

## Fiduciary arrangements and trust in Luxembourg : new obligations for local and foreign trustees

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In the aftermath of the obligation to create a register of beneficial owners as enacted by the Law of 23 January 2019 (the **RBO Law**) (please see our previous [briefing here](#)), the Luxembourg legislator has now established a register of *fiducies* and trusts.

By passing the law of 10 July 2020 creating a register of *fiducies* and trust (the **RFT Law**), Luxembourg has completed the transposition of the 5th anti-money laundering directive<sup>[1]</sup>, by implementing a series of measures, enhancing the transparency of beneficial ownership of trusts, *fiducies* (fiduciary agreements) and similar legal constructs.

The RFT Law is complementary to the register of beneficial owners as set out under the RBO Law so is applicable to all legal entities registered in the Luxembourg Trade and Companies Register. It addresses two different topics: (i) the information on beneficial owners to be obtained and maintained by the trustees/ *fiduciaries* (chapter 2 of the RFT Law)<sup>[2]</sup> and (ii) the creation of the register of *fiducies* and trusts (chapter 3 to 5 of the RFT Law).

### Scope of the RFT Law

The RFT Law applies to (i) all (including foreign) *fiducies* (fiduciary agreements) and express trusts for which a *fiduciaire* or a trustee is established or domiciled in the Grand Duchy of Luxembourg, and (ii) all *fiducies* and express trusts for which the *fiduciaire* (fiduciary agent) or trustee is established in a third country, where the *fiduciaire* or trustee enters into a business relationship in the Grand Duchy of Luxembourg with a professional<sup>[3]</sup>, i.e. an entity subject to the law of 12 November 2004 on the fight against money laundering and terrorism financing (the **AML Law**) or acquires real estate located in the Grand Duchy of Luxembourg on behalf of such *fiducie* or trust and (iii) all legal constructs that have a structure or functions that are similar to those of a *fiducie* or a trust according to the criteria as set out in the RFT Law.

# The obligation to collect information

All *fiduciaries* of *fiducies* and trustees of express trusts administered in the Grand Duchy of Luxembourg need to set up an internal file on their beneficial owners.

The respective fiduciary agent(s) or trustee(s) must, in respect of the entities that fall under the scope of the RFT Law:

- Obtain and hold information regarding their beneficial owners. This information relates to the identity of: (i) the settlor(s), (ii) the trustee(s) or *fiduciare(s)*, (iii) the protectors (if any), (iv) the beneficiaries or class beneficiaries and (v) any other natural person exercising effective control over the trust or *fiducie*
- Obtain and hold basic information on any other professionals or foreign law governed entities providing services or entering into a relationship with the *fiducie* or trust, where, if their registered office were located in Luxembourg, such professionals would be considered as a trust or a company provider within the meaning of the AML Law.
- the information must be adequate, accurate and up to date and must be kept by the fiduciary agent(s) or trustee(s) for a time period of five years following the termination of the involvement in the relevant *fiducies* or trust
- Provide the national authorities (such as the public prosecutor, the CSSF, the CAA<sup>[4]</sup>, the AED<sup>[5]</sup>, the tax administration, the *celulle de renseignements financiers* etc. as defined in the RFT Law) and the self-regulated bodies, upon request, the information as referred to above and the information on the proper registration in the RFT Register.
- Provide the professionals with whom the *fiducaires* and trustees enter into a business relationship or carry out an occasional transaction exceeding one of the relevant thresholds of the AML Law with the information on the beneficial owners and inform their status by providing them with the registration number or equivalent proof of registration.

# The obligation to register

## Who must register?

Much in line with the RBO Law, the RFT Law creates a new register of *fiducies* and trust (the **RFT Register**) which is administered by the *Administration de l'Enregistrement et Domaines et de la TVA* (the **AED**). The registration with the RFT Register is mandatory for all entities that fall under the scope of the RFT Law (please see above).

The following exceptions apply:

- Fiduciaries or trustees that are established or domiciled in the Grand Duchy of Luxembourg as well as being established or domiciled in another member state of the European Union, or
- Fiduciaries or trustees (irrespective of whether they have been established in another member state of the European Union or in the Grand Duchy of Luxembourg) that enter into multiple business relationships in another member state of the European Union on behalf of the trust or *fiducie*,

These exceptions will be considered as having complied with the registration obligation under the RFT law when submitting a certificate of registration of another register of *fiducies* and trust enacted by another member state of the European Union or submitting an extract containing the information of the beneficial owners kept with such equivalent register.

It is to be noted that the obligation to register a trust or a *fiducie* in the RFT Register lies with the trustees and *fiduciaires*.<sup>[6]</sup> The RFT Law does not apply to a foreign trust acting as shareholder of a Luxembourg entity.

There is a one month filing deadline from the event triggering the registration obligation.

### **What information needs to be registered?**

The information to be filed in respect to the *fiducies* and trust includes the following<sup>[7]</sup>:

- Identification number
- Legal name
- Date of enactment of the trust
- The information related to each beneficial owner of the trust:
  - In case of a natural person:
    - Name and surname
    - Nationality
    - Full date of birth
    - Place of birth
    - Country of residence
    - Precise private or professional address
    - National identification number or for non-Luxembourg residents, the foreign identification number

- The nature of involvement of the beneficial owner of the trust and the degree/extent of such actual held interest
- In case of legal person registered as beneficial owner in a register of beneficial owners:
  - Legal name as well as abbreviation and commercial name (if applicable)
  - Precise registered office
  - Identification number (in case of entity not registered with the Luxembourg Commercial register, the name of the foreign register where such identification number is held and equivalent registration number)
  - The nature of involvement of the beneficial owner of the trust and the degree/extent of such actual held interest

The RFT Law further clarifies that in the case that the beneficiaries are designated by a characteristic or category, the registration must contain this specific category as set out under the fiduciary contract or the constituting document of the trust.

The AED has been empowered to supervise the compliance with the RFT Law and can take administrative measures or even impose sanctions (also against the members of their management body and any other person that is responsible for the non-compliance of the RFT Law) in case of failure to register the required information or the provision of inaccurate and outdated information.

## Access to the RFT Register

The RFT law set outs the different access rights to RFT Register. Unrestricted access has been granted to the national authorities (for exercising their supervisory duties like the public prosecutor, the CSSF and the CAA) and self-regulated bodies, (when exercising their supervisory role in the context of money laundering and CTF, i.e. for example the bar association or the notary chamber), as well as the professionals under the AML Law when carrying out their due diligence checks.

Limited access is granted to any person demonstrating a legitimate interest in preventing the use of the financial system for money laundering or the financing of terrorism. Such persons must demonstrate a legitimate interest and they can be granted access to limited information on the basis of the duly motivated request addressed to the AED alongside any supporting documentation submitted with their request.

The access procedures will be further regulated in grand ducal regulations.

A beneficial owner may in certain exceptional conditions as set out in the RFT Law request to restrict the access to its information registered with the RTF Register (for example where there is a risk of fraud, kidnapping, extortion or if the beneficial owner is a minor).

## Sanctions

Noncompliance with the RTF Law can be subject to sanctions including an administrative sanction (e.g. a warning, a reprimand), and administrative fines amounting to twice the benefit derived from the non-compliance with the RTF Law with a cap of EUR 1,250,000.

The RFT Law does not provide for a transition period, and came into force as from 17 July 2020.

*[1] Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.*

*[2] Fiducie means a fiduciary contract subject to the law of 27 July 2003 on trust and fiduciary contracts;*

*Fiduciaires means a person, who within a fiducies, and under obligations as determined by the parties becomes the owner of the asset forming the fiduciary estate;*

*[3] These professionals include for example credit institutions, real estate agents, professionals of the financial sector and notaries.*

*[4] Commissariat aux assurances*

*[5] L'Administration de l'Enregistrement et Domaines et de la TVA*

*[6] These are defined by the RFT Law to be: (i) all fiduciaries of fiducies that fall under the scope of the Luxembourg law of 27 July 2003 on trusts and fiduciary arrangements and trustees of trust within the meaning of the Hague Convention of 1 July 1985, and approved by the law of 27 July 2003, (ii) all persons having a similar position to that of a fiduciaire or trustee in legal arrangements that have structure or function similar to those.*

*[7] Art 14*

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