

New bills of law in relation to the creation of Luxembourg registers of beneficial owners and fiduciary arrangements

Deals - 11/01/2018

Two bills of law were filed on 6 December 2017 by the Luxembourg Ministry of Justice with a view to transposing articles 30 and 31 of the Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (the **Directive**):

1. Bill n°7217 (the **BOs Bill**) relating to the creation of an electronic national register of beneficial owners (the **REBECO**) for commercial companies and other legal entities registered with the Luxembourg Trade and Companies' Register (the **RCSL**); and
2. Bill n°7216 (the **Fiduciary Bill**, and together with the BOs Bill, the **Bills**) relating to the creation of an electronic national register of fiduciaries for fiduciary arrangements governed by the Luxembourg law dated 27 July 2003 related to trusts and fiduciary contracts (the **Fiduciary Arrangements**) located in and subject to a tax treatment in the Grand Duchy of Luxembourg (the **Fiduciaries Register**).

What is the REBECO and who can access it?

The REBECO shall be created for the maintenance and provision of information regarding "*beneficial owners*" (as defined in the Luxembourg law dated 12 November 2004 on the fight against money laundering and terrorist financing (the **BOs**)) of commercial companies and other legal entities registered with the RCSL. It will be electronically maintained and monitored by the RCSL as a separate register to the companies' register, under the control and supervision of the Luxembourg Ministry of Justice. Extracts eliciting all the information required to be registered shall be issued on demand by the RCSL to any person permitted to have access to it within the scope of the BOs Bill.

Access to the REBECO shall be limited to (i) actors involved in the fight against money laundering, including (a) national authorities (*i.e.* judicial and tax authorities, Luxembourg regulators such as the *Commission de Surveillance du Secteur Financier* etc.), (b) self-

regulatory bodies (*i.e.* the Luxembourg Bar Council, the Notaries' Chamber etc.) and (c) professionals subject to anti-money laundering regulations (*i.e.* notaries, lawyers, accountants, banks etc.) and (ii) Luxembourg persons or organisations who can evidence a "*legitimate interest*" in such information (to be assessed on a case to case basis by a special commission created pursuant to the BOs Bill). Under certain limited circumstances which are enumerated in the BOs Bill, registered companies may request that their BOs information be only accessible by national authorities.

The BOs Bill does not apply to Luxembourg listed companies, which are subject to different anti-money laundering rules.

What information shall be made available in the REBECO and who shall be responsible for the filing and conservation of such information?

The information to be registered in the REBECO includes *inter alia* the name, nationality, place and date of birth, personal address and identification number (as applicable) of the BOs, as well as the nature and extent of the participation they hold in the relevant entities. Any changes in the information provided to the REBECO relating to the BOs must be filed with the RCSL within one month of the change.

All registrations and further modifications to the REBECO can be filed either by (i) the corporate entity itself, (ii) its domiciliation agent, (iii) any *ad hoc* agent to whom such power has been granted or (iv) the notary incorporating or amending the articles of association of the entity. It should be noted that any person having access to the REBECO is under an obligation to inform the RCSL "*without any delay*" of any inaccurate or false information registered in the REBECO. The RCSL can also make a request at any time to the relevant persons to update the registered BOs' information, which request must be treated within thirty days of receipt by the relevant persons of the request, after which time the RCSL may transmit such request to the Luxembourg State's prosecutor.

The commercial companies and other legal entities subject to the BOs Bill and registered with the RCSL must also maintain information regarding their BOs at their registered office, and must indicate to the RCSL where such information will be kept during the statutory five-year record retention period following their eventual dissolution and/or liquidation, as the case may be.

What information shall be made available in the Fiduciaries Register and who shall be responsible for its filing and conservation?

The content of the Fiduciary Bill is quite similar to the BOs Bill and shall create the Fiduciaries Register, which shall be electronically controlled and supervised by the Luxembourg *Administration de l'enregistrement et des domaines* (the **AED**). The Fiduciary Bill will also create an obligation for Luxembourg fiduciary agents to obtain and keep all relevant information

related to the BOs for whom they perform their "*fiduciary*" services. Each Luxembourg Fiduciary Arrangement registered in the Fiduciary Register will be given an identification number by the AED.

The information to be registered in the Fiduciaries Register includes *inter alia* the identity of the settlor (*fiduciant*), the fiduciary agent, the protector (if any), the beneficiaries and any other natural person effectively controlling the Fiduciary Arrangement. The same requirements as set out in the BOs Bill relating to the maintenance and provision of the BOs information detailed under section 2 above also apply to the Fiduciaries Register.

The access to the Fiduciaries Register shall be exclusively limited to national authorities.

What are the sanctions applicable in case of non-compliance with the Bills?

Any person subject to the BOs Bill who does not comply with its provisions may potentially be subject to a penal fine ranging from EUR 1,250 to EUR 1,250,000, depending on the seriousness of the infringement.

Non-compliance with the provisions of the Fiduciary Bill, on the other hand, may trigger administrative sanctions including, *inter alia* a simple warning, a public declaration revealing the identity of the relevant natural person or corporate entity which should have been registered in the Fiduciaries Register, a temporary ban of up to five years on exercising any professional activities within in the financial sector or an administrative fine of up to EUR 1,250,000 depending on the seriousness of the infringement.

Transition period

A six month transition period is provided for in both Bills.

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