

# Luxembourg Introduces Register of Beneficial Owners

February 2019

On 15 January 2019, Luxembourg published legislation in its Official Gazette enabling the creation of a register of beneficial owners (the "RBE"). The Law will enter into force on 1 March 2019.

The Law provides for a six (6) month transition period after its entry into force. Affected entities and their beneficial owners must therefore comply with its provisions before 1 September 2019.

The Law applies the transparency requirements of article 30 of Directive 2015/849/EU on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (AMLD IV) by creating a central register of beneficial owners, the purpose of which is to supervise and make available relevant information on the beneficial owners of Luxembourg entities registered with the Luxembourg Trade and Company Register (the "RCS"). The Law also implements the transparency requirements of Directive 2018/843/EU on the prevention of the use of the financial system.

## 1. Who Is Affected?

The obligations apply to all entities registered with the Luxembourg RCS pursuant to article 1, points 2 to 15 of the law of 19 December 2002 on the trade and companies register and the accounting and annual accounts of undertakings, as amended. It will therefore apply to the following:

- commercial companies with legal personality, such as sociétés anonymes (public limited liability companies) and sociétés à responsabilité limitée (private limited liability companies);
- other legal entities, such as sociétés en commandite spéciale (special limited partnerships); and

- investment funds of all legal regimes (e.g., UCITS, Part II UCI, SIF, SICAR, RAIF or unregulated AIF), and legal forms (e.g., investment company with variable capital (SICAV), investment company with fixed capital (SICAF) or mutual fund (FCP)).

The Law also imposes obligations on beneficial owners themselves.

## 2. What Are the New Obligations?

The legal representatives of affected entities must:

- Obtain and hold information on the beneficial ownership of the entity, including first names, last names, nationalities, date and place of birth, country of residence, address, identification number, and the nature and extent of the beneficial interests held (as well as relevant supporting documentation). That information must be accurate and up to date at all times.
- File the above information, as well as supporting evidence, with the RBE. By derogation, listed companies whose securities are admitted to trade on a regulated market must only file the name of the relevant regulated market. The list of documents to be provided as supporting evidence and how to electronically file will be determined in a Grand Ducal regulation which is not yet available.

In addition to these initial steps, the legal representatives of affected entities will then have to:

- update filings within one month of becoming aware of any event that would make the filed information inaccurate or obsolete;
- upon simple request, provide within three days access to all information on their beneficial

owners to the national authorities (amongst others the State prosecutor, the investigating judges, the financial intelligence unit, the Commission de surveillance du secteur financier (the financial sector regulator), the Commissariat aux assurances (the insurance regulator), as well as the tax authorities);

- (v) upon duly justified request, provide within three days to certain professionals (e.g., credit institutions, lawyers, notaries, etc.) in connection with the performance of customer due diligence measures the following information: first names, last names, nationalities, date and place of birth, country of residence of their beneficial owners, and the nature and extent of the beneficial interests they each hold; and
- (vi) indicate the place where the above information will be kept for five years after an affected entity has been removed from the Luxembourg RCS.

The beneficial owners of an affected entity must provide all necessary information about themselves (as listed under 2. (i) above) to the entity.

The information that national authorities or certain professionals can request from the affected entities is also accessible to them in the RBE.

### 3. What Is the Definition of a Beneficial Owner?

The definition of a 'beneficial owner' is set out within the Luxembourg law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended (the "AML Law"). This states that a beneficial owner is "any natural person(s) who ultimately owns or controls an entity or any natural person(s) on whose behalf a transaction or activity is being conducted". [Further information can be found here.](#)

### 4. Who Can Access the Information in the Register?

Any person, whether or not residing in Luxembourg, may request access to the following information held in the RBE: the first names, last names, nationalities, full date and place of birth, country of residence and the nature and extent of the beneficial interests held by the beneficial owners of an affected entity. No proof of a legitimate interest or authorisation from competent authority is required to access the information. National authorities have unrestricted access to all information listed under 2. (i) above.

### 5. Are There Exemptions from the Register?

In exceptional circumstances, where granting access would expose the beneficial owner to a disproportionate risk (a risk of fraud, kidnapping, blackmail, violence or intimidation), or where the beneficial owner is a minor or otherwise incapable, an affected entity or a beneficial owner may request an exemption whereby access will be restricted to the national authorities, credit and financial institutions, public notaries and bailiffs. The exemption shall last only for as long as the circumstances justify and no more than three years (the exemption can be renewed upon request).

### 6. Will There Be Penalties?

Affected entities are subject to criminal fines ranging from €1,250 to €1,250,000 if they fail to obtain, hold and provide, when required by law, information on the beneficial owners or, if they have voluntarily provided inaccurate, incomplete or obsolete information on their beneficial owners.

Failure by a beneficial owner to provide the necessary information may also trigger a criminal fine ranging from €1,250 to €1,250,000.

For further information please contact your usual Trident representative or [our Luxembourg office.](#)

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