



Disqualification Database

On 6 December, Decree-Law no. 114-C/2023 of 5 December came into force, partially transposing Directive (EU) 2019/1151 of the European Parliament and of the Council of 20 June 2019 and creating a database of disqualifications, with the purpose of preventing fraudulent and abusive behaviors, and thus ensuring the protection of those who interact with commercial companies or branches.

The purpose of the database of disqualifications (DD) is to organise information on (i) permanently ordered disqualifications of persons from the exercise of trade, from the exercise of the position of manager, director or other member of a corporate body subject to registration and from the administration of third party's people's assets, as well as information on (ii) judicial disqualifications of members of corporate bodies that have become final and unappealable. The DD is integrated into the Registry Interconnection System, allowing information on disqualified persons to be requested and obtained in other European Union Member States.

The DD includes the following information on judicial disqualifications:

- a) Personal data of the natural person;*
- b) The terms and legal grounds for disqualification;*
- c) The date on which the disqualification became final or on which the court decision of disqualification became final;*
- d) The company name and identification number of the company in which the dismissed person held office;*
- e) The period of disqualification;*
- f) Identification of the proceedings in which the disqualification was ordered;*
- g) The court or administrative body that ordered the disqualification.*

The data contained in the DD is maintained and can be consulted for a period of:

- a) 5 years from the date on which the judicial disqualification decision becomes unappealable;*
- b) 20 years from the date on which the disqualification became final.*

The information contained in the DD can be consulted by the holder of the information and, additionally, by notaries public, lawyers and solicitors, registrars and registry officers, judicial magistrates and public prosecutors, as well as administrative bodies with powers to impose disqualifications on persons.

Thus, after promoting any registration of commencement and alteration of the activity of an individual trader, registration of appointment or reappointment to the position of manager, director or other member of a corporate body subject to registration, it is the responsibility of the commercial registry services to consult the DD, ensuring that there is no impediment to the practice of acts of commerce or exercise of the office, namely with regard to the functions of binding the company to third parties, representation of the company in court and participation in the administration and surveillance or supervision of the company. If any impediment is detected, registration will be refused.

Furthermore, it is the responsibility of the commercial registry services to request and obtain information on any disqualification of a person from exercising the aforementioned offices, being responsible for the refusal of the commercial registry in the event of its existence.

Finally, it should be noted that this regime only applies to facts that occurred after the regime came into force, i.e. 6 December.

This Decree-Law also amends the Portuguese Commercial Registry Code and Decree-Law no. 24/2019, of 1 February (regime for electronic communication between European commercial registries), in order to incorporate the changes introduced in the Portuguese commercial registry system.

We remain available for any further clarifications.

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