



# The Law of 13 January 2019 establishing a Luxembourg Beneficial Owners Register (le “Registre des Bénéficiaires Effectifs”)



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## 1) Background

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In the context of the fight against money laundering and the financing of terrorism, the European Union (EU) adopted on May 20, 2015 the Directive (EU) 2015/849 and on May 30, 2018 the Directive (EU) 2018/843 (known as 4th AML Directive and the 5th AML Directive, respectively). These Directives provide for a series of measures to prevent the use of the financial system for the purpose of money laundering and terrorist financing, in particular by setting up a centralized register of beneficial owners of legal persons registered with the Luxembourg Trade and Companies Register (*le “Registre de Commerce et des Sociétés”*).

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## 2) The law

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The law of 13 January 2019 (the “**Law**”) establishes a register of beneficial owners<sup>1</sup> by :

- Implementing 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 in 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 European Parliament and of the Council and Commission Directive 2006/70 / EC;
- Amending the amended law of 19 December 2002 on the *Registre de Commerce et des Sociétés* and the accounting and annual accounts of undertakings.

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<sup>1</sup> For the purposes of this Law, the term "beneficial owner" means any natural person who ultimately owns or controls the customer or any natural person for whom a transaction is performed or an activity carried out. The notion of beneficial owner includes at least:

**(a) in the case of companies**

any natural person who owns or controls a legal entity, by virtue of a sufficient percentage of shares (i.e. at least 25% of the shares) or voting rights or of an ownership interest in that entity;

**(b) in the case of fiducies and trusts,**

the constituent, any trustee, the protector (if any), the beneficiaries or, where the persons who will be the beneficiaries of the construction or legal entity have not yet been designated, the category of persons in whose main interest the construction or legal entity has been incorporated or operates; any other natural person exercising ultimate control over the *fiducie* or trust; for legal entities such as foundations, and legal arrangements similar to *fiducies* or trusts, any natural person performing functions equivalent to or similar to those referred to in point (b).

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### 3) Entities concerned

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Article 1 (2) to (15) of the Luxembourg law dated 19 December 2002 on the *Registre de Commerce et des Sociétés* and the accounting and annual accounts of undertakings determines all the entities which are subject to the Law. The forms of entity are the following:

*“commercial companies with the exception of temporary commercial companies and joint ventures; economic interest groups; european economic interest groups; branches established in the Grand Duchy of Luxembourg by commercial and civil companies, economic interest groups and european economic interest groups, governed by the law of another State; civil companies; non-profit associations; foundations; pension savings associations; agricultural associations; state and district public establishments; mutual insurance associations; special limited partnerships; common funds; other legal persons and entities whose registration is provided for by the law dated 19 December 2002.”*

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### 4) Main objective of the Law : Creation of a Beneficial Owners Register

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It is established under the authority of the Minister of Justice a register called “*Registre des bénéficiaires effectifs*” (Beneficial Owners Register) whose purpose is to preserve and make available information on the beneficial ownership of registered entities.

#### **The Beneficial Owners Register**

The Register will centralize and maintain beneficial ownership information as defined by the Anti-Money Laundering and Anti-Terrorist Financing law of November 12, 2004 (as modified) of entities registered on the Luxembourg Business Register with the exception of companies whose securities are admitted to trading on a regulated market (listed companies), which will only be required to have the name of the market in which their securities are admitted to trading.

#### **Information to be published in the Beneficial Owners Register**

- the name and first name (s);
- the nationality (ies);
- the day, the month, the year and the place of birth;
- the country of residence;
- the nature and extent of the effective interests held;
- the precise private address or the precise professional address mentioning:
  - for addresses in the Grand Duchy of Luxembourg: habitual residence in the register of natural persons or, for business addresses, the locality, the street and the building number in the national register of localities and streets, as provided for in Article 2, letter g) of the amended law of 25 July 2002 (“*portant réorganisation de l’administration du cadastre et de la topographie*”) as well as the postal code;
  - for addresses abroad: the locality, the street and the building number together with the postal code and the country;
  - for persons registered in the national register of natural persons: the identification number provided for by the amended law of 19 June 2013 on the identification of natural persons;
  - for non-resident persons not registered in the national register of natural persons: a foreign identification number.

#### **What about beneficial owners in the fund industry ?**

The Council of State “*Conseil d’Etat*” raised the issue concerning the extent of the effective interests held by beneficial owners.

For example, in the situation of an investment fund established as a partnership, one could legitimately ask itself whether the beneficial owners of the general partner should be considered as beneficial owner of the fund itself. Concerning umbrella funds, should the beneficial ownership be made at the level of the

fund itself or should it be made at the level of each sub-fund ? Some additional work and discussion may be awaited for clarification.

### **How to comply with the Law in practice ?**

The Information collected will have to be kept at the registered office in an internal file throughout the existence of the registered entity. Then, it will be necessary to designate and publish at the *Registre de Commerce et des Sociétés* the place where this Information will be kept for the five years following its cancellation from the *Registre de Commerce et des Sociétés*. It should be noted that at the request of the national authorities, the registered entities will be required to make available, within 3 days of the request, information on their beneficial owners as well as those relating to their legal owner. The deposit of information regarding the beneficial owners and the registration on the Beneficial Owners Register held in the *Registre de Commerce et des Sociétés* will be the responsibility of the registered entities or the agent that the registered entity may use as an intermediary. This will be done electronically on the *Registre de Commerce et des Sociétés* website within the month following the event making the registration or modification of the information needed.

### **Access to the Beneficial Owners Register**

#### **Who is concerned ?**

- National authorities which, within the framework of their mission, will have access to all the Registered Information.
- Any (legal or natural) person interested will be able to consult the same Information with the exception of the address of the beneficial owner as well as his national identification number.

#### **How to consult the Beneficial Owners Register ?**

- Access will be secured by a user authentication that must inform the precise reason for its consultation. However, in the event of a disproportionate risk, such as the risk of blackmail, kidnapping or violence, registered entities or beneficial owners may, on a reasoned basis, request the *Registre de Commerce et des Sociétés* Manager to limit access to the information to certain categories of persons only for a maximum of 3 years renewable.

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### 5) Timing to comply with the entry into force of the Law

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The Law will enter into force on 1<sup>st</sup> March 2019. Entities within the scope of the Law will have a six months period (until 31 August 2019) to comply with the provisions of the Law and file the necessary information regarding their beneficial owners with the Beneficial Owners Register.

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### 6) Criminal Sanctions

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The Law provides that registered entities which omit within the prescribed time to communicate to the Beneficial Owners Register an application to register or modify information regarding the beneficial owner(s) will be punished with a fine of 1 250 euros to 1 250 000 euros.

Registered entities that knowingly communicate inaccurate or incomplete information regarding the beneficial owner(s) for registration in the Beneficial Owners Register will also be punished with a fine of 1 250 euros to 1 250 000 euros.