

Praxio Legal Alert

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Register of Beneficial Owners



Creativity

Efficiency

Sophistication

Knowledge

On 18th December 2018, the Luxembourg Parliament adopted the draft bill n°7217 (the "RBE Law") providing for the establishment of a register of beneficial owners ("RBE"). The law entered into force on **1st March 2019** and concerned entities have until **1st September to comply** with its provisions. A Circular number LBR 19/01 was adopted on **25th February** bringing practical information.

RBE Register

Pursuant to the IV and V AML Directive, Luxembourg adopted a central register in which ultimate beneficial owners ("UBO"s) of concerned entities registered with the RCS shall be identified.

Most of the Luxembourg entities registered with the RCS are concerned. It applies to all Luxembourg civil and commercial companies including limited liability companies (S.à r.l.), joint-stock companies (S.A.), common limited partnership (S.C.S.) and partnerships limited by shares (S.C.A.). The RBE requirement to register does not apply to (European) economic interests groupings, Luxembourg branches of foreign entities and certain types of entities which are in fact rarely used in Luxembourg, including temporary commercial companies (sociétés commerciales momentanées) and to participation commercial companies (sociétés commerciales en participation).

Who is UBO?

A UBO is a natural person who ultimately owns or controls the legal entity and/or natural persons on whose behalf a transaction is executed or the business relationship is entered into. Natural persons behind intermediaries also qualify as UBOs.

In the case of companies, this includes any natural person who ultimately owns or controls the company through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that company, including through bearer shareholdings, or through control via other means. A person may be considered as a UBO based on the ownership criterion and/or on the control criterion.

A direct or indirect shareholding of more than 25% held by a natural person in a Luxembourg company is an indication that the ownership criterion is met. This does not mean that a person who owns a shareholding of 25% or less is automatically not a UBO, since that person may exercise actual control via other means.

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If, after having exhausted all possible means and provided there are no grounds for suspicion, no UBO can be identified, or if there is any doubt whether the persons identified are UBOs, information has to be provided with respect to the natural person(s) holding the position of senior management official (*dirigeant principal*).

What must be registered?

- First and last name of UBO;
- Nationality;
- Date and place of birth;
- Country of residence;
- Private or professional address;
- Identification number for the individuals registered in the Luxembourg Register of natural persons (or for non-resident individuals their national identification number, e.g. the number of the ID card or the matricule); and
- Nature of UBO's interest and its extent.

Exception

Listed Companies must only file the name of the regulated market on which their securities are admitted to trading.

What are the obligations to which Luxembourg entities will be subject?

The registration must be done electronically via www.lbr.lu. It shall include supporting documents that will not be available for consultation.

Luxembourg entities will have to collect information, file it with the RBE, keep it up to date and disclose to national authorities upon request.

When shall registration take place?

The registration should have place within one month following the moment when the concerned entities have become or should have become aware of the event or circumstances requiring the registration with the RBE.

The information will be kept in the RBE during a period of five years after the date on which the relevant Luxembourg entity has been deregistered from the RCS.

The registration fees are 15 €. However, the subscriptions made until the end of the transition period (1st September 2019) are free of charge.

Which information will be available to the public?

Any person will have a right to access such information (except for the exact private or professional address and identification number of the UBOs) without having to demonstrate a legitimate interest. This results from the 5th EU anti-money laundering Directive, which was adopted in May 2018 and partially implemented in Luxembourg through the RBE Law. The information will be freely available via www.lbr.lu.

However, a Luxembourg company required to file information with the RBE may request that access to such information be limited exclusively to the national authorities (for instance the Luxembourg tax authorities), credit and financial institutions, as well as notaries acting in their professional capacity. Such request must be duly motivated and addressed to the RBE manager (the Luxembourg Business Registers which also maintains the RCS). The limitation of access will be granted only in exceptional circumstances, where access to information available in the RBE could expose the UBO in question to a disproportionate risk, a risk of fraud, kidnapping, blackmail, violence, intimidation, or in case the UBO is either a minor or legally incapable.

Luxembourg professionals such as lawyers and banks will have 30 days to notify to the RBE manager if they determine that information filed in the register is incomplete or erroneous.

What are the legal consequences of infringements?

Failure to comply with the obligations specified in the RBE Law, is subject to a fine between EUR 1,250 to EUR 1,250,000 for legal entities and their representatives, as well as for the UBO who has failed to provide all necessary information to the concerned entity.

Registre des Fiducies

An upcoming law establishing a register for UBO of fiduciary arrangements is yet to be finalised (the draft law n°7216B). Such registre des fiducies is subject to largely the same regime as the RBE. Fiduciary agents (such as trust companies) subject to any fiduciary arrangements need to obtain, hold, keep up-to-date and upload information in the registre des fiducies.

According to the bill of law of August 2018, the information to be filed must comprise:

- the identity of the principal (settlor);
- the fiduciary agent(s);
- the protector (if any);
- the beneficiaries; and

- any other natural person exercising effective control over the fiduciary arrangement.

As an alternative to the identification of each beneficiary on an individual basis, it is possible to identify a class of beneficiaries.

The authorities (the CSSF and administration de l'enregistrement et des domaines) supervise the performance of these new requirements for fiduciary agents and may impose administrative sanctions, including a fine or a temporary prohibition on exercising a professional activity.

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