



## Reporting Obligation

### **Legal Regime of the Central Register of the Beneficial Owner (“CRBO”)**

The **Legal Regime of the Central Register of the Beneficial Owner (“CRBO”)** approved by Law no. 89/2017, dated from August 21<sup>st</sup>, which transposed to the Portuguese jurisdiction the provisions of Chapter III of the Directive (EU) no. 2015/849, of the European Parliament and of the European Council, dated from May 20<sup>th</sup>, 2015, regarding the prevention of the use of the financial system for money laundering and terrorism financing, establishes the scope and the terms and conditions for the creation of a database managed by the Institute of Registries and Notary Affairs. In the cases legally foreseen, the registration in this database is mandatory and shall contain and “sufficient, accurate and updated” information on the identity of the natural person(s) who, directly, indirectly or through a third party, ultimately own or effectively control a legal entity subject to the CRBO regulations.

Pursuant the applicable law, **the following entities are subject to the CRBO regime:**

- ✓ Associations, cooperatives, foundations, civil and commercial companies, as well as other personalized collective entities that carry out business activity, perform legal

acts or business within the national territory, which implies to mandatorily obtain and apply for a Portuguese taxpayer number;

- ✓ The permanent representations of international legal persons or of foreign law that carry out business activity in Portugal;
- ✓ Other entities that, performing their activities different from those of their associates, do not have legal personality;
- ✓ The fiduciary management instruments registered at Madeira's Free Trade Zone (trusts);
- ✓ The external financial branches registered at Madeira's Free Zone;
- ✓ Trust funds and other centers of collective interest without legal personality with a similar structure or functions that, in particular cases, do not fall under the scope of the previous numbers;
- ✓ The entities and the responsible bodies whose business and activities fall within the categories of the subjects and transactions included in the regulations defined for the fight against money laundering and terrorism financing, are subject to the legal regime of the CRBO;
- ✓ Condominiums are excluded from the CRBO legal regime solely whenever refer to buildings or sets of buildings in horizontal property, and furthermore as long as the following requirements are jointly met:
  - i) The global cadastral value does not exceed the amount of €2.000.000, including common areas and as defined by the applicable tax rules;
  - ii) A "*permilagem*" higher than 50% is not held by one holder, co-holders or an individual or individuals who may be considered the respective beneficial owners, as provided by the index and criteria of Law no. 83/201, August 18<sup>th</sup>.

Therefore, and taking the example of commercial companies and permanent representations of foreign entities, the reporting obligation to which they are subject to is essentially the following:

- (a) Identify the beneficial owners;
- (b) Identify the entity subject to CRBO;
- (c) Identify the holders of the share capital of the commercial companies, specifying their shareholding, as well as the represented parent company, when applicable;
- (d) Identify the directors, representatives or whoever manages the entity subject to the CRBO;
- (e) Identify the issuer/reporting individual;
- (f) Maintain an updated internal record with the identity details of the shareholders, their respective shareholding, the represented parent company, and the beneficial owners of the company or the branch; for such purpose, shareholders shall inform

the company of any alteration to their identification details within 15 days from the date the alteration has occurred; the company may notify the shareholder to update the respective identification details within a deadline of 10 days;

- (g) Regarding the amendments to the articles of association before the commercial registry office, submit the list of the company's shareholders with their respective identity details or, in the case of branches, identify the represented parent company;

The reporting obligation concerning the beneficial owner is complied with by means of the filling and submission of the relevant electronic form. The Ministerial Order ("Portaria") no. 233/2018, dated from August 21<sup>st</sup>, has provided the regulation of the referred Legal Regime of the CRBO, defining some of the paramount aspects for the compliance of the reporting obligations, from which we highlight the following:

- ✓ The form of the declaration (form template) to be used for the fulfillment of the reporting obligations provided by the CRBO regarding the beneficial owners; This form will be available at the department of justice website;
- ✓ The following will have legal capacity to submit the declaration mentioned in the previous paragraph:
  - (i) The members of the board/management of companies or persons that perform similar duties in other entities;
  - (ii) Individuals or legal persons acting as fiduciary directors or, if not applicable, to the director for legal purposes or the director in fact;
  - (iii) Founding members of legal persons through special proceedings of immediate or online incorporation;
- ✓ The entities subject to the CRBO legal regime shall perform their registration through an individual authentication of their representative using the following alternative means:
  - a) Digital certificate of the Portuguese Citizen Card;
  - b) Digital Portable Key;
  - c) Professional Authentication Certificate, in case of lawyers, notaries and "solicitadores";
  - d) Tax Authority Authentication System, for Certified Accountants;
  - e) Professional Attributes Certification System, as per article 546 no. 5 of the Commercial Companies Code.
- ✓ The submitted and validated declaration will automatically generate an access code, which will allow the user to confirm the declaration's submission and validation;
- ✓ The assisted fulfillment of the electronic form, necessary to submit the declaration, will be available by appointment and has to be requested (i) until

the date of submission, in person, of the commercial registry request, or (ii) at the date of incorporation of the company or the branch or (iii) until the date of the registration request submission before the Central File of Legal Entities ("Ficheiro Central de Pessoas Coletivas"). The declaration executed by means of assisted fulfillment may be submitted until the registry is confirmed, provided that the issuer expressly provides the consent for such purpose;

- ✓ The terms regarding the extraction of information and of certificates from the CRBO database. The offices appointed by the Directive Council of IRN, I.P. are competent to issue the certificates and to disclose such information;
- ✓ The public disclosure of information regarding the beneficial owners, which shall be performed through the authentication of the interested party through secure authentication means, in accordance with the requirements provided by the CRBO support computerized system, being the access limited to the following information:
  - (i) Entities subject to CRBO: corporate taxpayer number (NIPC) or taxpayer number (NIF) issued in Portugal by the competent authorities - if it is a foreign entity, the tax number issued by the local competent authority-, the name, nature, head office address, code of economic activity (CAE), Legal Entity Identifier, when applicable, and the official e-mail;
  - (ii) Beneficial Owners: name, month and year of birth, nationality, country of residence and the economic interest held;
- ✓ The registration at the Commercial Registry Office shall reflect the information that the entity did not comply with the reporting obligation of the beneficial owner, as communicated by CRBO. The disclosure of the non-compliance in the referred registration shall be deleted once the CRBO notifies the Registry Office that the breach has been terminated.

**The entities that do not comply with the reporting obligations foreseen in the Legal Regime of the CRBO are prevented from:**

- (a) Distribute profit of the financial year or anticipate profit payment;
- (b) Enter into or execute utility contracts, public works contracts or acquisition of services and goods from the State, autonomous regions, public institutes, municipalities and social solidarity private institutes mainly financed by the State's Budget or renew such contracts;
- (c) Apply for the concession of public services;

- (d) Admit to trading in a regulated market of financial instruments representative of its share capital or convertible into share capital;
- (e) Pitch public offerings of distribution of financial instruments issued by the entity in question;
- (f) Benefit from support from structural European funds, investment and public funds;
- (g) Be a party in business regarding real estate.

The non-compliance with reporting obligations determines that the participation exemption regime shall not be applicable to the profit distribution by Portuguese companies to non-resident shareholders.

The non-compliance of the obligation to keep an updated internal record with the identification details of the beneficial owner is considered an administrative offence that may be sanctioned with a fine from € 1.000 to € 50.000.

The unjustified non-compliance by the shareholder of the obligation to provide the updated information regarding the identification details, after being notified by the company to within a maximum period of 10 day to execute such update, may imply and lead to the amortization of the shares pursuant to the provisions of the Commercial Companies Code.

Misrepresentation and false statements for purposes of the beneficial owner will lead to criminal responsibility, besides civil responsibility for the damages caused.

The initial reporting declaration of all entities to the CRBO, which have been incorporated by October 1<sup>st</sup> 2018 (date the Ministerial Order ("Portaria") will be in force), shall be submitted from **January 1<sup>st</sup> 2019** through an electronic form available at the department of justice website using the official authentication means (such as the lawyers professional authentication certificate). The deadlines for the submission of the referred initial reporting declaration are:

- (i) until **April 30<sup>th</sup> 2019**, for the entities subject to commercial registry (such as commercial companies and branches); and
- (ii) until **June 30<sup>th</sup> 2019**, for the remaining entities subject to the CRBO;

**Amendments and/or updates** to the information included in the CRBO shall be executed as soon as possible, within a maximum deadline of 30 days, starting from the date the event/alteration occurred.

The **annual confirmation** of the accuracy, sufficiency and current information regarding the beneficial owner shall be executed through an annual declaration until July 15<sup>th</sup>. The entities that are obliged to submit the Simplified Company Information (IES) shall simultaneously submit the referred annual declaration.

We are available to provide any additional clarifications regarding this matter and to assist in the execution of the proceedings deemed necessary for the compliance with this reporting obligation.

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