

Luxembourg Adopts Law on the Establishment of a Fiduciaries and Trusts Register



On 1 July 2020 the Luxembourg Parliament adopted the much anticipated Bill of Law n°7216B (the “**Law**”) that repeals the existing law on the information of beneficial owners of trusts and fiduciary agreements by transposing in its entirety article 31 of the EU Directive 2015/849 of the European Parliament and the Council of 20 May 2015 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing (the “**Directive**”) and implementing a fiduciary agreements (*fiducies*) and trusts register (*Registre des fiducies et des trusts* / the “**Register**”).

The Law is applicable to any fiduciary arrangements and trusts that are administrated by (i) **trustees** (as defined in the Convention of the Hague dated 1 July 1985 on the law applicable to trusts and their recognition) and (ii) **fiduciaries** (*fiduciaires* (a person, that in case of a fiduciary agreement and under the obligations determined by the parties, is the owner of the property forming the fiduciary estate)) or (iii) **persons occupying functions similar to those of a trustee or a fidu-**

ciary under a fiduciary agreement or a trust, established in the Grand Duchy of Luxembourg (all together referred to as the “**Fiduciaries and Trustees**”).

The Law governs the following main points:

- the information on beneficial owners to be obtained and held by Fiduciaries and Trustees;
- the establishment and update of the Register; and
- the access to the information contained in the Register.

1. Information to be obtained and held by the Fiduciaries and Trustees

Fiduciaries and Trustees must obtain and hold information on the beneficial owner(s) of any fiduciary agreements or trusts (the “**Beneficial Owners**”) as well as on other foreign law governed professionals or entities providing services to or entering into a business relationship with a fiduciary agreement or a trust, which include the identity of:

- the settlor(s),
- the trustee(s) or fiduciary(ies),
- the protector (if any),
- the beneficiaries or the class of beneficiaries; and
- any other natural person exercising effective control over the trust or the fiduciary.

This information must be adequate, accurate, up-to-date, and kept for a period of five years following the termination of their involvement in such fiduciary arrangement or express trusts.

The Beneficial Owners are obliged to provide Fiduciaries and Trustees with any information allowing them to comply with their obligations under the Law.

This information must be transmitted, on request and for the purpose of their missions, to:

- national authorities and self-regulatory organisations (including among others the Financial Regulator (**CSSF**), the Insurance Supervisory Agency (*le Commissariat aux assurances - "CAA"*), the Tax Administration (*l'Administration de l'enregistrement, des domaines et de la TVA - "AED"*), the Financial Information Agency (*la Cellule de renseignement financier - "CRF"*), the public prosecutor, etc.);
- professionals with whom they enter into a business relationship, but solely to enable them to fulfil their obligations under the amended law of 12 November 2004 on the fight against money laundering and terrorism financing (the **"AML Law"**).

The CSSF, the CAA, the AED or the self-regulatory organisations, as the case may be, shall monitor the compliance of Fiduciaries and Trustees with their obligations and may impose administrative sanctions (ranging from a warning to an administrative fine) in the event of non-compliance with the Law.

The following Beneficial Owner information must be provided as part of the registration process:

In case of natural persons	In case of corporate entities
<ul style="list-style-type: none"> ■ First name and last name ■ Nationality ■ Date and place of birth ■ Country of residence ■ Private or professional address, ■ The identification number of the Luxembourg national register of natural persons (<i>le registre national des personnes physiques</i>) or the foreign identification number, as the case may be ■ The nature of the relevant person's involvement in the fiduciary or trust and the extent of the beneficial interest held 	<ul style="list-style-type: none"> ■ The name including abbreviation and commercial sign, if applicable, ■ The full address of the corporate seat, ■ The registration number with the Luxembourg company register (<i>registre de commerce et des sociétés de Luxembourg</i>) or the name of the foreign register where it is registered and the number, if applicable, ■ The nature of the relevant person's involvement in the fiduciary or trust and the extent of the beneficial interest held

2. Establishment of the Register

The information requested by the Law will be filed in the Fiduciaries and Trusts Register, specifically set up to render the collected information publically available to authorised entities and/or persons.

Any fiducial agreement and any express trust shall be registered in the Register when:

- its Fiduciary or Trustee is established or resides in Luxembourg;
- its Fiduciary or Trustee is not established in Luxembourg or another EU member country, but it enters into multiple business relationships with professionals in the Grand Duchy of Luxembourg or acquires real estate in Luxembourg on behalf of the fiduciary agreement or trust.

Registration of the above is not required where a fiduciary or trustee, that is established or resides in several EU countries or that enters into multiple business relationships in different EU countries on behalf of a fiduciary agreement or a trust, proves that it has already been registered with the equivalent register of another EU country.

The following Fiduciaries and Trustees information must be provided as part of the registration process:

- the number of enrolment given to each fiduciary agreement or express trust;
- the name of the fiduciary agreement or express trust;
- the date of settlement of the fiduciary agreement or express trust;
- the information whether the fiduciary agreement or the trust holds controlling participations in a company or legal entity, other than those listed in article 30 first paragraph of the Directive, by bearer shares or through control by other means.

The AED supervises the Register, but shall not be responsible for the content of the registered information.

Upon registration with the Register, the Fiduciary Agreement or Trust will receive a unique registration number.

The AED monitors the compliance of Fiduciaries and Trustees with their registration obligations and may impose administrative sanctions (ranging from a warning to an administrative fine up to an amount of EUR 1,250,000) in the event of non-compliance with the Law.

3. Access to the Register

The Register's information can be consulted by the following authorised persons (the "Authorised Persons"):

- national authorities will have full access to the information for the purpose of the performance of their supervisory duties;
- self-regulatory organisations will have full access to the information for the purpose of the performance of their supervisory missions with regard to the fight against the money laundering and the financing of terrorism;
- any person demonstrating a legitimate interest in the prevention of the use of the financial system for the purpose of money laundering or terrorist financing and whose motivated request, including any document proving the existence of a legitimate interest, has been assessed by the director of the AED or his delegate, may have limited access to the information.

A Beneficial Owner may request, in exceptional circumstances and on the basis of a motivated request addressed to the AED, that access to all or part of the information be limited to certain persons only.

The use of the information by Authorised Persons for purposes other than those for which access is granted will be punishable by a fine up to an amount of EUR 1,250,000.

By providing for the establishment of the Fiduciaries and Trusts Register, the newly adopted law complements and strengthens Luxembourg's existing legal arsenal in the fight against money laundering and the financing of the terrorism, which also benefits from the Register of Beneficial Owners (*registre des bénéficiaires économiques*) that was set up in 2019.

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