

RUŽIČKA

AND PARTNERS



key
changes
introduced
by the
RPSP Act
amendment

The RPSP Act amendment

On September 1, 2019, the amendment of Act No. 315/2016 Coll. on the Register of Public Sector Partners and on the amendment and supplementation of certain acts (the „**RPSP Act**“ or “**the Act**”) shall take effect. In practice, the amendment shall have a fundamental impact on the RPSP Act's application.

Since its very inception, the application of the RPSP Act has raised a whole array of practical questions. These have arisen due to certain legislative shortcomings, as well as due to the inadequate definition of rights and duties of entities falling within the scope of the Act. This long-awaited amendment brings several useful changes that reflect the needs of the Public Sector Partners (“**PSP**”). This concludes the preparation process our firm has been intensively engaged in, working towards the promotion of said changes. In this context, we would like to introduce a brief overview of seven significant changes brought by the amendment:

1 Narrowing the senior management definition

Companies with a complex ownership structure and issuers of securities currently meet their statutory duty by having members of their senior management registered. Senior management has so far comprised members of the company's statutory body, authorised representatives and employees directly reporting to the statutory body. **In cases of large foreign companies, tens or even hundreds of persons were thus covered by the definition**, as a result of which, the legislature has now decided to narrow the definition. Senior management shall now be defined to comprise **only the statutory body members**.

2 Dropping the unnecessary „exception from the exception“

Companies that issue securities or companies in which these issuers hold an exclusive controlling interest are required to register the members of their senior management in place of their ultimate beneficial owners („**UBO**“). **The original text of the RPSP Act contained an additional exception from this exception**, stating this rule to be inapplicable if a natural person entitled to the economic benefit of at least 25 % of the company's business activity could be identified within the ownership structure. **The amended Act drops the 25% of economic benefit exception**; the issuers of securities and companies exclusively controlled by such companies will thus equally be required to register the members of the statutory body only.

3 Favourable changes in the rules related to the verification of UBO identification

To simplify the verification of UBO identification process, the amendment now enshrines the option to conduct a **voluntary** verification, which may be performed at any time, without the need for the verification to coincide with a verification event. The notification on the mandatory annual verification of UBO identification at 31 December may now be submitted with the registry court at any time **before the end of the following year's February**.

4 Interpretation rules to determine contract value

The amendment sets new interpretation rules for determining the value of contracts, including:

- (i) the aggregate financial limit of **250 000 EUR** for the partial or repeated performance now relates to the entire contract duration, as opposed to the original duration of one calendar year only;
- (ii) contract performance values will be determined exclusive of VAT;
- (iii) a presumption applies that the **maximum price** for rendered performance **under a framework agreement will have been paid out**;
- (iv) if the contract is unclear and, despite the exercise of due care, it is **impossible to presume whether the value of performance surpasses the financial limit, an obligation arises for the entity to register** with the RPSP **prior to the moment of rendering** of performance that is to exceed the limit.

5 Widening the negative definition of PSPs

The following entities, among others, **are not considered PSPs** within the meaning of the amendment:

- (i) **a public undertaking**¹ which has not participated in public procurement;
- (ii) **financial institutions** subject to regulatory control by the National Bank of Slovakia;
- (iii) entities receiving performance from a public undertaking in the ordinary course of trade of the public undertaking and in the fulfilment of the public undertaking's primary economic activity (**energy suppliers' clients**).

¹ A public undertaking, within the meaning of the RPSP Act, is defined as a legal person established by the state, municipality, county or a legal person established by statute, with the exception of a statutory professional chamber, wherein these persons hold full direct or indirect equity participation, whether individually or collectively.

6 Enabling the registration of business address in place of UBO permanent residency data in justified cases

PSPs may, furthermore, **register business address data instead** of the permanent residency address of UBOs or statutory body members in cases **where the PSP can demonstrate justified circumstances indicating a threat to the safety of UBOs or statutory body or their rights relating to privacy and their personality rights. PSPs issuing securities can register business address data without limitation.** This amendment has been undertaken with the goal of better reflecting the practical needs of the PSPs, since situations have occurred in practice, where mainly foreign state bodies have blocked access to information related to, for instance, the UBOs' residency address due to concerns about the persons' health and life.

7 Changes in the qualified complaint proceedings

During the course of the qualified complaint proceedings, the court may **refrain from punishment** of the PSP in cases where the accuracy and completeness of UBO-related data has not been proven, if, having regard to the manner in which the obligation has been breached, as well as the related consequences and circumstances, the severity of the breach of duty can be regarded as negligible. Furthermore, the amended legislation introduces a **registration ban on the PSP, the period lasting two years from its previous deletion.**

Please note that the registered data of the PSP must be brought into line with the requirements of the amended version of the RPSP Act by the deadline of 29 February 2020.

For more detailed information, please contact:



JUDr. Ján Azud

✉ jan.azud@r-p.sk

☎ + 421 (0)2 32 333 441



JUDr. Ivan Šafranko

✉ ivan.safranko@r-p.sk

☎ + 421 (0)2 32 333 431



Mgr. Jaroslav Ružička, LL.M.

✉ jruzicka@r-p.sk

☎ + 421 (0)2 32 333 431

RUŽIČKA AND PARTNERS s. r. o.

Information pursuant to Act no. 136/2010 Coll.
Limited Liability Company founded in line with Slovak law.

Seat:

Vysoká 2/B, 811 06 Bratislava, Slovak Republic

Tel: +421 (0)2/32 33 34 44

Fax: +421 (0)2/32 33 34 43

Email: office-ba@r-p.sk

IČ DPH: SK2022827620

Entered in the Commercial Register of District Court Bratislava I, Section Sro, Entry no. 58431/B, Id. no. (IČO): 36 863 360.

Entered in Slovak Bar Association (hereinafter as "SAK") on 04 June 2009.

Authorization to provide legal services and legal consulting (attorney services) in line with Act no. 586/2003 Coll. on Advocacy as amended, established based on registration of the company in the register kept by SAK having its seat at Kolárska 4, 813 42 Bratislava, Slovak Republic.

The company provides attorney services in compliance with the provisions of Act no. 586/2003 Coll. as amended and in line with relevant SAK regulations based on client agreements governed by Slovak law. In case of service provision to foreign entities, the Slovak court competent based on the seat of the company pursuant to Slovak legal regulations has jurisdiction.

Liability for damage caused by the company in provision of legal services is regulated by Act no. 586/2003 Coll.

The company's liability is subject to insurance taken out with the insurer Starr International (Europe) Ltd., registered address: 30 Frenchchurch Avenue, London, EC3M 5AD, United Kingdom, registration number: 09654797, represented on the basis of a power of attorney by: Starr Underwriting Agents Limited, registered address: 30 Frenchchurch Avenue, London, EC3M 5AD, United Kingdom, acting in the Slovak Republic through its organizational branch Starr Underwriting Agents Limited Slovakia, organizačná zložka, Panenská 5, 811 03 Bratislava, Slovak Republic. Insured risks: provision of legal and professional services, Policy no.: 7707024613. Insurance cover: 15,000,000 EUR for any one and all insurance claims during the insurance term.

The company provides services for a fee, the amount and form of which are to be agreed contractually before commencing the provision of services in line with the Decree of Ministry of Justice SR no. 655/2004 Coll. as amended.

Grievances or complaints regarding the services provided by the company may be submitted at company premises.

Other information about the company may be obtained at the company offices.