



Luxembourg newsflash

13 December 2017

Registers of beneficial ownership: new rules to be implemented soon

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The draft laws implementing AMLD 4 set out strict rules to allow for protection against improper access to the information on BOs.

On 6 December 2017, the Luxembourg Parliament published two draft laws to implement new transparency measures provided by Directive 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (“**AMLD 4**”). They are both intended to create central registers of beneficial owners (“**BOs**”) which is one of the main innovations of AMLD 4 and which will be (and to a large extent has already been) implemented in all EU Member States. Although these are merely draft laws which will still have to undergo the complete legislative process in Parliament in Luxembourg (and which could therefore still be amended in this context), we wish at this stage to shed some light on the concrete intended functioning of these new central registers of BOs related information. However, as the draft laws are in line with the provisions of AMLD 4, one may only expect certain minima amendments in such legislative process. Whereas these central registers will contribute to a new level of transparency as required in AMLD 4, it is worth bearing in mind that the Luxembourg government conversely has also provided for some specific safeguards against improper access to these registers.

The draft laws include the setting-up of two central registers, namely (i) a central register of beneficial owners of Luxembourg legal entities (companies, partnerships, etc.) under the authority of the Minister of Justice (Draft law No 7217) and (ii) a central register of beneficial owners of fiduciary arrangements under the authority of the *Administration de l'Enregistrement et des Domaines* (“**AED**”) (Draft law No 7216).

1. Central register of beneficial owners of Luxembourg legal entities

Scope of the draft law No 7217

All Luxembourg commercial companies as well as any other legal entities registered with the trade and companies' register fall within the scope of such draft law. This includes, among others, the following types of entities: public limited companies (*sociétés anonymes*), private limited companies (*sociétés à responsabilité limitée*), partnerships limited by shares (*sociétés en commandite par actions*), common limited partnerships (*sociétés en commandite simple*), special limited partnerships (*sociétés en commandite spéciale*), foundations, civil companies, interest groupings (GIE), European interest groupings (GEIE) and investment funds (*fonds d'investissement*).

Listed companies under certain circumstances, common funds (FCPs) and branches of foreign companies are out of scope.

New requirements for legal entities

Relevant “in scope” Luxembourg entities are required to obtain and hold adequate, accurate and up-to-date information on their BOs at their registered office.

Such information must be kept up-to-date by the entities (or their representatives appointed to that effect, such as a notary) and uploaded into the central register of BOs (*Registre des bénéficiaires effectifs*), the so-called REBECO, maintained by the Luxembourg trade and companies’ register.

Existing entities will have up to 6 months after the entry into force of the draft law to register the relevant information with the REBECO.

Criminal sanctions will be imposed on relevant “in scope” Luxembourg entities or their representatives who (i) do not register the information in the REBECO within the required timeframes, (ii) knowingly provide incorrect or partial information or information which has not been updated or (iii) fail to obtain and keep the information at their registered office.

Information to be available in the REBECO

The information must include the identity of the BO, date and place of birth, nationality and private or professional address of residence as well as the BO’s nature and extent of beneficial interests held in the relevant entity. The information must be accurate, complete and up-to-date.

The information will be kept in the REBECO for a period of 5 years after the winding-up of the subject entity.

All persons having access to the REBECO and becoming aware of incorrect or missing information must inform the REBECO thereof without delay.

Access to the central register of BOs (REBECO)

The information contained in the REBECO will be made available electronically only to national competent public authorities, including but not limited to the prosecutor, the *Commission de Surveillance du Secteur Financier* (CSSF), the *Commissariat aux Assurances* (CAA) and tax administrations. This electronic access is unrestricted.

Self-regulatory bodies (such as the Bar Council, Notary Chamber and the *Institut des Réviseurs d’Entreprises*) will also have a limited electronic access to the REBECO. This electronic access is only to be used within the strict context of their supervisory functions. Access is subject to the authorisation of the REBECO manager. Only partial information may be disclosed to these self-regulatory bodies.

Obligated entities (such as for instance credit institutions, professionals of the financial sector, insurance undertakings and UCITS management companies) will have a limited electronic access to the REBECO which may be used only where obligated entities are required to carry out client due diligence measures in relation to their clients.

Physical access may also be granted to any person or organisation that (i) can demonstrate a legitimate interest in relation to AML, (ii) is resident in Luxembourg and (iii) has made an official written and duly justified request in this respect. Such access is subject to the prior approval of a formal commission to be created by the Minister of Justice.

Any subject entity may request a restriction of access to the REBECO where such access would expose the BO to a risk of fraud, kidnapping, blackmail, violence or intimidation, or where the BO is a minor or otherwise incapable.

Furthermore, criminal sanctions may be imposed on the self-regulatory bodies or on the obliged entities if they purposely access the REBECO outside the aforementioned circumstances.

2. Specificities regarding the central Register of BOs in fiduciary arrangements

A register of fiduciary arrangements, the *Registre des Fiducies*, is subject to largely the same regime as the REBECO. Some differences however should be outlined at this stage:

Fiduciary agents subject to any express fiduciary arrangements governed by Luxembourg law (as long as the fiduciary arrangement generates tax consequences) must obtain, hold, keep up-to-date and upload information in the central *Registre des Fiducies*.

The competent authorities supervise the performance of these new requirements by the fiduciary agents and may impose administrative sanctions, such as a fine or a temporary prohibition on exercising a professional activity.

The information must include the identity of the principal, the fiduciary agent, the protector (if any), the beneficiaries or class of beneficiaries and any other natural person exercising effective control over the fiduciary arrangement. The information must be kept in the *Registre des Fiducies* for a period of 5 years after the termination of the fiduciary arrangement.

All persons having access to the *Registre des Fiducies* and becoming aware of incorrect or missing information must inform the AED thereof without delay.

Finally, the national competent public authorities shall cooperate among themselves and exchange all relevant information in the context of the performance of their duties as provided by the draft law and the AML Luxembourg law.

This publication is intended to provide information on recent legal developments and does not cover every aspect of the topics with which it deals. It was not designed to provide legal or other advice and it does not substitute for the consultation with legal counsel before any actual undertakings.

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