

BENEFICIARY OWNERS (BENEFICIARIOS FINALES): NEW FORMAL OBLIGATIONS

Law 2155 of 2021 aligned the concept of Beneficiary Owners with international definitions, created the Single Registry of Final Beneficiaries (RUB) and created the Identification System for Non-Incorporated Structures (SIESPJ). The Colombian Tax Administration (DIAN) issued Resolution 164 of 2021 that regulates the new concept of Beneficiary Owners and details the operation of its reporting systems. In particular, it establishes the RUB for those registered in the Single Tax Registry (RUT) and the SIESPJ for Non-Incorporated Structures (or Legal Arrangements) that are not obliged to register in the RUT. In addition, the recently enacted Law 2195 of 2022 extends the use of information on Beneficiary Owners.

Below we highlight some relevant aspects for the compliance of the new set of obligations related to the report of Beneficiary Owners. In particular, we provide information about the obliged to provide information through the RUB, the criteria to determine the Beneficiary Owners and other conditions related to the fulfilment of these new obligations.

I. OBLIGED TO PROVIDE INFORMATION IN THE RUB:

- A. For-profit or non-profit national companies and entities, including those registered or listed on one or more stock exchanges.
- B. Permanent establishments.
- C. Legal arrangements or similar that: (i) are created or managed in Colombia, (ii) are governed by Colombian law, and (iii) their trustee or equivalent is a Colombian tax resident.

The reference to legal arrangements should include fiduciary agreements, private equity, collaboration agreements, private equity or collective investment funds, public debt funds and pension and severance funds, among others.

- D. Foreign legal entities and legal arrangements which hold more than 50% of their total assets in Colombia.

II. CRITERIA TO DETERMINE THE BENEFICIARY OWNER:

The Beneficiary Owners are the natural persons (individuals) who ultimately own or control, directly or indirectly, an entity or the natural persons on whose behalf transaction is being conducted. This definition includes natural persons who exercise effective and/or final control, directly or indirectly, over a legal person or other legal arrangements.

The following criteria must be considered to determine the Beneficiary Owners of a legal person or other legal arrangements:

A. Legal persons:

1. The natural person who owns 5% or more of the capital or voting rights of the legal person, or benefits from 5% or more of the assets, returns or profits of the legal person; Y
2. The natural person who exercises control over the legal person; or
3. If the Beneficiary Owner is not identified according to the above definitions, the natural person who is the legal representative or holds the position of most significant authority in relation to the management or direction functions of the legal person.

B. Legal arrangements:

1. Settlor, settlor, constituent or similar or equivalent position;
2. Fiduciary or similar or equivalent position;
3. Fiduciary committee, finance committee or equivalent position;
4. Trustee, beneficiary or conditional beneficiary; Y
5. Natural person who exercises effective/final control or who has the right to enjoy and/or dispose of the assets, benefits, results or profits.

III. CONDITIONS RELATED TO THE FULFILMENT OF THESE NEW OBLIGATIONS :

A. Opportunity:

Legal entities and legal arrangements incorporated or created before January 15, 2022, must provide the information through the RUB or register in the SIESPJ no later than September 30, 2022.

Those incorporated or created after January 15, 2022, must submit the information through the RUB within two months after registration in the RUT or register in the SIESPJ within one month following their creation.

B. Update of information

The RUB must be updated within one month following the event that generates its modification, counted from the first day of January, April, July and October of each year.

If the information provided in the SIESPJ must be modified, the registry must be updated within one month following the event that generates the update.

C. Penalty system

In case of not providing the information or sending it erroneously, the DIAN may apply the sanctions provided for in the Tax Code for not sending information.

D. Due diligence

Legal persons and legal arrangements must identify the Beneficiary Owners and obtain, keep, supply and update the information for their registration.

Hence, they have a duty of due diligence to carry out all the necessary acts to identify the Beneficiary Owners. If it is impossible to determine the Beneficiary Owners after exhausting the existing mechanisms for their determination, the reasons that support the situation must be stated in the RUB.

E. Access to the RUB:

In addition to its use for tax purposes, Law 2195 of 2022 authorized the Office of the Comptroller General of the Republic, the Office of the Attorney General of the Nation, the Superintendence of Companies, the Financial Superintendence, the Attorney General's Office and the Financial Information and Analysis Unit, to access this information, in compliance with its functions to combat money laundering, terrorism and other crimes.