

CORPORATE LAW



FLASH INFO

NEW FILING OBLIGATION UNDER FRENCH CORPORATE LAW FOR FRENCH REGISTERED ENTITIES

THE NEW DUTY TO DECLARE BENEFICIAL OWNERSHIP

Further to an ordinance implementing in France an EU anti-money laundering directive 2015/849 of May 20, 2015, it is now required for companies newly created in France to declare the identity of their beneficial owners as of August 1st, 2017. For existing companies, the same information will have to be filed prior to April 1st, 2018. A decree (the “Decree”), dated June 12, 2017, clarifies the scope of this new registration obligation. These new rules have already been implemented in the EU (for example in the UK, in 2016, with the creation of the People with Significant Control Register).

The French filing must be made with the clerk of the Commercial Tribunal where the company is registered. However, the identity of beneficial owners is not available to everyone but only person authorized. Furthermore, French entities shall keep updated information about their beneficial ownership at any time.

Your French Subsidiaries and French branches are concerned by this new filing obligation.

- **To whom does this new filing obligation apply?** All existing non-listed French companies and legal entities (including EIG) incorporated in France; this includes both commercial and civil companies (Article L. 561-46 of the French Monetary and Financial Code).

- **When should companies make this filing for the first time?** Companies newly created in France had to declare the identity of their beneficial owners since August 1st, 2017, at the time of their registration with the Trade and Companies Register. For existing companies, the same information will have to be filed no later than April 1st, 2018.
- **Is it necessary to make an updated declaration afterwards?** Yes, the Decree requires to file an updated statement within 30 days after any fact or act which requires the amendment of the information previously filed. French companies and French branches of foreign companies are also required to obtain from their shareholders such information and to keep accurate the information regarding their beneficial owners at any time.
- **What should the statement filed shall specify?**
 - Information **about the French company or entity registered in France:** legal name, corporate form, registered office and, as the case may be, its unique identification number followed by the mention of the relevant Trade and Companies Register and the place of the office where the company or legal entity is incorporated;
 - Information **about the beneficial owners:** the name, name used, pseudonym, first names, date and place of birth, citizenship, personal address of the relevant individual and terms and conditions under which the control is exercised over the legal entity.
- **What is a "beneficial owner"?** Further to Article R. 561-1 of the French Monetary and Financial Code, the beneficial owner is the individual(s) who own(s), directly or indirectly, more than 25% of the share capital or voting rights of the company, or exercise(s), by any other means a supervisory power over managing, administrative or executive bodies of the company or over the general meeting of the shareholders.

For investment funds, the beneficial owner is understood as the natural person(s) who hold(s), directly or indirectly, more than 25% of the fund, or has a supervisory power over administrative or executive bodies of the fund or over the management company of the funds.
- **Who signs the statement?** The document has to be dated and signed by the legal representative of the French company or entity which is registered with the Trade and Companies Register.

For the French company in the process of incorporation, the statement may be dated and signed by the person (one of the shareholder or the future manager for example) to whom the shareholders have given a special power to perform the registration formalities.
- **Who can be authorized to have access to the beneficial owners' information?** The Decree provides a list of such persons, including judges of the courts (judicial or administrative authorities), French customs authorities, French bank regulators (*Autorité des marchés financiers*), anti money laundering administration (*Tracfin*), French tax administration, authorities that are involved in addressing terrorism financing (such as bank, insurance, investment service provider), financial prudential supervision authority (the *Autorité de contrôle prudentiel et de résolution*). In addition, the document may be communicated to any other person specially authorized by a court decision.
- **What are the penalties and criminal sanctions for failure to comply with the filing requirement?** General sanctions may apply, the President of the court can order any legal entity to provide the relevant information related to the beneficial owner(s), the order can be accompanied by a daily fine (*astreinte*).

In addition, non-compliance with this new filing requirement is punishable by specific criminal sanctions: a €7,500 fine and/or 6 months' imprisonment for a natural person (such as managers) and €37,500 fine for a legal entity. In addition, the Court Registry will likely refuse changes of the registration if the French company fails to timely comply with its filing obligation.

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Stehlin's lawyers are available to assist you with any questions you may have regarding this new corporate filing obligation. Specific case may have to be analyzed in order for your company or branch to be compliant with French law.

The M&A, Private Equity and Corporate team of STEHLIN & Associés assists its clients throughout their operations and is attentive to developing a legal structure specific to each client's file and needs, jointly with our tax and social team when required.

We are at your disposal to analyze the concrete situations that may arise in your different projects and to consider with you the most appropriate solutions.



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