

## INFORMATION NOTE

# New Central Registry of Real Estate Titles

## *Commercial aspects and the Prevention of Money Laundering and Financing of Terrorism*



On Tuesday 11th July, the Government approved in the Council of Ministers (at the request of the Ministries of Justice and Economic Affairs and Digital Transformation) the Royal Decree (hereinafter, “RD”) creating the Central Registry of Real Estate Ownership and approving its regulations, whose main purpose focuses on the development and implementation of the third and fourth additional provisions of Law 10/2010 on the prevention of money laundering and terrorist financing (hereinafter, “LPBC and FT”). This transposes Directive (EU) 2018/843 of the European Parliament and of the Council of 30th May 2018, which targets the misuse of the financial system, preventing the future commission of unlawful actions.

As regards the Central Register of Beneficial Ownership, this new institution, whose headquarters will be in the Directorate General for Security and Public Trust, will operate in a single, centralised manner throughout the national territory, with its management depending on the Ministry of Justice.

The purpose of the Register is to collect and publicise information on beneficial ownership relating to all Spanish legal persons and entities or structures without legal personality that have their effective seat of management or their main activity in Spain, or that are managed or administered by natural or legal persons resident in Spain, as well as those entities without legal personality that, not having a company or representation in Spain, intend to establish business relations, carry out occasional operations or acquire real estate in Spain.

This information note analyses mainly the commercial aspects involved, the obligations regarding the prevention of money laundering and the financing of terrorism and, finally, the protection of personal data.

## I. COMMERCIAL ASPECTS

The regulatory text covers certain relevant aspects relating to the commercial/corporate area, specifically contained in the second additional provision (AP 2<sup>nd</sup>) and paragraphs 3 and 4 of the third additional provision (AP 3<sup>rd</sup>) of the RD, as well as Article 1 and Article 3(3) and (4) of the Central Registry Regulations. On the one hand, AP 2<sup>nd</sup> regulates the closure of the register provided for in Article 379 of the Companies Register Regulations as a consequence of non-compliance with the obligation to identify and inform the Central Register, either due to the lack of identification in the beneficial ownership sheet, or due to the lack of record of said sheet due to omission in the filing of the annual accounts in the case of entities legally obliged to do so.

AP 3<sup>rd</sup>, which regulates the transfer of data between the Central Register and the registers of legal persons, devotes its fourth section to the obligations that companies must fulfil regarding this transfer. Specifically, it establishes that the sheet for the declaration of identification of beneficial ownership to be made when the filing of accounts shall comply with the fields necessary for the provision of data referred to in the Regulation.

Likewise, when changes in beneficial ownership occur, a new declaration of identification of beneficial ownership must be filed with the corresponding Companies Register by the company’s directors within ten days of the day following knowledge of the change, to ensure that the information sent by the Companies Register to the Central Register is adequate, accurate and up to date.

It also provides that, if the data supplied are not all those provided for in the Regulation, they must be



completed by the parties who have the obligation to communicate the data or their management bodies if they are legal persons. They must also make an initial supplementary declaration by electronic means to the Central Register of Real Property Ownership within **two months** of the entry into force of the RD.

Regarding the regulation contained in the Regulation, all foundations, associations, legal persons, trusts or similar structures that have not declared their beneficial ownership identification through the Register of Companies, Register of Foundations and Associations or the register responsible for their registration, are obliged to notify the Central Register within a maximum period of **one month** from their incorporation. They must also, subsequently, update the changes within **ten days** of the modification and make an annual declaration by electronic means in January (Art. 1).

Finally, Articles 3(3) and 3(4) of the Regulation indicate how to proceed in the event of discrepancies between the different types of information supplied, directly or indirectly.

## **II. PREVENTION OF MONEY LAUNDERING AND TERRORIST FINANCING**

The main objective of the Register is to regulate the collection of information on the direct or indirect beneficial ownership of legal entities. This Register will centralise this information from various sources, in addition to that provided directly, helping to effectively combat money laundering and the financing of terrorism and providing means of verification of beneficial ownership to those obliged by the regulations on the prevention of money laundering.

The entry into force of this Royal Decree entails the 5<sup>th</sup> May amendment of article 9.6 of the AML/CFT

Regulations, approved by Royal Decree 304/2014, in the sense that obliged entities must verify the identity of the beneficial owner of natural and/or legal persons by accessing the Central Register of Beneficial Ownership, an obligation that is added to the already established obligation to identify customers.

The Register is mainly based on existing historical data on legal persons or entities without legal personality or structures such as trusts and entities without legal personality or structures analogous to trusts, as information is obtained from other databases which are centralised in this Register. The various registers responsible for collecting this data must take the necessary technological measures to ensure that, within a maximum period of **nine months** from the date of entry into force, they have made a first full submission or have at the disposal of the Central Registry all the data on beneficial owners included in their databases.

As of the first transmission, daily updates must be made of the registrations and variations in the databases of beneficial owners under their jurisdiction. To facilitate compliance, the Spanish Association of Property and Mercantile Registrars, the Register of Foundations under State jurisdiction and the General Council of Notaries are authorised to make connections and transfer data with the Central Register of Real Property Ownership.

Pending completion of the first full submission of data to the Central Register, the authorities, obliged parties and persons with a legitimate interest may obtain information on beneficial owners by accessing those registers and databases in accordance with their specific regulations.

Finally, it should be noted that the exemption from the obligation to notify beneficial ownership will be extended to the funds, but this obligation will be extended to their management company.



### III. DATA PROTECTION

Regarding data protection, the Directorate General for Legal Security and Public Trust will be responsible for the processing of data; the purposes of data processing are regulated and the consent of the natural persons whose personal data are included in the Register is not required, but the need to comply with the duty to provide information is regulated.

Therefore, natural persons whose data are included in the Register will receive an e-mail with information on the protection of personal data.

An important issue regulated by the Regulation is the retention period, the cancellation and the transfer of data:

1. As regards the retention period, it is established that the Register shall keep and update the data for the lifetime of the legal persons or entities or structures without legal personality and shall be maintained for a period of ten years after their extinction. Once this period has elapsed, the data will be kept duly blocked except for the purpose of making the data available to judges and courts, the Public Prosecutor's Office or the competent Public Administrations, in particular the data protection authorities, for the enforcement of possible liabilities arising from the processing and only for the prescription period of such liabilities for a period of three years.
2. Regarding the transfer of data, it is established that data may be transferred when the purpose is the prevention of money laundering and the financing of terrorism and always with indication of the source and its marketing.

The registration information shall be sufficient to identify the natural persons who are beneficial owners, and the

means and mechanisms through which they exercise beneficial ownership or control. The data provided shall be as follows:

- First name.
- Surname(s).
- Date of birth.
- Type and number of identification document.
- Country of issue of the identification document, if the one issued in Spain is not used.
- Country of residence.
- Nationality.
- Criterion that qualifies that person as the beneficial owner.
- In the case of beneficial ownership by direct or indirect ownership of shares or voting rights, percentage shareholding, including indirect ownership, information on the legal entities involved and their shareholding in each of them.
- A valid e-mail address, for the purpose of sending notices of availability of possible notifications by electronic means.

#### Information Access

Any person who can demonstrate a legitimate interest may access information on the beneficial ownership of the entities, although the type of data to which they may have access is limited. Legitimate interests are held by: (i) the parties bound by the AML regulations (ii) the legal person, trust or trust-like entity in relation to which the query is made, or one of the natural persons appearing as the beneficial owner of the entity itself in the Central Register of Beneficial Owners (iii) the media, or civil society organisations involved in the prevention and fight against money laundering, which must prove their status and, once accredited, designate up to three persons who may access the Register.

In relation to the data declared directly to the Central Register of Real Data Holders, the data subjects may exercise the rights of access, rectification, erasure, objection, limitation of processing, portability and not to be subject to automated decisions and, where appropriate, erasure, before the Directorate General for Legal Certainty and Public Trust.

Regarding data contained in the Central Register of Real Ownership from other Registers or databases, the rights must be exercised before the Register or database from which they originate.

Finally, the obligation is established to implement the security measures provided for in the 30<sup>th</sup> May National Security Scheme of Royal Decree 311/2022, determined by the data controller in accordance with the categorisation of the system, the risk analysis and, where appropriate, the personal data protection impact assessment.

#### IV. EFFECTIVE DATE

The regulation will enter into force on 19<sup>th</sup> September 2023.

Regarding the obligations of technological adaptation and transfer of data by the registers with competence in the collection of data from data owners or databases, the regulation will enter into force on the day following the publication of the Royal Decree.

Likewise, for access to information relating to beneficial ownership by persons accrediting a legitimate interest, the regulation will enter into force on 19<sup>th</sup> October 2023, except for the media or civil society organisations that have a relationship with the prevention and fight against money laundering and the financing of terrorism, which will be able to access the Register from 19<sup>th</sup> September 2023.



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