

Registration of beneficial ownership: time to take action | Corporate law

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What are business owners obligations, in terms of registering

beneficial ownership of their companies? How do these obligations differ, in France and the United Kingdom, even though such obligations stem from the same European legislation, i.e. the European Directive 2015/849 dated 20 May 2015 on money laundering?

1. What is this all about?

On 20 May 2015, the [Directive \(EU\) 2015/849](#) of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council, was published (the “**Directive**”).

As set out in the recitals of the Directive, and in order to better fight against money laundering, terrorism financing and organised crime, “*there is a need to identify any natural person who exercises ownership or control over a legal entity (...). Identification and verification of beneficial owners should, where relevant, extend to legal entities that own other legal entities, and obliged entities should look for the natural person(s) who ultimately exercises control through ownership or through other means of the legal entity that is the customer*”.

In addition, “*the need for accurate and up-to-date information on the beneficial owner is a key factor in*

tracing criminals who might otherwise hide their identity behind the corporate structure“.

Chapter III (Beneficial ownership information) of the Directive relates to such topic.

In particular, article 30 of the Directive provides that *“member states shall ensure that the information (on beneficial ownership) is held in a central register in each member state, for example a commercial register, companies register or a public register (...). Member states shall ensure that the information on the beneficial ownership is adequate, accurate and current”* and accessible *“to competent authorities, without any restriction; (...) and to any person or organisation that can demonstrate a legitimate interest“.*

These persons or organisations shall access at least the name, the month and year of birth, the nationality and the country of residence of the beneficial owner as well as the nature and extent of the beneficial interest held.

2. Registration of beneficial ownership in French companies

With typical Gallic nonchalance, and while the deadline to transpose the Directive in each member-state was 26 June 2017, France transposed the Directive almost one year later, through its [Ordinance n. 2016-1635 of 1 December 2016 reinforcing the French mechanism against money laundering and the financing of terrorism](#) and of the [Decree n. 2017-1094 of 12 June 2017 relating to the registry of effective beneficiaries as defined in article L. 561-2-2 of the French monetary and financial code](#) (the **“Ordinance”** and the **“Decree”** respectively), with a compliance deadline of 1 April 2018.

The Ordinance and Decree, which have now been incorporated in the French monetary and financial code, compel all companies operating in France to register their beneficial owners with the Registry of Commerce and Companies of the competent Commercial court (the **“Registry“**).

2.1. Beneficial ownership and filing with the Registry

The notion of beneficial ownership is not defined in the Decree, although is it defined in the Directive as including each natural person who either ultimately owns, directly or indirectly, more than 25% of the share capital or voting rights of the company, or exercises, by any other means, a supervisory power on the managing, administrative or executive bodies of the company or on the shareholders general assembly.

The information that must be filed is essentially identical to that required by financial institutions and other entities such as law firms, in order for them to carry out their mandatory Know-Your-Client (KYC) procedures.

2.2. The initial filings

The declaration of beneficial ownership must be filed at the Registry when a company is first registered with the Registry or, at the latest, within 15 days as of the date of issuance of the receipt of registration (article R. 561-55 of the French monetary and financial code) i.e. when it is created or opens a branch in

France.

2.3. Corrective filings

For companies already registered, the deadline for the declaration is 1 April 2018. If subsequent updates are required, new filing must be made within 30 days as of the fact or the act giving rise to a required update (article R. 561-55 of the French monetary and financial code).

2.4. On the beneficial owner

The declaration must set out the owner's name and particulars, as well as the means of control exercised by the beneficial owner and the date on which s/he became a beneficial owner (article R. 561-56, 2. of the French monetary and financial code).

2.5. Persons having access to the register of beneficial owners

Access to the register of beneficial owners is limited to magistrates of the civil courts and the Ministry of Justice; investigators working for the Autorité des Marchés Financiers (French financial markets regulator); agents of the Direction Générale des Finances Publiques (Directorate-General for Public Finances); qualifying credit institutions, insurance and mutual insurance companies and investment services providers; and any person authorised by a court decision to this effect.

2.6. Penalties for non-compliance

The new provisions of the French monetary and financial code provide remedial penalties with the possibility for any person having a legitimate interest to bring an action in order to force the defaulting company to fulfil its obligation to declare its beneficial owners (article R. 561-48 of the French monetary and financial code).

Punitive provisions have also been introduced: failure to declare the beneficial owners to the Registry or filing a declaration involving incomplete or inaccurate information is punishable by 6 months of imprisonment and a fine of Euros 7,500 (article 561-49 of the French monetary and financial code).

3. Registration of beneficial ownership in British companies

Well within the deadline to transpose the Directive in each member-state of 26 June 2017, the United Kingdom transposed the Directive on time, through its new [paragraph 24\(3\) of Schedule 1A of the Companies Act 2006](#), as amended by [Schedule 3 to the Small Business, Enterprise and Employment Act 2015](#) (the “**Companies Act**” and “**Enterprise Act**” respectively), with a compliance deadline of 30 June 2016.

The Companies Act and Enterprise Act, compel all companies operating in the United Kingdom to keep a register of Persons with Significant Control (“**PSC register**“) and to file this PSC information via their confirmation statements, upon the due filing date of their respective confirmation statements with Companies House, i.e. the British equivalent to the French Registry of Commerce and Companies of the

competent Commercial court (“Companies House”).

3.1. Beneficial ownership and filing with Companies House

The notion of beneficial ownership, or significant influence or control, as set out in the Companies Act, is defined in the Companies Act as including each natural person who either ultimately owns, directly or indirectly, more than 25% of the share capital or voting rights of the company, or exercises, by any other means, a supervisory power on the managing, administrative or executive bodies of the company or on the shareholders general assembly.

UK companies, *Societates Europae* (SEs), Limited liability partnerships (LLPs) and eligible Scottish partnerships (ESPs), will be required to identify and record the people with significant control.

3.2. The initial filings

The PSC information must be filed with the central public register at Companies House when a company is first registered with Companies House, i.e. when it is created or opens a branch in the UK.

In addition, new companies, SEs, LLPs need to draft and keep a PSC register in relation to them, in addition to existing registers such as the register of directors and the register of members (shareholders).

3.3. Corrective filings

For companies already registered, on 6 April 2016, the Companies Act required all companies to keep a PSC register and, from 30 June 2016, companies started to file this PSC information via their confirmation statements.

As each company has a different filing date, based on the anniversary of their respective incorporation, it took up to 12 months (i.e. 30 June 2017) to develop a full picture of all UK companies’ PSCs.

3.4. On the beneficial owner

Before a PSC can be entered on the PSC register, you must confirm all the details with them.

The details you require are:

- name;
- date of birth;
- nationality;
- country, state or part of the UK where the PSC usually lives;
- service address;
- usual residential address (this must not be disclosed when making your register available for inspection of providing copies of the PSC register);
- the date s/he became a PSC in relation to the company (for existing companies, the 6 April 2016 was used);

- which conditions for being a PSC are met;
 - this must include the level of shares and/or voting rights, within the following categories:
 - over 25% up to (and including) 50%;
 - more than 50% and less than 75%;
 - 75% or more;
 - the company is only required to identify whether a PSC meets the condition relating to the control and significant influence, if they do not exercise control through the shareholding and voting rights conditions;
- whether an application has been made for the individual's information to be protected from public disclosure.

3.5. Persons having access to the register of beneficial owners

A company's PSC register should contain the information listed in paragraph 3.4 above, for each PSC of the company. However, that may not always be possible. Where, for some reason, the PSC information cannot be provided, other statements will need to be made instead, explaining why the PSC information is not available. The PSC register can never be blank and such information must be provided to Companies House.

Unlike in France PSC information is freely available, for each company, on [Companies House's website](#).

As the PSC register is one of the company's statutory registers, each UK company must keep it at its registered office (or alternative inspection location). Anyone with a proper purpose may have access to the PSC register without charge or have a copy of it for which companies may charge GBP12.

If compared with the French situation, it is therefore much easier to obtain the PSC register for a UK company, than for a French company.

3.6. Penalties for non-compliance

Company officers who fail to take all reasonable steps to disclose their PSCs are liable to be fined or imprisoned (by way of a prison sentence of up to two years) or both. If an investigated person fails to respond to the company's request for information, the company is allowed to "freeze" the relevant shares by stopping proposed transfers and dividends in relation to those shares.

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