

Luxembourg law on the register of beneficial owners comes into force

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On 1 March 2019, the Law of 13 January 2019 (the Law) establishing a register of beneficial owners ("Registre des bénéficiaires effectifs", the RBE) came into force, marking the start of the six-month grace period given to entities falling under its scope to comply with its requirements.

Who are the beneficial owners?

Beneficial owners are defined by the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended, as "any natural person(s) who ultimately own or control the customer or any natural person(s) on whose behalf a transaction or activity is being conducted." More precisely, the notion comprises any natural person who ultimately owns or controls a legal entity through direct or indirect ownership of a sufficient percentage of shares, voting rights or via other means. The holding of more than 25% of the aforementioned rights is used as an indicator of both direct and indirect ownership, noting that a natural person owning less than this threshold may also be considered as beneficial owner of a corporate entity if that person exercises actual control via other means. If it is not possible to identify the beneficial owners using those methods and provided there are no grounds for suspicion, senior managers will be considered as such.

Which legal entities are affected?

Legal entities which fall under the scope of the Law are, inter alia, public limited companies (sociétés anonymes), private limited companies (sociétés à responsabilité limitée), partnerships limited by shares (sociétés en commandite par actions), common limited partnerships (sociétés en commandite simple), special limited partnerships (sociétés en commandite spéciale), foundations, civil companies, (European) economic interest groups (groupements (européens) d'intérêt économique, GIE), investment funds (fonds d'investissement) and Luxembourg branches of foreign companies.

Which information needs to be registered?

Information on beneficial owners that will have to be reported on the RBE includes the name, date and place of birth, nationality, country of residence, precise professional or personal address, national identification number or its foreign equivalent, as well as the nature and the extent of the beneficial interest held in the relevant entity. Entities whose securities are admitted to trading on a regulated market in Luxembourg, an EEA country of a third country which imposes transparency obligations equivalent to those established by the Directive 2004/109/EC[1] only have to provide the name of the market in question.

Who can have access to the RBE?

Full access to the RBE is granted to the competent national authorities including, inter alia, the state prosecutor, the Financial Intelligence Unit, the Financial Sector Supervisory Authority (Commission de Surveillance du Secteur Financier or “CSSF”), the Insurance Supervisory Authority (Commissariat aux Assurances) and the tax authorities.

Members of the general public can also access the RBE information, save with respect to the private or professional address and the relevant national identification number(s) of the beneficial owners.

Is it possible to limit access to the information?

On a case by case basis, in-scope entities have the right to request that access be limited to national authorities, credit institutions, bailiffs and notaries, acting in their professional capacity for a maximum three-year (renewable) period. Such a request must have good cause, and the limitation may be granted only in exceptional circumstances in cases where (i) the access to the RBE information could expose the beneficial owner to a disproportionate risk of fraud, kidnapping, extortion, harassment etc or (ii) the beneficial owner is a minor or is legally incapable.

How will the RBE be maintained?

The RBE is an electronic database, managed by the economic interest grouping Luxembourg Business Registers (the LBR), under the authority of the Ministry of Justice. In connection with the data protection regime established under the General Data Protection Regulation (the GDPR), the Ministry is the data controller, and the LBR and the national Centre for Technologies and Information are the data processors.

Responsibility for the content of the information held in the RBE lies with the entities in scope of the Law - they have to report, by way of an electronic communication exclusively, any relevant information, or a modification thereof, within one month from its occurrence. This obligation takes effect upon the expiration of the aforementioned six-month grace period. The content of the supporting documentation, as well as the exact technical details of electronic communication have been determined by a grand-ducal regulation. The LBR may demand clarification of a certain information submission, or even refuse to register information submitted by an entity, in which

case the Law lays down specific judicial remedies.

Moreover, the Law provides for a general obligation for any in-scope entity, or any person having access to the RBE, to notify the latter of any missing or inconsistent information they are aware of. Following such notification, the RBE may introduce a direct demand for submission or clarification to the entity in question.

Entities are not only obliged to provide information to the RBE, but also to hold such information, including supporting documents, at their registered office. Beneficial owners will have a corresponding obligation to provide all information necessary for the entity to comply with its obligations.

Information recorded in the RBE and retained internally by the entity has to be kept for the duration of the entity's existence, and for five years after its removal, as the case may be, from the Luxembourg Trade and Companies Register.

Administrative fees

Administrative fees related to the RBE are set at 15 euro for demands for registration and modification and 5 or 10 euro for extracts, payable with each demand or, following an agreement with the LBR, by monthly invoice. However, legal entities falling under the scope of the Law are exempt from all fees until 1 September 2019.

Are there sanctions for non-compliance?

The Law lays down criminal provisions in the form of sanctions which range from 1,250 to 1,250,000 euro. Those sanctions for non-compliance can be applied both towards the entity and the beneficial owner, depending on the type of infraction.

For further information, please contact Ogier in Luxembourg.

[1] Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC

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