

LBR Circular 19/01

(updated version following the law of 25 March 2020 amending the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended)

Subject: Register of Beneficial Owners

This circular presents the register set up pursuant to Section 2 of the Law of 13 January 2019 establishing the Register of Beneficial Owners (hereinafter referred to as the “Law of 13 January 2019”).

The Law of 13 January 2019 transposes into Luxembourg Law provisions of Article 30 of Directive (EU) 2015/849, on information concerning beneficial owners, as amended by Directive (EU) 2018/843. The LUXEMBOURG BUSINESS REGISTERS, which is already responsible for managing the Trade and Company Register (*Registre de commerce et des sociétés* – RCS), has been entrusted with the administrative management of the new register, under the authority of the Minister of Justice; the data bank in question remains the property of the Luxembourg Government.

The purpose of the Register of Beneficial Owners (*Registre des bénéficiaires effectifs* – RBE) is, with respect to the bodies affected by that law (1), to collect adequate, accurate and up-to-date information on their beneficial owners (2) and make that information available to the general public (3), businesses and national authorities tasked with combating money laundering and the financing of terrorism.

1. Scope of the RBE

1.1 Registered entities required to enter their beneficial owners onto the RBE

Article 1, section 4 of the Law of 13 January 2019 defines “registered entities” which are required to disclose the identity of their beneficial owners under the terms of Article 3 of the same law.

As such, this requirement applies to entities registered in the RCS and subject to the terms of Article 1, sections 2 to 15, of the amended Law of 19 December 2002 on the Trade and Company Register and businesses' accounting and annual account requirements.

Under this definition, all entities registered with the RCS must disclose their beneficial owners to the RBE, with the sole exception of traders who are natural persons.

1.2 Persons to enter onto the RBE

Article 1, section 3 of the Law of 13 January 2019 also defines the term “beneficial owner”, referring to Article 1, paragraph 7 of the modified Law of 12 November 2004 on combating money laundering and the financing of terrorism.

Thus, the following must be registered: *“Any natural person who ultimately, owns or controls the customer or any natural person on whose behalf a transaction or an activity is being conducted.*

The notion of “beneficial owner” includes at least:

a) in the case of corporate entities:

i) the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that entity, including through bearer shareholdings, or through control via other means, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Union law or subject to equivalent international standards which ensure adequate transparency of ownership information.

A shareholding of 25% plus one share, or ownership interest of over 25% in the customer, held by a natural person, is an indication of direct ownership. A shareholding of 25% plus one share or an ownership interest of more than 25% in the customer, held by a corporate entity which is under the control of one or several natural persons, or by several corporate entities which are controlled by the same natural person(s), is an indication of indirect ownership;

ii) if, after having exhausted all possible means and there are no grounds for suspicion, none of the persons referred to in point i) have been identified, or if there is any doubt that the person(s) identified are the beneficial owners, any natural person who holds the position of senior managing official(s).

Control through other means may be determined in accordance with Articles 1711-1 to 1711-3 of the Law of 10 August 1915 on commercial companies, as amended, as well as in accordance with the following criteria:

(aa) the direct or indirect right to exercise a dominant influence over a customer, on the basis of a contract entered into with that customer or of a clause of the articles of association of that customer, where the law governing that customer allows being subject to such contracts or such statutory clauses;

(bb) the fact that a majority of the members of the administrative, management or supervisory bodies of the customer, in office during the financial year as well as the preceding financial year and until the preparation of the consolidated financial statements, were appointed through direct or indirect exercise of the voting rights of one natural person;

(cc) the direct or indirect power to exercise or the actual direct or indirect exercise of a dominant influence or control over the customer, including the fact that the customer is placed under a single management with another undertaking;

(dd) an obligation, under the national law to which the parent undertaking of the customer is subject, to prepare consolidated financial statements and a consolidated management report;

b) in the case of fiduciaries and trusts, all following persons :

i) the settlor(s);

ii) the fiduciaire(s) or trustee(s);

iii) the protector (s), if any;

iv) the beneficiaries or, where the persons who will be the beneficiaries of the legal arrangement or entity have not yet been determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;

v) any other natural person exercising ultimate control over the fiducie or trust by means of direct or indirect ownership or by other means;

c) in the case of legal entities such as foundations, and legal arrangements similar to trusts, any natural person holding equivalent or similar positions to those referred in point b). ”

It is the responsibility of the entities mentioned by the Law of 13 January 2019 to establish who their beneficial owners are whose identity needs to be entered onto the RBE.

2. Entering information onto the RBE

2.1 Information to be disclosed

The information that must be disclosed under Article 3 of the Law of 13 January 2019 must be sufficient, accurate and up to date, in application of Article 4 (2) of the Law. Article 20 (2) of the Law provides for criminal sanctions if the registered entity asks the RBE to enter information that it knows to be inaccurate, incomplete or out of date.

2.1.1 Information on the beneficial owner(s)

Article 3 (1) of the Law of 13 January 2019 lists the information to be entered onto the RBE pertaining to the beneficial owners of registered entities subject to the law.

Accordingly, the following information about beneficial owners must be disclosed:

- > Surnames and first names,
- > Nationality (or nationalities),
- > Date of birth (day, month and year),
- > Place of birth,
- > Country of residence,
- > Exact personal or work address:
 - o For addresses in Luxembourg, the usual residence appearing in the national register of natural persons or, for business addresses, the town/city, street and building number in the national register of towns and streets – as set forth by Article 2 g) of the amended Law of 25 July 2002 reorganising the land registry and topographical administration – as well as the postcode;
 - o For addresses abroad, the town/city, street and building number, postcode and country,
- > The identification number as provided for by the amended law of 19 June 2013 on the identification of natural persons, for people on the national register of natural persons,
- > A foreign identification number, for non-residents who are not on the national register of natural persons,
- > The nature and scope of the beneficial interests held.

For beneficial owners who do not have a Luxembourg national identification number, the manager of the RBE will not create such a number in the national registry of natural persons. Only the foreign identification number disclosed by the declarant will be recorded in the RBE.

2.1.2 Specific case of companies that have released their shares for trading on a regulated market

Paragraph (2) of the aforementioned Article 3 stipulates that specific information must be disclosed when the registered business, falling within the scope of application of the Law of 13 January 2019, releases its shares for trading on a regulated market in the Grand Duchy of Luxembourg or in another Member State of the European Economic Area or in a third country which imposes requirements 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.

In this case, the business is only required to enter the name of the regulated market on which its shares are admitted to trading onto the RBE.

2.2 Procedure for registering with the RBE

Registration with the RBE entails submitting declarations to the manager of the RBE electronically through the website www.lbr.lu, via the portal specifically dedicated to the RBE.

2.2.1 Who performs the registration?

Article 4 (1) of the Law of 13 January 2019 stipulates that the registered entity or, where applicable, the entity's representative, is required to enter the details of its beneficial owners.

The same article also empowers the notary who has drafted the registered entity's articles of association or any amending deed to request registration of the information required by law.

In addition, the LUXEMBOURG BUSINESS REGISTERS has a help desk to provide assistance to registered entities or their representative(s) who do not have an internet connection or the necessary hardware to register online with the RBE. In this context, the manager acts on behalf of the applicant on the basis of a mandate from the latter, so responsibility for registering lies with the principal.

2.2.2 How to register?

The declarant needs to sign in securely to the RBE portal on the LUXEMBOURG BUSINESS REGISTERS website (using a Luxtrust electronic certificate) to gain access to the registration system.

Once the declarant has identified the registered entity on whose behalf they are acting, an electronic declaration form is displayed so that they can submit the legally required information. Once completed, this form materialises the applicant's declaration with the RBE.

In some cases, supporting documents will also need to be attached to the declaration form. Those documents include:

- > A copy of an official document establishing the identity of the natural person being registered, when the latter does not have a Luxembourg national identification number.
If the official document is not written in Latin script, then it must be accompanied by a French, German or Luxembourgish translation.
On the other hand, if the person in question does have a Luxembourg national identification number, no identity documents need to be submitted.
- > A duly justified request to limit access to the information, as provided for in Article 15, Paragraph 1 of the Law of 13 January 2019, when the entity or beneficial owner invokes this exception (see point **3.3**).
- > A document certifying that the entity is a business whose shares have been 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 a third country which imposes requirements 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.

In accordance with Article 6, Paragraph (2) of the Law of 13 January 2019, the manager has three working days from the submission of the request by the registered entity or their representative, to enter the submitted information onto the RBE. Once the request has been accepted, the submitted information is entered onto the RBE and the manager sends the declarant a receipt certifying that the registration has been accepted, and hence that the information has been duly entered onto the RBE. Any documents submitted in support of the declaration are also returned to the declarant.

Conversely, if the registration application is incomplete or does not comply with the legal and regulatory requirements, or if the information disclosed does not correspond to the supporting documents, the manager will deny the application and return it to the declarant, in accordance with Article 7 of the Law of 13 January 2019. In that case, the declarant will be asked to rectify the application and resubmit it within 15 days.

If the resubmitted application still fails to comply with the legal and regulatory requirements, or if the missing information or supporting documents have still not been provided, the manager will notify the entity in question that registration has been denied, stating the reasons for the denial. The entity may appeal that denial in a court of law. The appeal is heard by the judge presiding the chamber of the District Court ruling on business matters for traders, and by the President of the District Court ruling on civil matters for those 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 company register and businesses' accounting and annual account requirements.

2.2.3 What is the deadline for registering with the RBE

In general terms, Article 4 of the Law of 13 January 2019 stipulates that information on beneficial owners, and amendments to that information, must be filed within one month from the time when the registered entity subject to the Law of 13 January 2019 became (or ought to have become) aware of the event necessitating the registration or amendment. Article 20 (1) of the law provides for a criminal sanction in the event of failure to comply with this deadline.

With respect to the establishment of the RBE, the transitional arrangements provided for in Article 27 of the Law of 13 January 2019 allow a period of six months, from the entry into force of the Law of 13 January 2019, for registered entities or their representatives to register their beneficial owners with the RBE. This period allows sufficient time to compile the new data bank which will become the RBE.

2.2.4 What is the cost of registering with the RBE?

The applicable fee, corresponding to the administrative costs, is set by Grand-Ducal regulation.

During the six-month transition period following the entry into force of the Law of 13 January 2019, entities registering with the RBE will be exempt from paying these administrative costs.

Thus, declarations can be made free of charge until **31 August 2019 inclusive**, which is the end date of the transition period.

3. Public access to the RBE

In accordance with Article 27 of the Law of 13 January 2019, the RBE will only be opened for consultation at the end of the six-month transition period running from the entry into force of the law.

Hence, the RBE will only be available for consultation from **1 September 2019** onwards.

3.1 Consultation of the RBE online

The general public can access the RBE free of charge by going to the LUXEMBOURG BUSINESS REGISTERS website (www.lbr.lu) and selecting the RBE portal.

The database can be searched using either the entity's RCS registration number or its name.

The information items to which the general public has access are listed in Article 12 of the Law of 13 January 2019. All of the information in the RBE about the preselected entity may be consulted, except for the exact address and identification number of the registered beneficial owners, and information relating to a specific beneficial owner, for which the manager of the RBE has accepted a request to limit access to the information, under the terms of Article 15 of the Law of 13 January 2019.

If the registered entity has not entered information onto the RBE or has been struck off from it, the search will turn up nothing and no results will be displayed.

3.2 Extract from the RBE

It is possible to order an extract from the RBE listing the information entered for a given registered entity, under the terms of Article 14 of the Law of 13 January 2019. Such an order must relate to a specific entity, identified by its RCS registration number, and be sent to the RBE's manager through their website. If, for a given entity, no information has been entered onto the RBE, it is also possible to order a certificate attesting to that fact.

The information pertaining to the exact address and identification number of the registered beneficial owners, and the data on a specific beneficial owner for which the RBE manager has accepted a request to limit access to the information, under the terms of Article 15 of the Law of 13 January 2019, will not appear on RBE extracts.

Extracts and certificates may be issued in electronic format or in a secure paper format, bearing, respectively, the manager's electronic or handwritten signature.

These documents are issued in return for payment of an administrative fee, which is set by Grand-Ducal regulation.

3.3 Limitation of access to the information of a beneficial owner

Article 15 of the Law of 13 January 2019 provides that data disclosed to the RBE concerning beneficial owners who present a disproportionate risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation, or beneficial owners who are minors or are otherwise incapacitated, should not be viewable by the public, if the registered entity or beneficial owner in question so request. Hence, if such a beneficial owner is registered with the RBE, their information will not be visible on the RBE portal or displayed on the extracts issued by the RBE manager. It will be replaced by a note indicating that the information cannot be consulted, in accordance with the aforementioned Article 15.

Requests to limit access to information pursuant to Article 15 are to be sent to the RBE manager by the declaring entity or the beneficiary themselves, through the LUXEMBOURG BUSINESS REGISTERS website. They must cite valid reasons, because they will be assessed by the manager, who must closely analyse the exceptional nature of the circumstances justifying the request. The manager may deny the request to limit access.

In practice, as soon as a limitation request is received by the RBE manager, the information concerning the beneficial owner referred to in the request is made unavailable for public consultation, even before a decision has been made by the manager, until a ruling is made.

- > If the manager denies the request to limit access to the beneficial owner's information, the applicant then has 15 days to file an appeal against the manager's decision. During that period, the information will remain unavailable for public consultation.
- > If the manager grants the request to limit access, the information will remain unavailable to the public for the whole duration for which the limitation of access has been accepted.

Thus, beneficial owners who can prove a disproportionate risk as set out above, must be entered onto the RBE, but their information will not be available for the public to view once a request to limit access to that information has been submitted and granted by the manager.

This limitation of access to information is time-limited, and can only be granted for as long as the circumstances justify it, and then only for a maximum period of three years. Once this period ends, the information will become accessible to the public again, unless the request to limit access has been renewed one month before the expiry date, at the latest.

The decisions made by the manager in this particular context, be they positive or negative, are included on a list published on the RBE portal. This list shows the entities that have submitted a request to limit access to the information of at least one of their beneficial owners. The entity in question will remain on that list for a month, from the date of the manager's decision.

The legislative texts applicable to the RBE are available on the LUXEMBOURG BUSINESS REGISTERS website at www.lbr.lu.

For LUXEMBOURG BUSINESS REGISTERS

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The notes presented by the LUXEMBOURG BUSINESS REGISTERS:

- ***are general in nature and do not pertain to the specific situation of any natural or legal person;***
 - ***are documentary and explanatory;***
 - ***are intended to answer a number of questions posed by users of the RCS or RBE;***
 - ***have no legal value and LUXEMBOURG BUSINESS REGISTERS assumes no liability for their content;***
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 - ***do not constitute a professional or legal opinion;***
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