

LEWIN & WILLS

ABOGADOS
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Beneficial ownership
formal obligations:



July 2023

Beneficial ownership: formal obligations:

Considering that the deadline to report Beneficial Owners is approaching, we highlight some relevant aspects for its compliance below.

In particular, we provide information about the obligation to provide information through the RUB, the criteria to determine the Beneficial Owners and other conditions related to fulfilling these obligations.



Obligated 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.
- D. 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.
- E. Foreign legal entities with investment in Colombia, when all their investment in the country is not made through legal entities, permanent establishments, and/or legal arrangements or similar obliged to provide information in the RUB.

Criteria to determine the beneficiary owner:

The Beneficiary Owners are individuals who ultimately own or control, directly or indirectly, an entity or the individuals on whose behalf a transaction is being conducted. This definition includes individuals 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 individual 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;
2. The individual who exercises control over the legal person; or
3. If the Beneficiary Owner is not identified according to the above definitions, the individual who is the legal representative or holds the position of most significant authority concerning 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;
5. Individuals who exercise effective/final control or have the right to enjoy and/or dispose of the assets, benefits, results, or profits.

Conditions related to the fulfilment of these obligations

● A. Deadlines for submitting information to the RUB

Legal persons or legal arrangements constituted or created before **May 31, 2023**, and that are obliged to submit information to the RUB will be able to provide information on their Beneficial Owners until **July 31, 2023**. On the other hand, those created as of **June 1, 2023**, must submit such information within two months after (i) their registration in the RUT, (ii) their registration in the Identification System for Non-Incorporated Structures ("SIESPJ"), or (iii) at the moment in which they are obliged to comply with the formal obligations due to the fulfillment of the criteria to provide information in the RUB.

● B. Opportunity to enroll in the SIESPJ

Legal arrangements or similar created before **May 31, 2023**, which are not obliged to register in the RUT, must register in the SIESPJ before **July 31, 2023**. Those created after **June 1, 2023**, must register with the SIESPJ within the month following their creation.

● C. 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.

● D. Penalty system

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

● E. 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 Beneficial Owners. If it is impossible to determine the Beneficial Owners after exhausting the existing mechanisms for their determination, the reasons that support the situation must be stated in the RUB. We suggest that, if this is the case, you document and retain evidence regarding the impossibility of determining who the ultimate beneficiaries of the entity or subject to be reported are.

● F. 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.



If you have any questions
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