

NEWSLETTER

THE IDENTITY OF THE BENEFICIAL OWNERS SOON AVAILABLE TO THE PUBLIC

As a reminder: to combat money laundering and terrorist financing, European Directive 2015/849/EU of 20 May 2015 imposed a number of new obligations on European Union Member States, including the creation of a national central register of beneficial owners.

In France, companies (civil and commercial), economic interest group ("G.I.E."), collective investment undertakings and entities that must be registered in the French Trade and Companies Register are required to declare their beneficial owner(s) to the relevant Commercial Court.

The beneficial owners are the natural persons who (French Monetary and Financial Code, Art. R. 561-1):

- hold, directly or indirectly, more than 25% of the share capital or voting rights of the company; or
- exercise, by any other means, a power of control over the company (French Commercial Code, Art. L. 233-3, I, 3° and 4°):
 - by effectively determining, through the voting rights they hold, the decisions at the general meetings of that company, or
 - when they are partners or shareholders of the company, by having the power to appoint or dismiss a majority of the members of the company's administrative, management or supervisory bodies.

If no natural person could be identified with these criteria, the beneficial owner is the legal representative (or legal representatives) of the company.

Until now, this information was not intended to be known to the public, and only a limited number of entities and persons could obtain access to the document relating to the beneficial

owner of a company (French Monetary and Financial Code, Art. L. 561-46, 1° to 5°).

These were the authorities responsible for combating money laundering as part of their mission (magistrates, customs officers, etc.), persons subject to the fight against money laundering and terrorist financing as part of a monitoring measure (the central Bank of France, lawyers, auditors, etc.) and finally any other person proving a legitimate interest and authorized by a court decision.

By 10 January 2020 at the latest, any third party should be entitled to access information on beneficial owners without having to prove an interest.

The European Directive 2018/843 of 30 May 2018 opens access to the register to the general public. Such access should, however, be limited to the name, month of birth, country of residence and nationality of the beneficial owner, as well as nature and extent of the beneficial interests held. Member States may, under certain conditions, provide access to supplementary information, including at least the date of birth or contact details (address) of the beneficial owners.

The French legislator will have to determine the modalities for exercising this right and the possible costs to be borne by persons requesting access to the said information.

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