

Panamanian National Assembly approves bill on beneficial owner register for legal entities

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Executive summary

On 19 December 2019, the Panamanian National Assembly approved Bill No. 169, which would create a free Register of Beneficial Owners of Legal Entities to allow resident agents to file information on the beneficial owner of all legal entities incorporated in Panama for which they are agents. The register is aimed at assisting competent authorities with preventing money laundering, the financing of terrorism and the proliferation of massive weapons. The bill's effective date is subject to the Executive Branch's approval.

Detailed discussion

Beneficial owner

Bill No. 169 responds to Law 23 of 27 April 2015, which currently requires resident agents to perform due diligence by reporting information for all legal entities that will be incorporated in Panama, including information on the entities' ultimate beneficial owners. The bill defines the term "beneficial owner" as any individual who directly or indirectly owns or controls, or has a significant influence on, the business or individual benefitting from a transaction, including individuals who ultimately control the legal entity's decisions. The definition also would establish criteria for determining possession, control or influence over a legal entity, including:

- a. Shareholding criteria: direct or indirect ownership of at least 25% of a legal entity's shares or voting rights
- b. Control criteria: special provisions for civil entities, trusts, entities in liquidation, etc.

Competent authority

The Superintendence of Non-Financial Institutions (hereinafter, the Superintendence) would manage the register and would be responsible for ensuring the privacy of the information provided by the resident agents. In that sense, the register will be private, with access limited to: (1) resident agents, (2) registered legal entities, and (3) two designated officers with the required security and technological protections. The Superintendence also would uphold the integrity, confidentiality, traceability and technological security of the information provided, according to the highest international standards of data protection.

Resident agent's obligations

Under current law, all legal entities incorporated in Panama must appoint a Panamanian lawyer or law firm as their resident agent. The bill would require resident agents to register with the Superintendence, to obtain a unique registry code to access the beneficial owner register and complete the information required for each legal entity for which they render services as resident agents. The bill also would suspend a legal entity's corporate rights if it has a resident agent that is not duly registered with the Superintendence.

Information to be registered by resident agents

Once the resident agent is duly registered before the Superintendence, the bill would require it to file the following information in the beneficial owner register within 30 business days, counted from the incorporation of the legal entity with the Panamanian Public Registry or the agent's appointment as a new resident agent:

- For the legal entity to which it renders services as a resident agent:
 - Name of the legal entity
 - Registration number in the Panamanian Public Registry
 - Date of registration in the Panamanian Public Registry
 - Address
 - Main business activity

- For the beneficial owner of the legal entity to which it renders services as a resident agent:

- Name
- ID number
- Date of birth
- Nationality
- Address
- Date the individual became the beneficial owner of the legal entity

The bill would provide specific requirements for particular scenarios, such as the beneficial owner being an entity listed in a stock exchange market, an entity owned by a governmental or multilateral entity, or an entity owned by a State.

If the information filed in the beneficial owner register changes, the bill would require the legal entity to notify and provide updated information to its resident agent within 30 business days. Conversely, the bill would require the resident agent to update the information in the beneficial owner register within 30 business days from the date it received the updated information.

The information filed in the beneficial owner register will be kept throughout the existence of the legal entity and for at least five years following its dissolution.

Sanctions

The bill would sanction resident agents with fines from US\$1,000 to US\$5,000 for each legal entity whose information is not registered or updated in the beneficial owner register. For each day, the registration or update is not completed, the bill would impose progressive fines on 10% of the fine previously imposed, up to a maximum of six months. If false information is provided or filed in the beneficial owner register, the bill would impose additional sanctions.

The bill would suspend legal entities that do not have information registered or updated in the beneficial owner register from the Panamanian Public Registry. As a consequence, the legal entity would not be able to file any document or agreement with the Panamanian Public Registry. The legal entity also would not be able to receive a good-standing certificate from the Panamanian Public Registry. If the information or update is not filed with the beneficial owner register within two years, the legal entity would be removed from the Panamanian Public Registry.

The bill would require those with access to the beneficial owner register to keep that information confidential. Failure to keep the information confidential would result in a fine of US\$200,000. The bill would impose a fine of US\$500,000 on anyone who accesses the register without the corresponding authorization.

Grandfathering

Resident agents would have six months from the notification of the Superintendence to register with the Superintendence and obtain from the legal entities the information to be filed in the beneficial owner register. Resident agents that are unable to update the information on the legal entity's beneficial owner would be required to resign as the entity's resident agent before the Panamanian Public Registry, without any costs. Moreover, it would have to notify the Superintendence about its resignation within 30 business days.

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EYG no. 000059-20Gbl

1508-1600216 NY
ED None

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