

Circular LBR 19/02

(rectified, which cancels and replaces the version of March 28, 2019)

Concerns: The application of the provisions relating to the Register of Beneficial Owners to the non-profit associations (ASBL)

The purpose of this Circular is to assist NPOs 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 (hereinafter the "Law of 13 January 2019").

Pursuant to Article ¹ 4° of the Law of 13 January 2019, which defines the entities subject to the said law, NPOs are obliged to register their beneficial owner(s) with the RBE. To do so, they must first determine who are their beneficial owner(s) (1) before registering them with the RBE (2).

1. Determination of beneficial owners

1.1 General

Article ¹ 3° of the Law of 13 January 2019 makes a reference 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".

A beneficial owner is any **natural person** who ultimately **owns** or **controls** an entity by virtue of **owning**, directly or indirectly, a sufficient percentage of the shares, voting rights or equity interest in that entity.

It is therefore up to the entity to carry out this exercise by first assessing who holds its capital and to what extent (a holding strictly in excess of 25%), and then by verifying who controls it (via a preponderant voting right, for example).

If, despite the investigations carried out, no beneficial owner has been identified within the meaning of the aforementioned law, the senior management official(s) is/are then considered as beneficial owner(s) and, as such, should be entered onto the RBE.

In this context, the notion of senior management official is to be understood in general as the board of directors and therefore the entire legally prescribed management body is to be reported to the RBE and not only the chairman of a board of directors.

May also be considered to be the senior management official, the Chief Executive Officer for the day-to-day management or any other equivalent body, appointed by virtue of legal or statutory provisions, in which case only the Chief Executive Officer is then to be registered.

The document "Declaration of beneficial owners to the RBE - Explanatory Guide" can usefully be consulted at www.lbr.lu for further information.

1.2 Application to NPOs

In general, the Manager 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 itself for the registered entity as regards the determination of its beneficial owner(s).

As far as NPOs are concerned, they must imperatively submit to this exercise even if, in the majority of cases, no beneficial owner can be identified and the members of the Board of Directors or the delegate for day-to-day management or any other equivalent body, appointed by virtue of legal or statutory provisions, will therefore be registered in the RBE.

- > In concrete terms, the ASBLs must first of all take a look to their members and check whether one of them does not indirectly control them. This could be the case, for example, if the members of the ASBL are legal entities, themselves majority owned by the same natural person.

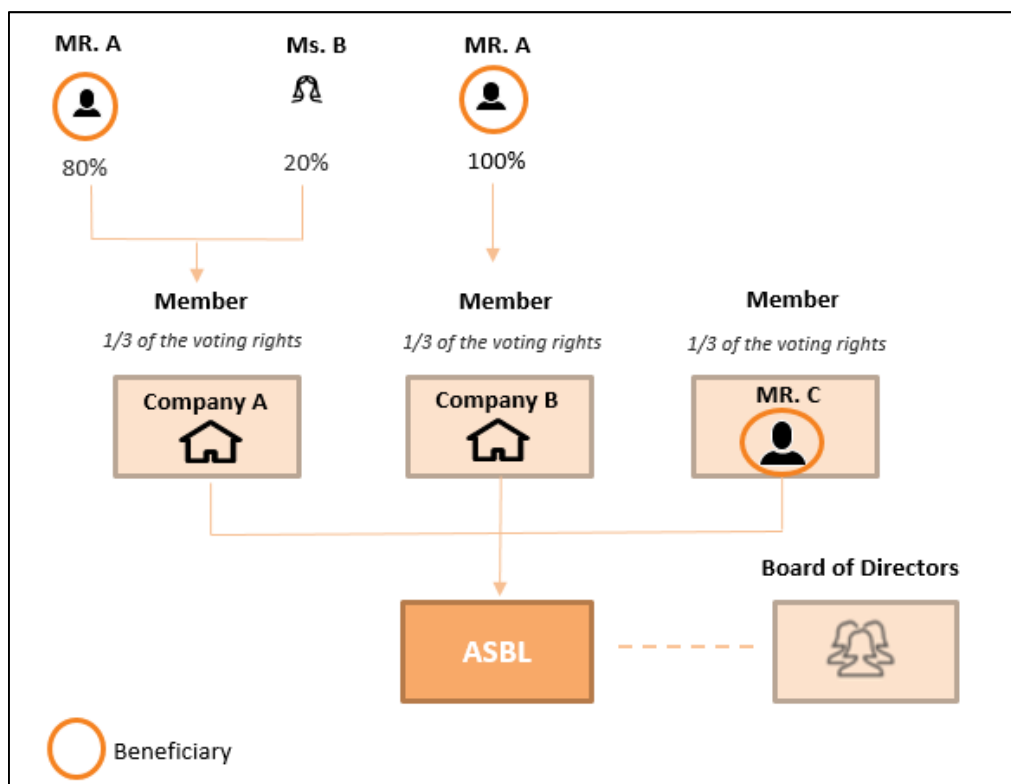


Figure 1 - identified beneficial owners

- > If no beneficial owner could be identified, the Chief Executive Officer(s) should be recorded in the RBE.

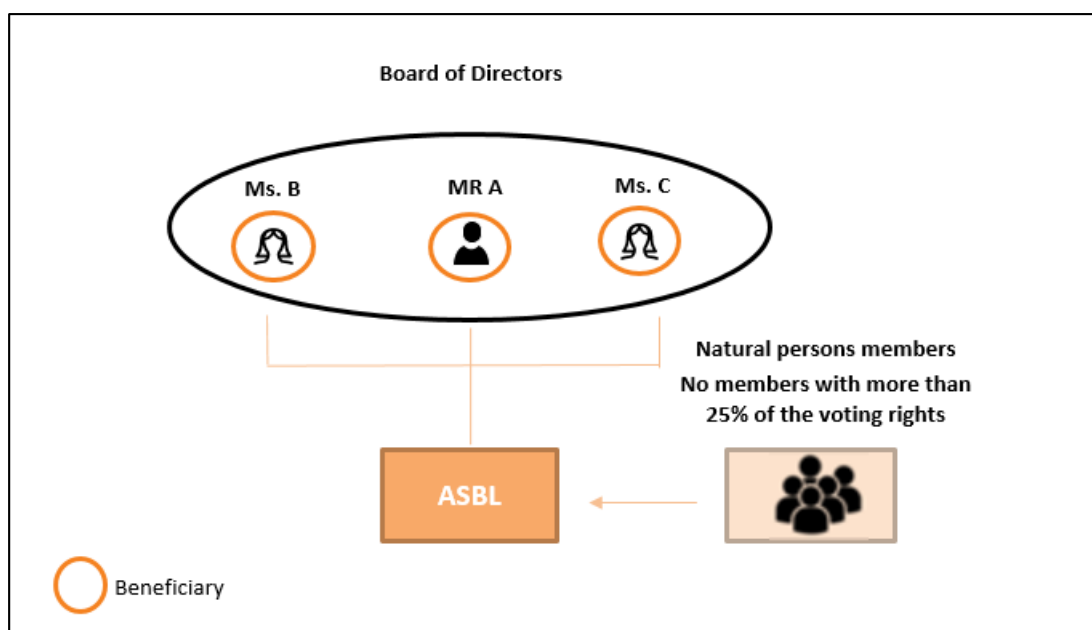


Figure 2 - Unidentified beneficial owners - Example with registration of board members as chief executive officers

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 reorganisation 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.

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.

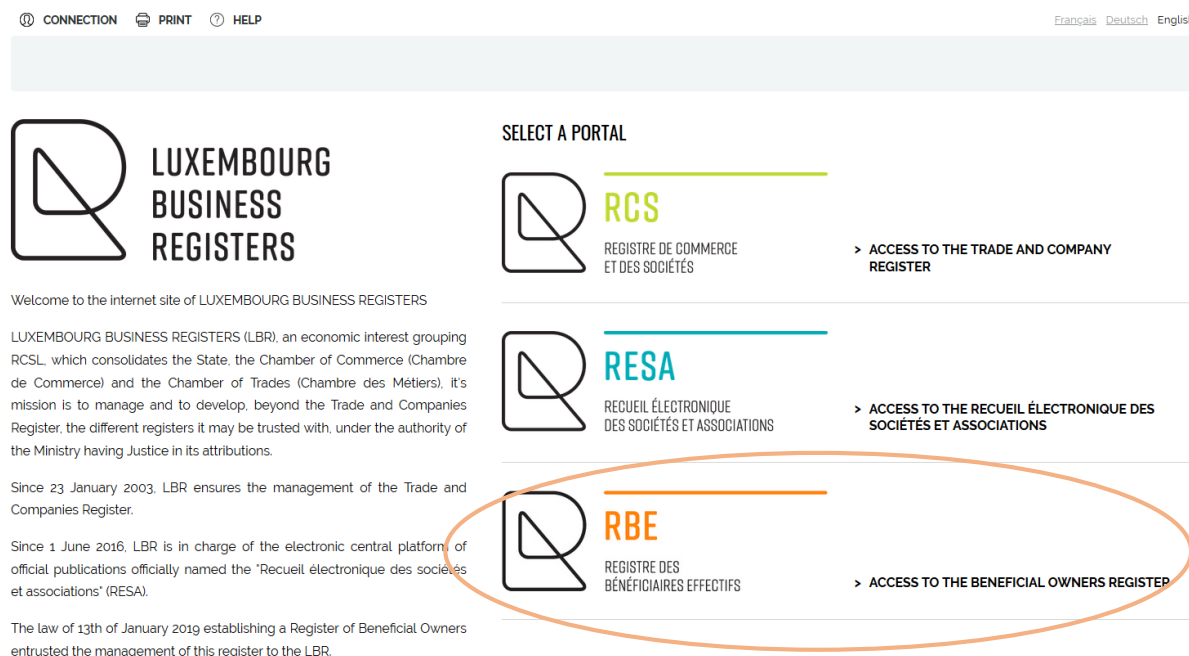


Figure 3 - RBE Portal

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 ASBL or by a person duly mandated by the ASBL.

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 ASBL 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 some cases, supporting documents must also be attached to the declaration form. In the specific case of NPOs, the only document that can 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.

However, if the application for registration is incomplete or does not comply with the legal and regulatory provisions, or if the information provided does not correspond to the supporting documents, the manager shall refuse the application and return it to the registrant, in accordance with Article 7 of the law of 13 January 2019. In this case, it 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 NPOs.

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 context of NPOs and insofar as in most cases 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 RCS,
- Electronic reporting to the RBE.

With regard to the implementation 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 declare to the RBE?

The applicable fee, 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.

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;*
 - *s 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 REGISTER*
 - *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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