

LEGAL ALERT

THE LEGAL REGIME OF THE CENTRAL REGISTER OF BENEFICIAL OWNERSHIP

The Central Register of the Beneficial Ownership, which is subject to a Draft Law currently under assessment, aims to identify and maintain the registration of natural persons who control corporate and other legal entities, assisting in the fulfillment of duties on the prevention of the use of the financial system for money laundering or terrorist financing.

The Portuguese Parliament is currently assessing Draft Law No. 71/XIII related with the transposition of chapter III of Directive 2015/849 of May 20, 2015, which, among other things, entails the creation of a database for the preservation of sufficient, accurate and up-to-date information on the beneficial owners of legal entities and trust funds, as well on the legal arrangements similar to trusts.

This Draft Law proposes the creation of the Legal Regime of the **Central Register of Beneficial Ownership (CRBO)** and the introduction of a set of legislative changes to a multiplicity of legal diplomas, considered essential to assure the internal coherence and functionality of the legal system.

In brief, the CRBO will be a database, managed by the Registry and Notary Institute (*Instituto dos Registos e do Notariado*), which will identify the natural person or persons who own the property or effective control of the entities subject to it, even if indirectly or through a third party.

For the purposes of registration in the CRBO, companies and other entities subject to the CRBO will be obliged to keep an updated internal register identifying the shareholders and respective ownership interests and the identification of the natural persons who hold, even indirectly or through a third party, ownership interests, and that, in any way, hold their effective control.

The entities subject to the CRBO, in relation to which lies the duty (under the terms and with the periodicity provided for in such regime) to declare, *i.e.*, to submit for registration, the information legally required about the respective beneficial owners, are, among others, the following:

- Associations, cooperatives, foundations, civil and commercial companies;
- Permanent representations;

- Trust companies registered in the Madeira Free Trade Zone;
- Off-shore financial centres registered in the Madeira Free Trade Zone; and
- Trust funds.

The criteria for determining the beneficial owner status are set forth in Draft Law No. 72/XIII, also currently under assessment, envisaging the creation preventive and repressive measures anti-money laundering and anti-terrorist financing, partially transposing the mentioned Directive. It is expected that the circumstances indicating such capacity will still be determined by ordinance.

The CRBO will be publicly accessible, but with different levels of access to the provided information, depending on the nature of the consulting entities.

The registration in the CRBO will work in a declarative/reporting basis, which means, in practical terms, that this register will be made through the completion and submission of an electronic form in terms to be regulated by ordinance or in person in a registry service.

It is also worth noting the provision of a sanctioning regime applicable to entities that do not comply with their reporting obligations. They will be prohibited from practicing, among others, the following acts: *(i)* distribution or advance profits; *(ii)* conclusion/renewal of supply contracts, public works contracts or the acquisition of services and goods with the State and other public entities; *(iii)* compete for the concession of public services.

Finally, in all circumstances where the law requires proof of compliance with tax and contributory responsibilities, all entities subject to the CRBO will be obliged to prove their registration in this register.

This information will be completed with the publication of the law.

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