



## UBO REGISTER – WHAT ARE THE NEW OBLIGATIONS OF BELGIAN ENTITIES?

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**1.** The Law of 18 September 2017 implementing the 4<sup>th</sup> EU Anti-Money Laundering Directive of 20 May 2015 (Directive EU 2015/849) has established a register of beneficial owners, namely the “UBO register” (Ultimate Beneficial Ownership). The Royal Decree of 30 July 2018 on the operating procedures of the UBO register has been published in the Belgian Official Journal on 14 August 2018 and will enter into force on 31 October 2018.

**2.** The Law of 18 September 2017 requires companies registered in Belgium, (international) non-profit associations, foundations, trusts, fiduciaries and other similar entities to collect and keep adequate, accurate and up-to-date data relating to their ultimate beneficial owners and to file this information with the UBO register.

It should be noted that all forms of companies are covered, from listed companies to simple partnerships.

**3.** Article 4, 27° of the Law defines a “beneficial owner” as the individual(s) who, ultimately, own(s) or control(s) the company.

Regarding companies, this definition mainly refers to individuals who (i) ultimately own, directly or indirectly, a sufficient percentage of voting rights or shares (to possess, directly or through the holding by one or companies, of more than 25% of the

voting rights or the share capital being a sufficient indication in this respect) or (ii) control the company through other means. In the absence of an individual fulfilling one of these conditions, the ultimate beneficial owner is the individual(s) acting as the principal manager.

Regarding (international) non-profit associations and foundations, the beneficial owners are the directors, daily managers, founders, individuals or categories of individuals to the benefit of whom the association was founded or any other individual who controls the association via other means.

For fiduciaries and trusts, the beneficial owners are the constituent, the fiduciaries, the trustees, the protector, the beneficiaries or categories of persons in the interest of whom the fiduciary or the trust was constituted, or any other individual who ultimately controls the fiduciary or trust.

The various categories of beneficial owners mentioned above are cumulative.

**4.** The Decree makes a distinction between the direct and indirect beneficial owner (the individual who “owns or controls the information provider through one or several legal entities”).

The report to the King stipulates that the concept of indirect beneficial owner aims at identifying the beneficiaries having an effective interest or control

through the intermediary of other structures, including foreign legal entities.

**5.** The Royal Decree of 31 July 2018 transposes in part the 4<sup>th</sup> EU Anti-Money Laundering Directive and, by anticipation, the 5<sup>th</sup> EU Anti-Money Laundering Directive of 30 May 2018 (directive EU 2018/843) which amends the 4<sup>th</sup> Directive.

The report to the King indicates that the creation of a UBO register and the exact identification of the beneficial owner also make Belgium compliant with the FATF's recommendations and the OECD's requirements relating to the exchange of information for tax purposes.

**6.** The Decree introduces the concept of information provider, namely the entities referred to in section 2 above.

The obligation to file the relevant information with the General Treasury Administration in charge of managing the UBO register lies upon the information providers, and more specifically upon their directors – and not upon the beneficial owners themselves.

The information will have to be updated at least once a year. However, company directors shall have to communicate to the UBO register any change to the information on the beneficial owners within one month of such change.

All data should be uploaded to the register via the online platform MyMinFin. The register is operational since September 27.

**7.** The Royal Decree requires companies incorporated in Belgium to communicate to the UBO register the following information on each beneficial owner: (i) last name and first name, date of birth (day/month/year), citizenship(s), country of residence, complete address of residence, date on which they became the UBO of the company, national registry number or registration number with the Crossroads Bank for Companies (or similar identifier abroad), (ii) the relevant category of UBO they belong to, (iii) whether he/she is a direct or indirect UBO, (iv) whether he/she is an isolated UBO or jointly with other individuals, (v) if he/she is an indirect UBO, the complete

identification of each intermediary, (vi) the percentage of shares or voting rights owned, and (vii) in the case of indirect detention or control, the percentage of shares or weighted voting rights held in the company.

**8.** The (international) non-profit associations and foundations incorporated in Belgium will have to communicate to the UBO register the same information as required from the beneficial owners of companies, except the extent of the effective interest held in the company.

The Decree requires trustees and fiduciaries managing trusts, fiduciaries or similar legal entities from Belgium, to collect and preserve similar information on their beneficial owners and to communicate some information related to Belgium to the UBO register.

**9.** All data contained in the UBO register is accessible to the competent authorities and related entities (including the Ministry of Finance, tax authorities, the CTIF-CFI, the police, the NBB, the FSMA, company auditors, accountants, lawyers, notaries, bailiffs, etc.), as well as to any member of the public in accordance with the increased transparency principle implemented by the 5<sup>th</sup> Anti-Money Laundering Directive.

However, the members of the public will not have access to the first name, the exact date of birth, the complete address of residence, the national registry number or equivalent of the beneficial owners.

Members of the public may only search by company name or CBE number. They cannot use the beneficial owners' name. Members of the public must log in and the logs used to consult information will be saved. They will also have to pay administrative costs.

Regarding all other legal entities – (international) non-profit associations, foundations, trusts and fiduciaries – the members of the public cannot have direct access to the UBO register. They will have to file a request with the General Treasury Administration justifying a legitimate interest related to the fight against money-laundering or to the financing of terrorist or other similar activities.

**10.** Companies and beneficial owners will not be informed of the searches made on them by third parties in the UBO register.

**11.** The information providers will have to provide some information to beneficial owners to comply with the rules on data protection and privacy.

The General Treasury Administration will also inform the beneficial owners of their registration in the UBO register and send them all information recorded under their name once a year.

The beneficial owners will have the right to access all information registered under their name and request to modify or delete any inaccurate data.

Any consultation of the register will be recorded and kept for a period of ten years. The data contained in the register will also be registered and saved during ten years after the relevant company lost its legal personality or definitively ceased its activities.

**12.** Nevertheless, the General Treasury Administration may, at the request of a beneficial owner, limit access notably to the public to all or part of his/her information. The beneficial owner will have to demonstrate that “such access would create a disproportionate risk, a risk of fraud, harassment, kidnapping, blackmailing, extortion, violence or intimidations”, or if the beneficial owner is minor or incapacitated. The General Treasury Administration may grant such an exemption on a case by case basis upon a “detailed analysis of the exceptional nature of the circumstances”.

**13.** A criminal or administrative fine may be imposed on any company, (international) non-profit associations, foundations and, more specifically, on their directors responsible for a breach of any of their obligations.

### **Practical aspects**

**14.** On the basis of the applicable texts, the information providers should communicate for the first time the required information on beneficial owners to the UBO register by 30 November 2018.

However, in practice, it results from the information that has just been published on the website of FPS Finance, that this deadline has been extended **to 31 March 2019.**

In the meantime, the following measures must be undertaken by the information providers:

- a. Implement internal procedures to facilitate the collection of information mentioned in the Decree and communication of any related changes;
- b. Identify the beneficial owners and the category(ies) to which they belong and collect the documents attesting the accuracy of the information communicated (i.e copy of the identity card, register of shareholders, authentic deed, articles of association of the intermediary company in case of indirect ownership);
- c. Designate the legal representative or an authorised representative with an E-ID card who will be responsible for fill in all the information mentioned in the royal decree via the online platform MyMinFin on behalf of the information provider. In the event of an authorized representative, it may be either an internal agent to the information provider or an external agent (e.g. accountant, legal advisor, natural person or legal entity).

Various information is available on the website of the Federal Public Service Finance (<https://finance.belgium.be/en/E-services/register-beneficial-owners>) and in particular an FAQ.

Detailed guidelines are also being drafted are also being drafted. The user guide for the legal representative is now available.

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