



# LAW OF JANUARY 15<sup>TH</sup> 2019 SETTING UP A REGISTER OF BENEFICIAL OWNERS



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## HISTORICAL BACKGROUND

On December 6<sup>th</sup> 2017, the Luxembourg Parliament published two bills of laws (PL 7216 and PL 7217) aimed at implementing new transparency measures provided by Directive 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (the **AML 4<sup>th</sup> Directive**)<sup>1</sup>. They, additionally, take into consideration amendments made to the AML 4<sup>th</sup> Directive by the Directive (EU) 2018/843 of the European Parliament and of the Council of May 30<sup>th</sup> 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, and amending Directives 2009/138/EC and 2013/36/EU (the **AML 5<sup>th</sup> Directive**).

These bills of laws intended to create central registers of beneficial owners (as per the requirements of the AML 4<sup>th</sup> Directive) which will be implemented in all EU Member States.

Bill of law 7216 relates to the creation of a central register of beneficial owners of fiduciary arrangements under the authority of the *Administration de l'Enregistrement et des Domaines*, while bill of law 7217 provided for the setting-up of a central register of beneficial owners of Luxembourg legal entities under the authority of the Minister of Justice (**PL 7217**).

This newsletter will focus on PL 7217 only.

The PL 7217 has been analysed, discussed and adopted in parliamentary session on December 18<sup>th</sup> 2019. The law dated January 13<sup>th</sup> 2019, setting-up a register of beneficial owners, has been published on January 15<sup>th</sup>

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<sup>1</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) no 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC.

2019 in the Luxembourg Official Gazette (*Mémorial A*) (the **RBO Law**).

## CREATION OF THE REGISTER OF BENEFICIAL OWNERS

As mentioned above, the RBO Law creates a register of beneficial owners (*régistre des bénéficiaires effectifs*) (the **RBE**) under the authority of the Minister of Justice, which aims to preserve and make available information on the beneficial owners of the Registered Entities (as defined below).

## DEFINITION OF THE BENEFICIAL OWNER

The RBO Law defines the notion of beneficial owner (**BO**) by reference to the definition provided in the law of November 12<sup>th</sup> 2004 on the fight against money laundering and terrorist financing (the **Law 2004**), which defines the BO as “*any natural person who ultimately owns or controls the customer or any natural person for whom a transaction or activity is carried out*”.

The Law 2004 further indicates that the notion of BO shall additionally include: “[.] (a) *in the case of companies: (i) any natural person who ultimately owns or controls a legal entity by virtue of directly or indirectly owning a sufficient percentage of shares or voting rights or equity participation in that entity, including through bearer shares or control by other means, other than a company listed on a regulated market that is subject to disclosure requirements consistent with European Union law or equivalent international standards that ensure adequate transparency for information relating to ownership.*

*A shareholding interest of 25 per cent of the shares plus one or an equity interest of more than 25 per cent in the client, held by an*

individual, is a sign of direct ownership. A shareholding interest of 25 per cent of the shares plus one or more equity interests of more than 25 per cent in the client, held by a company, which is controlled by one or more individuals, or by several companies, which are controlled by the same individual(s), is a sign of indirect ownership.

(ii) if, after exhausting all possible means and provided there is no reason to suspect, none of the persons referred to in point (i) is identified, or if it is not certain that the identified person or persons are the beneficial owners, any individual holding the position of senior manager [(dirigeant principal)]<sup>7</sup> [..].

## WHICH ENTITIES ARE CONCERNED?

The RBO Law delimit the scope of concerned entities by reference to the amended law dated December 19<sup>th</sup> 2002 on the register of commerce and companies (**RCSL**) and the accounting and annual accounts of undertakings, which thus include amongst others: public limited liability companies (*sociétés anonymes*), private limited liability companies (*sociétés à responsabilité limitée*), corporate partnerships limited by shares (*sociétés en commandite par actions*), common limited partnerships (*sociétés en commandite simple*), special limited partnerships (*sociétés en commandite spéciale*), interest groupings (*groupements d'intérêt économique - GIE*), European interest groupings (*groupements européens d'intérêt économique - GEIE*), investment funds (*fonds d'investissement*), all mutual funds (*fonds communs de placement - FCPs*), civil companies (*sociétés civiles*), non-profit associations (*associations sans but lucratif*); foundations (*fondations*); pension savings associations (*associations d'épargnes pensions*); agricultural associations (*associations agricoles*); public establishments

of the State and municipalities (*établissements publics de l'Etat et des communes*) (the **Registered Entities**).

Please note that listed companies remain within the scope of the RBO Law.

## SCOPE OF THE REQUIRED INFORMATION

1. The RBO Law is about enhancing transparency of shareholding ownership information. Therefore, it is of paramount importance to determine with precision the scope of information the transparency of which is required. To this end, information regarding BO that must be recorded and kept in the RBE pursuant to the RBO Law is as follows: (1) the name; (2) the first name(s); (3) nationality (ies); (4) the day of birth; (5) the month of birth; (6) the year of birth; (7) the place of birth; (8) the country of residence. As far as address is concerned, some flexibility is introduced in the RBO Law and the option is given to specify either (9) the precise private address or the precise business address mentioning: (a) for addresses in the Grand Duchy of Luxembourg: the usual residence entered in the national register of natural persons (*register nationale des personnes physiques*) or, for business addresses, the locality, street and building number appearing, as well as the postal code; b) for addresses situated outside the Grand Duchy of Luxembourg: the locality, street and building number abroad, the postal code and the country; (10) for natural persons registered in the national register of natural persons: the identification number provided for by the amended law of 19 June 2013 on the identification of natural persons; (11) for non-resident persons not registered in the national register of natural persons: one foreign identification number; (12) the nature of the

interests held; (13) the scope of the interests held (the **Required Information**).

2. Companies whose securities are admitted to trading on a regulated market in the Grand Duchy of Luxembourg or in another Member State of the Economic European Area or in another third country imposing obligations recognised as equivalent by the European Commission within the meaning of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency obligations concerning information on issuers whose securities are admitted to trading on a regulated market and amending the Directive 2001/34/EC are not outside the scope of the RBO Law. However, considering that these companies and their BOs are submitted to strict notification requirements upon crossing of certain thresholds of shareholding and thus already comply with transparency requirements, these companies have been granted with a more flexible regime and are allowed to only file in the RBE the name of the regulated market on which their securities are admitted to trading.

## OBLIGATIONS FOR REGISTERED ENTITIES

1. Registered Entities are first required to collect and maintain, at their registered office, the Required Information on their BO (identified as such), which must, at any time, be adequate, accurate and up-to-date as well as the supporting documents relating thereto. Required Information and supporting documents must be maintained by the Registered Entities within an internal file.
2. Besides this internal file, Registered Entities must upload the Required Information in the RBE, which is

maintained by the Luxembourg Business Registers GIE<sup>2</sup> (the **LBR**), within one month after the Registered Entities have become aware or should have become aware of an event or circumstances which trigger the filing with the RBE. Obviously, Required Information must equally at all time be accurate, complete and up-to-date.

## STORAGE PERIODS

1. Required Information and requests of upload for registration are stored and kept by the RBE for a period of five years after the date of removal of the Registered Entity from the RCSL. Supporting documents shall be kept by the RBE for five years only.
2. As far as the internal file of the Registered Entities is concerned, in the event of removal from the RCSL following the dissolution of a Registered Entity, such Registered Entity must designate the place where the Required Information as well as the related supporting documents shall be stored for five years after the date of the captioned removal. The designation of the place of storage shall be published in the *Recueil électronique des sociétés et associations (RESA)*.

## CONDITIONS TO ACCESS TO THE REGISTER / THE REQUIRED INFORMATION

1. Unrestricted access to Required Information contained in the RBE is granted to **national authorities** (as defined in the RBO Law) (e.g. the public prosecutor, investigating judges, the *cellule de renseignement* financier, the judicial police officers, the *Commission de*

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<sup>2</sup> As defined in article 1 2° of the RBO Law.

*Surveillance du Secteur Financier*, the *Commissariat aux Assurances*, the tax administrations, etc.), within the scope of their duties.

2. Restricted access is granted to the **public**, which will have no access to the addresses and national or foreign identification numbers of the BOs.
3. Any access for consultation shall be carried out by electronic means.
4. The Registered Entities or their BOs may in no circumstances be informed of any access to the Required Information by competent authorities.
5. On exceptional basis, any Registered Entity or BO may request in writing to the LBR a restriction of access to the Required Information in the RBE in specific exceptional circumstances (e.g. where such access would expose the BO to a disproportionate risk, a risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation, or where the BO is a minor or otherwise incapable). However, such restriction of access is only granted subject to stringent conditions and, if granted, a specific notice to that effect will be published in the RBE.

The decision of the LBR is subject to recourse under certain conditions.

## DUTY OF INFORMATION OF THE REGISTERED ENTITIES

In addition to the above explained access to the RBE and consequently to information contained therein, Registered Entities must:

1. upon simple request, within three days, provide access to all Required Information to the national authorities (see above for listing); and

2. upon duly justified request, within three days, provide the first name(s), last name, nationality(ies), date and place of birth, country of residence of their BO, as well as the nature and extent of the beneficial interests they each hold to certain professionals as defined in the RBO Law by reference to article 2 of the Law 2004 (e.g. credit institutions, professionals of the financial sector, insurance undertakings and UCITS management companies, lawyers, notaries, etc.) in connection with the performance of customer due diligence measures.

## DUTY OF THE BOs

With the view to allow any Registered Entity to validly comply with its obligation under the RBO Law, any BO must provide the relevant Registered Entity with the Required Information necessary to enable it to meet its obligations under RBO Law.

## GRAND-DUCAL REGULATION

Technical aspects relating to the RBE like the process for (i) electronic filing with the RBE, (ii) granting access to the RBE, (iii) the research criteria upon access, (iv) supporting documents, (v) most likely fees to be paid to the LBR, etc.) shall be addressed by way of Grand-Ducal regulation which is not yet available.

## PENALTIES?

1. Registered Entities are subject to criminal fines ranging from Euro 1,250 to Euro 1,250,000 if they (i) fail to obtain and hold the internal file with the Required Information, (ii) omit to file Required Information to the RBE, (iii) voluntarily



provided inaccurate, incomplete or obsolete information on their BO.

2. BOs are subject to a criminal fine ranging from Euro 1,250 to Euro 1,250,000 in case of failure with their information duty to provide the Required Information.

## ENTRY INTO FORCE

As stated above, the RBO Law has been published in the Luxembourg Official Gazette on January 15<sup>th</sup> 2019 and will come into force on March 1<sup>st</sup> 2019.

## TRANSITORY PERIOD

The RBO Law provides for a six months transition period starting at the entry into force. Consequently, Registered Entities and BOs must start complying with the RBO Law at the latest on September 1<sup>st</sup> 2019.

## For more info



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