



Luxembourg newsflash

2 July 2020

After the register of beneficial owners for companies, here comes the Luxembourg register for *fiducies* and trusts!

On 1 July 2020, bill of law 7216B setting up a Luxembourg register of *fiducies* and trusts (the “RFT”), under the supervision of the *Administration de l’Enregistrement, des Domaines et de la TVA* (the “AED”), was passed in Parliament (the “RFT Law”).

Following the adoption of the law of 13 January 2019 establishing a register of beneficial owners (“BOs”) of Luxembourg entities (the “RBE Law”), the RFT Law implements into Luxembourg law the last provisions of 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 (the “4th AML Directive”) and certain provisions of Directive 2018/843 of the European Parliament and of the Council of 30 May 2018 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (the “5th AML Directive”). The RFT Law also repeals the law of 10 August 2018 on the information to be obtained and held by Luxembourg *fiducies*, as its relevant provisions have been directly incorporated into the RFT Law.

This Newsflash reviews the main features of the RFT Law, which will impact the obligations incumbent on Luxembourg *fiduciaires* and trustees, as well as professionals subject to anti-money laundering and counter terrorist financing (“AML-CTF”) obligations under *i.a.* the amended law of 12 November 2004 on the fight against money laundering and terrorism financing (the “2004 Law”).

1. Scope of the RFT Law

1.1. The *fiducies* and trusts subject to the RFT Law

The RFT Law applies to:

- all (including foreign) *fiducies* (fiduciary arrangements) and express trusts for which a *fiduciaire* or a trustee is **established or domiciled in the Grand Duchy of Luxembourg**; and
- 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**, *i.e.* an entity subject to the 2004 Law, or **acquires real estate**

located in the Grand Duchy of Luxembourg on behalf of such *fiducie* or trust.

It is further specified that **all legal arrangements that have a structure or functions which are similar to those of a *fiducie* or a trust** also fall within the scope of the RFT Law and must be considered as *fiducies* and trusts within the meaning of the RFT Law.

1.2. The persons to be considered to be *fiduciaires* and trustees for the purpose of the RFT Law

The following are *fiduciaires* and trustees:

- **all *fiduciaires* of *fiducies*** within the meaning of the amended law of 27 July 2003 on trusts and fiduciary arrangements and **trustees of trusts** within the meaning of the Hague Convention of 1 July 1985 on the law applicable to trusts and on their recognition;
- **all persons having a similar position to that of a *fiduciaire* or trustee** in legal arrangements having a structure or functions which are similar to those of a *fiducie* or a trust; and
- **all persons occupying an equivalent position to that of a *fiduciaire* or trustee in a legal arrangement which does not fall within the scope of the RFT Law but that have a structure or functions which are similar to those of a *fiducie* or a trust.**

2. Obligations set out by the RFT Law

2.1. Obligation for *fiduciaires* and trustees to set up an “internal file”

2.1.1. Scope of the obligation to set up an “internal file”

The obligation to set up an “internal file” applies to all *fiduciaires* of *fiducies* and all trustees of express trusts administered in the Grand Duchy of Luxembourg.

2.1.2. Information to be obtained and held by the *fiduciaires* and trustees

2.1.2.1. BO-related information

In line with the RBE Law, under the RFT Law, *fiduciaires* and trustees are required to obtain and hold, at the registered place of business of an express trust or *fiducie*, information on such trust or *fiducie*, including the identity of all person(s) identified as BOs thereof.

The RFT Law defines the concept of BOs of *fiducies* and trusts by reference to Article 1(7) of the 2004 Law *i.e.* all of the following persons shall be considered to be BOs of *fiducies* and trusts:

- (i) the settlor(s);
- (ii) the *fiduciaire(s)* or trustee(s);
- (iii) the protectors, if any;
- (iv) the beneficiaries, or where the individuals who will benefit from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates; **and**
- (v) any other natural person exercising ultimate control over the *fiducie* or trust by means of direct or indirect ownership or by other means.

In addition to the BO-related information, the trustees and *fiduciaires* are also required to obtain and hold adequate, accurate and up-to-date information on **any other professionals or entities subject to foreign law** providing services to or entering into a relationship with the *fiducie* or trust where such persons would be considered as trust and company service providers within the meaning of the 2004 Law if their registered office were located in the Grand Duchy of Luxembourg.

All of the above-mentioned information must be adequate, accurate and up-to-date and any update must be made within a reasonable timeframe. It should be noted that this information will have to be kept by the *fiduciaires* and trustees for a period of five years following the termination of their involvement in the relevant *fiducies* or trusts.

2.1.2.2. Obligation for BOs to provide the fiduciaires and trustees with the relevant information

All persons qualifying as BOs of a *fiducie* or express trust are subject to an obligation to provide the relevant *fiduciaire* or trustee with the necessary BO-related information in order to enable the latter to comply with its obligations under the RFT Law. The AED, or the *Commission de Surveillance du Secteur Financier* (“**CSSF**”) or the *Commissariat aux Assurances* (“**CAA**”), as the case may be, are competent in this respect to enjoin the BOs to comply with such obligation.

2.1.3. Obligation for fiduciaires and trustees to provide the relevant information to national competent authorities and professionals

The above BO-related information and the unique registration number (or, where the *fiducie* or trust is registered in an equivalent register set up by another Member State of the European Union, a proof of registration in such register, or an extract of the information of the BOs held in said register) must be made available by the *fiduciaires* or trustees to:

- national competent authorities (e.g. the public prosecutor, the CSSF or CAA, the tax administrations, the *Cellule de Renseignement Financier* (“**CRF**”), etc.), upon their request; and
- professionals with which the *fiduciaires* and trustees enter into a business relationship or carry out on an occasional transaction exceeding one of the relevant thresholds of the 2004 Law. The *fiduciaires* and trustees must also declare their status to such professionals and, upon request, provide information on the assets of the trust or the property of the fiduciary estate held or managed as part of their business relationship.

2.2. Obligation for fiducies and trusts to register with the RFT

2.2.1. Who must be registered with the RFT?

2.2.1.1. Obligation for fiducies and trusts to be registered with the RFT

Much in line with the RBE Law, the RFT Law sets up a Luxembourg register of *fiducies* and trusts under the supervision of the AED in which all trusts and *fiducies* within the meaning of the RFT Law (as detailed above under Section 1.1.) must be registered, except those falling under one of the below exemptions.

2.2.1.2. Exemptions

Fiduciaires or trustees which either (i) are established or domiciled in the Grand Duchy of Luxembourg while also being established in other Member States of the European Union or (ii) enter into multiple business relationships in other Member States of the European Union on behalf of the *fiducie* or trust will be viewed as having complied with their obligation to register with the RFT where they submit to the AED **proof of registration in an equivalent register for *fiducies* and trusts set up by another Member State** of the European Union or an **extract of the information on the BOs registered with such register**, and will thus not need to be registered with the Luxembourg RFT.

2.2.2. Which information must be registered?

2.2.2.1. Obligation to register information on *fiducies* and trusts

With respect to *fiducies* and trusts, the information to be registered with the RFT is the following:

- identification number;
- legal name;
- date of enactment;
- information related to each of their BOs; and
- whether the *fiducie* or express trust holds or has a controlling interest in a company or other legal entity through direct or indirect ownership, including through bearer shares or through control by other means.

2.2.2.2. Obligation to file BO-related information with the RFT

The following information relating to each BO of *fiducies* and express trusts must be registered and kept in the RFT:

- for natural persons: the name and surname, nationality, date and place of birth, country of residence, the exact private or professional address, the national or foreign identification number (if applicable) and the nature of the involvement of the BO in the *fiducie* or express trust and the extent of the effective interests held;
- for legal persons: the legal name of the entity and, where appropriate, the abbreviation and the commercial sign used, the exact professional address and the identification number (for a legal person not registered with the Luxembourg Trade and Companies Register (the “**LTCR**”), the name of the register in which such legal person is registered and the identification number should be provided instead), the nature of the involvement of the BO in the *fiducie* or express trust and the extent of the effective interests held.

All of the information relating to the BOs of the *fiducie* or trust must be adequate and up-to-date.

3. Access to the RFT

3.1. Full unrestricted access to the information registered with the RFT

In line with the RBE Law, the information contained in the RFT will be made available electronically to national competent authorities for the purpose of their supervisory duties (e.g. the public prosecutor, the CSSF, the CAA, tax administrations, etc.), self-regulatory bodies (e.g. the Luxembourg bar council, Notary Chamber and the *Institut des Réviseurs d'Entreprises*) within the context of their supervisory mission with respect to AML-CTF and, finally, also to professionals within the meaning of the 2004 Law (e.g. credit institutions, investment firms, insurance or reinsurance companies) within the context of their customer due diligence measures.

3.2. Limited access to the information registered with the RFT upon request to any person having a legitimate interest

Any person demonstrating a legitimate interest as part of the AML-CTF framework can also request access to limited information in the RTF on the basis of a duly motivated request addressed to the AED and supplemented by any documentation proving the legitimate interest.

3.3. Restriction of access to the information registered with the RFT

Any BO may, in certain exceptional circumstances, make a written request to restrict access to its information registered with the RTF to national competent authorities, self-regulatory bodies, credit institutions, financial institutions, bailiffs and notaries acting in their capacity as public officers (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 subject to stringent conditions and, if granted, information to that effect will be displayed in the RTF. Such limitation of access may not exceed 3 years, but may be renewed where relevant.

4. Functioning of the RFT

The registration of trusts and *fiducies* and of BO-related information with the RFT or any subsequent amendment thereof is to be carried out electronically by the *fiduciaire* or trustee within one month following the event triggering such registration or amendment.

Upon registration with the RFT, a unique registration number will be allocated to each *fiducie* or express trust.

The information relating to trusts and *fiducies* as well as the BO-related information registered with the RFT will be held by the RFT for a period of five years following the winding-up of the *fiducie* or trust, or after the circumstances justifying the registration of such information ceased to exist, or following the termination of the involvement of the relevant person in the *fiducie* or trust.

Any incomplete filing (or which does not comply with the conditions of the RFT Law) shall be rejected and will then require the *fiduciaire* or trustee to rectify its request (by completing or amending the information initially provided) within 15 days following the refusal decision by the AED.

A Grand Ducal Regulation supplementing the RFT Law, which is not yet available at this stage, will also be enacted in Parliament to further clarify the new obligations applicable under the RFT Law.

5. Sanctions for non-compliance with the RFT Law

Non-compliance by *fiduciaires* and trustees with their obligations under the RFT Law is subject to administrative sanctions, including administrative fines of up to twice the amount of the benefit derived from the infringement, where such amount can be determined, or of up to a maximum of EUR 1,250,000.

The competent authority to impose administrative measures or fines on a *fiduciaire* or a trustee will be the national competent authority in charge of the supervision of the relevant *fiduciaire* or trustee, *i.e.* the CSSF or CAA, or the AED where the *fiduciaire* or trustee is not under the supervision of a competent authority.

6. How can we help

Arendt can assist you in better understanding, assessing and ultimately complying with your new obligations as a result of the introduction of the RFT Law.

Our multi-disciplinary team of legal professionals, regulatory/compliance experts and corporate services specialists will provide you with a fully integrated solution customised to your set-up and specific requirements.



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