

The new royal decree creating the Central Register of Beneficial Ownership has been approved

Royal Decree 609/2023, which will enter into force on **19 September 2023**, creates the Spanish Central Register of Beneficial Ownership and approves its regulation. This Register, which will be managed by the Ministry of Justice, must be consulted by all obliged entities in the field of AML/CFT.

The Spanish Government has approved Royal Decree 609/2023 of 11 July creating the Central Register of Beneficial Ownership and approving its regulation (“**CRBO**” and “**CRBO Regulation**”). The following are some of the key aspects of the recently approved provisions.

1. HOW DOES THE CRBO DIFFER FROM SIMILAR REGISTERS?

Until now there have been two large beneficial ownership registers in Spain: one managed by the General Council of Notaries, which holds all the beneficial ownership declarations executed before notaries, and the other managed by the Commercial Registry, which relies on the information provided by legal persons when depositing their annual accounts.¹ Those registers will continue to exist and therefore operators should continue to keep them up to date.

The CRBO, which will be managed by the Ministry of Justice, will be the central register for Spain and will be connected to the rest of the EU Member States’ central registers per Articles 30 and 31 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 (“**Directive 2015/849**”), and the third and fourth additional provisions of Law 10/2010 of 28 April on the prevention of money laundering and terrorist financing (“**Law 10/2010**”).

The two other registers must upload their data to the CRBO on a daily basis. The first data dump will take place no later than nine months after the CRBO Regulation enters into force on 19 September.

2. WHAT INFORMATION WILL THE CRBO CONTAIN?

The CRBO will hold the information referred to in articles 4, 4 *bis* and 4 *ter* of Law 10/2010, which is now more precisely detailed in article 4 of the CRBO Regulation. These provisions require obliged entities to identify their beneficial owners and set out the criteria according to which they have been identified as

¹ Article 1.3 of the CRBO Regulation refers to registers of foundations, associations, cooperatives, agricultural transformation companies, and other registers that collect information on registered legal persons or entities, as well as information obtained from the beneficial ownership database of the General Council of Notaries and the Commercial Registries managed by the College of Property, Commercial and Movable Property Registrars of Spain.

such. In the case of beneficial ownership by indirect ownership, the intermediate legal persons must also be identified.

3. WHO DOES THE CRBO CONTAIN INFORMATION ABOUT?

The third additional provision of Law 10/2010 states that the CRBO will contain information regarding:

- **All Spanish legal persons**, which when considered in light of article 4 *bis* should be understood as referring to companies, foundations, associations and any other legal persons incorporated under Spanish law or with their registered office or branch in Spain.
- Entities or structures without legal personality that have their **seat of effective management** or their main activity in Spain.
- Entities or structures without legal personality that are **administered or managed by individuals or legal persons resident or established in Spain**.
- Entities or structures without legal personality that, not being managed or administered from Spain or another Member State of the European Union, and not being registered by another Member State of the European Union, **intend to establish business relationships, carry out occasional transactions or acquire real estate in Spain**.

4. IS THERE A DUTY TO PROVIDE INFORMATION TO THE CRBO?

Yes. Although in principle the CRBO will gather information from other registers, all operators are obliged, at least after the first data dump on 19 September, to verify that this information is adequate, accurate and current. If it is not, they must notify the CRBO and provide the relevant information through a **supplementary declaration** filed electronically within two months of the CRBO's launch. The template form for making this type of declaration is pending approval.

In this sense, foundations, associations and, in general, all legal entities, trustees and entities or structures without legal personality similar to trusts that have not declared their beneficial ownership in any register, must make a declaration within one month of the CRBO's launch and ten days of each change in beneficial ownership. They must update this declaration every January.

In the case of investment funds, it has been clarified that the obligation to notify beneficial ownership lies with the management company. This criteria is relevant as a clarification regarding how the beneficial owner is identified in the case of investment funds.

In the case of companies, when there are changes in beneficial ownership a new declaration identifying the new beneficial owners must be submitted to the relevant Commercial Registry within ten days from the day after the change is known, so as to guarantee that the information sent by the Commercial Registry to the CRBO is adequate, accurate and current.

5. WHAT HAPPENS IF THERE ARE DISCREPANCIES IN THE INFORMATION?

If the CRBO identifies **discrepancies** between the information held in the CRBO and the information held in other registries that upload their data to it, the CRBO will inform the register of origin so it can **request the obliged entity** to ratify the information or file a new declaration within a maximum of ten days. Were the obliged entity not to present a new declaration, priority will be given to the most “important” information based on its date or the reliability of the manner in which it was obtained.

6. WHO CAN ACCESS THE INFORMATION IN THE CRBO?

An online application to access the information held in the CRBO using a template electronic form can be filed by the following parties:

- Spanish and EU Member State **authorities** with responsibility for preventing, detecting, investigating and prosecuting criminal offences related to the funding of terrorism and money laundering (and predicate offences). They will be given unrestricted access to the CRBO free of charge.
- **Notaries public and registrars**, as well as their centralised prevention bodies.
- The national and EU authorities and organisations who manage, verify, pay out or audit **European Funds**, and whose functions are determined in an EU regulation that establishes that the information about the beneficial ownership of the recipient of the funds can be taken from the central registers.
- **Obliged entities under Law 10/2010**, who not only can access the information, but are required to do so to comply with the obligation to identify and verify the identity of the beneficial owner. They can also submit other enquiries (which the CRBO Regulation calls “additional”) to other registries. They have access to full up-to-date information, and can also request a certificate of the information.
- All other **persons and organisations that can demonstrate a legitimate interest, or other authorities**, can access part of the information. A legitimate interest is presumed in the case of the media and civil society organisations working in AML/CFT.

In certain scenarios, the entities obliged to declare this information can request the CRBO to restrict access to it (for example, in the case of underage beneficial owners, or when access to that information could expose the beneficial owner to a disproportionate risk, or to a risk of fraud, kidnapping, extortion, harassment, violence or intimidation, or other similarly serious risks).

7. WHAT IF THE OBLIGATION TO DECLARE IS BREACHED?

The entities obliged to declare their beneficial ownership must guarantee that the information contained in the CRBO is adequate, accurate and current. If they fail to do so, the second additional provision of the CRBO Regulation stipulates that they will not be permitted to register anything in the Commercial Registry until the information is corrected (per article 378 of the Commercial Registry Regulation).

They will also face a sanction under the third additional provision of Law 10/2010, which provides that the Ministry of Justice is competent to determine the gravity of each infringement, the sanctions that must be imposed for each infringement, the sanctioning procedure, and who is competent to exercise the sanctioning powers relating to the breach of the obligations.

8. CONTACT LAWYERS



Manuel Vélez Fraga

Partner

+34 91 586 01 60

manuel.velez@uria.com



Miguel Martínez Gimeno

Partner

+34 91 586 04 50

miguel.martinez.g@uria.com



Isabel Aguilar Alonso

Partner

+34 91 586 01 20

isabel.aguilar@uria.com



Xavier Codina García-Andrade

Senior associate

+34 91 587 06 93

xavier.codina@uria.com
