

Effective as of August 1, 2017, companies and other entities incorporated with the Register of Trade and Companies will have the obligation to disclose their beneficial owner(s)

Unlisted companies and legal entities required to be incorporated with the Register of Trade and Companies and headquartered in France (in particular branches of foreign corporations) will very soon have the obligation to file with the clerk of the Commercial Court a document that sets forth identification data on their beneficial owner(s), his/her/their personal place of residence as well as the way in which he/she/they exercise(s) control over the relevant company or entity.

Ordinance n°2016-1635 of December 1, 2016 strengthening the French system for the prevention of money laundering and terrorist financing transposed Article 30 of Directive 2015/849/EU that provides for the creation of a register of the beneficial owners of legal entities. Specifically, unlisted companies and legal entities headquartered in France and incorporated with the *Registre du Commerce et des Sociétés* (Register of Trade and Companies or “RCS”) will very soon have the obligation to file with the clerk of the Commercial Court a document that sets forth identification data on their beneficial owner(s), his/her/their personal place of residence as well as the way in which he/she/they exercise(s) control over the relevant company or entity.

A recent Decree^[1] has specified the applicable filing requirements and the content of the document on the beneficial owner(s), as well as the terms and conditions governing the disclosure of this document to third parties.

1. Scope of application

The new measures apply to companies and entities mentioned in Article L. 123-1 §2 §3 and §5 of the French Commercial Code, i.e.:

- Companies and economic interest groups with legal personality headquartered in a French *département* (local administrative and geographical sub-division);
- Commercial companies headquartered outside of a French *département* that have an establishment in such a *département* (i.e. in particular branches of foreign groups);
- Other legal entities required to be incorporated as per applicable legal or regulatory provisions.

Companies, the shares of which are listed on a regulated market in France or in another State that is a party to the European Economic Area agreement or in another third-party country imposing requirements deemed equivalent by the European Commission within the meaning of Directive 2013/50/EU of the European Parliament and of the Council of October 22, 2013, are not subject to this new obligation.

2. Content of the document on the beneficial owner(s)

The document on the beneficial owner(s) must include the following information:

- Regarding the company or legal entity: Its corporate name or trade name, its legal form, the address of its registered office and, as the case may be, its unique identification number followed by the mention “RCS” followed by the name of the city where is located the clerk of the Commercial Court where the company or legal entity is incorporated;
- Regarding the beneficial owner(s):
 - The name, name used, pseudonym, first names, date and place of birth, nationality, personal address of the natural person(s);
 - The way in which control is exercised over the relevant company or legal entity;
 - The date on which the natural person(s) became beneficial owner(s) of the relevant company or legal entity.

“Beneficial owner” means the natural person (i) who ultimately owns or controls, directly or indirectly, the relevant company or legal entity, or (ii) on whose behalf a transaction or a business activity is carried out.

3. Filing requirements

The document on the beneficial owner(s) must be filed with the clerk of the Commercial Court (in order to be annexed to the RCS) upon incorporation with the RCS or within a maximum of fifteen days from the issuance of the proof of filing of the company creation file.

A new document must be filed within thirty days following any fact or action that makes it necessary to rectify or add to existing information.

4. Terms and conditions governing the disclosure of the filed information

The document on the beneficial owner(s) can be disclosed to the following persons:

- Judicial magistrates, as may be needed for the proper performance of their duties;
- The officers of the department referred to in Article L. 561-23 of the French Monetary and Financial Code;
- Customs agents individually appointed and specially authorized by the regional director or, as appropriate, the director of the department with national authority or, as the case may be, the general director of Customs;
- Officers of the general directorate of public finance responsible for tax inspection and collection, individually appointed and specially authorized by the director of, as the case may be, a public finance regional or departmental office, a department with national authority, a general tax inspection directorate, a specialized tax inspection directorate or, as the case may be, the general director of public finance;
- The members of the French Prudential Supervision and Resolution Authority who perform a desk audit or examine applications for authorization and approval, the members of the legal department and the secretary-general and the deputy secretaries-general of such Authority;
- The investigators and auditors of the French Financial Markets Authority, as per Article L. 621-10 of the French Monetary and Financial Code;
- The Chair of the Bar and, as the case may be, on his/her delegation, one or several members of the Bar Council individually appointed and specially authorized by said Chair, as well as the individuals individually appointed and specially authorized by the National Council of Bars as per Article 156 of Decree n°91-1197 of November 27, 1991 organizing the legal profession;
- The so-called “investigator-notaries” appointed in the conditions set forth by Article 5 of Decree n°74-737 of August 12, 1974 on the inspection of notary offices and departmental and interdepartmental *syndics* (i.e. a notary designated by his/her peers and responsible *inter alia* for taking action against a notary for professional misconduct) appointed in the conditions set forth by Article 4 of Decree n°45-0117 of December 19, 1945 on the application of the status of the notarial profession;
- The so-called “investigator-bailiffs” appointed in the conditions set forth by Article 94-4 of Decree n°56-222 of February 29, 1956 adopted in furtherance of Ordinance of November 2, 1945 relating to the status of court bailiffs, as well as departmental and interdepartmental *syndics* (i.e. a bailiff designated by his/her peers and responsible *inter alia* for taking action against a bailiff for professional misconduct) appointed in the conditions set forth by Article 96-1 of said Decree;
- The delegated judicial auctioneers appointed in the conditions set forth by Article 19 §8 of Decree n°45-0120 of December 19, 1945 on the application of the status of judicial auctioneers, as well as the *syndics* (i.e. a judicial auctioneer designated by his/her peers and responsible *inter alia* for taking action against a judicial auctioneer for professional misconduct) appointed in the conditions set forth by Article 10 of this Decree;
- The Chair of the council of lawyers authorized to appear before the *Conseil d'état* (French Administrative Supreme Court) and *the Cour de cassation* (French Supreme Court) and, as the case may be, on his/her delegation, one or several members of this council individually appointed and specially authorized, as well as the *syndics* appointed in the conditions set forth by Article 8 of Ordinance of

September 10, 1817 related to lawyers authorized to appear before the *Conseil d'état* and the *Cour de cassation*;

- The Chair of the national council of judicial administrators and receivers and the auditors appointed in accordance with Articles R. 814-44 and R. 814-45 of the French Commercial Code;
- The Chair of the High Council of statutory auditors and its rapporteur-general, any person directly involved in the activities of the High Council specially appointed for this purpose, as well as the auditors appointed in accordance with Article R. 821-69 of the French Commercial Code, and the investigators authorized under Article R. 824-2 of the French Commercial Code;
- The members of the committee for the fight against money laundering of the national council of chartered accountants created by the internal rules and regulations of said council and provided for by Article 12 of Order n°45-2138 of September 19, 1945 on the creation of the council of chartered accountants and the regulation of the qualification and profession of chartered accountants;
- The Chair of the French estate auction regulation authority;
- The person with jurisdiction over sports agents, acting under the authority of the commission of sports agents of the delegating sport federation, appointed and duly empowered by the competent governing authority as per Article R. 222-1 of the French Sports Code;
- The officers appointed by the administrative authority responsible for competition and consumer matters, specially authorized by Decree of the Minister of Economy in the conditions provided for by Article R. 561-40 of the French Monetary and Financial Code;
- The national police officers of the police unit responsible for the enforcement of gambling laws and regulations, specially authorized by Decree of the Minister of Home Affairs in the conditions provided for by Article R. 561-39 of the French Monetary and Financial Code;
- Persons subject to obligations concerning the fight against money laundering and terrorism who:
 - Have drawn up a declaration, signed by the legal representative of the entity subject to such obligations or by a duly authorized person within said entity, that contains the designation of the entity subject to such obligations and, as the case may be, the designation of its legal representative, and that specifies that (i) the person subject to such obligations belongs to one of the categories of persons defined in Article L. 561-2 of the French Financial and Monetary Code, and (ii) the consultation of the document on the beneficial owner(s) is made in the framework of the implementation of at least one of the due diligence measures provided for under Articles L. 561-4-1 to L. 561-14-2 of the French Monetary and Financial Code;
 - File a disclosure request that includes (i) the designation of the relevant company(ies) or legal entity(ies), and (ii) the due diligence measure(s) implemented with respect to the company(ies) or legal entity(ies) mentioned in that request;
- Any other person authorized by a court decision for which all ordinary avenues of appeal have been exhausted.

5. Penalties

The President of the Commercial Court, acting upon his/her own motion or at the request of the Public Prosecutor or any other person with an interest, may order any relevant company or entity to file the required



exhibits and information on the beneficial owner(s), or to have such exhibits and information produced, and may impose a penalty payment for non-compliance.

In the same conditions, the President of the Commercial Court may appoint an agent for carrying out these formalities. If the relevant company or legal entity has a statutory auditor, the agent may request such auditor to disclose any necessary information.

In addition, failing to file with the RCS the document on the beneficial owner(s) or filing a document that contains inaccurate or incomplete information is punished by six months' imprisonment and a €7,500 fine (x5 for legal entities). Additional penalties may be imposed.

6. Entry into force

The Decree will enter into force on August 1, 2017. However, legal entities incorporated with the RCS before that date have until April 1, 2018 to comply with the new provisions.

[1] Decree n°2017-1094 of June 12, 2017 on the register of beneficial owners defined in Article L. 561-2-2 of the French and Monetary Financial Code.

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