

# GSK Update

12.01.2018

## Register of beneficial owners: what are the rules in Luxembourg?

### Executive Summary

- > The register will be managed by the economic interest group of the Luxembourg Trade and Companies Register and will be under the authority of the Ministry of Justice;
- > Information about the BOs of all entities registered with the RCSL will need to be provided;
- > Information contained in the register should not be public and any access to the register will be restricted.

On 6 December 2017, the Luxembourg government has finally submitted the 7217 draft bill (the “**Bill**”) establishing a register of ultimate beneficial owners (“**BO**”) in Luxembourg (introduced under the abbreviated name of “**REBECO**”). This Bill implements the new transparency requirements provided by the Fourth Anti-Money Laundering Directive<sup>1</sup>. The register will be managed by the economic interest group of the Luxembourg Trade and Companies Register (“**RCSL**”) through a separate data bank and will be under the authority of the Ministry of Justice.

### ➤ Who is concerned?

The RCSL economic interest group will be responsible for collecting and maintaining data concerning the BO of all legal persons registered with the RCSL, i.e all Luxembourg commercial companies as well as any other legal entities (including investment funds and foundations). The entities that were registered in the RCSL before implementation of the REBECO will also fall under the scope of the law. Companies whose securities are tradable on the regulated market and subject to a transparency regime are explicitly excluded from the scope, as

well as collective investment schemes (FCPs) and Luxembourg branches of foreign companies<sup>2</sup>.

### ➤ What type of information on the BO will be provided?

Entities registered with the RCSL or their agents have to provide to and keep updated with the REBECO accurate and complete information on their BO. The following information will need to be provided:

- name and first name(s);
- citizenship / nationality(s);
- date and place of birth;
- country of residence;
- exact and complete private or professional address;
- Luxembourg or foreign identification number;
- nature and extent of beneficial interests held.

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

### ➤ Who can access to the REBECO?

Contrary to other European countries, which have decided to grant full access to their BO registers, Luxembourg took the position that the information contained in the REBECO should not be public and any access to the register will be restricted.<sup>3</sup> Hence, Luxembourg makes a point of protecting as much as possible the privacy of BOs.

The Bill differentiates between three categories of people with more or less restricted access to the information in the register.

<sup>1</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015

<sup>2</sup> The BO register legislation in France includes also a duty for existing French branches of foreign non-listed companies to declare their BO.

<sup>3</sup> such as the United Kingdom and the Netherlands.

1. Will have **unlimited and unconditional** electronic access:
  - The competent national authorities in the fight against money laundering and the financing of terrorism, ie. Luxembourg police, judiciary and administrative authorities such as the Commission de Surveillance du Secteur Financier (CSSF), the Commissariat aux Assurances (CAA) and the tax administrations.
  
2. Will have **limited and unconditional** electronic access:
  - Luxembourg self-regulatory organizations (e.g. the Bar Council, the Chamber of Notaries, the Institute of Company Auditors, the Order of Chartered Accountants, the Chamber of Bailiffs);
  - Professionals involved in the fight against money laundering.

Limited access here means access only in the context of the supervisory function and access to all information except, the complete private or professional address and the Luxembourg or foreign identification number.
  
3. Will have **limited and conditional** access:
  - Individuals or organizations residing in Luxembourg and demonstrating a "legitimate interest" in knowing the details of a BO.

Limited access here means access to all information, except the date and place of birth, the complete private or professional address and the Luxembourg or foreign identification number.

Access is only granted under the condition that the interested individual/organization makes a motivated request to the RCSL economic interest group. The request will be screened by a coordinating commission under the authority of the Ministry of Justice who will then assess the underlying motivations. If the commission decides to grant access, it will first notify the relevant entity which, pursuant to the Bill, holds a right to object to it.

In this context, it needs to be emphasized that the term "legitimate interest", which would allow access to REBECO, is not defined in the Bill. This concept would have to be assessed on a case-by-case basis and according to the circumstances of the case

presented by the claimant<sup>4</sup>. Though, the lack of definition could also be interpreted as an attempt by the Luxembourg legislator to allow more flexibility and grant further protection to the BOs.

In exceptional cases (e.g. if a BO fears being exposed to a 'risk of fraud, kidnapping, blackmail, violence or intimidation', or is a minor or incapacitated) the BO can ask to limit access to its personal information to the national authorities by making a motivated request to the commission. Such request would as well be assessed by the coordinating commission.

#### ➤ **What are the sanctions in case of failure to declare?**

The registered entity or its agent who has either failed to submit an application for registration to REBECO or has knowingly disclosed information that is inaccurate, incomplete or not current on the BO is subject to a fine between EUR 1,250 and EUR 1.25 million.

The Bill also foresees sanctions from EUR 1,250 to EUR 1.25 million for self-regulatory bodies or professionals who knowingly request access to information from REBECO outside of their mission of control / duty of vigilance in relation to the fight against money-laundering/terrorism financing.

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<sup>4</sup> It shall be noted that German legislators have given further explanations on the concept of "legitimate interest" in an explanatory memorandum. This memorandum states that there is such an interest in particular when the inquiry is related to preventing and combating money laundering. Accordingly, specialist journalists or NGOs would have sufficient legitimate interest if they are seriously engaged, in a task-oriented manner, in preventing or combatting money laundering and corruption. However, it shall be understood that this explanation will not necessarily have an influence on the Luxembourg interpretation, and that the Luxembourg authorities could interpret the concept more or less restrictively.

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