



## CORPORATE

# THE CENTRAL REGISTER OF BENEFICIAL OWNERS

## THE REGULATION

*Besides other aspects that prevented the entities covered by the LFCRBO (the “Reporting Entities”) from complying with the new reporting obligations imposed on them, the Ministerial Order was expected, in particular, to define (i) the form and deadline of the reporting obligations to the central registry, as well as (ii) the terms in which the capacity as beneficial owner.*

On the first anniversary of Law no. 89/2017, of 21 August 2017<sup>1</sup>, and with a delay of approximately 9 months in relation to the deadline set out in article 23 of said Law, the Ministerial Order no. 233/2018, of 21 August 2018 (the «Ministerial Order»), of the Ministry of Finance and the Ministry of Justice, provided for in Annex I of said Law (the «LFCRBO») was published, regulating the legal framework of the Central Register of Beneficial Owners (the “CRBO”). The Ministerial Order will enter into force on 1 October 2018.

### 1. WHAT WAS TO BE DEFINED UNDER THE MINISTERIAL ORDER?

Besides other aspects that prevented the entities covered by the LFCRBO (the «Reporting Entities») from complying with the new reporting obligations imposed upon them, the Ministerial Order was expected, in particular, to define (i) the form and deadline of the reporting obligations to the central registry, as well as (ii) the terms in which the circumstances indicating the capacity as beneficial owner, listed in article 30 of Law no. 83/2017, of 18 August<sup>2</sup> 2017, should be considered relevant within the framework of the CRBO.

<sup>1</sup> For additional information on Law no. 89/2017, of 21 August 2017, and, particularly, on the obligations arising from the LFCRBO, please see here.

<sup>2</sup> Pursuant to article 30 of Law no. 83/2017, of 18 August 2017:

«1.(...)

2.2. For the purposes of determining the capacity as beneficial owner, when the client is a corporate entity, the reporting entities:

(a) Shall consider as an evidence of direct ownership by a natural person, the ownership of holdings representing more than 25 per cent of the customer’s share capital;  
(b) Shall consider as an evidence of indirect ownership by a natural person, the ownership of holdings representing more than 25 per cent of customer’s share capital by:  
i) A corporate entity that is under the control of one or more natural persons; or  
ii) Several corporate entities that are under the control of the same person or of the same natural persons;  
(c) Shall verify the existence of any other control indicators and other circumstances which may indicate control by other means.

3. The following are considered effective beneficiaries of trusts:

(a) the founder (settlor);  
(b) the trustee or trustees of trust funds;  
(c) the curator, if applicable;  
(d) the beneficiaries or, if they have not yet been determined, the category of persons in whose main interest the trust fund was set up or carries on its business;  
(e) any other natural person who has ultimate control of the trust through direct or indirect participation or through other ways.  
4. In case of legal entities of a non-corporate nature, such as foundations, or of collective interests without legal personality similar in nature to trusts, a person or natural persons with equivalent or similar positions to the ones referred to in the preceding paragraph is considered a beneficial owner.

### 1.1. THE FORM OF COMPLIANCE WITH THE DECLARATIVE OBLIGATION - THE FORM FOR THE CRBO DECLARATION

Article 11 of LFCRBO states that the beneficial owner declaration must be filled in through (i) completing and submitting an electronic form (the «Form») or, alternatively, (ii) at a registration service, through electronic assisted filing, together with any application for the commercial registration of any fact or the inscription of any fact in the Central File of Legal Entities (“Ficheiro Central de Pessoas Coletivas”).

Unlike what was expected, the Ministerial Order failed to approve the template of the Form, rather establishing that it will be made available on the website of the Ministry of Justice after the enactment of an order by the President of the Board of Directors of the Institute of Registries and Notary Affairs (the «IRN»). To date, neither the form template, nor the contents of the order of the President of the IRN Board of Directors on this matter are yet available, and at this stage it is not possible to anticipate the date on which they will actually be disclosed.

In turn, the assisted filing of the beneficial owner declaration will be available through prior appointment at certain registration services, still to be defined by resolution of the IRN Board of Directors, and should be made (i) at the registry services when applying for a commercial registration act, (ii) under the procedure for immediate constitution of a legal person or of a permanent representation, or (iii) upon filing of the application for inscription in the Central File of Legal Entities.

*The first stage of submission of the initial declaration of the beneficial owner will begin on 1 January 2019.*

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### 1.2. THE CONTENTS OF THE STATEMENT - THE CIRCUMSTANCES INDICATING THE CAPACITY AS BENEFICIAL OWNER

A central issue within the scope of the LFCRBO is the definition of the criteria on the basis of which the capacity as beneficial owner for the purposes of the CRBO will be determined.

While Law no. 89/2017 failed to clarify what should be considered as a beneficial owner or effective control over the Reporting Entities, referring such clarifications to the Ministerial Order, this, in turn, confines itself to transferring this clarification to the templates of the Form that will be published at a later stage - that is, to the President of the IRN Board of Directors, who will be responsible for approving the relevant templates.

### 1.3. THE DECLARANT - THE AUTHENTICATION PROCESS OF THE REPORTING ENTITIES IN THE CRBO

Authentication by the Reporting Entities in the CRBO will be performed through the individual authentication of their representatives, by one of the following means of authentication: (i) digital certificate of the ID card; (ii) Digital Mobile Key; (iii) certificate of professional authentication, in case the persons making the declarations are lawyers, notaries and solicitors; or, after development of their specific functionalities, (iv) Tax Authority authentication system, in the case of certified accountants; or (v) System of Certification of Professional Attributes, as provided for in article 546 of the Portuguese Companies Code.

### 1.4. THE DEADLINE FOR THE INITIAL DECLARATION OF THE BENEFICIAL OWNER AND THE 2019 ANNUAL UPDATING EXEMPTION

The first stage of submission of the initial declaration of the beneficial owner will begin on 1 January 2019.

The Reporting Entities that are already incorporated on 1 October 2018 will have to present the initial declaration of the beneficial owner between 1 January 2019 and 30 April 2019 (in case of Reporting Entities subject to commercial registration), or until 30 June 2019 (in case of Reporting Entities not subject to commercial registration).

Because Article 13(1) of the Ministerial Order restricts the application of the periods of time indicated above to the entities that are already incorporated at the moment of the entry into force of the Ministerial Order (i.e. 1 October 2018), the question remains as to when will the beneficial owners declaration be filed by companies and by the remaining Reporting Entities not subject to commercial registration that are incorporated or registered in the Central File of Legal Entities between 1 October 2018 and 31 December 2018.



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ROSA ALMEIDA

*Cadence & Cascade, 2001*

*Guache, lápis, prova cromogénea,  
PVC macio e tinta permanente s/ papel - 100 x 70 cm*

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*The LFCRBO also imposes the filing of an annual declaration of confirmation of the information previously communicated, to be presented together with the Simplified Business Information (“Informação Empresarial Simplificada” or “IES”) declaration.*

In relation to these, it seems to result from Article 12 of the LFCRBO that the obligation must be complied with at the time of registration of company's incorporation, of inscription in the Central File of Legal Entities or of the event giving rise to their subjection to the LFCRBO.

It therefore appears that the legislator imposes on the new Reporting Entities the immediate fulfillment of an obligation that the remaining Reporting Entities will only be required to meet between 1 January and 30 April or 30 June 2019 (depending on whether they are entities subject to or not subject to Commercial Registration, respectively).

We would not be surprised to see a declaration of rectification of the Ministerial Order published in Portuguese Official Gazette (“Diário da República”) shortly to clarify this issue and to standardise the deadlines for the initial declaration of the beneficial owner.

With respect to (i) companies that are incorporated between 1 January 2019 and 30 April 2019 and (ii) Reporting Entities not subject to commercial registration - which shall be subject to the CRBO between 1 January 2019 and 30 June 2019 -, we anticipate that the obligation to file the initial declaration of the beneficial owner must be complied alongside with the registration of the company's incorporation, with the inscription of the entity in the Central File of Legal Entities (pursuant to article 12(1) of the LFCRBO) or with the occurrence of the event generating the subjection to the CRBO, respectively.

In addition to the obligation to submit the initial declaration, the LFCRBO also imposes the filing of an annual declaration of confirmation of the information previously communicated, to be presented together with the Simplified Business Information (“Informação Empresarial Simplificada” or “IES”) declaration. In 2019, however, the Reporting Entities will be exempted from submitting the annual confirmation statement, without prejudice to the possible need to update the information communicated in the initial declaration.

## 2. THE DISCLOSURE AND CONSULTATION OF THE INFORMATION INCLUDED IN THE CRBO

### 2.1. THE EVIDENCE OF FILING OF THE DECLARATION, THE ELECTRONIC ACCESS (CODE) AND THE REFERENCE TO THE (NON-) COMPLIANCE WITH THE OBLIGATION OF DISCLOSING THE BENEFICIAL OWNER

After submission and validation of the initial declaration of the beneficial owner, the CRBO will issue evidence of that submission, which will include the identification of the applicant and the information about the Reporting Entity that has been stored in the CRBO – this can be accessed through an access code that will be generated by the system.

The delivery of the access code to evidence the fulfillment of the declarative obligations will be sufficient to demonstrate compliance and will set aside the need to present any certificate in physical format.

*With the amendment imposed by the Ministerial Order to the Commercial Registry Regulation, any situation of non-compliance by the Reporting Entities will be recorded in the respective commercial registration certificate (as regards the Reporting Entities that are subject to commercial registration).*



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VALDEMAR SANTOS

S/título, 2004

Acrílico s/tela  
100 x 180 cm

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In the future, the competent registry services (which will be defined by resolution of the IRN Board of Directors) may be requested to produce evidence of the beneficial owner declaration and of the information stored in the CRBO.

With the amendment imposed by the Ministerial Order to the Commercial Registry Regulation, any situation of non-compliance by the Reporting Entities will be recorded in the respective commercial registration certificate (as regards the Reporting Entities that are subject to commercial registration).

### 2.2. PUBLIC ACCESS TO THE CRBO INFORMATION

Access by the public to the information about the Reporting Entities and their beneficial owners provided for in article 19 of the LFCRBO<sup>3</sup> will be made by authentication of the interested party/parties through one of the above mentioned means of secure authentication, subject to the requirements set out in the system (which is not currently available for consultation).

<sup>3</sup> The information stored in the CRBO on Reporting Entities made publicly available includes: (i) the Company Identification Number («NIPC») or Tax Identification Number («NIF»); (ii) the name or business name; (iii) legal nature; (iv) registered offices; (v) the economic activity code (“CAE”); (vi) the Legal Entity Identifier, when applicable; and (vii) the institutional electronic address.

With regard to the beneficial owner, publicly available information covers only (i) the name; (ii) the month and year of birth; (iii) nationality; (iv) the country of residence; and (v) the economic interest held in the Reporting Entity.

After authentication, the consultation will be performed by searching the NIPC or NIF of the Reporting Entity or, in the case of non-resident Reporting Entities, their respective corporate names.

### 2.3. ACCESS BY COVERED ENTITIES UNDER LAW NO. 83/2017, OF 18 AUGUST 2017, AND BY THE COMPETENT AUTHORITIES

Pursuant to article 34 of Law no. 83/2017, of 18 August 2017, entities obligated<sup>4</sup> under the new regime to prevent the use of the financial system for money laundering and terrorist financing will have to consult the CRBO database whenever their customers are Reporting Entities, and will be required to make the establishment or continuation of the business relationship or the performance of occasional transactions conditional upon compliance with the obligations arising from the LFCRBO by their customers. Pursuant to the Ministerial Order, this obligation to consult the CRBO will apply after 30 June 2019, except in cases in which the Reporting Entities are able to provide the electronic access code of the declaration of the beneficial owner.

In turn, the judicial, police and sectoral authorities provided for in Law no. 83/2017, of 18 August 2017, as well as the Tax Authority - to whom full and unlimited access to the information stored in the CRBO is granted - will be able to make an automated consultation of the CRBO database, to be regulated through a protocol to be entered into between said entities and the IRN.

### 3. THE MONITORING OF (NON-) COMPLIANCE - THE EXCHANGE OF INFORMATION BETWEEN THE AUTHORITIES, THE COVERED ENTITIES UNDER LAW NO. 83/2017, OF 18 AUGUST 2017, AND IRN

In order to facilitate the monitoring of compliance with the obligations now imposed to the extensive range of Reporting Entities, the Ministerial Order establishes a mechanism for the exchange of information among the competent authorities, the entities covered by Law no. 83/2017 and the IRN. As such:

- (a) The Central File of Legal Entities will inform the CRBO, officially and immediately, of the registration of any Reporting Entity included in article 3(1) of the LFCRBO, with the respective identification details;
- (b) The Tax Authority will notify the CRBO, within 30 days upon the entry into force of the Ministerial Order, of the identification details of Reporting Entities within the scope of article 3(2) of the LFCRBO that, on such date, have already been assigned a NIF, and will thereafter make such communication on a daily basis;
- (c) The entities covered by Law no. 83/2017, of 18 August 2017, will communicate to their sectoral entities, within 30 days upon the entry into force of the Ministerial Order, the identification of the clients to whom they provide services of fiduciary administration (trustees), or in respect of which they are legally responsible for their management or carry out similar functions. Within 60 days after said communication, the sectoral authorities will prepare and submit to IRN a list with the information collected.

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<sup>4</sup> The entities listed in articles 3 and 4 of Law no. 83/2017, of 18 August 2017, are available here.

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