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The Council of Ministers approves the creation of the Central Registry of Beneficial Ownership and its regulation

On 12 July, the Council of Ministers, at the request of the Ministries of Justice and Economic Affairs and Digital Transformation, approved Royal Decree 609/2023, of 11 July, creating the Central Registry of Beneficial Ownership (the "**Registry**") and approving its regulation (respectively, the "**Royal Decree**" and the "**Regulation**"). The purpose of these rules is to implement the provisions of the third and fourth additional provisions of Law 10/2010, of 28 April, on the prevention of money laundering and terrorist financing (the "**AML Law**").

This Royal Decree completes the transposition of Directive (EU) 2018/843 of the European Parliament and of the Council (the "**Fifth Directive**") into Spanish law. The Royal Decree also implements into national law the provisions of the judgment of the Court of Justice of the European Union in Joined Cases C-37/20 and C-601/20, concerning the Fifth Directive.

Below are the main new features linked to the creation of the Registry which, as we will see, creates obligations for all legal entities that carry out a commercial activity in Spain or that wish to do so.

1. Objective of the Royal Decree

The Royal Decree establishes the creation of the Registry, which will be under the responsibility of the Directorate General for Legal Certainty and Public Faith, which is part of the Ministry of Justice. The Registry will operate electronically, centrally and as a single registry for the entire national territory and its main objective is to collect and disseminate information on beneficial ownership, as provided for in Articles 4, 4bis and 4ter of the AML Law.

2. Subjects whose data must be communicated to the Registry

Article 4 of the Regulation sets out the data to be provided to the Registry separately and electronically by the management bodies of legal entities, unincorporated entities, trusts and other similar legal instruments (See Annex I). The Registry must collect the data of the following entities:

- (i) Spanish legal entities.
- (ii) Unincorporated entities or structures that have their effective management or main activity in Spain.
- (iii) Unincorporated entities or structures that are administered or managed by natural persons or legal entities that are resident in Spain.
- (iv) Unincorporated entities or structures which intend to establish business relations, carry out occasional operations or acquire real estate in Spain and:
 - a) are not being managed or administered from Spain or another EU State; and
 - b) are not registered in another EU State.

These entities, such as trusts and similar entities, must declare their beneficial owner electronically to the Registry before commencing business activities, occasional transactions or acquisitions of real estate in Spain.

3. Transfer of data between registries

The Royal Decree provides for an initial transfer of data between the Registry and the various registries of legal entities. Thus, the various registries responsible for the collection of beneficial ownership data, in coordination with the Registry, have a maximum period of nine months from the entry into force of the Royal Decree (until 19 July 2024) to carry out a first complete transfer of the data or to make available to the Registry all the data on beneficial owners included in their databases.

If the data on beneficial ownership provided by these different registries does not contain all the information required by the Regulation, the data must be completed by the parties obliged to provide the information or by their management bodies in the case of legal entities. To this end, they must submit a supplementary electronic declaration to the Registry within two months of the entry into force of this Royal Decree (19 November 2023).

4. Subjects obliged to provide information to the Registry and deadlines

A. Legal entities in general

Foundations, associations and **in general all legal entities**, trusts and unincorporated entities or structures analogous to trusts that have not declared their beneficial ownership through other registries, **must submit an electronic declaration to the Registry**. This declaration must contain the information required in Articles 4bis and 4ter of the AML Law, as well as the information set out in the Regulations (See [Annex I](#)).

The deadlines for this communication are:

- a) **One month from the incorporation of the entity or from the start of its activity in Spain.**
- b) **Ten days from any change in the beneficial ownership of the entity.**

In addition, **an annual electronic declaration must be filed in January, confirming the beneficial ownership, even if there has been no change.**

B. Companies obliged to file accounts in the commercial registry

In the case of **commercial companies, the beneficial ownership identification declaration form submitted together with the filing of accounts must include the fields necessary to provide the data required by the Regulation**. The Royal Decree contemplates the possibility that the Directorate General for Legal Certainty and Public Faith may approve a new model form for the declaration of beneficial ownership.

We understand that this obligation will arise for those companies that are obliged to file their accounts after 19 September 2023, the date of entry into force of the Royal Decree.

C. Funds

The **obligation to report the beneficial ownership of funds will lie with** the fund's management company, provided that it is resident in Spain or has its effective place of management or principal activity in Spain.

D. Trusts and similar entities or structures

Trusts and similar unincorporated entities or structures analogous to trusts must submit a first electronic declaration to the Registry by 19 November 2023.

5. Scope of reporting

Article 4 of the Regulation provides the specific data to be provided to both the Registry and the Commercial Registry in the framework of the filing of annual accounts. This data is listed in [Annex I](#) to this Legal Briefing.

6. Manner in which the information is to be communicated to the Registry

The information to be submitted to the Registry, apart from information from the various registries of legal entities or databases, shall be provided electronically, using standard forms approved by resolution of the person in charge of the Registry.

7. Data discrepancies in the Registry

In the event of discrepancies between data supplied by different registries, the Registry shall inform the relevant registry of these inconsistencies. The original registry shall notify the legal entity concerned of the existence of the discrepancy and request that it confirm the data or provide a new declaration of beneficial ownership within ten days.

If a new declaration is made, the original registry shall update the information. If no reply is received within the specified time limit, the original registry shall inform the Registry so that a specific entry can be made. In addition, the principle of the most relevant data shall be followed. This means that information that is more recent in terms of its date or that is considered more reliable in terms of its collection will be considered priority information.

8. Consequences of non-compliance with reporting requirements to the Registry

A. Closing of the registration form

The Royal Decree establishes that non-compliance with the identification and reporting obligations required by the Registry, either due to the absence of identification in the beneficial ownership form or due to the absence of a record of the beneficial ownership form due to an omission in the filing of the annual accounts in the case of entities legally obliged to do so, will result in the closing of the registration as provided for in Article 378 of the Regulations of the Commercial Registry.

B. Administrative financial penalty

Non-compliance with the identification and reporting obligations required by the Registry, as well as with other obligations established in the Royal Decree, by legal entities, trusts and unincorporated entities or structures, will constitute an administrative offence.

These administrative sanctions have yet to be regulated in a subsequent regulation. The Ministry of Justice will be responsible for determining the seriousness of each infringement, as well as establishing the possible penalties applicable to each infringement, establishing the sanctioning procedure and exercising the sanctioning power arising from non-compliance with the above.

9. Access information in the Registry

Access to the information in the Registry is subject to certain regulations and different levels of access are established depending on the purposes and the persons or organisations that request it.

- (i) **Authorities responsible for the prevention, detection, investigation and prosecution of offences related to terrorist financing and money laundering** have free and unlimited access to the information in the Registry, including historical data and details of beneficial interest and ownership.

- (ii) **Obligated subjects under the AML Law** must access current information in the Registry by requesting electronic certificates or extracts to comply with their beneficial ownership identification (KYC) obligations. Their legitimate interest in accessing the information is presumed, provided that they state the reason for the request and that it is in accordance with the purpose of the Registry.
- (iii) **Entities that are obliged to report information under the Regulation and natural persons that appear as beneficial owners of those entities** in the Registry. In such cases, there is a presumption of legitimate interest and a valid and justified reason for accessing the information in the Registry.
- (iv) Other persons or organisations with a legitimate interest, such as **the media and civil society organisations involved in the prevention of money laundering and terrorist financing**, may have access to limited information on the beneficial owners, such as name, surname, date of birth, country of residence and nationality.

These applicants must submit an initial request in which they will prove their legitimate interest and designate up to three persons authorised to access the Registry. However, neither the Royal Decree nor the Regulation provides the procedures and criteria to be followed when verifying this information. Nor do they provide procedures for entities or owners of the information to oppose such access by the media or other organisations.

Access to the information in the Registry is electronic, and requires the authentication and identification of the applicant.

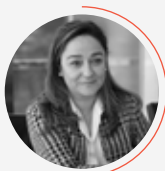
10. Entry into force

The Royal Decree will enter into force on 19 September 2023.

The third additional provision, sections 1 and 2, concerning the transfer of data between the different registries of legal entities and the Registry, entered into force on 13 July 2023.

The access to beneficial ownership information provided for in Article 5(3) of the Regulation will enter into force on 19 October 2023, except for the accreditation of media or civil society organisations involved in the prevention of money laundering and terrorist financing, and the designation of natural persons authorised to access the Registry in their name and on their behalf, which will also enter into force on 19 September 2023.

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Data to be provided to the Central Registry of Beneficial Ownership (Article 4 of the Regulation)

The following data is required:

- (i) For legal persons and unincorporated entities or structures:
 - a) Name.
 - b) Surnames.
 - c) Date of birth.
 - d) Type and number of identification document (in the case of Spanish nationals or residents of Spain, the document issued in Spain must be included).
 - e) Country of issue of the identification document (in the case that the National Identity Document or Spanish Resident Card is not used).
 - f) Country of residence.
 - g) Nationality.
 - h) Criteria that qualify that person as a beneficial owner.
 - i) In the case of beneficial ownership by direct or indirect ownership of shares or voting rights, the shareholding percentage must be included and, in the case of indirect ownership, information on the legal entities involved and their shareholding in each of them.
 - j) A valid email address for receiving electronic notifications.

Where there is no beneficial owner as such, the administrator(s) shall be considered as such. If the administrator is a legal entity, the natural person appointed by the legal entity as the administrator shall be considered the beneficial owner.

- (ii) For trusts and similar legal instruments:
 - a) Name.
 - b) Surnames.
 - c) Date of birth.
 - d) Type and number of identification document (in the case of Spanish nationals or residents of Spain, the document issued in Spain must be included).
 - e) Country of issue of the identification document (in the case that the National Identity Document or Spanish Resident Card is not used).
 - f) Country of residence.
 - g) Nationality.
 - h) Criteria that qualify that person as a beneficial owner.
 - i) A valid email address for receiving electronic notifications.

Specifically in the case of trusts, the details of settlors, trustees, protectors, beneficiaries and any other natural person exercising ultimate control of the trust through direct or indirect ownership or other means must be provided.

For other legal arrangements analogous to trusts, such as fiduciaries or the Treuhand under German law, the details of individuals occupying equivalent or similar positions should be provided.

In addition, the necessary identifying data of the legal person or unincorporated entity or structure in respect of which the beneficial ownership is communicated must be provided. This data includes the corporate identity or name of the unincorporated entity or structure, the European Unique Identifier (EUID), the tax identification number (NIF) or, in its absence, the registration number of the entity, the legal form of the entity, the nationality and the registered office.