovak republic can serve as authorized persons, full knowledge of the act should be granted. This substantially eases the position of the foreign partner, as he should only be duly following instructions of the authorized person to comply with the Act.

On the other hand, non-compliance with the Act results in fairly high fines. The general fine for breaching the Act amounts to the obtained economic benefit. If such a benefit cannot be determined, the fine ranges from 10,000 to 1,000,000EUR for the partner and 10,000 to 100,000EUR for each member of the partner’s statutory body. As was previously mentioned, the authorized person shares the responsibility for data entered into the Register, and as such is liable for the imposed fine, unless the authorized person proves to have acted with professional care.

It is important to note that the obligation to be registered in the Register not only applies to the direct partner of the public sector applying for funds from public resources, but also to its suppliers meeting financial limits,

even though they are not in direct relationship with the public sector. The latter can cause practical problems, as many foreign partners fail to comply with their obligations, which may result in several problems for a domestic partner when applying for public funds, particularly in regard to public procurement, European structural and investment funds etc. In the case of non-compliance with the Act, the domestic partner can either change the foreign supplier or if such a change is not possible, the foreign partner can be liable for compensation for potential incurred damages.

Registration in the Register is not a one-time obligation but more of a continuous process where the partner and authorized person are obliged to keep the posted information updated. The time period in which the partner is required to be registered in the Register must at least equal the duration of the contract. However, the term “contract” refers to the part of the contract on the basis of which the fulfilment (public funds) is provided. This means that the partner has to be registered for as long as he essentially draws public funds. Once the monetary or non-monetary fulfilment pursuant to the contract is consummated, it is generally no longer required to be incorporated in the Register. The process of erasure from the Register is fully electronic and is completed in a matter of hours.

¹ Act. No. 315/2016 Coll. on Register of Public Sector Partners and on Amendment and Supplement on Certain Acts as amended (hereinafter referred to as the “Act”).