

Fiduciary arrangements – AML Directive – new requirements

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On 25 August 2018 the law of 10 August 2018 on the information to be obtained and held by Luxembourg fiduciary agents in relation to fiduciary arrangements (the **Law**) has entered into effect. It is a part of the legislative pack meant to transpose into Luxembourg law the provisions of the European anti-money laundering regulatory framework, more precisely Directive (EU) 2015/849 (the **4th AML Directive**) on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, as amended by the Directive (EU) 2018/843 (the **5th AML Directive**).

The aforementioned fiduciary agents are obliged to maintain up to date and accurate information on beneficial owners of Luxembourg law fiduciary arrangements, for a period of five years after their involvement in such arrangements.

This information shall include the identity of the settlor, the trustee, the fiduciary agent, the protector (as the case may be), the beneficiaries (or their class, as the case may be), and any other natural person exercising effective control over the fiduciary arrangement. This information shall be provided by the fiduciary agents to (i) the Luxembourg national authorities as listed in the Law (upon request) and (ii) the professionals of the financial sector (as defined by the Luxembourg law of 12 November 2004 on the fight against money laundering and terrorist financing) when, in their capacity as fiduciary agents, they enter into a business relationship with them, or when they carry out occasional transactions which exceed the threshold of 15,000 euros.

Supervisory authorities which oversee the fulfillment of fiduciary agents' anti-money laundering obligations have been given wide investigative powers, which include: the right to access all documents in any form, the right to request information from any person (even by means of summoning) under their supervisory power, and the right to perform on-site inspections and investigations. Moreover, they may impose sanctions and other measures towards persons which are under their supervisory authority, as well as towards members of their governing

bodies and effective managers, for non-compliance with the obligations stated by the Law. Depending on the seriousness of the infraction, sanctions may vary from simple warnings to fines in an amount equivalent to twice the financial advantage gained by the breach (when it can be assessed), or of up to 1,250,000 euros. The Luxembourg's Financial Sector Supervisory Commission (*Commission de Surveillance du Secteur Financier - CSSF*) and the Luxembourg insurance industry supervisory authority (*Commissariat aux Assurances - CAA*) have the power to temporary ban performing professional activities in the financial sector, for a period which may not exceed five years.

For more information on this topic, please see our [previous briefing 1](#) / [previous briefing 2](#). Further newsflashes will be issued in relation to the requirements of the Directive regarding registries of beneficial owners, considering that the deadline for their setting up was prolonged by the 5th AML Directive, and is now set for January 2020 for the Register of beneficial owners for commercial companies and other legal entities, and for March 2020 for the Register of fiduciaries for fiduciary arrangements.

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