



THE ULTIMATE BENEFICIARY CENTRAL REGISTER LEGAL REGIME



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Law no. 89/2017



It has been published on the 21st August 2017 the Ultimate Beneficiary Central Register Legal Regime a measure announced by the government some time ago.

Law no. 89/2017 incorporates into Portugal's national legislation chapter III of the Directive (EU) 2015/849 of the European Parliament and of the Council, from May the 20th 2015, and is part of a broaden packages of measures addressing tax evasion, money laundering and terrorist financing.

This new measure foresees the creation of a data registry with precise, updated and sufficient information about the individual, or individuals, that even indirectly or through designated third parties, own or have the effective control over a number of entities such as companies or condominiums that have a aggregated value of more than EUR 2.000.000 and are held in more than 50% by a single entity, individual or group of persons that, according to the criteria foreseen in Decree-Law no. 83/2017 are to be considered the ultimate beneficiaries.

This new legal regime imposes important obligations on companies from which we highlight:

- a) The obligation of presenting an initial statement on its ultimate beneficiaries. This initial statement is to be made at the time of the company's incorporation. The existing companies are expected to file this statement within a term still to be established.
- b) Of keeping an updated, sufficient and precise registry regarding its ultimate beneficiaries.
- c) Of updating within the shortest delay possible, but never exceeding 30 days from the date of the change, any change to any registered data.
- d) Of confirming the accuracy, sufficiency and timeliness of the information regarding the ultimate beneficiaries by means of a yearly statement, made until the 15th of July. For entities subject to the obligation of filing the IES (simplified company information) said confirmation shall be made when filing the IES.

According to the Law the compliance with the imposed obligations falls on the members of the board although compliance by certified accountants, lawyers, notaries and solicitors is also foreseen.



Any error in the registered information which is available to public consultation (for example the name of the ultimate beneficiary or his share in the company) may be corrected on the entity's initiative, on the ultimate beneficiary's initiative or on regulation, police or tax authorities' initiative.

In order to assure the compliance with the reporting obligations by companies the lawmaker also imposes some obligations on the shareholders that shall communicate to the company any change to their identification data within a maximum term of 15 days.

The lawmaker also foresees that the companies may take the initiative of requesting information to their shareholders and in case they unjustifiably refuse to answer to said request the company shall be entitled to redeem their shares.

Companies that do not comply with the obligation of keeping this mandatory registry are subject to penalties that may vary from EUR 1.000 to EUR 50.000.

Additionally companies that do not resume the fulfilment of their reporting obligations or that do not correct wrong data, may be forbidden to:

- a) Distribute profits;
- b) To enter into agreements with public bodies such as the Government, autonomous regions, public institutes, local authorities or to extend the terms of existing agreement with such entities;
- c) Bid for a franchise to provide public services;
- d) Have their shares listed;
- e) Launch public offers of financial instruments it may issue;
- f) Benefit from European and Government subsidies and funds;
- g) Be a party to any agreement which purpose is the property transfer or the sale, purchase or the creation of any enjoyment right or warranty over immovable property.

As we can see the consequences of not complying with this new legal regime can be severe therefore it is mandatory that companies, and other entities subject to the legal regime, adopt the required compliance policies.

Raposo Bernardo – Sociedade de Advogados, RL Company Law department is available to clarify any doubt you may have regarding this legal regime that shall come into force on the 19th November 2017 or to support you designing or implementing any compliance measures.

Raposo Bernardo & Associados – Sociedade de Advogados, RL.

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