

Register of beneficial owners deadline approaching – are you ready?

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As of 1 March 2019, the Luxembourg law of 13 January 2019 (the **Law**) creating a register of beneficial owners (*Registre des bénéficiaires effectifs* or "**RBE**") is in force.

The Law has established a central register of beneficial owners, managed by the Luxembourg Business Registers (the **LBR**), in order to safe-keep and make available to the authorities and (with certain restrictions) to the public, relevant information on the beneficial owner(s) of Luxembourg entities.

Technical aspects of the functioning of the RBE, such as the submission procedure, tariffs, supporting documents etc have been detailed by a Grand-ducal Regulation and further elaborated by a circular letter issued by the LBR.

| Entities in scope of the Law

The Law applies to all entities registered with the Luxembourg Trade and Company Register (**RCS**) whatever their legal form (the **Registered Entities**).

| Main requirements of the Law

Main requirements of the Law laid upon Registered Entities are to:

- submit to the RBE the following personal information: (i) name(s)/last name of the beneficial owner, (ii) nationality, (iii) date/place of birth, (iv) country of residence, (v) precise private or professional address, (vi) national or foreign identification number (if applicable) and (vii) nature and extent of the beneficial interest held;
- obtain and maintain adequate, accurate and up-to-date information, along with supporting documentation, on their beneficial owner(s) at their registered office;

- file such information and supporting documentation in the RBE within a month after the Registered Entity becomes aware or should have become aware of the event requiring the registration or modification of the information; and
- forward such information to competent national authorities (upon simple request) and to certain professional entities (upon a substantiated request).

Main requirement laid upon the beneficial owner itself is to provide to the Registered Entity any information necessary for the entity to comply with its obligations under the Law.

By way of derogation, it should be noted that Registered Entities whose securities are admitted to trading on a regulated market in Luxembourg, an EEA country or 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 are the beneficial owners

A beneficial owner is defined by the Law of 12 November 2004 on the fight against money laundering and terrorist financing as any natural person who ultimately owns or controls a legal entity, or any natural person(s) on whose behalf a transaction or activity is being conducted.

For corporate entities, the notion of beneficial owner includes at least "natural persons who ultimately own or control the entity through direct or indirect ownership of a sufficient percentage of shares or voting rights or ownership interest in that entity, or through control via other means."

Holding of 25 % plus one share or more than 25% of an ownership interest shall be an indication of direct ownership, while the indirect ownership is observed in relation to the same threshold, only through a prism of holdings (holding by a corporate entity, which is under the control of a natural person(s), or by multiple corporate entities, which are under the control of the same natural person(s)).

If it is not possible to identify the beneficial owner(s) using these methods and provided there are no grounds for suspicion, senior managers ("dirigeants principaux")/members of the governing body of the Registered Entity will be considered as such (and their personal information will then be disclosed to the RBE).

In the case of fiduciary arrangements and trusts, the notion of beneficial owners may include the settlor, any *fiduciaire* or trustee, any protector, beneficiaries or their class, any other natural person exercising ultimate control over the *fiducie* or trust by means of direct or indirect ownership or by other means, or any natural person holding equivalent or similar positions to that of senior managers.

Who may access the RBE?

Full access to the RBE is granted to competent national authorities.

The public can also access the RBE, save for the private or professional address and the relevant national identification number of the beneficial owners.

A limitation of access to public information may be granted in exceptional circumstances (eg risk of fraud, kidnapping, blackmail, extortion, juvenile or legally disabled beneficial owner, etc). and upon a specific substantiated request submitted to the LBR in order to prevent public disclosure for a 3-year period (maximum), renewable if necessary.

What are the sanctions for non-compliance

The Law lays down criminal fines from EUR 1,250 to EUR 1,250,000. Those sanctions may be applied both towards the Registered Entity and the beneficial owner.

When does the information need to be filed in the RBE?

A six-month transitional period has been provided, starting from the date of entry into force of the Law until 30 November 2019, to comply with the provisions of the Law and make the required filings to the RBE. During such period, Registered Entities are exempt from all registration fees with the RBE.

[1] Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation 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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