



## Luxembourg newsflash

22 November 2018

### The Luxembourg registers of beneficial owners (“BOs”) expected soon, so get ready!

The enactment on 30 May 2018 of EU Directive 2018/843 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (the “**5<sup>th</sup> AML Directive**”) ([AML 5 – key aspects and changes](#)) has prompted the Luxembourg government to accelerate the final implementation process of EU Directive 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (the “**4<sup>th</sup> AML Directive**”).

Despite the noticeable progress made in the legislative process of bills of law 7216 and 7217 since December 2017 ([RBO new rules to be implemented soon](#)), by which the Luxembourg government intends to implement the parts of the 4<sup>th</sup> AML Directive relating to the creation of central registers of BOs of Luxembourg legal entities and fiduciary arrangements, and despite the fact that Luxembourg has in the meantime implemented all the remaining parts of the 4<sup>th</sup> AML Directive, the latter bills of law have still not yet been passed in Parliament.

In view of the fact that the 5<sup>th</sup> AML Directive partially amends the requirements relating to these registers of BOs under the 4<sup>th</sup> AML Directive, the Luxembourg government has seized the opportunity to amend bill of law 7217, which relates to the requirement of setting up a register of BOs of Luxembourg legal entities (which has now been renamed from REBECO to “**RBE**”), in order to directly reflect such new requirements.

The Luxembourg Parliament is expected to pass these bills of law rapidly and especially bill of law 7217 (which, in view of the last amendments by the Luxembourg government in October 2018, could now be described as being in the final stage of such legislative process), even though the 5<sup>th</sup> AML Directive has effectively delayed the timeline initially set for these registers to be put in place.

The present newsflash thus aims at shedding light on the most noticeable changes in the revised bill of law 7217 (1.) but also on the amendments which the Luxembourg government is likely to proceed with soon in respect of bill of law 7216 which relates to the requirement to set up a register of BOs of Luxembourg fiduciary arrangements, notably in view of the recent changes introduced by the 5<sup>th</sup> AML Directive (2.).

## 1. Noticeable changes in respect of the RBE (bill of law 7217)

### 1.1. *Extended scope of bill of law 7217*

Whereas the initial draft referred to all commercial companies as well as any other legal entities registered with the Luxembourg Trade and Companies Register (*Registre de Commerce et des Sociétés du Luxembourg*, the “**RCSL**”), thus intending to exclude **mutual funds** (FCPs) and **branches** of foreign companies, these entities would now fall within the scope of the revised version of the bill of law and thus also become subject to the obligation to file data in respect of their BOs with the RBE.

As regards **listed companies** which subject to certain conditions are exempted from such filing obligation with the RBE, they will continue to remain so under the revised version of the bill of law provided, however, that they file with the RBE the exact name of the regulated market(s) on which their securities are admitted to trading.

### 1.2. *Further requirements for legal entities clarified*

Compared to the initial version of the bill of law and the general obligation for Luxembourg legal entities to (i) obtain and hold adequate, accurate and up-to-date information on their BOs and (ii) file such information with the RBE (which has not changed under this revised draft), the only noticeable changes essentially aim at clarifying some of the requirements under the initial draft of the bill of law and can be summarised as follows:

Pursuant to the revised bill of law, the one-month period which Luxembourg legal entities have to file the relevant BO-related information with the RBE only runs from the moment where such entities have become or should have become aware of an event or circumstance that should prompt a filing with the RBE.

Notwithstanding the above and most likely in order to render the filing with the RBE more efficient from a practical perspective, all persons qualifying as BOs will also become subject to a criminally sanctioned obligation to provide the relevant Luxembourg legal entity with all the necessary BO-related information in order for the latter entity to comply with its obligations under the bill of law.

The other criminal sanctions provided for in the initial bill of law, which include fines ranging from EUR 1.250.- to EUR 1.250.000.-, have not been amended under the revised version of the bill of law.

### 1.3. *Public access to the RBE now available*

Driven by the transparency requirements of the 5<sup>th</sup> AML Directive, the most noticeable change under the revised version of the bill of law is that in addition to the access granted to national competent authorities (such as, for instance, the Commission de Surveillance du Secteur Financier (CSSF), the Commissariat aux Assurances (CAA) and tax administrations), self-regulated entities and obliged entities, as initially foreseen under the bill

of law, any member of the public may now request access to the RBE and thus to the information on BOs of Luxembourg legal entities (such as the name, surnames, nationality, date and place of birth, country of residence, nature and extent of the beneficial interests held) and such access should now also be granted in electronic form.

Whereas a restriction of the access to the RBE is still foreseen under the revised version of the bill of law (in circumstances entailing, for instance, a risk of kidnapping, blackmail, fraud, etc.), such restriction is now subject to more stringent conditions, including in terms of duration.

Apart from the above, the revised bill of law also specifies that Luxembourg legal entities and/or their BOs must not be informed of access to the RBE by any national competent authority.

Finally, as regards the purely technical aspects relating to the RBE (such as, for instance, the procedure for electronic filing with the RBE, the procedure for granting access to national authorities, the research criteria, the fees paid to the RCSL, supporting documents needed for an entry or a modification thereof, etc.) which will be addressed by way of grand-ducal regulations, it is worth bearing in mind that they are not yet available at this stage even in draft form.

## 2. New amendments to be expected in relation to the central register of BOs of Luxembourg fiduciary arrangements (bill of law 7216)

At the end of June 2018, bill of law 7216 was split into two separate bills of law: bill of law 7216A, by which the Luxembourg government intends to implement the part of Article 31 of the 4<sup>th</sup> AML Directive relating to the information on BOs to be held by Luxembourg fiduciary arrangements and bill of law 7216B, which in turn relates to the part of Article 31 requiring a central register of BOs of Luxembourg fiduciary arrangements.

Whereas bill of law 7216A has in the meantime been passed in Parliament through a law of 10 August 2018 ([Bill of law 7216A – New requirements for fiduciary arrangements: setting up by their fiduciary agent for an internal file on the beneficial owners](#)), bill of law 7216B has, unfortunately, neither significantly progressed in Parliament nor does it appear to have been subjected yet to all the required amendments under the 5<sup>th</sup> AML Directive.

In essence pursuant to the 5<sup>th</sup> AML Directive, bill of law 7216B is expected to be amended so as to now extend to any Luxembourg fiduciary arrangement (even if it does not entail any tax consequences). The 5<sup>th</sup> AML Directive has further specified that the competent register for filing purposes for a trust/fiduciary arrangement should be the register of the Member State where the relevant trustee or fiduciary agent is established and that the relevant BOs under such a trust/fiduciary arrangement (which must then also be registered with the relevant register) should extend to and comprise in effect all the persons that qualify as BOs under the applicable legal definition of anti-money laundering and counter terrorist financing (“AML/CTF”).

Pursuant to the 5<sup>th</sup> AML Directive, access to the *Registre des Fiducies* should now be extended *i.a.* also to obliged entities within the framework of their AML/CTF obligations as well as to any person that can demonstrate a legitimate interest for AML/CTF purposes.

In addition, as currently foreseen under bill of law 7217, the possibility to request a restriction of access to the *Registre des Fiducies* (in circumstances entailing, for instance, a risk of kidnapping, blackmail, fraud, etc.), should now also become subject to more stringent conditions.

Finally, like the RBE, a grand-ducal regulation will in the near future address the purely technical aspects of the *Registre des Fiducies*; it is however not yet available, even in draft form.



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