



Reporting Obligation

Legal Regime of the Central Register of the Beneficial Owner ("CRBO")

– *Update / September 2020*¹

The **Legal Regime of the Central Register of the Beneficial Owner ("CRBO")**, regarding the prevention of the use of the financial system for money laundering or for terrorism financing, approved by Law no. 89/2017, dated from August 21st, 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 20th, 2015, amended by Law no. 58/2020, dated from August 31st, which transposed to the Portuguese jurisdiction the Directive (EU) no. 2018/843, of the European Parliament and of the European Council, dated from May 30th, 2018, establishes the scope and the regulation of the database with "sufficient, accurate and updated" information on the identity of the natural person(s) who, even indirectly or through a third party, ultimately own or control a legal entity subject to the CRBO regulations.

¹ Update following the entry into force of Law no. 58/2020, of August 31st.
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This database – Central Register of Beneficial Owner (“CRBO”) – is managed by the Institute of Registries and Notary Affairs.

Entities subject to the CRBO

- Pursuant to the applicable law, **the following entities are subject to the CRBO regime:**
 - a) Associations, cooperatives, foundations, civil and commercial companies, as well as other personalized collective entities that carry out business activity, or perform legal acts or business within the national territory, which implies to mandatorily obtain a Portuguese taxpayer number;
 - b) The permanent representations of international legal persons or of foreign law that carry out business activity in Portugal, excluding permanent representations of companies with shares admitted to trading on a regulated market, subject to disclosure requirements consistent with the European Union law or subject to equivalent international standards, which ensure sufficient transparency of information concerning the ownership of shares;
 - c) Other entities that, performing their activities different from those of their associates, do not have legal personality;
 - d) The fiduciary management instruments registered at Madeira’s Free Trade Zone (trusts);
 - e) The external financial branches registered at Madeira’s Free Trade Zone;
 - f) Trust funds and other centers of collective interest without legal personality with a similar structure or functions that, in particular cases legally foreseen, do not fall under the scope of the previous numbers; when a trust fund or similar centers of collective interest without legal personality not resident in Portugal makes the declaration of beneficial owner in an equivalent register in another Member State, it may rely on that registration as a waiver of subjection to the CRBO;
 - g) Condominiums that are not excluded pursuant to article 4 of the CRBO’s Legal Regime.

- In accordance with the current wording of the CRBO’s Legal Regime, added by Law no. 58/2020, dated from 31st August, the following entities **are excluded** from the scope of its application:
 - a) Diplomatic and consular missions, as well as international bodies of a public nature recognized under an international agreement to which the Portuguese State is a party, established or with an agreement based in Portugal;
 - b) Services and entities of the central, regional or local government subsectors of the State;

- c) Independent administrative bodies;
 - d) Bank of Portugal and the Regulatory Authority for the Media;
 - e) Professional associations;
 - f) Companies with shares admitted to trading on a regulated market, subject to disclosure requirements in accordance with the European Union law or subject to equivalent international standards, which ensure sufficient transparency of information regarding the ownership of shares, as well as their permanent representations;
 - g) Consortium and Complementary Groups of Companies;
 - h) In the case of condominiums, they are only excluded regarding buildings or sets of buildings in horizontal property, whose total patrimonial value, including common areas and as determined by the applicable tax rules, does not exceed the amount of € 2,000,000 or when exceeding, a "permilage/*per thousand*" above 50% is not held by one sole holder, by co-holders or by an individual or individuals who may be considered the respective beneficial owners, as provided by the index and control criteria of Law no. 83/2017, dated from August 18th.
 - i) Insolvency states; and
 - j) Abeyance inheritances.
- The following persons are entitled to submit the CRBO declaration:
 - a) The members of the administration of companies or persons that perform similar duties in other legal persons;
 - b) Individuals or legal persons acting as fiduciary directors or, when there is no trustee or when there is another entity, as the director for legal purposes or the director in fact;
 - c) Founding members of legal persons through special proceedings of immediate or online incorporation; and also
 - d) Lawyers, notaries, solicitors and certified accountants, whose powers of representation are presumed.

Deadlines

- The **initial reporting declaration** of all entities subject to the CRBO shall be submitted following the registration of the incorporation of the legal person or the first registration at the Central Register of Legal Persons, depending on whether the entity is subject to commercial registration or not, and within 30 days.

- **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, as from the date the alteration occurred.
- The **annual confirmation** of the accuracy, sufficiency and up-to-dateness information regarding the beneficial owner shall be executed through an annual declaration until December 31st.
 - ✓ However, this obligation shall be waived in cases where an update of the information has taken place in the course of the respective calendar year and there has not, in the meantime, occurred an event leading to a new change in the information.
 - ✓ From December 1st, 2020, the entities that must submit the “*Informação Empresarial Simplificada*” may confirm the accuracy, sufficiency and up-to-dateness of the information contained in the CRBO at the time of that submission.
- The entity subject to the CRBO may only be voluntarily **extinguished or winded-up** after updating the information contained in the CRBO or confirming the up-to-dateness of that information.

Declarative obligation in the case of commercial companies and permanent representations of foreign entities

Therefore, and taking the example of commercial companies and of permanent representations of foreign entities subject to the CRBO’s legal regime, the reporting obligation corresponds to the following:

- a) In the submission of the initial reporting declaration that shall:
- Identify the entity subject to CRBO;
 - Identify the beneficial owners, including the circumstances indicating such quality, in accordance with the criteria of Law no. 83/2017, dated from August 18th, and the information on the economic interest held, which shall include the respective source, by indicating the Public Administration database or, when this is not possible, by attaching a sufficient document, as well as, when applicable and as from December 1st, 2020, the respective chain of control with the identification of the entities that comprise it;
 - Identify the tax representative, if any, of the persons indicated as beneficial owners, whenever they are not resident in Portugal;
 - Identify the reporting person;
 - The obligation of identification of the holders of the share capital of the commercial companies, their shareholding percentage, as well as of members

of the corporate bodies is waived with the entry in force of Law no. 58/2020, dated from August 31st;

- b) There is also the obligation to maintain an **updated internal record** with the identity details of the shareholders, their respective shareholding, or of other natural persons who hold, even directly or through third parties, the ownership of the shares, as well as of those who have, in any way, effective control of the company or of the permanent representation; for this purpose, the above-mentioned persons must inform the company of all the elements necessary for the preparation of the CRBO and, whenever there is an alteration to the information provided, the natural persons identified within this scope must update the respective identification elements within 15 days from the date of the alteration, and the company may notify them to update the respective information within a maximum of 10 days;
- c) Regarding the amendments to the articles of association before the commercial registry office, it will be necessary to submit the list of the company's shareholders with their respective identity details or, in the case of branches, identify the represented parent company;
- d) Obligation to update the information contained in the CRBO within a maximum period of 30 days from the date of the event determining the change;
- e) Obligation to annually confirm the accuracy, sufficiency and up-to-dateness of the information contained in the CRBO, until December 31st. In the specific case of commercial companies and permanent representations of foreign entities, they may perform this annual confirmation with the submission of the "*Informação Empresarial Simplificada*". The annual confirmation is waived whenever the entity has made an update of the information during the corresponding calendar year and subsequently has not occurred any fact that determines the alteration of the information contained in the CRBO.

The Ministerial Order ("Portaria") no. 233/2018, dated from August 21st, which 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 regarding the beneficial owners, available at the CRBO website;
- The authentication procedures to be followed by the entities subject to the CRBO, establishing that the authentication must be carried out using secure authentication services, which will allow the reporting person to confirm his/her identity at his/her CRBO service available at the website of the area of justice and, in addition,

establishing the means of authentication allowed (such as digital portable key, electronic signature of the citizen card or the professional authentication certificate of lawyers);

- The submitted and validated declaration will generate a submission proof, which contains the identification of the reporting person, as well as the information of the CRBO, which can be accessed by means of an access code generated for this purpose.
- ✓ 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) regarding the entity subject to CRBO: corporate taxpayer number (NIPC) or taxpayer number (NIF) issued in Portugal by the competent authorities, and if it is a foreign entity, the tax number issued by the local competent authority, the name, legal nature, head office address, code of economic activity (CAE), Legal Entity Identifier, when applicable, and the official e-mail address;
 - (ii) in the case of information concerning the beneficial owners: name, month and year of birth, nationality, country of residence and the economic interest held.

Non-compliance

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 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 to 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 any business regarding the transfer of ownership, whether in return for payment or free of charge, or the establishment, acquisition or disposal of any other rights in rem or guarantee any property.
- The non-compliance with reporting obligations also determines that the participation exemption regime shall not be applicable to the profit distribution by Portuguese companies to non-resident shareholders.
 - Failure to comply with the reporting obligations or failure to provide justification for doing so after the expiry of the period laid down for that purpose will result in the publishing in the CRBO of the situation of non-compliance by the subject entity. The registration of the Commercial Registry shall reflect the information that the entity has failed to comply with the obligation to declare the beneficial owner, which is declared by the CRBO, and shall cease only when the CRBO declares the termination of the said situation of non-compliance.
 - 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 days, 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 consequences arising from failure to comply with the declaratory obligations only relate to contracts, acts or procedures concluded, carried out or concluded from the end of the period legally established for the compliance of the obligation.

Costs

- For the issuance of the proof of declaration at the Central Register of the Beneficial Owner - € 20.
- For the rectification, amendment or revocation of the declaration due to an error not attributable to the services - € 50.
- For the assisted electronic completion of the declaration of beneficial owner associated with a request for registration made in person - € 15.
- For the declaration of beneficial owner performed after the legally prescribed deadline - € 35.
- For the electronic access to the information of the Central Registry of the Beneficial Owner (monthly subscription) - € 50.

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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