

# FLASH

October 4, 2018

## EFFECTIVE BENEFICIARY CENTRAL REGISTRATION

The **August 21 Law no. 89/2017** came into force on September 19, 2017; said law approved the legal regime for the Effective Beneficiary Central Registration (RCBE in its Portuguese acronym form) by transposing chapter III of the EU Directive no. 2015/849, pursuant to the prevention of misusing the financial system for money laundering and the funding of terrorist activities.

On October the 1st, the **August 21 Ordinance no. 233/2018** will come into force, which regulates the RCBE legal regime and clarifies some of the questions that were lacking in realization under said law.

The Effective Beneficiary Central Registration (RCBE) is comprised of a database managed by the Institute for Registration and Notary Public Services (IRN, IP in its Portuguese acronym form), which contains sufficient, accurate and updated information about the effective beneficiaries of societies subjected to Portuguese law that operate within the national territory or exercise legal acts or business transactions within the national territory that require obtaining a tax identification number (NIF in Portuguese) in Portugal.

### Effective Beneficiary

Pursuant to the above-mentioned provision, the effective beneficiary is the natural person who holds the property and effective control of the Society in question, even if said capacities are exercised indirectly or via a third party.

### Initial Statement

The information contained in the RCBE must be declared by the Societies themselves (namely, via: their administration bodies; by lawyers with powers of attorney; by certified accountants) by filling and submitting an electronic form where the main Society identification data are clearly stated [namely: company/denomination; status in law; legal domicile (headquarters); CAE (Business Activity Code); institutional e-mail) and its effective beneficiary (namely: full name; birth date; country of origin; nationality; permanent residence address; identification document

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details; tax identification number, issued in Portugal or at the country of origin). Said Statement should preferably be submitted online via the appropriate online platform.

The Initial Statement is always submitted together with the society's incorporation registration, if said society is subjected and obliged to commercial register and, later, annually until July 15 of each year; the timely declaration submission is free of charge.

As far as societies that are already incorporated until October the 1st, 2018, are concerned, the initial statement should be issued until April 30, 2019, for all entities subjected to commercial register, and June 30, 2019, for the remainder entities subjected to the RCBE. It is also stipulated that the first stage for said Initial Statement starts after January the 1st, 2019, inclusive.

Should any of the stated details change, the Society is obliged to update said information no later than 30 days after said changes have taken place.

### **Information Availability**

The information about the effective beneficiaries of said societies and other juridical persons subjected to the RCBE is made available to the general public in electronic format (a web page). This information can be accessed by the interested party via a secure electronic authentication process, as per the requirements set out by the IT system that supports the RCBE. However, said information shall be limited to the following data:

- i. As far as entities are concerned, the NIPC (tax identification number for juridical persons) and the NIF (see above) issued in Portugal by the competent authorities and, for foreign entities, the NIF issued by the competent authority of the relevant jurisdiction, the company's name or denomination, the status in law, legal domicile (headquarters), the CAE (see above), the so-called Legal Entity Identifier (when applicable) and the institutional e-mail address;
- ii. As far as the effective beneficiaries are concerned, the name, the month and year of birth, the nationality, the country of residence and the economic interest held.

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### Non-compliance with Statement Obligations

Any delay or failure to submit said Statement entails a ban on engaging certain activities or on the performance of certain operations, such as:

- i. The distribution of profits for the applicable accounting year or imprests on profits during the applicable accounting year; and
- ii. The intervention as an interested party on any business focused on the transfer of property titles, for consideration or free of charge, or the incorporation, acquisition or alienation of any other actual usage or indemnity rights on any fixed assets (such as real estate).

Other than the RCBE, the provision also sets forth that Societies must maintain their own register of the following entities' identification details:

- i. Shareholders (partners), with a breakdown of the respective equity interest;
- ii. Private individuals that hold, even if indirectly or via a third party, the property of equity interests (e.g., trustees); and
- iii. Whoever, by any means, holds the respective effective control.

Failure to comply with the obligations set forth in said provision by any entity subjected to the RCBE may constitute a regulatory offence punishable by an administrative fine of EUR 1,000.00 and up to EUR 50,000.00.

Shareholders (partners) are obliged to inform the Society should any of the stated information be changed, no later than 15 days after said changes have taken place.

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