



CORPORATE

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THE CENTRAL REGISTER OF BENEFICIAL OWNERS

Law 89/2017 of 21 August was published on 21 August 2017. Among other measures, the new law approved the Legal Framework on the Central Register of Beneficial Owners ("CRBO").

Law 89/2017 of 21 August was published on 21 August 2017. Among other measures, the new law approved the Legal Framework on the Central Register of Beneficial Owners ("CRBO") provided for in article 34 of Law 83/2017 of 18 August (New measures to combat money laundering and terrorism financing). This law also transposes Chapter III of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing ("4th Directive"). To date, the 4th Directive has only been transposed by around half the EU Member States, which means many have not met the 26 June 2017 deadline to transpose it.

This new law comes into force on 20 November, but its regulations will still have to be passed by an order to be issued by the Government.

The CRBO will consist of a database partially accessible to the public. This database, which is completely new in Portuguese business environment, will store the identification details of all the individuals who, directly or indirectly, hold or control the various entities subject to this new mandatory registration.

1. THE ENTITIES COVERED BY AND EXCLUDED FROM THE CRBO

Among others, the following entities are subject to CRBO registration: (i) associations, cooperatives, foundations, civil and commercial companies, and any other legal entities, subject to Portuguese or to foreign law, which carry on activities or engage in legal acts or transactions in Portugal that require them to obtain a Portuguese taxpayer number ("número de identificação fiscal" - "NIF" or "NIPC"), (ii) representations or branches of international or foreign law legal entities that carry on activity in Portugal, (iii) other entities which, in pursuing their own objectives and activities different from their associates, do not have legal personality, and (iv) trusts and financial subsidiaries registered in the Madeira Free Trade Zone ("Reporting Entities").

The CRBO will consist of a database partially accessible to the public, which will store the identification details of individuals who control the various entities subject to registration.

In turn, there is also an extensive list of entities excluded from CRBO's scope of application, notably (i) companies with shares admitted to trading on regulated markets (the so-called "listed companies") as long as they are subject to disclosure requirements consistent either with European Union law or equivalent international rules, (ii) consortiums and complementary groups of companies, and (iii) condominiums, when the buildings are subject to horizontal property regime, but only if their tax value does not exceed EUR 2 million and provided no single person, no co-owners, and no individuals who are considered beneficial owners under the new law to combat money laundering and terrorism financing holds a per thousandth share which exceeds 50%.

2. THE "INTERNAL" REGISTER OF BENEFICIAL OWNERS

With the entry into force of the CRBO regime, companies (and, to the extent applicable, the remaining Reporting Entities) must keep an up-to-date register of the identification details of (i) their shareholders – with an indication of their shareholdings –, (ii) the individuals who, directly or indirectly, own the shareholdings and (iii) anyone, who in any way holds *effective control*¹ over the companies and other Reporting Entities. If the persons or entities referred to in (i), (ii) and (iii) are foreign and not resident in a EU Member State, this "internal" register will also have to contain the details of their tax representatives registered with the Portuguese Tax Authority.

¹ The wording of the law is not absolutely clear: it says nothing about what is considered, for the purposes of the CRBO, as «effective control over the company». Therefore, it seems that the legislator has left the door (half) open to conflicting interpretations of said concept, which could result in the creation of new mechanisms, of greater or lesser complexity, that will allow the real beneficial owners of companies to maintain their anonymity.

Companies – and the other Reporting Entities – will be obliged to declare information that is considered sufficient, accurate and up-to-date on their beneficial owners to the competent authority.

3. THE NEW REPORTING OBLIGATIONS AND THEIR SCOPE

Besides the internal register referred to above, companies – and the other Reporting Entities – will be obliged to declare information that is considered sufficient, accurate and up-to-date on their beneficial owners to the competent authority. They will also have to declare all the circumstances that indicate this capacity as beneficial owner and the extent of their beneficial interests in said entities.

In the case of Reporting Entities that have already been incorporated, the deadline for the filing of the first beneficial owner declaration will be defined by an order to be issued by the Government.

As to Reporting Entities that are incorporated after the entry into force of the new law, the initial beneficial owner declaration must be made alongside with the registration of their incorporation, or upon first registration in the Central File of Legal Entities ("*Ficheiro Central de Pessoas Coletivas*"), depending on whether or not the entity in question is subject to commercial registration.

4. THE CONTENT OF THE BENEFICIAL OWNER DECLARATION

The declaration on beneficial owners will have to include all the *relevant information* on:

- (i.) The entity subject to the CRBO;
- (ii.) In the case of companies, the identification of the holders of the share capital, detailing their shareholdings;
- (iii.) The identification of the managers and directors or whoever performs the management or directorship duties of the entity subject to CRBO;
- (iv.) The beneficial owners; and
- (v.) The identity of the person making the declaration.



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S/ título, 2007 (detail)

Pastel e lápis s/ papel

32 x 32 cm

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If the Reporting Entity and the holders of the share capital are legal entities, the relevant information to be communicated will be: (i) the legal entity identification number, if the entities are Portuguese, or the taxpayer number or equivalent number issued by the competent authority in entity's jurisdiction of residence, in case of foreign entities, (ii) the name and legal nature, (iii) the registered offices, (iv) the economic activity code ("CAE"), (v) the legal entity identifier, when applicable, and (vi) the institutional email address.

Besides the information on the Reporting Entity and the person making the declaration, in the specific case of trusts, it will also be necessary to communicate information on (i) the founder or settlor, (ii) the trustee(s) and, if applicable, any substitutes, when they are individuals, (iii) the legal representatives of the trustee(s), when they are legal entities, (iv) the protector, if applicable, (v) the beneficiaries and, if they exist, the substitutes (except if those persons have not been identified, in which case there will have to be a declaration of all the circumstances that make it possible to identify the category or categories of persons in whose interests the trust was set up or carries on its activity), and (vi) any other person who exercises effective control.

In relation to the beneficial owner and the individuals who hold stakes in the share capital, managers, directors (or those who perform similar duties) in Reporting Entities, persons making declarations and, with respect to trusts, the founders or settlors, trustees (and their substitutes), legal representatives of legal entities appointed as trustees or protectors, it will be necessary to communicate the (i) full name, (ii) date of birth, (iii) place of birth, (iv) nationality, (v) full address of permanent residence, (vi) identification document, (vii) taxpayer number and (viii) email address for contact, if they have one.

The information described above is the relevant information that will be stored in the CRBO.

Any change to the above information must also be communicated – for this purpose, the Reporting Entity must observe the maximum period of 30 days from the date of the fact that determines the change.

5. HOW TO COMPLY WITH THE OBLIGATIONS RELATING TO THE CRBO

The reporting obligations arising from the CRBO may be met by the Reporting Entities by filling and submitting an electronic form (in accordance with the government order yet to be published) or at a registration office, by assisted electronic filling, to be filed together with the application for any commercial registration, or the registration of any fact in the Central File of Legal Entities.

Besides the initial declarations and any alteration declarations, the Reporting Entities will also have to confirm all the information subject to registration annually. Confirmation shall be given by means of an annual declaration to be filed by 15 July of each year, which, in case of entities that file Simplified Business Information (“*Informação Empresarial Simplificada*” – “*IES*”), should be made together with IES.

6. STANDING TO FILE THE BENEFICIAL OWNER DECLARATION (DECLARANTS)

This declaration may be submitted by (i) the members of the management bodies of the companies (or by the people who perform similar duties in other legal entities), (ii) lawyers, notaries and solicitors, and (iii) certified accountants (in this case, only within the context of submitting the declaration of start of activity or the annual filing of IES).

In cases in which the simplified procedures for immediate or online incorporation of legal entities are used, the beneficial owner declaration may also be made by the founders of the legal entity.

The Reporting Entities will also have to confirm all the information subject to registration annually.

Proof of beneficial owner registration and of any necessary updates will be required in all situations in which the law requires proof that the tax situation of the entity in question is in order.

7. CONSEQUENCES OF BREACHING THE OBLIGATIONS OF REPORTING ENTITIES UNDER THE CRBO

Proof of beneficial owner registration and of any necessary updates will be required in all situations in which the law requires proof that the tax situation of the entity in question is in order. Among others, this is the case in bidding processes for the concession of public services, the award and/or renewal of contracts for supply, public works or acquisition of goods and services with the Portuguese State, autonomous regions and local authorities, and in applications for European structural and investment funds and other public funds. Reporting Entities that do not meet their obligations in respect of the CRBO will be barred from access to all the aforesaid arrangements.



MIGUEL ÂNGELO ROCHA - S/ título, 1996 (detail)
Guache e esmalte s/papel 50 x 70 cm
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Reporting Entities that do not comply with all the obligations imposed by this new law will, therefore, be prevented from:

- (i.) Distributing or advancing payments of the profits of the financial year;
- (ii.) Entering into contracts for supply, public works or acquisitions of goods and services with the State, autonomous regions, public institutions, local authorities, and private charitable institutions whose main source of financing is the State Budget, and nor will they be able to renew any existing contracts;
- (iii.) Bidding for the concession of public services;
- (iv.) Trading on a regulated market financial instruments representing their share capital or convertible into it;
- (v.) Launching public offers to distribute any financial instruments issued by them;
- (vi.) Benefiting from European structural and investment funds, and other public funds;
- (vii.) Being a party in any transaction whose object is the transfer of ownership, freely or for consideration, or the constitution, acquisition or disposal of any other real estate rights or guarantee rights, over any real property.

Furthermore, anyone who makes a false declaration for the purposes of the beneficial owners register will be subject not only to criminal liability, but also to civil liability for any loss or damage caused by the false declaration.

The mere absence of an “internal” register of beneficial owners by the Reporting Entities entails an administrative offence punishable with a fine of between EUR 1,000.00 and EUR 50,000.00.

Anyone who makes a false declaration for the purposes of the beneficial owner register will face civil liability for any loss or damage caused.

8. THE (NEW) PERSONAL OBLIGATIONS OF THE SHAREHOLDERS, ASSOCIATES OR PARTICIPANTS OF THE REPORTING ENTITIES WITHIN THE CONTEXT OF CRBO AND CONSEQUENCES OF DEFAULT

For the Reporting Entities to be able to comply with the reporting obligations to which they will be subject, their shareholders (or associates or participants, as applicable) will have to communicate to Reporting Entities all the identification information relating to their beneficial owners. Furthermore, they will also have to inform the companies and other Reporting Entities of any change in the aforementioned identification details (only those provided for in the new law), within 15 days of the date of the change in question.

The legal mechanism introduced to ensure compliance with the information duties of shareholders towards companies (which is essential for these companies may, in turn, to be able to comply with the obligations they will be subject to under new law) is particularly punitive: if, within 10 days of the notice given by the company to the defaulting shareholder, the shareholder does not comply with the duty of information or does not justify the breach, the company is entitled to redeem its shareholdings.

In our opinion, the law is not sufficiently clear as to whether this sanction only applies to breach of the obligation to communicate any changes in the details of the beneficial owner, or also to any breach of the obligation to communicate information for the purposes of the initial beneficial owner declaration of companies or other entities that have already been incorporated. We expect that this issue will be clarified by the government order that will regulate the terms of this initial declaration.

9. THE RULES ON ACCESS TO CRBO

Unrestricted and full access to all the information contained in the CRBO will be reserved to the judicial and police authorities, as well as to the supervisory authorities for each sector (as stated in the new legislation to combat money laundering and terrorist financing) and the Tax Authority.

Despite the criticisms made by the Portuguese National Data Protection Commission, the new law provides that the information stored in the CRBO should be made available, even if only partially, to the general public. Therefore, by entering the taxpayer number (NIPC or NIF) of the Reporting Entities on the website that will be created for this purpose, it will be possible for any citizen to access various details about the Reporting Entities and their beneficial owners. The public information on beneficial owners will include their full name, month and year of birth, nationality, country of residence and their beneficial interest in the Reporting Entities.

The rules on disclosure of this information fall among the (wide) range of issues that still have to be defined by government order.

Despite the criticisms made by the Portuguese National Data Protection Commission, the new law provides that the information stored in the CRBO should be made available, even if only partially, to the general public.

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The Lawyer European Awards, 2015-2012

Portuguese Law Firm of the Year
Who's Who Legal, 2016, 2015, 2011-2006
Chambers European Excellence Awards, 2014, 2012, 2009

Top 50 - Most Innovative Law Firm in Continental Europe
Financial Times - Innovative Lawyers Awards, 2014-2011