

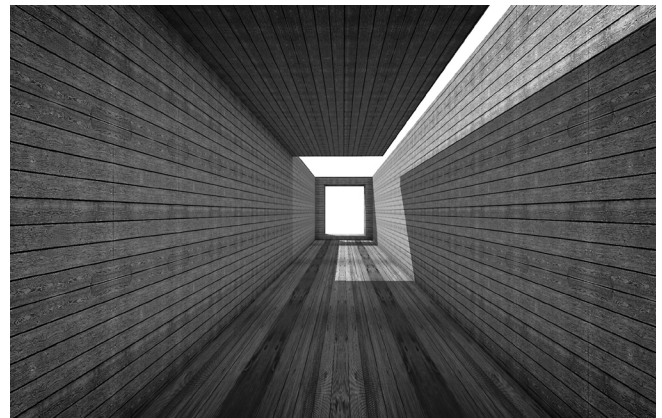
Luxembourg UBO register on its way - draft bill presented

On 6 December 2017, two Luxembourg draft bills of law, introduced under numbers 7216 and 7217, were published by Luxembourg's Finance and Justice Ministers regarding the introduction of a central Ultimate Beneficial Owner (UBO) register in Luxembourg. There will be a central register for the UBOs of corporate and legal entities and a separate central register for the UBOs of trusts and fiduciaries. This newsletter mainly focusses on draft bill 7217 regarding the register for corporate and legal entities. The draft bill has yet to be adopted by the Luxembourg Parliament.

The UBO register - background

The draft bill is based on the Fourth Anti-Money Laundering Directive (2015/849/EC). The EU Directive lays down the minimum requirements for the UBO register. Every EU member state determines the specific implementation of the UBO register. On 15 December 2017, the European Parliament and Council reached political agreement on the European Commission's proposal to further strengthen the EU rules on anti-money laundering and counter terrorist financing (as a revision of the Fourth Anti-Money Laundering Directive). It is questionable in that respect whether the Luxembourg draft bill fully complies with the scope of the strengthened EU Directive.

The bill is aimed at preventing money laundering and terrorism financing by introducing a register identifying the UBO of corporate entities, trusts and other legal entities. The draft bill proposes the implementation of a register which keeps information about the identity of the UBOs of Luxembourg registered entities (e.g. private



limited liability companies, public limited companies, corporate partnerships limited by shares, general partnerships, common limited partnerships etc.).

Who is considered to be UBO?

A UBO is any natural person who ultimately owns a relevant percentage of shares of a legal entity through direct or indirect ownership or has formal or effective control over a legal entity (shareholding or ownership of more than 25%). If no person with this profile can be identified or if there is any doubt that the person(s) identified are the beneficial owner(s), then the person falling under the definition is/are any natural person(s)

who otherwise exercise(s) control over the management of a legal entity. This could be, for example, the person(s) holding the position of senior manager of the relevant entity.



Which information is to be provided?

The information, which is to be provided to and filed with the “Groupement d'intérêts économique du Registre de commerce et des sociétés” (“RCSL”), includes the following items of (each of) the UBO(s):

1. full name, date and place of birth;
2. nationality(ies) and country of residence;
3. private or professional address;
4. national or foreign identification number (e.g. ID card/ passport number); and
5. information (nature and extent) of the beneficial interest held in the relevant corporate/other legal entities.

The abovementioned information needs to be collected, maintained (for a period up to five years) and timely

updated by all Luxembourg legal entities concerned. Moreover, this information is to be kept in the register and will be kept therein during 5 years after the dissolution of the concerning entity.

Who has access to the information kept in the register?

The information contained in the register shall be accessible for:

1. national authorities, which are individually listed in the draft bill and are competent in the fight against money-laundering (e.g. the judicial administration, the regulator of the financial sector and the tax authorities);
2. self-regulated bodies (e.g. associations of lawyers, notaries, auditors and accountants) and professionals (e.g. lawyers, notaries, tax and financial advisors, real estate agents, etc.). These persons will not have access to the professional/private address and national/ identification number of the UBO(s);
3. other resident persons or organisations having a ‘legitimate interest’ in the UBO information under a motivated request to be made to the RCSL. Subsequently, the RCSL shall transmit the request to a newly created commission de coordination, which shall validate and decide on the legitimacy of the request. In case the commission de coordination decides positively on the request, the RCSL provides the requesting person an extract containing certain limited

information on the UBO(s) within a period between 5 and 15 working days from the date of the positive decision of the commission de coordination. The draft bill does not specify what constitutes a 'legitimate interest'.

Trusts and fiduciaries will have to provide similar information about their UBOs. This information will be entirely accessible for and exclusively accessible by national authorities competent in the fight against money laundering.

In very exceptional situations (determined on a case-by-case basis) and subject to a motivated request to be addressed by the concerned entity to the RCSL, access to information may be restricted to national authorities (e.g. in case of fear of fraud, kidnapping, blackmail, violence, intimidation or if the UBO is a minor).

Failure to comply with the rules

The draft bill provides for fines ranging between EUR 1,250 and EUR 1,250,000 which could be imposed to the legal entity or its legal representative that fail to comply with the aforementioned obligations. Legal representatives (whether based in Luxembourg or elsewhere) of any relevant entity should therefore closely monitor the fulfilment of these obligations.

Conclusion

The draft bill currently follows the Luxembourg legislative procedure. The legislative procedure concludes with the publication of the legislative text in the Luxembourg Mémorial. We expect the publication in the Mémorial in the course of next year.

In case you have any questions regarding the Luxembourg UBO register, feel free to contact us.



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