



TAX NEWSLETTER

No. III MAY 2021

REGULATIONS

National Office Against Organized Crime and Financing of Terrorism (ONCDOFT, by its Spanish initials)

- I. Administrative Ruling No. ONCDOFT-001-2021, by means of which the Rules for the Unified Registry of Obligated Subjects (liable party) before the National Office against Organized Crime and Financing of Terrorism (RUSO-ONCDOFT) published in Official Gazette No. 42,098 is issued, on March 30, 2021.
- II. Administrative Ruling No. ONCDOFT-002-2021, by means of which the Rules for the Unified Registry of Obligated Subjects (liable party) before the National Office against Organized Crime and Financing of Terrorism (RUSO-ONCDOFT), has been published in Official Gazette No. 42,118 on May 3, 2021. It has been reprinted due to errors originated in Official Gazette No. 42,116 dated April 29, 2021.



I. Administrative Ruling No. ONCDOFT-001-2021, by means of which the Rules for the Unified Registry of Obligated Subjects (subjects bound to comply with) before the National Office Against Organized Crime and Financing of Terrorism (RUSO-ONCDOFT) is enacted.

On March 30, 2021, Ruling No. ONCDOFT-001-2021 was published in Official Gazette No. 42,098 dated March 30, 2021, by means of which the Rules for the Unified Registry of Obligated Subjects (liable party) before the National Office Against Organized Crime and Financing of Terrorism (RUSO-ONCDOFT) are issued.

The most relevant aspects of this Administrative Ruling are the following:

- ▶ Requirements and procedures are established for the registration of obligated subjects (liable party), in accordance with the Organic Law against Organized Crime, in the RUSO-ONCDOFT.
- ▶ The obligation of registration in the RUSO-ONCDOFT falls on the natural people and legal entities that appear as bound subjects (liable party) of the Organic Law against Organized Crime, who carry out activities that are not regulated by special law or that are not subject to any body or entity of prevention, control, supervision, inspection and surveillance.
- ▶ Under the previous assumption, the following subjects could be included: i) gambling houses, bingo halls and casinos; ii) those who are engaged in real estate promotion activities, as well as the sale of real estate; iii) construction companies; iv) jewelry stores and other establishments dedicated to the sale of precious metals and stones; v) hotels and tourism companies authorized to carry out foreign exchange operations; vi) companies for the sale of ships, aircraft and land motor vehicles; vii) establishments for the sale of spare parts and used vehicles; viii) sellers of antiques, art objects or archeology; ix) Merchant Marine companies and x) foundations, noncommercial associations, as well as other nonprofit organizations.
- ▶ The obligation to register in the RUSO-ONCDOFT also falls on natural people and legal entities who are designated in special laws, or who carry out activities where they can incur in crimes of money laundering, financing of terrorism and financing of the proliferation of weapons of massive destruction.
- ▶ Under the previous assumption, the following subjects could appear: i) banks, companies and individuals and other financial institutions governed by the General Law of Banks and other Financial Institutions and by the Decree with the Rank and Force of Framework Law that regulates the Public Financial System of the Venezuelan State; ii) insurance and reinsurance companies, insurance brokerage companies governed by the Insurance and Reinsurance Companies Act and, iii) mutual investment funds, management companies, public securities brokers, stock exchanges and other natural people and legal entities governed by the Capital Markets Law.
- ▶ Natural people or legal entities that take part in any way in the comprehensive risk management and corporate compliance system implemented by the obligated subjects will be bound to register in the RUSO-ONCDOFT.
- ▶ The general requirements for registration in the RUSO-ONCDOFT are established, as well as the requirements that must additionally be attached at the time of registration of trading companies, non-profit organizations and faithful compliance officers.

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- ▶ Among the general requirements, the following information have to be included: i) the documents of the business owners when they are natural people, legal representatives of legal entities, members of the board of directors of trading companies and members of the board of directors of cooperative societies; ii) Tax Identification Number (TIN); iii) certificate of registration issued by the National Registry of Contractors (RNC, by its Spanish initials) or by the National Contracting Service (SNC), as appropriate; iv) annual financial statements at the end of the last fiscal year, audited by a certified public accountant; v) current certificates, licenses or authorizations, issued by the competent control body or entity, in accordance with the activity to which the obligated subject (liable party) is engaged; vi) sworn statement on the veracity of the documents and information provided and, vii) proposal for the appointment of the faithful compliance officer.
- ▶ Among the additional requirements of trading companies, the following information must be submitted: i) The articles of incorporation and its latest amendments registered on the Public Registry of Commerce; ii) legalized power of attorney where the person authorized to act on behalf of the obligated subject is empowered; iii) meeting minutes where the current board of directors is appointed; iv) descriptive report of the company's trajectory; v) shareholding composition and when its shareholders are legal entities, their shareholding structures must be provided.
- ▶ Within the additional requirements, foreign trading companies must include the following information: i) registration document in the foreign business register and, ii) certificate issued by the public registry of commerce of the Bolivarian Republic of Venezuela.
- ▶ In the event that the trading company is part of a group controlled by a parent company, it must include the following information: i) the document proving the tax identification number (TIN) of the parent company; ii) notarial statement detailing the entities that make up the group, the links between them, the boards of directors and the main executives and, iii) the public legal document that justifies the legal representation of the group members by the parent company.
- ▶ For their part, the non-profit foundations, within the additional requirements, have to attach the following information to the registration in the RUSO-ONCDOFT: i) The articles of incorporation and its amendments, recorded in a protocol before the public registry of commerce; ii) proof of registration with the control body to which it belongs by nature; iii) minutes where the current board of directors is named; iv) a list from its board of directors of the national or foreign entities from which it receives donations, contributions or gifts; v) the identification by its board of directors of the beneficiaries, whether they are people or groups of people who receive charitable, humanitarian or other assistance and, vi) list issued by its board of directors of the foreign branches of international non-profit organizations and non-profit organizations with which they are associated.

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- ▶ In the case of a natural person who performs functions of a faithful compliance officer, the following information must be attached to the registry: i) proof of registration on the control body or entity to which it belongs, according to the nature of the activity to which it belongs; ii) proof of registration before the registry of officers of faithful compliance of the governing body in matters of organized crime and financing of terrorist and, iii) curriculum vitae indicating the academic training as an expert in matters of risk of money laundering, financing of terrorism and financing for the proliferation of weapons of mass destruction, as appropriate.
- ▶ The application for registration in the RUSO-ONCDOFT, as well as the designation of the person who will carry out the registration process, will be made before the governing body within thirty (30) continuous days following the start of operations.
- ▶ The subjects bound to register in the RUSO-ONCDOFT must update the information thirty (30) consecutive days later, when any of the following changes occur: Legal address, contact information, shareholding structure, statutory reforms, appointment of the members of the board of directors, conformation of trade factors, notarial certificates and legal representative documents, and any other update of the information provided at the time of registration.
- ▶ The governing body will have a maximum period of thirty (30) continuous days counted from the receipt of the last document to review the information, and if deemed pertinent, it will review the documents in situ. In cases where the information is incomplete or has defects, the obligated subject will be granted a maximum period of five (5) working days in order to correct them.
- ▶ When the registration is satisfactory, the governing body will generate the credentials of the legal representative, of the faithful compliance officer and will issue the registration certificate.
- ▶ The registration certificate will be issued electronically with security features that allow interested parties to validate its authenticity.
- ▶ The cancellation of the registration may be requested in the following cases: i) when the natural person appearing as the obligated subject has died and the economic activity is discontinued; ii) the legal entity has been dissolved or liquidated as a result of the penalties imposed by the competent courts; iii) when two or more obligated subjects have merged and the legal entity is extinguished, giving rise to a new one; iv) the economic activity has been changed for another that is not regulated by the Money Laundering Law, the financing of terrorism and the financing of the proliferation of weapons of mass destruction and, vi) by the merger of two or more obligated subjects, which extinguishes the legal status of the entity requesting the cancellation.
- ▶ Breach to comply with the duties and obligations related to registration in the RUSO-ONCDOFT will be penalized in accordance with the applicable legal provisions.
- ▶ The rules have come into effect on March 30, 2021.

II. Administrative Ruling No. ONCDOFT-002-2021, by means of which the Rules for the Unified Registry of Obligated Subjects (subjects bound to comply with) before the National Office against Organized Crime and Financing of Terrorism (RUSO-ONCDOFT, by its Spanish initials), is enacted.

On May 3, 2021, Administrative Ruling No. ONCDOFT-002-2021 is published in Official Gazette No. 42,118, by means of which the Rules for the Unified Registry of Obligated Subjects before the National Office against Organized Crime and Financing of Terrorism (RUSO-ONCDOFT) are enacted. It has been reprinted due to errors originated in the Official Gazette No. 42,116 dated April 29, 2021.

The most relevant aspects of this Administrative Ruling are:

- ▶ The requirements and procedures are established for the registration in the RUSO-ONCDOFT of the obligated subjects (liable party), when their activity is not regulated by a special law or that they are not subject to any body or entity of prevention, control, supervision, inspection and surveillance.
- ▶ When obligated subjects (liable party) are governed by a special law or who are under the control, supervision, inspection or surveillance of a control body or entity other than the governing body, their registration, updating or cancellation procedures shall be carried out directly before the control entity or body to which they belong to.
- ▶ The other obligated subjects that are not within the previous assumption must register directly with the governing body.
- ▶ Among the general requirements for registration before the governing body are the following: i) identification document of the business owner in the case of a natural person and legal representative in the case of a legal entity, as well as the members of the board of directors of trading companies; ii) Tax Identification Number (TIN); iii) certificate of registration with the National Contractor Registry (RNC) or with the National Contracting Service (SNC) when applicable; iv) annual financial statements at the end of the last fiscal year audited or certified by a certified public accountant; v) certificate or equivalent document issued by the governing body to which it belongs according to the nature of the activity to which the obligated subject is engaged; vi) sworn statement stating that the information and documents provided are true, correct and verifiable and, vii) proposal for the appointment of the faithful compliance officer.
- ▶ When the obligated subject (liable party) is regulated by a body other than the Office against Organized Crime and Financing of Terrorism, the person designated as the faithful compliance officer, in addition to the documentation of the previous point, must submit the following information: i) authorization letter issued by the governing body; ii) valid identity documents; iii) curriculum vitae where telephone numbers and emails are indicated and, iv) proposal of policy manuals and procedural standards for the management of money laundering risks, financing of terrorism and financing of the proliferation of weapons of destruction mass and other organized crime offenses.

II. Administrative Ruling No. ONCDOFT-002-2021, by means of which the Rules for the Unified Registry of Obligated Subjects (subjects bound to comply with) before the National Office against Organized Crime and Financing of Terrorism (RUSO-ONCDOFT, by its Spanish initials), is enacted.

- ▶ The documents must be submitted in Spanish and in the case that they are issued abroad, they must be apostilled (certified with the seal and signature of the corresponding authority) or legalized by the competent authorities, as well as duly translated into Spanish, when they are in a different language.
- ▶ When dealing with trading companies incorporated in the country, which appear as obligated subjects and which are not regulated by a special law or subject to a body or entity of prevention, control, supervision, inspection and surveillance, in addition to the general requirements, they must accompany their registration with the following information: i) the articles of incorporation and their respective amendments; ii) authenticated power of attorney of the representative empowered to register the obligated subject; iii) the meeting minutes where the current board of directors is appointed and, iv) the descriptive record of its trajectory in the sector to which it belongs.
- ▶ To comply with international standards related to transparency and the final beneficiary of legal entities, the registry must be accompanied by the following information: i) shareholding structure, detailing the name, type and number of the shareholders' identification document, percentage of stockholding and type of shares; ii) when the shareholders of the obligated subjects are legal entities, they must submit the shareholding structure of these, following the criterion of the previous point, and if the shareholders are in turn owned by legal entities, they must continue presenting the shareholding structure successively until determining the final beneficiary of the legal entity and, iii) certification from the board of directors, stating that the information submitted is in accordance with the book of shareholders or partners.
- ▶ In the case of trading companies incorporated abroad or subject to a body or entity of prevention, control, supervision, inspection and surveillance, in addition to the general requirements, their registration must be accompanied by the following information: i) registration document of the foreign public registry of commerce and, ii) certificate issued by the Business Register of the Bolivarian Republic of Venezuela.
- ▶ When the obligated subject is part of a group controlled by a parent company of national or foreign origin in addition to the general requirements, they must accompany their registration with the following information: i) document where the tax identification number (TIN) of the parent company is established, whether national or foreign; ii) notarial statement stating the business name of each of the group's member entities, the relationships between them, the boards of directors and main executives and, iii) the public legal document that certifies the legal representation of the group members by the parent company.
- ▶ Within the process of evaluating the required documents, the governing body will verify *extra situ* the information attached by the obligated subjects to the registry and when it deems it pertinent, it will carry out the visit *in situ* in order to verify the paperwork.

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- ▶ When the subject bound to the law is a natural person who carries out activities of faithful compliance, the following information must be attached to her/his registry: i) proof of registration on the governing body to which it belongs according to the nature of her/his activities; ii) proof of registration before the registry of faithful compliance officers kept by the governing body and, iii) curriculum vitae, where has to be shown the academic training (qualifications) as an expert in risk management of money laundering, financing of terrorism and financing for the proliferation of weapons of massive destruction.
- ▶ Within the process of evaluating the required documents, the governing body will verify *extra situ* (outside) the information attached by the subjects bound to the law to the registry and when it deems it pertinent, it will carry out the visit *in situ* (inside) in order to verify the paperwork.
- ▶ The review and validation of the information will be carried out by the governing body within thirty (30) continuous days following the submission of the required documents, any inconsistency in the information sent must be corrected by the obligated subjects within five (5) working days following notification by the governing body.
- ▶ Obligated subjects whose closing of the fiscal year is regular, the first fifteen (15) working days of the month of April of each year, must send to the governing body through electronic means, the annual financial statements audited or certified by an independent public accountant (CPA), corresponding to the last fiscal year.
- ▶ Subjects bound to the law whose closing of the fiscal year is irregular must send to the governing body through electronic means, the annual financial statements audited or certified by an independent certified public accountant (CPA), corresponding to the last fiscal year, the fifteen (15) continuous days following the date they file their income tax return.
- ▶ Registration may be cancelled in the following cases: i) natural people who have died and their economic activity is discontinued; and ii) the legal entities have been dissolved due to penalties imposed by the competent courts; iii) the economic activity has been changed for another that is not regulated by the Money Laundering Law and other provisions governing the matter; iv) the legal entity of the subject bound to the law is extinguished by the merger with other obligated entities and, v) any other circumstance that may arise contemplated in the law and other provisions referring to the money laundering.
- ▶ Any other order that collides with this Administrative Ruling is repealed.
- ▶ This Administrative Ruling has come into force as of May 3, 2021.

Contact us if you want to inquire about the scope of these rules.

Breach to comply with tax liabilities within the due dates provided by the Calendar of Special Taxpayers and other tax provisions will be penalized in accordance with the Organic Tax Code. Consult with our experts about the periodic review service of compliance with formal tax duties and avoid the risks of tax contingencies due to financial penalties and measures to close premises, in the event of a possible inspection procedure by the Tax Administration.



CONSULT OUR ADVISORS

We build lasting relationships, that is why our commitment is to provide an exceptional service to our client. Contact us.

Víctor E. Aular B.
Management Consultancy Partner/
Managing Partner
vaular@bdo.com.ve

José J. Martínez P.
Audit Partner /
ILP (International Liaison Partner)
jmartinez@bdo.com.ve

José G. Perales S.
Audit Partner
jperales@bdo.com.ve

Helí S. Chirino H.
Audit Partner
hchirino@bdo.com.ve

Lenin J. Fuentes D.
Audit Partner
lfuentes@bdo.com.ve

Yelitza C. Coll F.
Audit Partner
ycoll@bdo.com.ve

Edgar A. Osuna D.
Audit Partner
eosuna@bdo.com.ve

Miguel A. Romero D.
Tax Partner
mromero@bdo.com.ve

Iraima C. Núñez G.
Tax Partner
inunez@bdo.com.ve

Roderick J. Lárez L.
BSO Partner
rlarez@bdo.com.ve

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Our Offices

CARACAS. Blandin Avenue. Mata de Coco Shopping Centre. Floor 3. Office E-3. La Castellana. Chacao. ZIP Code 1060. Caracas, Venezuela. Phone number: +58-212-264-0637.

VALENCIA. Juan Uslar Avenue c/c Av. Carabobo, Corporate Centre La Viña Plaza, Floor 9. Office 15, Urb. La Viña, Valencia, Carabobo State, Zip Code 2001, Venezuela. Phone numbers: +58 241 613 9069 / 9066 / 9067.

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