

LUXEMBOURG LAW ON REGISTER OF BENEFICIAL OWNERS

The Luxembourg law of 13 January 2019 on the register of beneficial owners (the "RBE Law") has been published in the *Mémorial A* on 15 January 2019 and entered into force on 1 March 2019.

The RBE Law implements 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, in abbreviated form referred to as "RBE", the purpose of which is to safekeep and make available relevant information on the beneficial owners of Luxembourg entities registered with the Luxembourg Trade and Company Register (the "RCS"). The RBE Law also implements the transparency requirements of Directive 2018/843/EU on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (AMLD V), which require the RBE to be publicly available.

SCOPE OF THE RBE LAW

Luxembourg impacted entities

The RBE Law applies to all Luxembourg entities registered with the RCS (the "Registered Entities"), which are, among others, required to identify, obtain and maintain specific up-to-date information concerning their beneficial owner(s) and to file such information with the RBE.

Registered Entities include, without limitation, the following main types of entities:

- commercial companies¹;
- investment funds, whatever their legal regime (i.e. be they organised as UCITS, Part II UCI, SIF, SICAR, RAIF or unregulated AIF) and/or whatever their legal form (i.e. be they organised as investment company with variable capital (SICAV), investment company with fixed capital (SICAF) or mutual fund (FCP));
- pension saving associations (ASSEP) and pension saving companies (SEPCAV).

¹ Main Luxembourg commercial companies include, among others, the public limited liability company (*société anonyme* or SA), the simplified joint stock company (*société par actions simplifiée* or SAS), the private limited liability company (*société à responsabilité limitée* or Sàrl), the simplified private limited liability company (*société à responsabilité limitée simplifiée* or Sàrl-S), the corporate partnership limited by shares (*société en commandite par actions* or SCA), the common limited partnership (*société en commandite simple* or SCS), the special limited partnership (*société en commandite spéciale* or SCSp), the cooperative company (*société coopérative* or SC).

Key Features

- Obligation for Luxembourg Registered Entities to:
 - obtain and maintain up-to-date information on their beneficial owner(s)
 - communicate such information to national authorities (upon simple request) and to certain professional entities (upon motivated request)
 - file such information electronically with the RBE
- Full access to the RBE's files by Luxembourg national authorities and, with certain limitations, by the public
- Criminal sanctions for non-compliance with legal obligations
- Six month-transitional period

Luxembourg branches of foreign entities registered with the RCS also fall within the scope of the RBE Law as Registered Entities, and they must therefore also obtain and register relevant information on their beneficial owner(s) in the RBE.

By way of derogation, **listed companies whose** securities are admitted to trading on a regulated market are excluded from the obligation to provide information regarding their beneficial owner(s), but they must nevertheless register in the RBE the name of the regulated market on which their securities are admitted.

Concept of beneficial owner

The RBE Law does not create a new and separate definition of the concept of "beneficial owner" but cross-references the Luxembourg law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended (the "**AML Law**"), which defines a beneficial owner as ***"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"***.

In this respect, the AML Law further provides for the following clarifications regarding the beneficial owner(s) of corporate entities:

- The concept of beneficial owner shall include at least any natural person who ultimately owns or controls a corporate entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that entity. In this context, the AML Law specifies that a percentage of 25% plus one share or an ownership interest of more than 25% are considered as an indication of direct or indirect ownership or control, which means that a natural person may also be considered as a beneficial owner of a corporate entity even if the 25% threshold of ownership or control in that corporate entity is not met.
- If no natural person is identified as the beneficial owner ultimately owning or controlling a corporate entity, or if there is any doubt that the person(s) identified is/are the beneficial owner(s), and provided there are no grounds for suspicion, any natural person holding a position of senior managing official (*dirigeant principal*) may be considered as the beneficial owner.

The identification of the beneficial owner is often a straightforward process but may prove to be more difficult in more complex situations, such as cases where the shares/units of the Registered Entity are held in a clearing system and/or by a nominee, or where these shares/units are issued by different compartments of an investment fund or a securitisation vehicle.

MAIN OBLIGATIONS OF REGISTERED ENTITIES

Obtaining and maintaining up-to-date information on beneficial owners at the registered office

Each Registered Entity must obtain and maintain internally the following **adequate, accurate and up-to-date information regarding its beneficial owner(s)** (the "BO Information"):

- first name(s) and last name;
- nationality(ies);
- date and place of birth;
- country of residence;
- precise private or professional address;
- national or foreign identification numbers;
- nature and scope of beneficial ownership held by them.

Beneficial owners are also legally required to provide the relevant BO Information to the Registered Entity so that the latter may in turn fulfil its own obligations under the RBE Law.

The above information must be held by each Registered Entity at its **registered office in Luxembourg**, together with all relevant supporting documents.

In case of dissolution and radiation of a Registered Entity from the Luxembourg RCS, this information (and the supporting documents) will have to be safekept for a period of **five years** after the radiation at a place to be designated by the relevant Registered Entity.

Communicating up-to-date information on beneficial owners to national authorities and certain professionals

Registered Entities must communicate to **national authorities** (e.g. the *Commission de surveillance du Secteur financier* (the "CSSF"), the *Commissariat aux assurances* (the "CAA"), the *Cellule de renseignement financier* (the "CRF"), Luxembourg tax and other national authorities as defined by the RBE Law) the relevant BO Information (as well as information on their legal owners) as kept at their registered office. This information has to be communicated **upon simple request** of the national authorities, and **within three days** from that request.

In principle, Registered Entities also have to communicate the same BO Information (with the exception of the private/professional address and the national/ foreign identification numbers) **upon motivated request** and at the latest **within three days** of such request to **all professional entities** subject to anti-money laundering and counter terrorism financing obligations **under the AML Law** (e.g. credit institutions and other professional of the financial sector, UCITS/AIFs and their management companies/AIFMs, insurance undertakings, pension funds, lawyers, notaries, bailiffs, etc.) within the framework of the performance of their customer due diligence obligations under the AML Law.

However, under exceptional circumstances defined under the RBE Law and on the basis of a duly motivated request, the communication of this BO Information may be limited, on case-by-case basis, to certain professional entities only (see below under sub-section titled "*Limitation of access to the RBE*").

Filing up-to-date information on beneficial owners with the RBE

Registered Entities must **file with the RBE the relevant, adequate, accurate and up-to-date BO Information** as kept at their registered office, together with the following supporting documents:

- official documents establishing the identity of the BOs, along with a French, German or Luxembourgish translation if the official documents are not drafted in Latin characters;
- if applicable, the application for a limitation of access to the RBE; and
- if applicable, a document certifying that the entity is a company whose securities are admitted to trading on a regulated market.

The RBE is managed by the same administrator as the RCS (being the Luxembourg Business Registers (the "LBR")) and is placed under the authority of the Luxembourg Minister of Justice.

Such filing must be done electronically by Registered Entities through the dedicated LBR web portal² **within one month** from the moment the Registered Entities become aware or should have been aware of the event that triggers the filing or a modification thereof with the RBE.

The LBR registers the BO Information in the RBE **within three business days** following the filing of the application for registration made by the Registered Entities. However, the filing and application for registration in the RBE will be refused by the LBR if such request is incomplete, does not comply with the applicable laws and regulations, or is inconsistent with the supporting documentation. In that case, complete and/or corrected information will have to be provided by Registered Entities within **fifteen days** following the LBR's request to regularise the filing. Every interested person may appeal against the LBR's decision of registration or refusal of registration in the RBE.

As it is the case for the information kept at the registered office of Registered Entities, all BO Information filed with the RBE (as well as the application for registration and the supporting documents) will be held for a period of **five years** by the RBE following the dissolution of the relevant Registered Entity.

² The filing modalities and other technical aspects of the RBE are specified in the grand ducal regulation of 15 February 2019 on the registration procedures and payment of administrative costs as well as on the access to the information filed with the RBE (the "RBE Regulation").

ACCESS RIGHTS AND LIMITATIONS TO THE RBE

Access to the RBE

Luxembourg national authorities, as defined and specified by the RBE Law, have **full access to all the BO Information** contained in the RBE in relation to Registered Entities. These national authorities include, among others, the CRF, the CSSF, the CAA, the Luxembourg tax authorities (*Administration des contributions directes et Administration de l'enregistrement, des domaines et de la TVA, Administration des douanes et accises*), public prosecutors and investigative judges.

Any **other person** may also access the same **BO Information**, **except** for the information on the private/professional address and the national/ foreign identification numbers.

From the end of the transitional period, the access to and consultation of the RBE's files by national authorities and other persons will be done **electronically** through strong and secured authentication³, and the LBR will issue **extracts in electronic or paper version** including the relevant BO Information that may be communicated depending on whether the consultant is a national authority or not.

The RBE Law further provides that no information on data consultation of the RBE by a national authority may be communicated to any Registered Entity or beneficial owner.

Finally, every person with access to the RBE (as well as any professional subject to the AML Law) has the obligation to inform the LBR of any error or inaccuracy in the RBE within a period of thirty days as from the date of recognition.

Limitation of access to the RBE

Notwithstanding the above general right of access, the RBE Law provides that a Registered Entity or a beneficial owner may ask, on a **case-by-case basis and through a duly motivated request** to the LBR, to limit the access to the information relating to them in the RBE in certain **exceptional circumstances**, such as cases where the access could lead to a disproportional risk, a risk of fraud, kidnapping, blackmail, extortion, harassment or intimidation towards the beneficial owner or cases where the beneficiary is a minor or otherwise incapacitated.

The decision to restrict access to the RBE does however **not apply** to the **national authorities**, nor to **credit institutions, financial institutions, bailiffs and notaries** acting in their capacity as public officers, which can always consult the RBE.

It is also worth mentioning that, if accepted by the LBR, a limitation of access to the RBE may only be granted for the duration of the circumstances which justify it, without exceeding a **maximum period of three years** (but the LBR may renew the decision based on a new motivated request from the relevant Registered Entity or a beneficial owner at the latest one month before the expiry

³ The access and consultation procedures of the RBE are specified in the RBE Regulation.

date of the limitation). Once a limitation of access to the RBE is granted, a notification thereof shall be published in the RBE.

CRIMINAL SANCTIONS

Criminal sanctions consisting of a fine ranging from EUR 1,250.- to EUR 1,250,000.- will be imposed upon Registered Entities in the following situations:

- late filing for registration or modification of BO Information in the RBE;
- refusing to rectify within the prescribed delays a registration or modification of BO Information further to a request to conform;
- providing knowingly inaccurate, incomplete or outdated BO Information to the RBE;
- providing knowingly inaccurate or outdated BO Information to national authorities specified in the RBE Law or to professional entities subject to the AML Law when they request such information;
- not obtaining and keeping up-to-date BO Information at their registered office.

The same fines will apply to beneficial owners who do not provide Registered Entities with all the relevant necessary BO Information.

TRANSITIONAL PERIOD

Registered Entities have six months after the entry into force of the RBE Law (i.e. until 31 August 2019⁴) to comply with the provisions of the RBE Law and make the requisite filings with the RBE. The RBE may be accessed following the expiry of this six month-period (i.e. as of 1 September 2019).

⁴ The LBR announced on 29 August 2019 that the deadline to proceed with the filing is extended to 30 November 2019. Although, this additional period does not technically supersede the deadline provided in the RBE Law, it is reasonable to expect that there will be no adverse consequences for Registered Entities proceeding with their filing within that additional period.

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