

## **Public access to information entered in the register of beneficial owners**

**Since April 2021, some information relating to the beneficial owner(s) of unlisted companies and legal entities incorporated in France is now freely accessible via the website “DATA INPI” managed by the *Institut National de la Propriété Industrielle* (French National Institute of Industrial Property, commonly known by the acronym “INPI”).**

**This information includes: The identity, month and year of birth, country of residence and nationality of the beneficial owners, as well as the nature and extent of the beneficial interests they hold in the relevant company or legal entity.**

Since 2017, unlisted companies and legal entities required to be incorporated with the Register of Trade and Companies and headquartered on the French territory have the obligation to disclose their beneficial owner(s) to the clerk of the Commercial Court.

It should be recalled that Ordinance n°2016-1635 of December 1, 2016 on the strengthening of the French system for the prevention of money laundering and the financing of terrorism, which transposed Article 30 of Directive 2015/849/EU, created a register of the beneficial owners of legal entities that records identification data on their beneficial owner(s), his/her/their place of residence as well as the way in which he/she/they exercise(s) control over the relevant company or entity.<sup>[1]</sup>

“Beneficial owner (s)” is defined in Article R.561-1 of the French Monetary and Financial Code as follows: “*Natural person(s) who either hold, directly or indirectly, more than 25 percent of the share capital or voting rights of the company, or who exercise, by any other means, a power of control over the corporation within the meaning of Article L. 233-3 I §3 and §4 of the French Commercial Code*”.

The information on beneficial owners that must be disclosed to the clerk of the Commercial Court are as

follows[2]:

- Corporate name or trade name of the company, its legal form, the address of its registered office and its unique identification number;
- Identity (name, name used, pseudonym, first names), date and place of birth, nationality, personal address of the natural person(s);
- Date on which the natural person(s) became beneficial owner(s) of the relevant company or legal entity.

Until now, the register of beneficial owners was not intended to be available to the public. Indeed, Article L.561-46 §3 of the French Monetary and Financial Code provided, in its initial wording derived from the aforementioned Ordinance No. 2016-1635 of December 1, 2016, or as amended by Law No. 2019-486 of May 22, 2019 on business growth and transformation, known as the “PACTE” Law, that only the following entities/authorities could be given access to the document relating to the beneficial owner:

- The company who had filed the declaration;
- Some authorities, including judicial magistrates, customs agents, officers of the General Directorate of Public Finance and investigators of the French Financial Markets Authority;
- Entities subject to obligations concerning the fight against money laundering and terrorism;
- Any person with a legitimate interest, pursuant to an order of the judge in charge of supervising the Register of Trade.

However, this Article has been amended by Article 8 of Ordinance No. 2020-115 of February 12, 2020 on the strengthening of the national system for combating money laundering and the financing of terrorism[3] and now provides that some of this information, namely the identity, month and year of birth, country of residence and nationality of the beneficial owners as well as the nature and extent of the beneficial interests they hold in the relevant company or legal entity, is now freely accessible by the public.

As a matter of fact, following the adoption and publication of the inter-ministerial action plan against money laundering and the financing of terrorism published in March 2021, this information is now freely available to the public via the website “DATA INPI” managed by the INPI.

In order to preserve the anonymity of their beneficial owner(s), it is likely that some companies will henceforth be tempted to systematically declare their legal representative by default. Indeed, as a reminder, when no natural person could be identified as the beneficial owner, the beneficial owner to be declared is, by default, the legal representative(s) of the company. This being said, *“this designation must remain exceptional and only take place after having exhausted all possible means to determine the beneficial owner(s) and provided that there are no grounds for suspicion[4]”* (of money laundering).

It should be noted in this respect that the declaration of the legal representative - instead of the beneficial owner - is not without risk since the failure to file the declaration of beneficial owners, or the fact of making an inaccurate or misleading declaration, is subject to the following penalties[5]:

- First of all, the President of the Commercial Court may enjoin the company to declare or have declared the information relating to the beneficial owner, or to rectify this information when it is inaccurate or incomplete<sup>[6]</sup>;
- In addition, the company and its legal representatives are liable to six (6) months' imprisonment and a fine of up to 7,500 euros for individuals (37,500 euros for legal entities), which may be accompanied by a prohibition to manage a business and a partial deprivation of their civil and civic rights. Finally, the automatic dissolution of the company may be ordered.

Finally, it should be noted that the accessibility of information relating to beneficial owners is only one aspect of the new organization devised by the legislator at the time of the promulgation of the PACTE Law with regard to the completion of formalities by companies. The INPI has, in fact, been designated as the manager of a dematerialized one-stop shop. This one-stop shop will replace, by 2022, the existing systems for carrying out business formalities with the chambers of commerce and industry, the clerks of the commercial courts, the chambers of trades and crafts, etc.

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[1] For further information, please see our articles [Register of beneficial owners: 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\(s\)](#), [Register of beneficial owners: How to identify such owners?](#) and [Identification of beneficial owners: Publication of the Decree implementing Ordinance n°2016-1335 of December 1, 2016 that strengthens French rules against money laundering and terrorist financing](#) published on our Blog in June 2017, November 2017 and May 2018 respectively.

[2] Article R561-56 of the French Monetary and Financial Code, as amended by Decree No. 2020-118 of February 12, 2020.

[3] For the transposition of Directive (Eu) 2018/843 of the European Parliament and of the Council of May 30, 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU.

[4] Infogreffe (website that provides centralized access to the information filed with all Registers of Trade and Companies and enables various procedures to be completed online), information notice on beneficial owners

[5] Article L.574-5 of the French Financial and Monetary Code

[6] Article L.561-48 of the French Financial and Monetary Code

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