

Law of 13 January 2019 establishing the Beneficial Owner Register

1° transposing the provisions of Article 30 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, 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;

2° amending the Law of 19 December 2002 on the trade and companies register and the accounting practices and annual accounts of undertakings, as amended.

(Mém. A 2019, n° 15)

as amended by the:

Law of 25 March 2020 establishing a central electronic data retrieval system related to payment accounts and bank accounts identified by IBAN and safe-deposit boxes held by credit institutions in Luxembourg and amending:

1° the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended;

2° the Law of 5 July 2016 reorganising the State Intelligence Service, as amended;

3° the Law of 30 May 2018 on markets in financial instruments;

4° the Law of 13 January 2019 establishing a Register of beneficial owners;

for the purpose of transposing:

1° points (19) and (29) of Article 1 of 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 purposes of money laundering or terrorist financing and amending Directives 2009/138/EC and 2013/36/EU;

2° point 28(d) of Article 1 of Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures;

3° point (5) of Article 64 of Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU.

(Mém. A 2020, n° 193)

Chapter I. – Definitions

Article 1.

For the purposes of this law, the following definitions are applicable:

1° “Beneficial Owner Register” means the file in which information on beneficial owners is kept;

2° “manager” means the economic interest group Luxembourg Business Registers;

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° “registered entity” means the entities registered in the Trade and Company Register referred to in Article 1, points 2° to “16°”¹, of the amended Law of 19 December 2002 on the Trade and Company Register and on bookkeeping and annual accounts of companies, as amended; (*Law of 25 March 2020*)

5° “national authority” means the following authorities, administrations and entities:

- (a) the General State Prosecutor, State Prosecutors and members of the State Prosecutor's Offices;
- (b) the investigative judges;
- (c) the financial intelligence unit;
- (d) the officers of the judicial police referred to in Article 10 of the Code of Criminal Procedure and approved by the Director General of the Grand-Ducal Police;
- (e) the Commission de Surveillance du Secteur Financier;
- (f) the Commissariat aux Assurances;
- (g) the Administration de l'enregistrement, des domaines et de la TVA (registration duties, estates and VAT authority);
- (h) the Administration des douanes et accises (customs and excise administration);
- (i) the State Intelligence Service;
- (j) the Administration des contributions directes (Luxembourg Inland Revenue Authority);
- (k) the Ministry of Foreign and European Affairs, within the framework of its specific competences in the area of combating money laundering and the terrorist financing;
- (l) the Ministry of Finance, within the framework of its specific competences in the area of combating money laundering and the terrorist financing;

¹ Law of 25 March 2020

(m) the Office du contrôle des exportations, importations et du transit (Office of Export, Import and Transit Control);

6° “professionals”: 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.

Chapter 2 - Establishment of the Beneficial Owner Register

Article 2.

Under the authority of the Minister responsible for Justice, a register is established called “Beneficial Owner Register”, abbreviated as “RBE”, whose purpose is to store and make available information on the beneficial owners of the registered entities.

Chapter 3 - Registration and storage of information on beneficial owners in the Beneficial Owner Register

Article 3.

(1) The following information on the beneficial owners of the registered entities must be entered and stored in the Beneficial Owner Register:

- 1° the surname;
- 2° the first name(s);
- 3° the nationality (or nationalities);
- 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;
- 9° the precise private address or the precise business address indicating:
 - a) for addresses in the Grand Duchy of Luxembourg: the habitual residence appearing in the national Register of Natural Persons or, for business addresses, the town, street and building number appearing in the national register of towns and streets, as provided for in Article 2, letter g) of the Law of 25 July 2002 on the reorganisation Land Registry and Topography Administration, as amended, as well as the postcode;
 - b) for addresses abroad: the town, street and number of the building abroad, the postcode and the country;
- 10° for persons registered in the national Register of Natural Persons: the identification number provided for by the Law of 19 June 2013 on the identification of natural persons, as amended;
- 11° for non-resident persons not entered 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) As an 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 party to the Agreement on the European Economic 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 requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC shall list only the name of the regulated market in which their securities are admitted to trading.

Article 4.

(1) The registration of the information referred to in Article 3 and its amendment must be requested by the registered entity or its representative within one month from the time when the registered entity became aware or should have become aware of the event which made the entry or amendment necessary. The notary who draws up the instrument of constitution or any amending instrument of the registered entity may also request the registration of the information referred to in Article 3 and any amendments thereto.

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

(3) The request for registration of the information referred to in Article 3 and amendments thereto shall include the supporting documents laid down in a grand-ducal regulation.

Article 5.

(1) The Minister of Justice shall be 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).

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

The manager has the status of 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 made by secure electronic means leaving a trace of the sending.

(4) The manager is not responsible for the content of the information recorded.

(5) The manager may enter information on the beneficial owners of a registered entity in the Beneficial Owner Register at the request and on behalf of the registered entity.

(6) The State Information Technology Centre is responsible for the computerised management of the file within the meaning of the above-mentioned Regulation (EU) 2016/679.

(7) The State Information Technology Centre also has the status of a processor of the file within the meaning of the above-mentioned Regulation (EU) 2016/679.

Article 6.

(1) The request for registration referred to in Article 4(1) and (3) shall be made by electronic means on the Internet site of the manager in accordance with detailed rules to be laid down in a grand-ducal regulation.

(2) The manager shall be obliged to make the entries prescribed by law within three working days of the submission of the request for registration referred to in Article 4(1) and (3).

Article 7.

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

If the manager refuses the request for registration for one of the reasons referred to in the previous subparagraph, the manager shall ask the relevant registered entity or, where appropriate, its authorised representative to regularise its application by supplementing, amending or withdrawing the information requested by the registered entity, or by submitting the requisite supporting documents.

The relevant registered entity shall have a period of 15 days from the date of issue of the request for regularisation by the manager to comply.

(2) If the request still does not comply with the legal and regulatory provisions or if the missing information or supporting documents have still not been provided within the period referred to in the third subparagraph of paragraph 1, the manager shall notify the relevant registered entity of its refusal to register. Reasons shall be given for the refusal. It shall mention the possibility for the registered entity to appeal to the courts, indicating the competent judge, the procedure to be followed and the time limit.

Notifications shall be made by the manager through registered letter with acknowledgement of receipt.

(3) An appeal against the decision of registration or refusal of registration shall be open to any interested person. The appeal shall be brought before the presiding judge of the chamber of the District Court sitting in commercial matters for traders and before the presiding judge 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 Law of 19 December 2002 on the Trade and Company Register and on bookkeeping and annual accounts of companies, as amended.

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

(5) A decision that has the force of res judicata ordering a registration or an amendment of a registration shall be enforced by the manager.

In the event of confirmation of the manager's refusal to register by a decision that has the force of res judicata, the relevant registered entity shall have a period of 15 days from the notification of the decision to comply with the law or to provide the missing information.

If the registered entity fails to comply with the legal and regulatory provisions or fails to provide the missing information, the manager shall forward the file of the relevant registered entity to the State Prosecutor.

Article 8.

(1) Any person having access to the information in the Beneficial Owner Register pursuant to Article 11, as well as any professional, shall inform the manager as soon as they ascertain either the existence of erroneous data or the absence of all or part of the data in the Beneficial Owner Register, or the failure to register, modify or delete them, within 30 days of such ascertainment.

(2) The procedure laid down in Article 9 shall apply.

(3) For the duration procedure of the Article 9, a specific entry relating to the findings referred to in paragraph 1 shall be made by the manager in the Beneficial Owner Register.

Article 9.

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

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

(3) Registered entities concerned by a request from the manager within the meaning of paragraphs 1 or 2 shall verify their registrations and respond to the manager according to a procedure set by the manager.

(4) In the absence of a reply within 30 days from the date of dispatch of the request from the manager to the registered entity, the manager shall transmit the file of the relevant registered entity to the State Attorney.

Article 10.

(1) The information referred to in Article 3, as well as the requests for registration shall be kept by the Beneficial Owner Register for five years after the date of the removal of the registered entity from the Trade and Company Register.

(2) The supporting documents referred to in Article 4(3), shall be kept by the Beneficial Owner Register for five years.

Chapter 4 - Access to the Beneficial Owner Register

Article 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 concerning the granting of access by the national authorities shall be laid down in a grand-ducal regulation.

Article 12.

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

Article 13.

(1) Consultation access of the authorities and persons referred to in Articles 11 to the Beneficial Owner Register shall be done by electronic means in accordance with the access procedures laid down in a grand-ducal regulation.

The search criteria are laid down in a grand-ducal regulation.

(2) The computer system, through which the authorities referred to in Article 11 have access to the Beneficial Owner Register, must be set up in such a way that access to the files is secured by strong authentication means, so that the information on the person making the search, the information searched, the date, time and reference of the file in which the search was made and the precise reason for the search can be traced. Logging data must be kept for a period of five years from the date of recording, after which they must be deleted.

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

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

Article 14.

The manager shall issue extracts in electronic or paper format containing the information referred to in Article 3 in accordance with the conditions laid down in Articles 11 and 12.

Article 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 motivated request to the manager, to limit access to the information referred to in Article 3 to national authorities only, credit and financial institutions and court bailiffs and notaries acting in their capacity as public officers, where such access would expose the beneficial owner to a disproportionate risk, to the risk of fraud, abduction, 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 national authorities from the receipt of the request until the notification of his or her decision and, in case of refusal of the request, for a further 15 days. In the event of an appeal against a refusal decision, the limitation of access to the information shall be maintained until the refusal decision is no longer subject to appeal.

(3) A limitation on access to information may be granted only for the duration of the circumstances justifying it, but not exceeding 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 date of expiry of the limitation.

(4) A notice informing about the limitation of access to the information and the date of the related decision shall be published in the Beneficial Owner Register by its manager.

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

Article 7(4) shall apply.

Chapter 5 - Special provisions concerning the operation of the Beneficial Owner Register

Article 16.

The remuneration of the manager for the costs of operation and use of the Beneficial Owner Register is laid down in a grand-ducal regulation, within the limit of the costs of operation and use incurred.

Chapter 6 - Providing, obtaining and storing information on beneficial owners

Article 17.

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

(2) Registered entities must obtain and store, at the place of their registered office, the information on their beneficial owners referred to in Article 3, together with the relevant supporting documents.

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

(4) In the event of removal from the Trade and Company Register following the dissolution of a registered entity, the registered entity shall designate the place where the information referred to in Article 3 and the relevant supporting documents are to be kept for five years following the date of removal from the Register.

The indication of the designated place is published in the Electronic Compendium of Companies and Associations, in accordance with the provisions of Title I, Chapter Vbis, of the Law of 19 December 2002 on the Trade and Company Register and on bookkeeping and annual accounts of companies, as amended.

Article 18.

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

Article 19.

Except in situations where access to information has been restricted in accordance with Article 15, 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 information on its owner to professionals in the context of the implementation of their 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.

Chapter 7 – Criminal Provisions

Article 20.

(1) A fine of between EUR 1 250 and EUR 1 250 000 shall be imposed on a registered entity that fails to submit within the time limits referred to in Article 4(1), first subparagraph and Article 7(4), a request for registration in the Beneficial Owner Register for the purposes of registering all the information on its beneficial owners referred to in Article 3 and any amendments thereto.

(2) A fine of between EUR 1 250 and EUR 1 250 000 shall be imposed on a registered entity which knowingly submits a request for registration to the Beneficial Owner Register for the purpose of registering information referred to in Article 3 which is inaccurate, incomplete or not up-to-date

Article 21.

(1) Any registered entity that fails to obtain and store, at the place of its registered office, all the information on its beneficial owners referred to in Article 3 shall be punished by a fine of between EUR 1 250 and EUR 1 250 000.

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

(3) A fine of between EUR 1 250 and EUR 1 250 000 shall be imposed on the beneficial owner who fails to fulfil his or her obligation under Article 17(1).

Chapter 8 - Amending Provisions

Article 22.

Article 10 of the Law of 19 December 2002 on the Trade and Company Register and on bookkeeping and annual accounts of companies, as amended, is supplemented by a point 4° which reads as follows:

“ 4° where applicable, the indication of an additional statement provided for by law. ”

Article 23.

After Article 12 of the same law, the following new Articles 12a and 12c are inserted:

“ Article 12a. The national identification number of any natural person entered in the Trade and Company Register, as provided for by the Law of 19 June 2013 on the identification of natural persons, as amended, must also be communicated.

Natural persons who do not have an identification number as provided for by the Law of 19 June 2013 on the identification of natural persons, as amended, shall be allocated this identification number in accordance with Article 1(2), second subparagraph of the Law of 19 June 2013 on the identification of natural persons, as amended, upon registration by the manager of the Trade and Company Register.

Article 12b. The precise Luxembourg addresses to be entered in the Trade and Company Register pursuant to this law shall mention the town, the street, the number of the building, appearing or to be communicated to the National Register of Towns and Streets, provided for by Article 2, letter g) of the Law of 25 July 2002 on the reorganisation Land Registry and Topography Administration, as amended, as well as the postcode. ”

Article 24.

Article 22-1, second subparagraph of the same law is amended as follows:

“ When it is electronic, this signature must be qualified within the meaning of Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trusted services for electronic transactions in the internal market and repealing Directive 1999/93/EC.”

Article 25.

Article 22-4 of the same law is repealed.

Article 26.

Article 23 of the same law is amended as follows:

“1° In the letter a), the words “and the costs of publication in the Electronic Compendium of Companies and Associations” are deleted.

2° In the letter b), the words “and the costs of publication in the Electronic Compendium of Companies and Associations” are deleted.

Chapter 9 - Transitional provision

Article 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

Article 28.

The reference to this law is made in the following form “law of 13 January 2019 establishing a Beneficial Owner Register”.

Chapter 11 - Entry into force

Article 29.

The provisions of this law shall enter into force on the first day of the second month following its publication in the Official Journal of the Grand Duchy of Luxembourg.