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CORPORATE & GOVERNANCE | TAX

REGULATION OF THE BENEFICIAL OWNER CENTRAL REGISTER LEGAL REGIME

Ministerial Order 233/2018, of 21 August 2018 (“**Ministerial Order 233/2018**”), which regulates the legal regime of the Beneficial Owner Central Register (“**BOCR**”), enacted by Law 89/2017, of 21 August 2017 (“**Law 89/2017**”), enters into force today.

The new statute sets a deadline for the entities subject to the BOCR to submit the initial declaration regarding the beneficial owner(s).

It must be highlighted that associations, cooperatives, foundations, companies without commercial purpose and subject to the Civil Code (*sociedades civis*), companies and other legal persons, even if subject to foreign law, operating in Portugal or engaging in a legal transaction or a business in Portugal for which a Portuguese taxpayer ID number is required are subject to the BOCR₁.

Among other things, Ministerial Order 233/2018 regulates the model declaration, access to the BOCR, publication of information, authentication methods and the procedures for the issue of certificates and the provision of information.

I. Reporting obligation

Although Law 89/2017 foresaw the model declaration, it has yet to be disclosed. Ministerial Order 233/2018 merely states that the model form will be available on the justice department website after an order issued by the Chairman of the board of directors of the *Instituto dos Registos e Notariado, I.P.* (“**IRN**”). The form will make reference to the evidence of the beneficial owner status as set forth in Law 83/2017, of 18 August 2017, on the prevention of money laundering and terrorist financing (“**Law 83/2017**”), which need to be taken into consideration in the fulfilment of the reporting obligation.

The BOCR is extensive to the representations of international legal persons, or representations of legal persons subject to foreign law that operate in Portugal, trusts or offshore financial branches registered in the Madeira Free Trade Zone, trust funds and other legal arrangements, provided that (a) the trustee, the person who is legally responsible for its management, or any person or entity holding a similar position is an obligated entity as defined in Law no. 83/2017, of 18 August, and (b) any such person or entity has obtained a taxpayer number in Portugal.

Under Ministerial Order 233/2018, the beneficial owner declaration may be completed electronically at the relevant registry office, subject to prior appointment. The appointment needs to be requested (i) up to the application in person for commercial registry (ii) as part of the simplified procedure for incorporation of companies or permanent representations, or (iii) up to date of filing for registration with the *Ficheiro Central de Pessoas Coletivas* (Central Registry of Legal Entities).

After submission and validation of the beneficial owner declaration, the BOCR will issue the corresponding receipt, which may be accessed through a code generated for that purpose.

Failure to comply with the reporting obligation regarding the beneficial owner will be recorded in the commercial registration certificate of the entity subject to the BODR. The mention will be deleted upon compliance.

II. Access to the information in the BOCR

Under Ministerial Order 233/2018, public access to the information in the BOCR is subject to the interested party first demonstrating its capacity through secure authentication methods.

The statute further determines how entities that must comply with identification and due diligence procedures regarding their clients pursuant to Law 83/2017 will access the BOCR.

Information searches in the BOCR may be made by tax payer ID number of the entity registered in the BOCR or by corporate name, in case of non-resident entities.

III. Deadline to submit the initial declaration

Entities subject to the BOCR and incorporated until October 1, 2018, must submit the beneficial owner initial declaration as from January 1, 2019.

The declaration must be submitted, in a phased manner, by June 30, 2019, as follows:

- (i) Entities subject to commercial registration: by April 30, 2019; and
- (ii) Other entities subject to the BOCR (but not registered in the Commercial Registry): until June 30, 2019.

IV. Waiver of the submission of the annual confirmation of information on the beneficial owner for the year of 2019:

Although Law 89/2017 establishes a duty to submit an annual confirmation regarding the beneficial owner's information by filling a declaration until June 15 each year or together with the Simplified Enterprise Information (IES) for the entities who must report it, such confirmation is waived for the year of 2019, without prejudice to the obligation to update the information, if applicable, regarding any change of beneficial owners.

VdA is available to further clarify and explain in detail the effects of this new law.