

## **Law of 10 July 2020 establishing a Register of Fiducies and Trusts**

**Law of 10 July 2020 transposing Article 31 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 purpose 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, as amended by Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing and Directives 2009/138/EC and 2013/36/EU**

**(Mém. A 2020, No 581)**

as amended by the

- Law of 25 February 2021

amending:

1. the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended;
2. the Law of 20 April 1977 on gambling and betting relating to sporting events, as amended;
3. the Law of 17 December 2010 relating to undertakings for collective investment, as amended;
4. the Law of 25 March 2020 establishing a central electronic data retrieval system related to IBAN accounts and safe-deposit boxes;
5. the Law of 10 July 2020 establishing a Register of fiducies and trusts.

**(Mém. A 2021, No 158)**

- Law of 29 July 2022 amending:

- 1° the Code of Criminal Procedure;
- 2° the Law of 8 August 2000 concerning international mutual legal assistance in criminal matters, as amended;
- 3° the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended;
- 4° the Law of 10 July 2020 establishing a Register of fiducies and trusts;

**(Mém. A 2022, No 429)**

### **Chapter 1 - Definitions**

#### **Article 1**

(1) For the purposes of this law:

- (a) "National authorities" means the following authorities, administrations and entities:

- (b) the General State Prosecutor, State Prosecutors, and members of their State Prosecution Offices;
  - (c) Investigative Judges;
  - (d) the Financial Intelligence Unit, hereinafter referred to as "CRF";
  - (e) the 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;
  - (f) the Financial Supervisory Authority, hereinafter referred to as the "CSSF";
  - (g) the Commissariat aux Assurances (Insurance Supervisory Authority), hereinafter referred to as "CAA";
  - (h) the Administration de l'enregistrement, des domaines et de la TVA (Registration Duties, Estates and VAT Authority), hereinafter referred to as "AED";
  - (i) the Customs and Excise Administration;
  - (j) the State Intelligence Service;
  - (k) the Luxembourg Inland Revenue Authority;
  - (l) the Ministry of Foreign and European Affairs within the framework of its specific competences in the field of the fight against money laundering and terrorist financing;
  - (m) the Ministry of Finance within the framework of its specific powers in the field of the fight against money laundering and terrorist financing;
  - (n) the Office of Export, Import and Transit Control acting in the framework of issuing authorisations for import, export, transfer, transit, brokerage, technical assistance and intangible transfer of technology;
- (2) "supervisory authorities" means the supervisory authorities as defined in Article 1(16) of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended;
  - (3) "beneficial owner" means the beneficial owner as defined in Article 1(7) of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended;
  - (4) "Member State" means a Member State of the European Union. Member States of the European Union shall be assimilated to the Member States of the European Union if they are parties to the Agreement on the European Economic Area other than the Member States of the European Union, within the limits defined by that agreement and the acts relating thereto;
  - (5) "Fiduciaire" means the person who, in the context of a fiducie and under the obligations determined by the parties, becomes the owner of the assets forming the fiduciary estate;
  - (6) "fiducie" means a fiducie agreement subject to the Law of 27 July 2003 on trusts and fiduciary agreements, as amended;
  - (7) "self-regulatory bodies" means the organisations referred to in point 21 of Article 1 of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended;
  - (8) "professionals" means the persons referred to in Article 2 of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended;
  - (9) "Register of Fiducies and Trusts" means the file in which information on fiducies and trusts is kept;

- (10) "Trust" means a trust within the meaning of the Convention on the Law Applicable to Trusts and on their Recognition, signed at The Hague on July 1, 1985, and approved by the amended Law of 27 July 2003;
- (11) "Trustee" means a trustee within the meaning of the Convention on the Law Applicable to Trusts and on their Recognition, signed at The Hague on 1 July 1985, and approved by the amended Law of 27 July 2003;
- (12) "Express trust" means a trust clearly established by the settlor, usually by means of a document such as a written instrument creating the trust. This type of trust is opposed to trusts which arise by operation of law and which do not result from the clear intention or decision of a settlor to create a trust or a similar legal arrangement.

(2) For the purposes of this law, fiducies and trusts include legal arrangements that are similar in structure or function to fiducies and trusts.

A legal arrangement is considered to have a structure or functions similar to those of a fiducie and a trust when it enables a person to create legal relationships that place assets under the control of a third party for the benefit of a beneficiary or for a specified purpose and when it has the following characteristics:

1. the assets placed under the control of the third party constitute a separate fund and do not form part of the estate of the third party;
2. the title to the assets placed under the control of the third party is established in the name of the third party or of another person on behalf of the third party;
3. the third party is vested with the power and charged with the obligation, for which he or she is accountable, to administer, manage or dispose of the assets placed under his or her control in accordance with the terms of the legal arrangement and the special rules imposed on the third party by law.

For the purposes of this law, trustees and fiduciaires are persons who occupy an equivalent position in a legal arrangement not referred to in paragraph 1, point 6, and which has a structure or functions similar to those of a fiducie and trust.

## **Chapter 2 - Obtaining and Maintaining Beneficial Ownership Information by Trustees and Fiduciaires**

### **Article 2**

(1) Trustees and fiduciaires shall obtain and keep, at the place of administration of the express trust or fiducie, information on the beneficial owners of any express trust administered in the Grand Duchy of Luxembourg and of any fiducie for which they act as trustee or fiduciaire. This information includes the identity of:

1. the settlor(s);
2. the trustee(s) or fiduciaire(s);
3. the protector(s), if any;

4. the beneficiaries or class of beneficiaries; and
5. any other natural person exercising effective control over the trust or fiducie.

(2) The information referred to in paragraph 1 shall be adequate, accurate and up-to-date. It shall be updated within a reasonable time “not exceeding one month”<sup>1</sup> after any change.

(3) The persons referred to in points (1) to (5) of paragraph 1 shall provide trustees and fiduciaires with all information necessary to enable them to comply with their obligations under Article 15(1) and (2).

### **Article 3**

(1) The trustees of express trusts administered in the Grand Duchy of Luxembourg and the fiduciaires shall obtain and keep basic information on other professionals and entities governed by foreign law which, if their registered office were located in the Grand Duchy of Luxembourg, would be considered as professionals, which provide services to the trust or fiducie or which enter into a business relationship with the trust or fiducie. This information is accurate and up to date. It is updated within a reasonable period of time “not exceeding one month”<sup>2</sup> after any change.

The basic information referred to in the first paragraph must enable trustees and fiduciaires to identify the persons concerned and shall include in the case of a natural person the information referred to in Article 14(2), point 1, letters a) to c) and h) to(i) and, in the case of a legal person, the information referred to in Article 14(2), point 2, letters a) to c).

(2) The persons referred to in paragraph 1 shall provide the trustees and fiduciaires with all the information necessary to enable them to fulfil their obligations under paragraph 1.

### **Article 4**

Trustees and fiduciaires retain the information referred to in Articles 2 and 3 for five years after ceasing to be involved in the trust or fiducie.

### **Article 5**

(1) Trustees and fiduciaires shall provide to the national authorities for the purposes of their duties, upon request, the information referred to in Articles 2 and 3 and, where applicable, the unique registration number referred to in Article 13(3), or a certificate providing evidence of registration in an equivalent register set up by another Member State or an extract of the information on beneficial owners kept in such a register.

(2) Trustees and fiduciaires shall provide to the self-regulatory bodies for the purposes of their tasks under this law and the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended, upon request, the information referred to in Articles 2 and 3 and, where applicable, the unique registration number referred to in Article 13(3), or a certificate proving registration in an equivalent register set up by another Member State or an extract of the information on beneficial owners kept in such a register.

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<sup>1</sup> Law of 29 July 2022

<sup>2</sup> Law of 29 July 2022

#### **Article 6**

(1) Trustees and fiduciaires shall declare their status and provide professionals, in due time, with the information referred to in Article 2 and, where applicable, the unique registration number referred to in Article 13(3), or a certificate providing evidence of registration in an equivalent register set up by another Member State or an extract of information on beneficial owners kept in such a register where, in their capacity as trustees or fiduciaries, they enter into a business relationship with them or carry out, on an occasional basis, a transaction the amount of which exceeds the thresholds laid down in Article 3(1), point s b), ba) and bb) of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended.

(2) In the cases referred to in paragraph 1, trustees and fiduciaires shall provide professionals, upon request, for the sole purpose of implementing their due diligence obligations under the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended, with information on the trust assets and the fiduciary estate held or managed in the context of the business relationship.

#### **Article 7**

The CSSF, the CAA and the self-regulatory bodies shall monitor the compliance with the obligations provided for in this chapter by the persons for whom they are respectively responsible for ensuring compliance with the professional obligations, in the exercise of their professional activity, relating to the fight against money laundering and terrorist financing in accordance with Article 2-1 of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended.

The AED supervises compliance with the obligations provided for in this chapter by professionals, trustees and fiduciaires who are established or resident in the Grand Duchy of Luxembourg and who are not subject to the supervisory power of another supervisory authority or self-regulatory body pursuant to paragraph 1.

#### **Article 8**

(1) For the purposes of applying this chapter, the supervisory authorities are vested with all the supervisory and investigative powers necessary for the exercise of their functions within the limits defined by this chapter.

The powers of the supervisory authorities referred to in paragraph 1 are as follows:

1. to have access to any document in any form whatsoever and to receive or take copies thereof;
2. to request information from any person and, if necessary, to summon any person subject to their respective powers of supervision in accordance with Article 7 and to hear him or her in order to obtain information;
3. to carry out on-site inspections or investigations, including the seizure of any document, electronic file or other thing that appears useful for ascertaining the truth, from the persons subject to their respective powers of supervision in accordance with Article 7;

4. to order the persons subject to their respective powers of supervision in accordance with Article 7 to put an end to any practice contrary to the provisions referred to in Article 9(1), and to refrain from repeating it, within a period of time to be determined by them.

(2) The AED shall have the power to order:

- (a) the persons referred to in Article 2(1), points 1 to 5, to comply with their obligations under Article 2(3);
- (b) the persons referred to in Article 3(1), to comply with their obligations under Article 3(2).

By way of derogation from the paragraph 1, the power of injunction provided for therein shall be exercised by the CSSF and the CAA in respect of the persons subject to their respective powers of supervision in accordance with Article 7.

(3) When issuing the injunction provided for in paragraph 1, point 4, or in paragraph 2, the supervisory authorities concerned may impose a periodic penalty payment against the person subject to such measure in order to induce that person to comply with the injunction. The amount of the periodic penalty payment per day in for non-compliance may not exceed EUR 1 250, but the total amount imposed for non-compliance may not exceed EUR 25 000.

(4) The decision to issue an injunction in accordance with paragraph 1, point 4, or paragraph 2 and, where appropriate, to impose a periodic penalty payment in accordance with paragraph 3, shall be taken, in the case of fiduciaires subject to the supervisory powers of the AED in accordance with Article 7 and in the case of the persons referred to in paragraph 2, by the Director of the AED or his or her delegate.

(5) Trustees and fiduciaires shall provide, upon request, to the national authorities referred to in Article 1(2), point 1, letters a) to c), and to the supervisory authorities, any information they hold on any fiducie or trust for which they serve as trustees or fiduciaires.

(6) Professionals shall, upon request, provide the national authorities referred to in Article 1(1), point 1, letters a) to c), and the supervisory authorities with any information they hold on any fiducie or any trust, including:

1. the beneficial owners of a trust or fiducie;
2. the residence of the trustee or fiduciaire; and
3. any assets held or managed in connection with any trustee or fiduciaire with whom they have a business relationship or for whom they perform an occasional operation.

## Article 9

(1) The supervisory authorities shall have the power to impose the administrative sanctions and to take the other administrative measures provided for in paragraph 3 in respect of trustees or fiduciaires subject to their respective powers of supervision in accordance with Article 7 and, where appropriate, in respect of the members of their management bodies, their effective directors or other persons responsible for non-compliance with their obligations, where such trustees or fiduciaires:

1. fail to obtain the information referred to in Article 2(1), to ensure that such information is adequate, accurate and up-to-date or to update such information in accordance with Article 2(2);
2. fail to obtain the information referred to in Article 3, to ensure that such information is adequate, accurate and up to date, or to update such information in accordance with the provisions of Article 3;
3. fail to maintain the information referred to in Articles 2 and 3 in accordance with the provisions of Article 4;
4. fail to fulfil their obligation to provide, in accordance with Article 5, the national authorities with the information referred to in that Article, or knowingly provide those authorities with information referred to in that Article which is inaccurate or out-of-date
5. fail to declare their status or to provide the information referred to in Article 6(1), to traders in accordance with that paragraph;
6. fail to comply with their obligation to provide, in accordance with Article 8(5), the supervisory authorities or the CRF with the information referred to in that paragraph, or knowingly provide those authorities with information referred to in that paragraph which is inaccurate or out-of-date.

(2) The supervisory authorities shall have the power to impose the administrative sanctions and to take the other administrative measures provided for in paragraph 3 in respect of the professionals for whom they are respectively responsible for ensuring compliance with the professional obligations relating to the fight against money laundering and terrorist financing in accordance with Article 2-1 of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended, as well as, where applicable, in respect of members of their management bodies, their effective directors or other persons responsible for non-compliance, where those professionals fail to comply with their obligation to provide, in accordance with Article 8(6), the supervisory authorities or the CRF with the information referred to in that paragraph or knowingly provide those authorities with information referred to in that paragraph which is inaccurate or not up-to-date.

(3) In the cases referred to in paragraphs 1 and 2, the supervisory authorities shall have the power to impose the following administrative sanctions and to take the following administrative measures:

1. a warning;
2. a reprimand;
3. a public statement specifying the identity of the natural or legal person and the nature of the violation; or
4. administrative fines of up to twice the amount of the benefit derived from the violation, where this can be determined, or up to a maximum of EUR 1 250 000.

(4) The supervisory authorities may impose a fine of between EUR 250 and EUR 250 000 on natural and legal persons who obstruct the exercise of their powers under Article 8(1), who fail to comply with their orders provided for in Article 8(1), point 4, or Article 8(2), or who knowingly provide them with documents or other information which are found to be incomplete, incorrect or false in response to requests based on Article 8(1).

(5) When determining the type and level of administrative penalties, the supervisory authorities shall take into account all relevant circumstances, including, where appropriate:

1. the seriousness and duration of the violation;
2. the degree of responsibility of the natural or legal person held liable for the violation;
3. the financial situation of the natural or legal person held liable for the violation, for example as reflected in the total turnover of the legal person held liable or in the annual income of the natural person held liable;
4. the benefit derived from the violation by the natural or legal person held liable, to the extent that this can be determined;
5. the damage suffered by third parties as a result of the violation, to the extent that it can be determined;
6. the degree of cooperation of the natural or legal person held liable for the violation with the supervisory authorities and the CRF;
7. previous violations committed by the natural or legal person held liable.

(6) The costs incurred for the forced recovery of fines shall be borne by the persons on whom the fines were imposed.

(7) The decision to impose a sanction or other administrative measure in accordance with the provisions of this Article shall be taken, with respect to the persons subject to the supervisory power of AED pursuant to Article 7 and the persons referred to in Article 8(2), by the Director of AED or his or her delegate.

(8) The recovery by AED of amounts due resulting from sanctions and other administrative measures imposed by the Director of AED or his or her delegate in accordance with the provisions of this Article, shall be carried out in accordance with the procedures laid down in Article 8-9 of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended.

(9) The supervisory authorities shall publish any decision that has acquired the force of *res judicata* or finality and imposing a sanction or administrative measure on account of one or more of the breaches referred to in paragraphs 1 and 2 on their official website immediately after the person sanctioned has been informed of such decision. This publication shall mention the type and nature of the infringement committed and the identity of the person responsible.

The supervisory authorities shall assess on a case-by-case basis the proportionality of the publication of the identity of the responsible persons referred to in paragraph 1 or of their personal data. Where they consider such publication to be disproportionate or where such publication jeopardises the stability of the financial markets or an ongoing inquiry, the supervisory authorities:

1. delay the publication of the decision to impose a sanction or administrative measure until the reasons for not publishing it cease to exist;



2. publish the decision to impose a sanction or administrative measure on the basis of anonymity, if such anonymous publication guarantees effective protection of the relevant personal data; if it is decided to publish a sanction or administrative measure on the basis of anonymity, the publication of the relevant data may be deferred for a reasonable period of time if it is anticipated that by the end of that period the reasons for anonymous publication will have ceased to exist;
3. do not publish the decision to impose a sanction or administrative measure, when the options envisaged in points 1 and 2 are considered insufficient:
  - (i) to avoid jeopardising the stability of the financial markets; or
  - (ii) to ensure proportionality in the publication of the decision, where the measures concerned are considered to be minor.

The supervisory authorities shall ensure that any document published in accordance with this paragraph remains on their official website for five years after its publication. However, the personal data referred to in the published document shall only be kept on the official website of the supervisory authority for a maximum period of 12 months.

#### **Article 10**

Against decisions taken by the supervisory authorities pursuant to this chapter, an appeal for reversal shall be lodged with the Administrative Tribunal. The appeal must be lodged under penalty of foreclosure within one month from the notification of the contested decision.

#### **Article 11**

As regards trustees or professionals subject to the supervisory power of a self-regulatory body, the obligations provided for in this chapter are considered as professional obligations arising from the legislation on the fight against money laundering and terrorist financing within the meaning of Articles 71, point 1a and 100-1 of the Law of 9 December 1976 on the organisation of the notarial profession, as amended, Articles 31(1), point 1a, 44-1 and 46-1 of the Law of 4 December 1990 on the organisation of Court Bailiffs, as amended, Articles 17, 19, point 6, and 30-1 of the Law of August 10, 1991 on the profession of lawyer, as amended, Articles 11, letter f), and 38-1 of the Law of 10 June 1999 organising the profession of Chartered Professional Accountant, as amended, and Articles 62, letter d), and 78(1a), of the Law of 23 July 2016 on the audit profession, as amended.

### **Chapter 3 - Creation of the Register of Fiducies and Trusts**

#### **Article 12**

A register, to be known as the "Register of Fiducies and Trusts", shall be established at the AED, the purpose of which shall be to keep and make available the information referred to in Article 14 on express fiducies and trusts subject to the obligation to register in accordance with Article 13.

## **Chapter 4 - Registration and conservation of information in the Register of Fiducies and Trusts**

### **Article 13**

(1) Every fiducie and every express trust of which a trustee or fiduciaire is established or resides in the Grand Duchy of Luxembourg shall be registered with the Register of Fiducies and Trusts.

Where the fiduciaries of a fiducie or the trustees of an express trust referred to in paragraph 1 are established or resident in different Member States, the submission to the AED by the trustee established or resident in the Grand Duchy of Luxembourg of a certificate providing evidence of registration in an equivalent register established by another Member State or an extract of the information on the beneficial owners kept in such a register shall be considered sufficient to consider that the registration requirement is fulfilled.

(2) Any fiducie and any express trust whose fiduciaires or trustees are not established either in the Grand Duchy of Luxembourg or in another Member State shall be registered in the Register of Fiducies and Trusts where the trustee or fiduciaire, on behalf of the trust or fiducie, enters into a business relationship in the Grand Duchy of Luxembourg with a professional or acquires real estate which is situated in the Grand Duchy of Luxembourg.

Where the fiduciaries of such a fiducie or express trust enters into multiple business relationships in different Member States in the name of the fiducie or express trust, a certificate providing evidence of registration in an equivalent register set up by another Member State or an extract of the information on the beneficial owners kept in such a register shall be considered sufficient to consider that the registration requirement is fulfilled.

(3) Each fiducie and express trust registered in the Register of Fiducies and Trusts shall be assigned a unique registration number.

### **Article 14**

(1) The registration referred to in Article 13(1) or (2), shall specify:

1. the registration number;
2. the name of the fiducie or express trust, if any;
3. the date on which the fiducie or express trust was entered into;
4. the information referred to in paragraph 2 for each beneficial owner of the trust or fiducie;
5. whether the fiducie or express trust holds or has a controlling interest in a company or other legal entity other than those referred to in Article 30(1), 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 purpose 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, hereinafter referred to as "EU Directive 2015/849", through direct or indirect ownership, including through bearer shares or through control by other means.

(2) The following information shall be recorded and kept in the Register of Fiducies and Trusts for each beneficial owner of the fiducie or express trust:

1. in the case of a natural person:
  - (a) the name;
  - (b) the first names;
  - (c) the nationalities;
  - (d) day of birth;
  - (e) the month of birth;
  - (f) the year of birth;
  - (g) the place of birth;
  - (h) country of residence;
  - (i) the precise home address or the precise business address stating:
    - (i) for addresses in the Grand Duchy of Luxembourg: the habitual residence listed in the national Register of Natural Persons or, for business addresses, the municipality, street and number of the building listed in the national register of municipalities and streets, as provided for in Article 2, letter g), of the Law of 25 July 2002 on the reorganisation of the Land Registry and Topography Administration, as amended, as well as the postal code;
    - (ii) for addresses abroad: the municipality, street and number of the building abroad, the postal code and the country;
  - (j) for persons registered in the national Register of Natural Persons: the identification number as provided for by the Law of 19 June 2013 on the identification of natural persons, as amended;
  - (k) for non-resident persons not registered in the national Register of Natural Persons: a foreign identification number;
  - (l) the nature of the involvement of the person concerned in the fiducie or express trust and the extent of the beneficial interests held.
2. in the case of a legal person entered in a register in accordance with Article 30 of Directive (EU) 2015/849:
  - (a) the name of the legal person and, where applicable, the abbreviation and the commercial sign used;
  - (b) the precise address of the registered office of the legal person;
  - (c) in the case of
    - (i) a legal person registered with the Trade and Company Register of the Grand Duchy of Luxembourg, the registration number;
    - (ii) a legal person not registered with the Trade and Company Register of the Grand Duchy of Luxembourg, where applicable, the name of the register in which the legal person is registered and the registration number in the register, if the legislation of the State to which it is subject provides for such a number.
  - (d) the nature of the involvement of the person concerned in the fiducie or express trust and the extent of the beneficial interests held.

By way of derogation from the first paragraph, where the persons referred to in Article 2, paragraph 1, point 4, are designated by characteristics or category, the entry shall specify that such persons

are designated by characteristics or category and shall provide a description of such characteristics or class.

#### **Article 15**

(1) The trustees and fiduciaires of express fiducies and trusts that must be registered with the Register of Fiducies and Trusts in accordance with Article 13 shall electronically register the information referred to in Article 14 and amend the registered information within one month at the latest of the event that makes it necessary. They shall inform the AED by electronic means within the same period of time after the termination of the trust or fiducie or after the grounds for the registration of the information referred to in Article 13, paragraphs 1 or 2 have ceased to exist.

(2) The information referred to in Article 14 shall be accurate and up-to-date.

#### **Article 16**

(1) The AED is a data 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 individuals 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), hereinafter referred to as "Regulation (EU) 2016/679".

(2) The AED is responsible for the safeguarding, administrative management and provision of the information recorded on fiducies and express trusts in accordance with the provisions of this law.

(3) The AED is not responsible for the content of the registered information.

(4) The registration, modification, storage, administration and availability of information on express fiducies and trusts and the assignment of the unique registration number referred to in Article 13, paragraph 3, in accordance with the provisions of this law shall be carried out through automated and secure processes.

(5) The State Information and Technology Centre is responsible for the computerised management of the file within the meaning of Regulation (EU) 2016/679.

The State Information and Technology Centre is a subcontractor of the file within the meaning of the EU Regulation 2016/679.

#### **Article 17**

The entries and amendments referred to in Article 15(1), shall be made by electronic means in accordance with the procedures to be laid down by grand-ducal regulation.

#### **Article 18**

(1) Any application for registration that is incomplete or does not comply with the legal or regulatory provisions shall be refused.

(2) If the application for registration is refused for one of the reasons referred to in paragraph 1, the applicant shall regularize his or her application by supplementing, amending or withdrawing the information which is the subject of the application for registration, or by submitting the supporting documents proving the said information.

(3) The applicant shall have 15 days from the date of refusal to comply.

#### **Article 19**

Any person having access to the information recorded in the Register of Fiducies and Trusts shall promptly report to AED any discrepancies that he or she encounters between the information on beneficial owners available in the Register of Fiducies and Trusts and the information on beneficial owners available to him or her.

In the cases referred to in paragraph 1, the AED shall use its powers under Articles 21 and 22 to ensure that the information in the Register of Fiducies and Trusts is updated.

Until the relevant information has been updated, a specific entry shall be made in the Register of Fiducies and Trusts and the persons to whom access to such information is granted pursuant to Chapter 5 shall be informed that an update of the information has been requested.

#### **Article 20**

(1) The entry referred to in Article 13, paragraphs 1 or 2, and the information referred to in Article 14(1), points 1, 2, 3 and 5 shall be kept by the Register of Fiducies and Trusts for five years after the termination of the fiducie or express trust or after the grounds for the entry of the information referred to in Article 13(1) or (2), have ceased to exist.

(2) The information referred to in Article 14(2), shall be kept by the Register of Fiducies and Trusts for five years after the termination of the involvement of the person concerned in the fiducie or express trust.

#### **Article 21**

(1) The AED shall monitor compliance with the obligations under this chapter by the trustees and fiduciaires referred to in Article 15(1).

(2) For the purposes of this chapter, the AED is vested with the power:

1. to have access to any document relating to a fiducie or express trust that is required to be registered with the Register of Fiducies and Trusts in accordance with Article 13 and that may provide information in any form about the beneficial owners of the fiducie or express trust and to receive or take copies thereof;
2. to request from other supervisory authorities information available to them relating to the identity of the beneficial owners of any express trust to be entered in the Register of Fiducies and Trusts in accordance with Article 13;
3. to instruct the Trustees and Fiduciaires referred to in Article 15(1), to enter the information referred to in Article 14 in the Register of Fiducies and Trusts or to update the information referred to in Article 14 entered in the Register of Fiducies and Trusts
4. to instruct the trustees and fiduciaires referred to in Article 15(1), to cease and desist from any practice contrary to the provisions referred to in Article 22(1), within the period of time fixed by it.

(3) The decision to issue an injunction in accordance with paragraph 2, points 3 or 4, shall be taken by the Director of the AED or his or her delegate.

(4) When issuing an injunction pursuant to paragraph 2, points 3 or 4, the AED Director or his or her delegate may impose a periodic penalty payment against the person subject to the injunction in order to induce that person to comply with the injunction. The amount of the periodic penalty payment per day for non-compliance may not exceed EUR 1 250, but the total amount imposed for non-compliance may not exceed EUR 25 000.

## **Article 22**

(1) The Director of the AED or his or her delegate may impose the administrative sanctions and take the other administrative measures provided for in paragraph 2 on the trustees and fiduciaires referred to in Article 15(1), as well as on the members of their management bodies, their effective directors or other persons responsible for the failure to comply with the obligations, where such trustees or fiduciaires:

1. fail to enter the information referred to in Article 14 in the Register of Fiducies and Trusts within the period referred to in Article 15(1);
2. fail to amend, within the period referred to in Article 15(1), the information referred to in Article 14 entered in the Register of Fiducies and Trusts within the period referred to in Article 15(1);
3. knowingly make an entry in the Register of Fiducies and Trusts of information referred to in Article 14 that is inaccurate or out-of-date.

(2) In the cases referred to in paragraph 1, the AED Director or his or her or her delegate may impose the following administrative penalties and take the following administrative actions:

1. a warning;
2. a reprimand;
3. a public statement specifying the identity of the person or entity and the nature of the violation;
4. administrative fines of up to twice the amount of the benefit derived from the violation, where this can be determined, or of up to EUR 1 250 000.

(3) The Director of the AED or his or her delegate may impose a fine of between EUR 250 and EUR 250 000 on natural and legal persons who obstruct the exercise of the powers provided for in Article 21(1), points 1, 3 and 4, or who fail to comply with the injunctions issued under Article 21(2), point 3 or 4.

(4) The costs incurred for the enforced recovery of fines shall be borne by the persons on whom such fines have been imposed.

(5) The recovery by the AED of amounts due resulting from sanctions and other administrative measures imposed by the Director of AED or his or her delegate in accordance with the provisions of this chapter shall be carried out in accordance with the procedures provided for in Article 8-9 of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended.

### **Article 23**

In determining the type and level of administrative sanctions, the Director of the AED or his or her delegate shall take into account all relevant circumstances, including, where appropriate:

1. the seriousness and duration of the violation;
2. the degree of responsibility of the person or entity held liable for the violation;
3. the financial situation of the natural or legal person held liable for the violation, e.g. as shown by the total turnover of the legal person held liable or the annual income of the natural person held liable;
4. the benefit derived from the violation by the natural or legal person held liable, to the extent that this can be determined;
5. the damage suffered by third parties as a result of the violation, to the extent that it can be determined;
6. the degree of cooperation of the natural or legal person held liable for the violation with AED;
7. previous violations committed by the natural or legal person held liable.

### **Article 24**

An appeal for reversal of the decisions taken by the AED under this chapter shall be filed with the Administrative Tribunal. The appeal must be filed under penalty of foreclosure within one month from the notification of the contested decision.

## **Chapter 5 - Access to the Register of Fiducies and Trusts**

### **Article 25**

(1) In the performance of their duties, national authorities shall have access to the information referred to in Article 14 entered in the Register of Fiducies and Trusts.

(2) The implementing rules concerning the granting of access by the agents of the national authorities are laid down by grand-ducal regulation.

### **Article 26**

(1) In the performance of their supervisory role in the fight against money laundering and terrorist financing, the self-regulatory bodies shall have access to the information referred to in Article 14 entered in the Register of Fiducies and Trusts.

(2) In the context of the application of customer due diligence measures in accordance with Articles 3 to 3-3 of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended, professionals have access to the information referred to in Article 14 entered in the Register of Fiducies and Trusts.

## Article 27

(1) Without prejudice to Article 31, access to the information concerning a fiducie or an express trust referred to in Article 14(2), subparagraph 1, point 1, letters a) to c), e), f), h) and l), subparagraph 1, point 2, letters a), c) and d), and subparagraph 2, shall be granted, on the basis of a case-by-case decision by the AED Director or his or her delegate, to any natural or legal person that demonstrates a legitimate interest in the prevention of the use of the financial system for the purpose of money laundering or terrorist financing.

(2) Any natural or legal person that demonstrates a legitimate interest in the prevention of the use of the financial system for the purpose of money laundering or terrorist financing may request access to the information referred to in Article 14(2), subparagraph 1, point 1, letters a) to c), e), f), h) and l), subparagraph 1, point 2, letters a), c) and d) and paragraph 2, on the basis of a duly motivated request for access addressed to the AED.

The request for access may only relate to a fiducie or express trust by request and may only relate to a search by registration number, name or date of conclusion and the surnames and first names, or the business name, as the case may be, of the settlor of the fiducie or express trust.

The request shall specify, failing which it shall be void:

1. if the claimant is a natural person: the surnames, first names, nationalities, date of birth, place of birth and domicile or residence of the claimant; if the claimant is a legal person: the name, the precise address of the registered office and the person or body qualified to represent it in court;
2. for each fiducie or express trust to which the claim relates:
  - (a) the registration number; or
  - (b) the business name; or
  - (c) the date of conclusion and the surname and first names, or the name, if any, of the settlor of the fiducie or express trust;
3. the basis of the request and the uses for which access to the information is sought.

In support of the request, any document that could justify the existence of a legitimate interest shall be attached.

(3) The Director of the AED or his or her delegate shall decide on the merits in assessing the existence of a legitimate interest in the prevention of the use of the financial system for the purpose of money laundering or terrorist financing of the request for access and shall notify the requesting natural or legal person and each of the natural persons referred to in Article 2(1) concerned of his or her decision.

In assessing the existence of a legitimate interest, the Director of the AED or his or her delegate shall take into account any relevant circumstances that may indicate whether access to the information is requested in the context of the prevention of the use of the financial system for the purpose of money laundering or terrorist financing.



The AED Director or his or her delegate shall take into account the protection of the fundamental rights of individuals, in particular the right to privacy and the right to protection of personal data when making decisions.

(4) In the event of a favourable decision by the AED Director or his or her delegate, the AED shall provide the requesting natural or legal person with an extract containing the information referred to in paragraph 1 at the earliest one month after the decision. In the event of an appeal against the decision of the AED Director or his or her or her delegate in accordance with the provisions of paragraph 5, the AED shall refrain from transmitting the extract until the decision has become final. The extract shall indicate the use for which access is granted. The requesting natural or legal person may not use the information for purposes other than those specified in the extract.

(5) Against the decision of the AED Director or his or her delegate referred to in paragraph 3, an appeal for reversal shall be lodged with the Administrative Tribunal. It must be lodged within one month of notification.

(6) The provision of the information referred to in paragraph 1 is subject to the payment of a fee, the amount of which is determined by grand-ducal regulation. The amount of the fee shall not exceed the administrative costs of making the information available, including the costs of maintaining and developing the Register of Fiducies and Trusts.

#### **Article 28**

Any natural or legal person who has used the information to which he or she has had access on the basis of this chapter for purposes other than those for which such access has been granted in accordance with this chapter shall be punished by a fine of between EUR 1 250 and EUR 1 250 000.

#### **Article 29**

(1) The information referred to in Article 14(2), subparagraph 1, point 1, letters a) to c), e), f), h) and l), subparagraph 1, point 2, letters a), c) and d) and paragraph 2, relating to a fiducie or express trust which holds or has a controlling interest in a company or other legal entity other than those referred to in Article 30, paragraph 1, of Directive (EU) 2015/849, through direct or indirect ownership, in particular by means of bearer shares or through control by other means, shall be accessible to any natural or legal person who submits a written application relating to such fiducie or express trust.

(2) The provision of the information referred to in paragraph 1 is subject to the payment of a fee, the amount of which is determined by grand-ducal regulation. The amount of the fee shall not exceed the administrative costs related to the provision of the information, including the costs of maintenance and development of the Register of Fiducies and Trusts.

#### **Article 30**

(1) Access for consultation of the Register of Fiducies and Trusts is carried out in accordance with the terms of access laid down by grand-ducal regulation.

(2) The computer system by which access to the Register of Fiducies and Trusts is carried out shall be set up in such a way that access to the files is secured by means of strong authentication, that

the information relating to the person having made the consultation, the information consulted, the date, time and reference of the file in which the consultation was made and the precise reason for the consultation can be traced. The logging data shall be kept for a period of five years from the date of recording, after which it shall be deleted.

(3) No information on a search of the data by a national authority or a self-regulatory body may be disclosed to trustees or fiduciaires or to the beneficial owners. The Director of the AED or his or her delegate shall ensure that consultation of data from the Register of Fiducies and Trusts is carried out without alerting the trust or fiducie concerned or its beneficial owners.

### **Article 31**

(1) A beneficial owner or his or her nominee may request, on a case-by-case basis and in the following exceptional circumstances, on the basis of a duly motivated request addressed to the AED, that access to all or part of the information referred to in Article 14 be limited to national authorities, self-regulatory bodies, credit and financial institutions only, as well as bailiffs and notaries acting in their capacity as public officers, where access by other persons to such information would expose the beneficial owner to a disproportionate risk, to a risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation or where the beneficial owner is a minor or is otherwise incapacitated.

The application shall specify, failing which it shall be void:

1. if the applicant is a natural person: the surnames, first names and domicile or residence of the applicant; if the applicant is a legal person: the name, precise address of the registered office and the person or body qualified to represent it in court;
2. the data necessary for the identification of the trust or fiducie concerned;
3. the basis of the claim;
4. the surnames, first names, date of birth, nationality and domicile or residence of the beneficial owners for whom access to the information is to be restricted and the category to which they belong;
5. the information for which access is to be restricted.

In support of the request, any document is attached that can justify the existence of the exceptional circumstances referred to in paragraph 1.

(2) The AED shall provisionally limit access to the information referred to in Article 14 only to national authorities, self-regulating bodies, credit and financial institutions, as well as to bailiffs and notaries acting in their capacity as public officers, upon receipt of the request.

If the request is refused, access to the information shall remain restricted for a further period of one month. In the event of an appeal against a decision of refusal, the limitation of access to information is maintained until the decision of refusal is no longer subject to judicial review.

(3) A limitation of access to information may be granted only on the basis of a detailed assessment of the exceptional nature of the circumstances and only for the duration of the circumstances justifying it without exceeding a maximum period of three years. It may be renewed by decision of

the AED, on the basis of a reasoned request for renewal from the beneficial owner, addressed to the AED no later than one month before the expiry date of the limitation.

(4) A notice informing about the access limitation to information and the date of the related decision is published on the AED website for a period of one month.

(5) Against the decision of the AED Director or his or her delegate referred to in paragraph 2 or 3, an appeal for reversal is lodged with the Administrative Tribunal. It must be filed within one month from the notification.

(6) The AED shall publish annual statistical data on the number of derogations granted and the reasons given and shall communicate these data to the European Commission.

## **Chapter 6 - Miscellaneous, amending and transitional provisions**

### **Article 32**

(1) The CRF, the supervisory authorities and the self-regulatory bodies shall cooperate closely with each other.

For the purposes of paragraph 1, the supervisory authorities and the CRF are authorised to exchange any information obtained in accordance with this law that is necessary for the performance of their respective tasks in the fight against money laundering and terrorist financing. The supervisory authorities and the CRF shall solely use the information exchanged for the performance of these tasks.

(2) For the purposes of this law, the supervisory authorities shall cooperate with their foreign counterpart authorities in compliance with and within the limits of the provisions "of Articles 9-2a and 9-2b"<sup>3</sup> of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended.

### **Article 33**

(1) The AED may take the necessary measures to ensure the interconnection of the Register of Fiducies and Trusts with the registers referred to in Article 31(3a), of Directive (EU) 2015/849 established by the other Member States through the European Central Platform established by Article 22(1) of Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 on certain aspects of company law, hereinafter referred to as "Directive (EU) 2017/1132", in accordance with the technical specifications and procedures referred to in Article 31(9), subparagraph 1 of Directive (EU) 2015/849.

(2) The information referred to in Article 14 recorded in the Register of Fiducies and Trusts shall be available through the system of interconnection of registers established by Article 22(2), of Directive (EU) 2017/1132 in accordance with the access arrangements provided for by this law and the measures taken for its implementation.

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<sup>3</sup> Law of 25 February 2021

#### **Article 34**

In Article 6 of the Law of 27 July 2003 on trusts and fiduciary contracts, as amended, a paragraph 3 is added to Article 6, which reads as follows:

“(3) Each separate fiduciary estate shall be recorded in the books of the fiduciaire in an account clearly identified as a fiduciary account. The account must include a reference to the fiduciary agreement to which it relates.”

#### **Article 35**

The Law of August 10, 2018 on information to be obtained and kept by fiduciaires and implementing Article 31 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 purpose 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 is repealed.

#### **Article 36**

The reference to this law is made in the following form: "law of 10 July 2020 establishing a Register of Fiducies and Trusts".