

Circular LBR 19/03

Concerns : The application of the provisions relating to the Register of Beneficial Owners to the foundations under the amended law of 21 April 1928 on non-profit associations and foundations.

The purpose of this circular is to assist foundations in their new steps to be taken with the Register of Beneficial Owners (RBE), established by Chapter 2 of the Law of 13 January 2019 establishing a Register of Beneficial Owners (hereafter the "Law of 13 January 2019").

In application of Article ¹ 4° of the Law of 13 January 2019, which defines the entities subject to the said Law, foundations are obliged to register their beneficial owner(s) with the RBE. In order to do so, they must first determine who their beneficial owner(s) are (1), before they are registered in the RBE (2).

1. Determination of beneficial owners

1.1 Definition of the beneficial owners of a foundation

Article ¹ 3° of the Law of 13 January 2019 refers to Article ¹ paragraph 7 of the amended Law of 12 November 2004 on the fight against money laundering and terrorist financing, as regards the definition of the concept of "beneficial owner".

Thus, it follows from point (c) of the above mentioned Article that foundations are treated in the same way as legal arrangements and trusts as regards the determination of their beneficial owners. The beneficial owner of a foundation is therefore any **natural person** who has a **function similar or equivalent to** those existing in legal arrangements and trusts, namely

- The constituent,
- Any fiduciary or 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 was established or operates,
- Any other natural person exercising ultimate control, whether through direct or indirect ownership or by other means.

In this context, similar or equivalent functions within a foundation under Luxembourg law are :

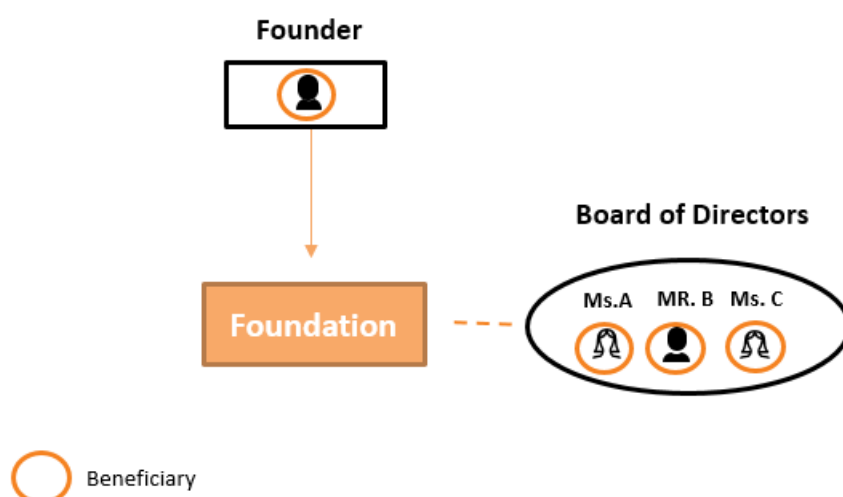
- The founder of the foundation,
- The members of the legally prescribed management body, who exercise control over the foundation.

Due to the nature of the foundation, which is intended to carry out a work of a philanthropic, social, religious, scientific, artistic, educational, sporting or tourist nature, the notion of beneficiary of the construction or existing legal entity within legal arrangements or trusts does not apply to the foundation. Similarly, the foundation is not aware of the functions of protector, trustee or trustee.

1.2 Application to foundations

In general, the Manager of the RBE reminds that the registered entity must carry out the necessary research to enable it to define its beneficial owners who are natural persons. The Manager cannot substitute himself for the registered entity as regards the determination of its beneficial owner(s).

> Example for the foundation :



The founder and the members of the Board of Directors must therefore be registered in the RBE as beneficial owners.

2. RBE Registration

2.1 List of information to be communicated

The information to be communicated pursuant to Article 3 of the Law of 13 January 2019 must be adequate, accurate and up-to-date pursuant to Article 4 (2) of the Law.

The following information concerning the person of a beneficial owner must be provided:

- > Surname and first name(s),
- > Nationality (or nationalities),
- > The date of birth (day, month and year),
- > Place of birth,
- > Country of residence,

- > The precise home address or the precise business address:
 - For Luxembourg addresses, the habitual residence appearing in the national register of natural persons or, for business addresses, the locality, street and building number appearing in the national register of localities and streets, as provided for in Article 2, letter g) of the amended law of 25 July 2002 on the reorganization of the administration of the land register and topography, as well as the postcode ;
 - For addresses abroad, the locality, street and building number abroad, postcode and country,
- > The identification number provided for by the amended law of 19 June 2013 on the identification of natural persons, for persons entered in the national register of natural persons,
- > A foreign identification number, for non-resident persons not registered in the national register of natural persons,
- > The nature and extent of the effective interests held: for foundations, it is sufficient to indicate here in which capacity (founder or director) the person is registered.

2.2 RBE Reporting Procedure

RBE registrations are made by means of declarations sent to the RBE manager electronically, on its website www.lbr.lu, via the portal specifically dedicated to RBE.

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**LUXEMBOURG
BUSINESS
REGISTERS**

Welcome to the Internet site of LUXEMBOURG BUSINESS REGISTERS

LUXEMBOURG BUSINESS REGISTERS (LBR), an economic interest grouping RCSL, which consolidates the State, the Chamber of Commerce (Chambre de Commerce) and the Chamber of Trades (Chambre des Métiers), it's mission is to manage and to develop, beyond the Trade and Companies Register, the different registers it may be trusted with, under the authority of the Ministry having Justice in its attributions.

Since 23 January 2003, LBR ensures the management of the Trade and Companies Register.

Since 1 June 2016, LBR is in charge of the electronic central platform of official publications officially named the 'Recueil électronique des sociétés et associations' (RESA).

The law of 13th of January 2019 establishing a Register of Beneficial Owners entrusted the management of this register to the LBR.

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REGISTRE DE COMMERCE
ET DES SOCIÉTÉS

> ACCESS TO THE TRADE AND COMPANY REGISTER



RESA
RECUEIL ÉLECTRONIQUE
DES SOCIÉTÉS ET ASSOCIATIONS

> ACCESS TO THE RECUEIL ÉLECTRONIQUE DES SOCIÉTÉS ET ASSOCIATIONS



RBE
REGISTRE DES
BÉNÉFICIAIRES EFFECTIFS

> ACCESS TO THE BENEFICIAL OWNERS REGISTER

2.2.1 Who does the registration?

In application of article 4 (1) of the law of 13 January 2019 the declaration is made by the foundation or by a person duly mandated by the foundation.

In addition, the LUXEMBOURG BUSINESS REGISTERS offers a help desk for people who do not have an internet connection or the necessary equipment to register online in the RBE. In this context, the Manager acts on behalf of the applicant, on the basis of a mandate.

The client therefore remains responsible for the registration made via the help desk.

To take advantage of this service, an appointment must be made in advance with the LBR Helpdesk, by telephone on 26 42 81.

This service is subject to a fee set in Appendix A of the Grand-Ducal Regulation of 15 February 2019 relating to the terms and conditions of registration, payment of administrative fees and access to information entered in the Register of Beneficial Owners (€20 excl. VAT, in addition to the declaration fee).

2.2.2 How do I register?

The declarant must connect to the LUXEMBOURG BUSINESS REGISTERS website, on the portal dedicated to the RBE, using a secure connection mode (by Luxtrust electronic certificate), to be able to access the RBE registration process.

He must then identify the foundation for which he is acting, indicating its registration number in the Trade and Companies Register (RCS). Once this number has been communicated, an electronic declaration form is made available to the declarant, enabling him to send the RBE manager the information required by law. The declaration to the RBE is thus concretely materialized by this form once completed.

In this context, the declarant must tick the box on the first page of the form "Beneficial beneficiaries are identified and must be filled in on this form", in order to communicate the information relating to the founder and the members of the board of directors of the foundation. The field on the form relating to the nature of the interests held will be completed in such a way as to show in which capacity the person is the beneficial owner.

Ex:

Intérêts effectifs détenus

Nature des intérêts effectifs (ex : capital social, actions, parts sociales,...)	
☐ -	1 Fondateur

Intérêts effectifs détenus

Nature des intérêts effectifs (ex : capital social, actions, parts sociales,...)	
☐ -	1 Administrateur

In some cases, supporting documents must also be attached to the declaration form. With specific regard to foundations, the only document that may be sent with the form is a copy of an official document establishing the identity of the natural person to be registered, where the latter does not have a Luxembourg national identification number. Please note that if this document is not written in Latin characters, it must be accompanied by a translation into French, German or Luxembourgish. A "free" translation is sufficient, as it is not necessary to have the document translated by a sworn translator.

If the person to be registered has a Luxembourg national identification number, no supporting documents need to be attached.

Pursuant to Article 6 paragraph (2) of the Law of 13 January 2019, the Manager has three working days to proceed with the registration in the RBE. Once the request has been accepted, the information transmitted shall be entered onto the RBE and the operator shall return to the declarant a receipt of acceptance of the entry, confirming that the entry has been duly made in the RBE. Any supporting documents transmitted in support of the declaration shall also be returned to the declarant.

On the other hand, if the registration application is incomplete or does not comply with the legal and regulatory provisions, or if the information communicated does not correspond to the supporting documents, the Manager shall refuse the application and return it to the declarant, in accordance with Article 7 of the law of 13 January 2019. In this case, the Manager invites the latter to regularize its request within fifteen days.

If the request is still not in conformity with the legal and regulatory provisions or if the missing information or supporting documents have still not been provided, the Manager shall notify the registered entity concerned of its refusal of registration, stating the reasons. The latter shall have the possibility to appeal to the courts against this refusal. The appeal shall be brought before the magistrate presiding over the chamber of the district court sitting in civil matters relating to foundations.

2.2.3 How long does it take to complete the RBE registration process?

In general, Article 4 of the Law of 13 January 2019 provides that the registration of information on beneficial owners and any changes thereto must be made within **one month** from the time when the registered entity subject to the Law of 13 January 2019 became aware or should have become aware of the event that makes it necessary to register the information or its modification.

In the case of foundations and insofar as the members of the Board of Directors are to be registered in the RBE, any change in the composition of the Board of Directors must be communicated to the RBE.

It should therefore be noted that, in this hypothesis, two distinct steps will have to be taken:

- Electronic filing with the Trade and Companies Register (RCS), with publication in the Electronic Compendium of Societies and Associations (RESA),
- Electronic reporting to the RBE.

With regard to the establishment of the RBE, the transitional provisions prescribed in Article 27 of the Law of 13 January 2019, allow a period of **six months, starting from the** entry into force of the law of 13 January 2019, for registered entities or their agents to request the registration of their beneficial owners in the RBE.

2.2.4 How much does it cost to register with the RBE?

The applicable tariff, corresponding to the administrative costs, is fixed by Grand-Ducal regulation. It amounts to 15€ excl. VAT for any registration or modification to the RBE.

During the transitional period of six months from the entry into force of the law of 13 January 2019, entities that will make their approach to the RBE will be exempted from the payment of these administrative fees.

Thus the declarations will be made **free of charge** until **August 31, 2019 inclusive**, the date on which the transitional period expires.

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

For LUXEMBOURG BUSINESS REGISTERS

(s.) Yves Gonner
Director

The notes presented by the LUXEMBOURG BUSINESS REGISTERS :

- are of a general nature and do not relate to the specific situation of any natural or legal person;*
 - are of a documentary and explanatory nature;*
 - are intended to answer a number of questions that users of the RCS or the RBE may have;*
 - have no legal value and do not engage the responsibility of the LUXEMBOURG BUSINESS REGISTERS ;*
 - are not necessarily complete, exhaustive, accurate or up to date;*
 - does not constitute professional or legal advice;*
 - represent only the opinion of the LUXEMBOURG BUSINESS REGISTERS on a number of issues, subject to the interpretation that may be given by the Courts and Tribunals.*
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