

# Law of 13 January 2019 Register of beneficial owners (“RBO”)

consolidated version as of 26 March 2020



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# Law of 13 January 2019 establishing a Register of beneficial owners

## Chapter 1 - Definitions

### Art. 1.

For the purpose of this law the following definitions shall apply:

- 1° "Register of beneficial owners": the file in which the information on the beneficial owners is kept;
- 2° "manager": the economic interest group Luxembourg Business Registers;
- 3° "beneficial owner": the beneficial owner defined in Article 1, paragraph 7 of the amended law of 12 November 2004 on the fight against money laundering and terrorist financing;
- 4° "registered entity": the entities registered in the Trade and companies register referred to in Article 1, points 2° to (L. 25 March 2020) "16", of the amended law of 19 December 2002 on the Trade and companies register and the accounting and annual accounts of companies;
- 5° "national authority": the following authorities, administrations and entities:
  - a) the State Prosecutor General, State Prosecutors and members of their public prosecutors' offices;
  - b) investigating judges;
  - c) the financial intelligence unit;
  - d) judicial police officers referred to in Article 10 of the Code of Criminal Procedure and approved by the general director of the Grand ducal police;
  - e) the *Commission de surveillance du secteur financier*;
  - f) the *Commissariat aux assurances*;
  - g) the Registration duties, Estates and VAT authority;
  - h) the Customs and excise agency;
  - i) the State intelligence service;
  - j) the Luxembourg Inland Revenue;
  - k) the Ministry of foreign and European affairs within the framework of its specific powers in the fight against money laundering and terrorist financing;

- l) the Ministry of finance within the framework of its specific powers in the fight against money laundering and terrorist financing;
  - m) the Office for the control of exports, imports and transit;
- 6° "professionals": the persons referred to in Article 2 of the amended law of 12 November 2004 on the fight against money laundering and terrorist financing.

## **Chapter 2 - Creation of the Register of beneficial owners**

### **Art. 2.**

A register called "Register of beneficial owners", in abbreviated form "RBE", is established under the authority of the minister in charge of justice, whose purpose is to store and to make available information on the beneficial owners of the registered entities.

## **Chapter 3 - Registration and retention of information on the beneficial owners in the Register of beneficial owners**

### **Art. 3.**

(1) The following information on the beneficial owners of the registered entities must be recorded and held in the Register of beneficial owners:

- 1° name;
- 2° first name(s);
- 3° nationality(ies);
- 4° date of birth;
- 5° month of birth;
- 6° year of birth;
- 7° place of birth;
- 8° country of residence;
- 9° the precise private address or specific professional address mentioning:
  - a) for addresses in the Grand Duchy of Luxembourg: the usual residence appearing in the national register of natural persons or, for professional addresses, the locality, street and building number appearing in the National register of localities and streets, as provided for in Article 2, g) of the amended law of 25 July 2002 reorganising the administration of the land register and topography, as well as the postal code;
  - b) for addresses abroad: the locality, street and building number abroad, the postal code and the country;

- 10° for persons registered in the National register of natural persons: the identification number provided for in 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: a foreign identification number;
- 12° the nature of the effective interests held;
- 13° the extent of the effective interests held.

(2) By way of exception to paragraph 1, companies whose securities are admitted to trading on a regulated market in the Grand Duchy of Luxembourg or in another State which is a party to the Agreement on the European Economic Area or in another third country imposing obligations recognised as being 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 requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC shall register only the name of the regulated market on which their securities are admitted to trading.

#### **Art. 4.**

(1) The registration of the information referred to in Article 3 and amendments thereto must be requested by the registered entity or by its agent, within one month from the time when the registered entity became aware or should have become aware of the event that necessitates the registration or its amendment. The notary, who prepares the constitutive instrument or any amending instrument of the registered entity, may also request the registration of information referred to in Article 3 and any amendments made thereto.

(2) The information referred to in Article 3 must be adequate, accurate and up-to-date.

(3) The request for the registration of the information referred to in Article 3 and any amendments made thereto shall include the supporting documents provided for in Grand-Duical regulation.

#### **Art. 5.**

(1) The Minister of Justice is the controller within the meaning of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

(2) The manager shall be responsible for the registration, safeguarding, administrative management and provision of information on the beneficial owners in accordance with the provisions of this law.

The manager is qualified as data processor of the file within the meaning of the above-mentioned regulation (EU) 2016/679.

(3) Without prejudice to the other channels of communication provided for in this law, any communication between the manager and the registered entity shall be conducted by secure electronic means leaving a record of the dispatch.

(4) the manager is not liable for the content of the registered information.

(5) The manager may register information on the beneficial owners of an entity registered in the Register of beneficial owners upon the request from and on behalf of the registered entity.

(6) The State centre for information technology is responsible for the electronic computer management of the file within the meaning of the above-mentioned Regulation (EU) 2016/679.

(7) The State centre for information technology is also qualified as data processor of the file within the meaning of the above-mentioned Regulation (EU) 2016/679.

#### **Art. 6.**

(1) The application for registration referred to in Article 4, paragraphs 1 and 3, shall be made by electronic means on the website of the manager in accordance with the procedures to be laid down by Grand-Ducal Regulation.

(2) The manager shall perform the registrations prescribed by law within three working days after the filing of the application for registration referred to in Article paragraphs 1 and 3.

#### **Art. 7.**

(1) The manager shall refuse any application for registration which is incomplete or does not comply with the legal and regulatory provisions. The manager shall also refuse to register or to amend information which does not correspond to the supporting documents.

In the event the manager refuses the registration upon request for one of the reasons referred to in the previous sub-paragraph, the manager shall request the registered entity concerned or, where applicable, its agent to regularise its request by supplementing, amending or withdrawing the information requested by the registered entity, or by submitting the required supporting documents.

The registered entity concerned shall have at its disposal a period of fifteen days from the date of the issue of the manager's request for regularisation to comply therewith.

(2) If the application still does not comply with the laws and regulations or if the missing information or supporting documents have still not been provided within the period referred to in paragraph 1, sub-paragraph 3, the manager shall notify the registered entity concerned of its refusal to register. Reasons must be given for the refusal. It must mention the possibility for the registered entity to file a judicial proceeding by indicating the competent judge, the procedure to be observed and the time limit.

Notifications shall be carried out by the manager by sending a registered letter with acknowledgement of receipt.

(3) An appeal against the decision to register or refuse to register shall be open to any interested person. The appeal shall be brought before the judge presiding over the chamber of the district court sitting in commercial matters for traders and before the president of the district court sitting in civil matters for the persons referred to in Article 1, points 6°, 7°, 8°, 10° and 11° of the amended law of 19 December 2002 on the Trade and companies register and the accounting and annual accounts of companies.

The action is brought and judged as in summary proceedings in accordance with Articles 934 to 940 of the New Code of Civil Procedure.

(4) A final decision ordering a registration or an amendment to a registration shall be enforced by the manager.

In the event of confirmation of the manager's refusal to register by a final decision, the registered entity concerned shall have a period of fifteen days from the date of notification of the decision to comply with the law or to provide the missing information.

In the event that the registered entity fails to comply with the legal and regulatory provisions or to provide the missing information, the manager shall transmit the file of the registered entity concerned to the State Prosecutor.

#### **Art. 8.**

(1) Any person having access to the information in the Register of beneficial owners pursuant to Article 11 as well as any professional shall be required to inform the manager as soon as they become aware either of the existence of erroneous data or the absence of all or part of the data in the Register of beneficial owners, or the absence of a registration, an amendment or a deletion, within thirty days of such a finding.

(2) The procedure of Article 9 shall apply.

(3) During the procedure under Article 9, a specific statement relating to the finding referred to in paragraph 1 shall be entered by the manager in the Register of beneficial owners.

#### **Art. 9.**

(1) In the cases referred to in Article 8, paragraph 1, the manager shall send a request by ordinary letter for the provision or the updating of registered information to the registered entities.

(2) In addition to the cases referred to in Article 8, paragraph 1, the manager may send a request by ordinary letter for the provision or the updating of registered information to the registered entities.

(3) The registered entities concerned by a request from the manager within the meaning of paragraphs 1 or 2 must verify their registration and respond to the manager, in accordance with the procedure established by the Manager.

(4) In the absence of a reply within thirty days from the date on which the manager's request is sent to the registered entity, the manager shall transmit the file of the registered entity concerned to the State Prosecutor.

**Art. 10.**

(1) The information referred to in Article 3 as well as the applications for registration shall be kept by the Register of beneficial owners for a period of five years after the date on which the registered entity is removed from the Trade and companies register.

(2) The supporting documents referred to in Article 4, paragraph 3 shall be kept by the Register of beneficial owners for a period of five years.

**Chapter 4 - Access to the Register of beneficial owners**

**Art. 11.**

(1) In the performance of their duties, the national authorities shall have access to the information referred to in Article 3.

(2) The implementing rules for the granting of access by the national authorities shall be laid down by Grand-Ducal Regulation.

**Art. 12.**

Access to the information referred to in Article 3, paragraph 1, points 1° to 8°, 12° and 13° shall be open to any person.

**Art. 13.**

(1) Access for consultation of the Register of beneficial owners by the authorities and persons referred to in Articles 11 and 12 shall be filed by electronic means in accordance with access procedures laid down by Grand-Ducal Regulation.

The search criteria are set out by Grand-Ducal regulation.

(2) The electronic computer system, by which the access to the Register of beneficial owners by the authorities referred to in Article 11 is granted, must be designed in such a way that access to the files is secured by strong authentication and in such a manner that the information relating to the person who carried out the consultation, the information consulted, the date, time and reference of the file in which the consultation was carried out and the precise purpose of the consultation can be traced. Logging data must be kept for a period of five years from the time of recording, after which time it is deleted.

(3) No information on a consultation of the data by an authority referred to in Article 11 may be communicated to the registered entities or to the beneficial owners.

The manager shall ensure that the consultation of data from the Register of beneficial owners is carried out without alerting the registered entity concerned or its beneficial owners thereto.

**Art. 14.**

The manager shall issue extracts in electronic or paper format containing the information referred to in Article 3 under the conditions provided for in Articles 11 and 12.

#### **Art. 15.**

(1) A registered entity or a beneficial owner may request, on a case-by-case basis and in the following exceptional circumstances, on the basis of a duly justified request to the manager, to limit access to the information referred to in Article 3 to the national authorities, to credit institutions and to financial institutions and bailiffs and notaries acting in their capacity as public officers only, where such access would expose the beneficial owner to a disproportionate risk, to the risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation or where the beneficial owner is a minor or is otherwise incapacitated.

(2) The manager shall provisionally limit access to the information referred to in Article 3 only to the national authorities from the receipt of the request until the notification of its decision, and, in the event of refusal of the request, for an additional period of fifteen days. In the event of an appeal against a decision to refuse the application, the limitation of access to the information shall be maintained until the decision to refuse the request is no longer subject to appeal.

(3) A restriction to access to information may only be granted for the duration of the circumstances justifying it, but may not exceed a maximum period of three years. It may be renewed by decision of the manager, on the basis of a reasoned request for renewal from the registered entity or the beneficial owner, addressed to the manager at the latest one month before the expiry date of the limitation.

(4) A notice mentioning the limitation of access to information and the date of the related decision shall be published in the Register of beneficial owners by its manager.

(5) Any interested party who intends to challenge a decision of the manager taken pursuant to paragraphs 2 or 3 may lodge an appeal in accordance with the provisions of Article 7, paragraph 3 against that decision within a period of 15 days of the publication of the notice referred to in paragraph 4.

Article 7, paragraph 4 shall apply.

### **Chapter 5 - Special provisions concerning the functioning of the Register of beneficial owners**

#### **Art. 16.**

The remuneration of the manager for the costs of operating and using the Register of beneficial owners shall be laid down by Grand-Ducal Regulation within the limit of the operating and use costs incurred.

### **Chapter 6 - Provision, obtaining and retention of information on beneficial owners**

#### **Art. 17.**

(1) Every beneficial owner of a registered entity shall provide the entity with the information necessary to enable it to fulfil its obligations under Articles 3, 4, 7 and 9.



(2) Registered entities must obtain and keep, at the premises of their registered office, the information on their beneficial owners referred to in Article 3 as well as the supporting documents relating thereto.

(3) This information must be adequate, accurate and up-to-date.

(4) In the event of removal from the Trade and companies register following the dissolution of a registered entity, the registered entity must designate the place where the information referred to in Article 3 and the relevant supporting documents relating thereto will be kept for a period of five years after the date of deletion from the register.

The indication of the designated place shall be published in the *Recueil électronique des sociétés et associations*, in accordance with the provisions of title I, chapter Vbis, of the amended law of 19 December 2002 on the Trade and companies register and the accounting and annual accounts of companies.

#### **Art. 18.**

Registered entities must provide the national authorities, upon request and within three days of such request, with the information referred to in Article 3 and the information on their owner.

#### **Art. 19.**

Except in situations where access to information has been restricted in accordance with Article 15, the registered entities must provide, upon reasoned request and within three days of such request, the information referred to in Article 3, points 1° to 8°, 12° and 13° and the information on their owner to the professionals in the context of the performance of their customer due diligence measures in accordance with Articles 3 to 3-3 of the amended law of 12 November 2004 on the fight against money laundering and terrorist financing.

### **Chapter 7 - Criminal provisions**

#### **Art. 20.**

(1) A fine of EUR 1,250 to EUR 1,250,000 shall be imposed on a registered entity that fails to submit, within the time limits referred to in the first subparagraph of Article 4, paragraph 1 and Article 7 paragraph 4, an application for registration in the Register of beneficial owners for the purpose of recording all the information on its beneficial owners referred to in Article 3 and their amendments.

(2) A fine of EUR 1,250 to EUR 1,250,000 shall be imposed on a registered entity that knowingly applies for registration in the Register of beneficial owners for the purpose of recording information referred to in Article 3 that is inaccurate, incomplete or not up-to-date.

#### **Art. 21.**

(1) A fine of EUR 1,250 to EUR 1,250,000 shall be imposed on a registered entity that fails to obtain and retain, at the premises of its registered office, all the information on its beneficial owners referred to in Article 3.

(2) A fine of EUR 1,250 to EUR 1,250,000 shall be imposed on a registered entity which knowingly provides the national authorities referred to in Article 18 or the professionals referred to in Article 19 with information referred to in Article 3 which is inaccurate or not up-to-date.

(3) A fine of EUR 1,250 to EUR 1,250,000 shall be imposed on a beneficial owner who fails to fulfil his obligation under Article 17, paragraph 1.

### **Chapter 8 - Amending provisions**

**Art. 22. – Art.26 (...)**

### **Chapter 9 - Transitional provision**

**Art. 27.**

Registered entities shall have a period of six months after the entry into force of this law to comply with the provisions of the law.

Access for consultation may be requested at the end of this six-month period.

### **Chapter 10 - Citation title**

**Art. 28.**

The reference to this law is in the following form: "law of 13 January 2019 establishing a Register of beneficial owners".

### **Chapter 11 - Entry into force**

**Art. 29. (...)**