

Luxembourg: registers of beneficial ownership

The Grand-Duchy is in the process of implementing the 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 (Anti-Money Laundering Directive, AMLD 4) and – partly – those articulated in the successor Directive 2018/843 (AMLD 5). To this effect, the Luxembourg Parliament adopted one legislation last summer, while finalising two draft laws this autumn. The two draft laws aim at establishing registers of beneficial owners (BOs), which represent one of the key innovations under EU law. In particular, the two bills provide for (i) a central register of beneficial owners of Luxembourg legal entities under the authority of the Minister of Justice (Draft Law n° 7217), and (ii) a central register of beneficial owners of fiduciary arrangements under the authority of the *Administration de l'Enregistrement et des Domaines* (Draft Law n° 7216B). In addition, the new transparency regime draws on the aforementioned legislation already passed by the *Chambre des Députés*: the Law of 10 August 2018 on the information to be obtained and held by fiduciary agents (Law of August 2018).

Central register of beneficial owners of Luxembourg legal entities

Draft Law n° 7217 establishes the *Registre des bénéficiaires effectifs* (RBE) which covers *inter alia* the following 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; • European interest groupings; • investment funds (*fonds d'investissement*); • common funds (FCPs); and • branches of foreign companies. The entities within the scope of the law are required to obtain and hold adequate, accurate and up-to-date information on their BOs at their registered office. They must upload such information into the RBE, maintained by the Luxembourg trade and companies' register. By contrast, listed companies are, subject to certain conditions, exempted from such filing obligation with the RBE, provided that they provide the RBE with the exact name of the regulated market(s) on which their securities are admitted to trading. Existing entities will have up to 6 months after the entry into force of the draft law to register the relevant information with the RBE. The law will impose criminal sanctions on entities, or their representatives, that (i) do not register the information in the RBE 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. 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 will be kept in the RBE for a period of 5 years after the closing down of the subject entity. All persons having access to the RBE and becoming aware of incorrect or missing information must inform the RBE thereof without delay. Pursuant to Draft Law n° 7217, the one-month period which Luxembourg legal entities have to file the relevant BO-related information with the RBE 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. 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 so as to allow it to comply with its obligations under the bill of law. Failure by a BO to provide the necessary information may trigger a criminal fine ranging from EUR 1,250 to EUR 1,250,000. The information contained in the RBE will be made available electronically to national competent public authorities, including the prosecutor, the *Commission de Surveillance du Secteur Financier* (CSSF), the *Commissariat aux Assurances* (CAA) and tax administrations, as well as self-regulatory bodies, such as the Bar Council, Notary Chamber and the *Institut des Réviseurs d'Entreprises*. In addition, in line with the broader transparency requirements under the AMLD 5, any member of the public may 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). Such access should also be granted in electronic form. However, an entity may request an exceptional exemption which is to limit the access, for a certain period of time, to the national authorities only, provided that granting access would expose the beneficial owner to (i) a disproportionate risk, or (ii) a risk of extortion or (iii) a risk of harassment. Irrespective of the above, the Draft Law n° 7217 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, grand-ducal regulations will address purely technical aspects relating to the RBE (e.g. procedure for electronic filing with the RBE, procedure for granting access to national authorities, fees, supporting documents needed for an entry or a modification thereof). At present, these regulations are not yet available, not even in draft form.

Register of BOs in fiduciary arrangements

In the course of the legislative process, Draft Law n° 7216 was divided into two distinct texts: (i) Draft Law 7216A, by which the Luxembourg government intends to implement the part of Article 31 of the 4th AML Directive relating to the information on BOs to be held by Luxembourg fiduciary arrangements; and (ii) Draft Law 7216B, which in turn relates to the part of Article 31 requiring a central register of BOs of Luxembourg fiduciary arrangements. Whereas Draft Law n° 7216A has in the meantime given rise to the Law of August 2018, the Draft Law n° 7216B has not significantly progressed in the *Chambre des Députés*. Draft Law n° 7216B aims at creating a register of fiduciary arrangements – the *Registre des Fiducies*, which is subject to largely the same regime as the RBE. Under the current version of the draft bill, as long as the fiduciary arrangement generates tax consequences, fiduciary agents subject to any express fiduciary arrangements governed by Luxembourg law need to obtain, hold, keep up-to-date and upload information in the *Registre des Fiducies*. According to the Law of August 2018, the information to be filed must comprise: • the identity of the principal (settlor); • the fiduciary agent(s); • the protector (if any); • the beneficiaries; • and any other natural person exercising effective control over the fiduciary arrangement. As an alternative to the identification of each beneficiary on an individual basis, it is possible to identify a class of beneficiaries. The identification by reference to a class of beneficiaries seems to be possible if the beneficiaries of the *fiducie* can be designated by common characteristics or by a class. The information must be kept in the *Registre des Fiducies* for a period of 5 years after the end of the fiduciary arrangement. All persons having access to the *Registre des Fiducies* and becoming aware of incorrect or missing information need to inform the AED thereof without delay. The competent authorities supervise the performance of these new requirements for fiduciary agents and may impose administrative sanctions, including a fine or a temporary prohibition on exercising a professional activity. 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 Luxembourg's anti-money laundering legislation. In light of the recent enactment of the AMLD 5, Draft Law n° 7216B is expected to be amended on the following points. First, the obligation to file information with the *Registre des Fiducies* may extend to all Luxembourg fiduciary arrangements, including those that do not entail any tax consequences. Second, while 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, the relevant BOs under such a trust/fiduciary arrangement should comprise all the persons that qualify as BOs under the applicable legal definition of anti-money laundering and counter terrorist financing (AML/CTF). Third, access to the *Registre des Fiducies* should be extended 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. Fourth, the possibility to request a restriction of access to the *Registre des Fiducies* (in circumstances entailing a risk of kidnapping, blackmail, fraud, etc.), should become subject to more stringent conditions. There is a clear intention on the part of the Luxembourg legislator to adopt both remaining bills as soon as possible. Julien Dif, Luxembourg