

ATOZ ALERT

Luxembourg law implementing a central register of beneficial owners of Luxembourg fiduciary arrangements published

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On 13 July 2020, the law implementing a central register of beneficial owners of Luxembourg fiduciary arrangements (the “**Law**”) as required under Article 31 of the 4th AML Directive (“**AMLD IV**”), as amended by the provisions of article 1 (16) of the 5th AML Directive (“**AMLD V**”) was published.

This Law is part of Luxembourg’s effort to fully implement the 4th and the 5th AML Directives and it is intended to be read in conjunction with the amended Law of 12 November 2004 on the fight against money laundering and terrorist financing (the “**AML Law of 2004**”).

This Law will also include all the provisions of the law of 10 August 2018 (the “**2018 Law**”) concerning the gathering and keeping of information on beneficial owner(s) of trust and *fiducie* to be kept by the trustees and fiduciaries which will be repealed.

Reminder of the obligations provided by the 2018 Law regarding the information to be gathered and kept by trustees and fiduciaries

Trustees and fiduciaries need to obtain and keep information about the beneficial owners of any express trust administered in Luxembourg for which they are trustee and any *fiducie* for which they are fiduciary at the place of administration of the express trust or *fiducie*. This information includes, but is not limited to, the identity of (1) the constituent(s); (2) the trustees or fiduciaries; (3) the protector(s), if any; (4) beneficiaries or classes of beneficiaries; and (5) any other natural person exercising effective control over the trust. The trust deed or other documents setting out control rights over the trust or its assets should also be obtained and kept.

In addition to the above, trustees of express trusts administered in Luxembourg and the fiduciaries will need to gather and keep basic information about other regulated agents and service providers of the trust, including investment advisers, investment managers, accountants and tax advisers.

The trustee and fiduciaries need to share information on the express trust or *fiducie* on demand, with the control authorities and self-regulating bodies.

Trustees and fiduciaries are required to retain the information referred to above for a period of five years following the termination of their involvement in the trust.

Creation of the register of fiduciary arrangements (*registre des fiducies et Trusts* or “RFT”)

The RFT will be managed and administered by the Administration de l'Enregistrement et des Domaines (“AED”) and all information will be submitted and recorded electronically.

The following needs to be registered or filed in the RFT:

1. any *fiducie* having a fiduciary which is established or resides in Luxembourg
2. any express trust having a trustee which is established or resides in Luxembourg
3. the certificate providing proof of registration kept in a register held by another EU Member State or an extract from the beneficial ownership information held in such a register, where the fiduciary of that *fiducie* or the trustee of that express trust mentioned in points 1 and 2 above engages in multiple relationships in different EU Member States in the name of the *fiducie* or express trust. The certificate or the extract provided to the AED meets the registration requirement
4. any *fiducie* the fiduciary of which or any express trust the trustee of which, while being established or residing outside the EU, is acting in the name of the *fiducie* or trust and enters into a business relationship with a professional established or residing in Luxembourg
5. any *fiducie* the fiduciary of which or any express trust the trustee, while being established or residing outside the EU, is acting in the name of the *fiducie* or trust and acquires real estate situated in Luxembourg
6. the certificate providing proof of registration kept in a register held by another EU Member State or an extract from the beneficial ownership information held in such a register, where the fiduciary of that *fiducie* or the trustee of that express trust mentioned in points 4 and 5 above engages in multiple relationships in different EU Member States in the name of the *fiducie* or express trust. The certificate or the extract provided to the AED meets the registration requirement

Each *fiducie* and express trust registered in the RFT will be assigned a unique registration number. The information held in the RFT must be adequate, accurate and up-to-date.

Information to be registered with the RFT

The information to be registered with respect to the *fiducie* or trust in the RFT shall specify:

1. the registration number
2. the name of the express trust or *fiducie*, if any
3. the date of conclusion of the *fiducie* or express trust
4. detailed information for each beneficial owner(s) (as defined in the AML Law of 2004) of the *fiducie* or trust (full name, nationality, full date and place of birth, country of residence, precise address for the personal residence or professional domicile, identification number, or denomination, registered office address and legal entities' register name or registration number, and, for both individuals and legal entities, the nature of the person's involvement in the trust and the extent of his/her/its actual interests held); or (ii) a statement that the beneficiaries are designated by characteristics or by category together with a description of these characteristics or this category

5. whether the *fiducie* or trust owns or has a controlling interest in a corporation or in another legal entity incorporated outside of the EU Member States, by direct or indirect ownership, in particular by means of bearer shares or through control by other means.

Trustees need to register and update the relevant information in the RFT within one month following the event triggering the registration – including when the trust is terminated or after the reasons for the inscription of information have ceased to exist.

The entries into the RFT and the information registered will be kept for five years after the termination of the trust or after the reasons for the inscription of the information in the RFT have ceased to exist. The information relating to the beneficiaries will be deleted five years after they cease their involvement with the trust.

Access to the RFT

The information entered into the RFT can be accessed as follows:

1. by national authorities, in the exercise of their missions, without any restrictions
2. by self-regulatory bodies, in the exercise of their supervisory role in the fight against money laundering and the financing of terrorism
3. by professionals, in applying customer due diligence measures in accordance with the AML Law of 2004
4. by any natural or legal person who introduces a written request to access the information on a trust that holds or has a controlling interest in a company or other legal entity incorporated outside of the EU Member States, by direct or indirect ownership, in particular by means of bearer shares or by means of control by other means
5. by any natural or legal person who demonstrates a legitimate interest in preventing the use of the financial system for the purposes of money laundering or terrorist financing

The request for access to the information in the RFT by any natural or legal person on the grounds of a legitimate interest must be duly motivated.

Sanctions

The AED will monitor the compliance with the obligation to register the relevant information in the RFT. The AED can oblige trustees to file the information needed, under threat of penalties of up to EUR 25,000. The omission to file or to update the information or the filing of inaccurate or not current information in the RFT may trigger administrative fines of up to EUR 1,250,000.

The failure to gather, update or provide the beneficial ownership identification information with respect to trusts or their assets may trigger administrative sanctions. Trustees or other professionals may be hit with administrative fines of up to EUR 1,250,000. The supervisory authorities can also name and shame trustees and other professionals by publishing their names and the nature of the breach on their websites.

Do you have further questions?



GAËL TOUTAIN
Partner,
Corporate Implementation
gael.toutain@atoz.lu
T + 352 26 940 306



RICHARD FAUVEL
Principal,
Corporate Implementation
richard.fauvel@atoz.lu
T +352 26 940 261