



LEGAL REGIME ON THE BENEFICIAL OWNERSHIP CENTRAL REGISTER

(APPROVED BY LAW 89/2017, OF AUGUST 21)

Law 89/2017 was enacted on 21 August 2017 approving the Legal Regime of the Beneficial Ownership Central Register, transposing to national law 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, and amending other Directives. This Law will enter into force 90 days after publication, i.e., on 19 November 2017.

The implementing regulations of the Beneficial Ownership Central Register regime are expected to be published until 20 November 2017.

In addition to the establishment of the Beneficial Ownership Central Register (BOCR), the Law requires corporate bodies and other legal entities subject to BOCR to maintain an updated record of the identification data and particulars of their shareholders and of the natural persons who - indirectly or through a third party - own or ultimately control the company. The failure to comply with this obligation qualifies as administrative offence punishable by a fine ranging from €1 000.00 to € 50 000.00.

Therefore, the shareholders must notify the company of any change to their stated details within 15 days after the date of any such change. The unjustified failure to perform this duty, after being notified by the company, will enable the company to amortise the shares of the defaulting shareholder.

The BOCR is composed of a database containing information about the natural persons who ultimately own or control legal entities, directly, indirectly or through third parties subject to registration, in order to keep the information adequate and current.

The *Instituto de Registos e Notariado* (IRN) is responsible for maintaining the database and the BOCR, ensuring the right of information and access to the data by the relevant holders. This entity and all the persons responsible for processing personal data are bound by professional secrecy, even after leaving office.

The following entities are subject to registration with the BOCR: (i) associations, cooperatives, foundations, commercial or civil law companies, as well as any other legal entities, subject to Portuguese or foreign laws, engaged in an activity or performing legal acts or transactions in Portuguese territory that require a Portuguese Taxpayer Number; (ii) representation offices of international or foreign legal entities operating in Portugal; (iii) other entities pursuing its own objectives and activities different from those of their members and without legal personality; (iv) trusts registered in the Madeira Free Trade Zone; and (v) external financial branches registered in the Madeira Free Trade Zone. In specific circumstances, trust funds and other arrangements without legal personality with a similar structure are also subject to registration with the BOCR.

Some entities are exempt from filing beneficial ownership information with the BOCR, notably, companies listed on regulated markets that are subject to disclosure requirements consistent to EU law or subject to equivalent international standards which ensure adequate transparency of ownership information, as well as consortia and unincorporated joint ventures, and the condominiums of buildings or group of buildings submitted to the horizontal property regime, provided some requirements are met.

The submission of beneficial ownership information with the BOCR is made online (beneficial owner declaration) at the IRN and it is mandatory for the entities subject to this new regime. This information must be adequate, accurate and current, enabling to identify the ultimate beneficial owners, the nature and extent of the interest held by each such beneficial owner. This information may, when possible, be validated against the Public Administration databases.

After the coming into force of this Law, the first beneficial owner declaration must be submitted upon the registration of the company, or upon the first registration with the Central Registry of Companies.

In any case, the first beneficial owner declaration must be made by the entities subject to BOCR already in existence on the date of entry in force of this law, within the time limit specified by way of Ministerial Order of the Ministers of Finance and Justice. This information shall be complemented with the information available at the Central Registry of Companies, the Tax Authority and other public entities required to provide information, which must be communicated to the BOCR.

From time to time, on the dates and at the intervals to be established in the implementing regulations, other declarations must be submitted, containing adequate, accurate and current information on (i) the entity subject to the BOCR; (ii) the identification of shareholders; (iii) the identification of managers, directors and officers responsible for the management and administration of the entity; (iv) the beneficial owners; and (v) the declarant.

With regard to trusts registered in the Madeira Free Trade Zone, other trust funds subject to the BOCR and the remaining arrangements without legal personality having a structure and functions similar to trusts, the declaration must also contain the name of the founder or settlor, trustees and their legal representatives, protector, beneficiaries and any other natural person exercising ultimate control over the trust.

The members of the governing bodies of the companies, the persons holding similar positions in other legal entities, the natural persons acting as trustees or the *de jure* and *de facto* administrator of such entities, the lawyers, notaries public, legal executives and certified accountant may submit beneficial owner declarations.

The beneficial owner declaration must contain the following information:

a) Regarding the entity or the shareholders as legal entities - (i) the Corporate Taxpayer number issued in Portugal by the competent authority, or, in case of non-resident entities, the Taxpayer Number or similar issued by the competent authority in the country of residence, if any; (ii) the name; (iii) the legal type; (iv) the registered office, including the jurisdiction of incorporation, for foreign entities; (v) the economic activity code (EAC); (vi) the Legal Entity Identifier, a unique alphanumeric identifier which serves to identify international entities that engage in financial transactions, if applicable; (vii) the institutional e-mail address.

b) Regarding the beneficial owner and the natural persons referred to hereabove - (i) full name; (ii) data of birth; (iii) place of birth; (iv) nationality; (v) residential address, including country; (vi) Identity card details; (vii); taxpayer number, if applicable, and for foreign citizens, the Taxpayer Number issued by the competent authorities in the country of origin or similar; (viii) institutional e-mail address, if any.

c) Regarding the declarant - (i) name; (ii) residential or professional address; (iii) details of identity card or professional licence; (iv) taxpayer number, if applicable; (v) capacity; (vi) e-mail address, if any.

The information on the circumstances indicating the status of beneficial owner must include the source, specifying the relevant Public Administration database, notably the database of the Companies Registration Office, or, if that is not possible, by filing the appropriate document.

In the special case of trust registered at Madeira Free Trade Zone, other trust funds and other arrangements without legal personality with similar structure, the following information must be filed: (i) Portuguese Company Number or Taxpayer Number, or a similar functional number issued by the jurisdiction of residence, if any, provided these documents are not mandatory in Portugal for the conduct of the business activity; (ii) name and identification; (iii) date of incorporation and duration, if of fixed duration, as well as the date and nature of the leading to changes or extinction; (iv) objects or type; (v) governing law; (vi) assets comprising the trust fund or arrangement without legal personality; (vii) name and head office of the trustee, not a natural person; (viii) rights and obligations of trustees, if more than one; (ix) the elements foreseen in paragraphs (i) and (ii) regarding the management company, if applicable.

Whenever the person registered as beneficial owner is not resident in Portugal, the tax representative, if any, must also be identified, with his/her name, full address and taxpayer number.

When there has been a change in beneficial ownership filed with BOCR, this information must be updated within the shortest possible delay, but not exceeding 30 days from the date of any such change.

In case of extinction, dissolution or termination of an entity, all the changes regarding beneficial owners must then be declared.

The information on the beneficial owner must be confirmed every year, by means of an annual declaration to be filed on or before July 15. The entities required to submit the Simplified Business Information (SBI) shall submit both declarations at the same time.

Access to the BOCR is made online, using the Company Taxpayer or Individual Taxpayer number of the relevant entity. Part of the information regarding both the entity subject to this new regime and the beneficial owner is published on the website, from which certificates and information can be obtained. Access to this information may be limited in whole or in part, where the disclosure on beneficial ownership would expose the beneficial owner to the risk of fraud, kidnapping, blackmail, violence or intimidation, or where the beneficial owner is a minor or otherwise incapable. The power for this assessment lies with the president of the governing board of IRN, who may delegate such power.

Evidence of registration and updates of beneficial owners by the entities contained in the BOCR, is mandatory in all cases where such entities are required by law to evidence that their tax situation is in order.

Failure to comply with the obligation to report and to correct information filed with the BOCR will hold the entities liable to several penalties, notably the prohibition to (i) distribute profits for the fiscal year and to make advance payments on profits during the fiscal year; (ii) enter into supply agreements, public works contracts or acquisition of public works or acquisition of services and goods with the State or any other public entities; (iii) submit tenders for the concession of public services; (iv) admit financial instruments to trading on regulated markets; (v) launch public offers of distribution of any financial instruments issued by the entity; (vi) benefit from European structural funds and investment or public funds; or (vii) be party to a business involving the transfer of ownership or the creation, acquisition or disposal of any other proprietary rights or security interests over real estate assets.

Any person who makes false statements in the beneficial owner declaration shall be held criminally and civilly liable for any damage caused.

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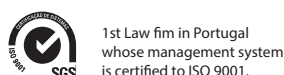
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