

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

Unlisted companies and legal entities required to be incorporated with the Register of Trade and Companies (RCS) and headquartered in France (in particular branches of foreign corporations established in France) have recently come under the obligation to disclose to the clerk of the Commercial Court the identity of their beneficial owner(s) as well as the way in which he/she/they exercise(s) control over the relevant company or entity.

Decree n°2018-284 of April 18, 2018 (finally!) specifies what is precisely meant by “beneficial owner (s)”.

Better late than never! Decree n°2018-284 of April 18, 2018 adopted in furtherance of Ordinance n°2016-1335 of December 1, 2016 that strengthens French rules against money laundering and terrorist financing, finally completes the transposition of Directive 2015/849/EU on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing as it specifies what is precisely meant by “beneficial owner (s)”^[1].

“Beneficial owner (s)” is now defined in the French Monetary and Financial Code^[2] 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*

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corporation **within the meaning of Article L. 233-3 I §3 and §4 of the French Commercial Code**^[3].”

Wherever it is impossible to identify a natural person as per these criteria, the beneficial owner (s) shall be:

- “The manager(s) of *sociétés en nom collectif* (general partnerships or “SNCs”), *sociétés en commandite simple* (limited partnerships or “SCSs”), limited liability companies (“SARLs”), *sociétés en commandite par actions* (partnership limited by shares or “SCAs”) and civil companies;
- The general manager of joint-stock companies with a board of directors;
- The sole general manager or the president of the management board of joint-stock companies with a management board and supervisory board;
- The president or, as the case may be, the general manager of simplified joint-stock companies.

It being specified that:

- If the company is not incorporated with the Register of Trade and Companies, the beneficial owner (s) shall be the equivalent of the above-listed persons under applicable foreign law;
- Whenever this/these legal representative (s) is/are a legal entity, the beneficial owner (s) shall be the natural persons who “legally represents” this/these legal entity.

These clarifications are fully in line with the terms of the Directive and the recommendations that had been released by the *Association Nationale des Sociétés par Actions* (French association of joint stock companies, referred to as “ANSA”) pending the publication of the Implementing Decree^[4].

^[1] For more information on (i) the scope of application of this new obligation, (ii) the content of the document on the beneficial owner(s) and the applicable filing requirements, (iii) the terms and conditions governing the disclosure of the filed information to third parties, and (iv) the applicable penalties for non-compliance, please refer to the articles entitled “[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\(s\)](#)” and “[Register of beneficial owners: How to identify such owners?](#)” published respectively in our June 2017 and November 2017 e-newsletters

^[2] Article L. 561-2-2 and Article R. 561-1, as amended

^[3] “Any natural person or legal entity is deemed [...] to control another company: [...] §3 When it effectively determines the decisions made at that company’s general meetings through the voting rights it holds; §4 When it is a partner in, or shareholder of, that company and has the power to appoint or dismiss the majority of the members of that company’s administrative, management or supervisory boards.”

^[4] Communication ANSA n° 17-043, October 2017.

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