

September 2019

Frequently Asked Questions Belgian UBO register

FAQ: Belgian UBO register

All companies and other legal entities incorporated in Belgium, other than listed companies and their 100% subsidiaries, have the obligation to collect and hold information on their Ultimate Beneficial Owners (hereafter UBOs). Furthermore, the information about UBOs needs to be reported to the Belgian UBO register. The Belgian UBO register is effective as of 31 October 2018. The UBOs of Belgian entities need to be registered by 30 September 2019 at the latest.

Directors are responsible for submitting this information to the Belgian UBO register in a timely manner, and may be sanctioned if they fail to comply with this obligation.

1 Legal framework

On 20 May 2015, the Fourth Anti-Money Laundering Directive (hereafter 4th AMLD) was adopted by the European Parliament and Council. Among the provisions in the 4th AMLD is the requirement for EU Member States to set up a UBO register that lists the UBOs of companies and other legal entities incorporated in their jurisdiction. The 4th AMLD lays down minimum requirements, Member States can impose more stringent requirements.

The Law of 18 September 2017 on the prevention of money laundering and terrorist financing and on the limitation of cash payments (hereafter AML law) implements the 4th AMLD in Belgium and introduces the Belgian UBO register.

The AML law includes the framework for the Belgian UBO register. The incorporation of the UBO register itself is laid down in the Royal Decree of 30 July 2018 (hereafter Royal Decree).

On 30 May 2018, the Fifth Anti-Money Laundering Directive (hereafter 5th AMLD) has been adopted. The 5th AMLD amends the 4th AMLD with respect to the UBO register on certain aspects, such as the obligation for the Member States to grant public access to essential information on UBOs.

A Ministerial Order on the further practical implementation of the Belgian UBO register is still expected. However, the date of the publication of this Ministerial Order remains uncertain.

2 Targeted entities

The Belgian UBO register collects the information of all UBOs of legal entities incorporated in Belgium, irrespective the legal form of the Belgian entity and regardless whether or not the entity has legal personality.

Moreover, trusts, fiduciaries and similar entities established outside Belgium must also report their UBOs to the Belgian UBO register, provided that they have a specific link with Belgium.

Branches of foreign companies are (generally) not incorporated in Belgium and therefore do not need to report their UBOs to the Belgian UBO register.

Although not explicitly provided for in the Belgian legislation, the FAQ of the Federal Public Service of Finance (hereafter “FPSF”) states that companies listed on a regulated market, which are subject to disclosure requirements consistent with EU law or equivalent international standards, and which guarantee adequate transparency of proprietary information, are exempted from registering their UBO’s.¹ This exemption equally applies to the subsidiaries that are directly or indirectly 100% owned by such a listed company. However, these subsidiaries are required to sign in the UBO-register and to register their ownership structure by listing all intermediate entities, including the listed company.

3 Who are UBOs?

As a rule, UBOs who must be reported in the Belgium UBO register are the natural persons – irrespective of their State of residency and nationality – who ultimately own or control the Belgian legal entity, and/or on whose behalf a transaction is executed or a business relationship is entered into.

Natural persons who hold the Belgian legal entity through one or more intermediaries also count as UBOs. They are broadly defined as natural persons who benefit, or will benefit, from a transaction or business relationship and who, *de iure* or *de facto*, directly or indirectly, have the power to decide on the execution of the transaction or the business relationship and/or to determine or agree to the modalities involved.

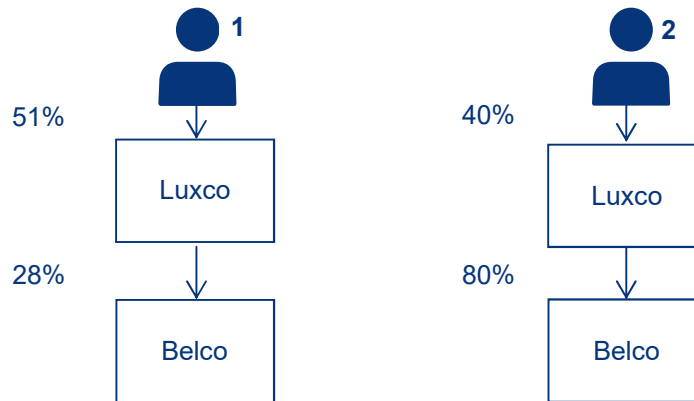
3.1 UBOs of Belgian companies

Belgium introduced the following definitions of UBOs of Belgian companies.

- 1 The UBOs of a company are the natural persons who directly or indirectly own a sufficient percentage of voting rights or a sufficient ownership interest in a company. The following shareholdings are deemed to be an indication of a sufficient percentage of voting rights or a sufficient ownership interest:
 - The natural persons who directly hold more than 25% of the voting rights, the shares or the share capital of a Belgian company;
 - The natural persons who control the holding company or companies, in cases where the Belgian company is indirectly held through one or more holding companies that hold more than 25% of the shares or the share capital of the Belgian company. The FAQ of the FPSF extends this category to indirect shareholdings with a weighted percentage of more than 25%.

¹ The regulated markets deemed to be subject to disclosure requirements consistent with EU law are those set out in the implementing decisions of the European Commission, i.e. the legal and supervisory framework of the United States of America, Switzerland, Hong Kong Special Administrative Region and Australia.

Example of indirect control:



Shareholder 1 qualifies as the indirect UBO of Belco, since shareholder 1 can (in principle) control Luxco, an intermediate entity that holds more than 25% of the shares of Belco.

According to the FAQ of the FPSF, on the basis of the weighted percentage approach, shareholder 2 will qualify as UBO of Belco, since shareholder 2 holds a weighted percentage of 32% in Belco ($40\% * 80\%$).

- 2 The natural persons who control the company by other means. Control by other means may be assessed on the basis of the notion of "control" specified in Article 1:14 of the Belgian Code on Companies and Associations, such as holding the majority of the voting rights, holding the right to appoint the majority of the directors of the company, holding veto rights, having concluded a shareholders agreement and joint control (i.e. the control a select number of shareholders exercise together, when they have agreed that decisions regarding the orientation of the management cannot be taken without their mutual consent, e.g. through a shareholders agreement).

The aforesaid categories of UBOs are cumulative, i.e. all natural persons who can be identified on the basis of these definitions must be reported to the UBO register.

In the event no natural person can be identified on the basis of the aforesaid definitions, or if there is any doubt that the identified persons are the ultimate beneficiaries, the natural persons who hold the position of senior managing official need to be reported to the UBO register. According to the explanatory memorandum, in most cases the person who holds the position of senior managing official will be the CEO or the chair of the executive committee. The FAQ of the FPSF adds that – in the absence of the CEO or the chair of the executive committee – the director, the manager, the representative of the executive committee and a member of the board of directors can be considered as senior managing official(s).

3.2 UBOs of Belgian foundations and (international) non-profit organizations (hereafter (I)NPOs)

The following natural persons are considered as the UBO's of foundations and (I)NPOs:

- 1 The directors;
- 2 Natural persons who are entitled to represent the NPO;
- 3 Natural persons in charge of the daily management of the (I)NPO's;
- 4 Founders of the foundation;
- 5 Either the natural persons, or the category of natural persons when these have not yet been appointed, in whose interest the foundation or the (I)NPO has been established, i.e. the beneficiaries;
- 6 Any other natural person who controls the foundation or the (I)NPO through other means.

The categories of UBOs mentioned above are cumulative. All natural persons of these categories have to be registered.

For the first three categories of UBOs of (I)NPOs, the information included in the Crossroads Bank for Enterprises (hereafter "CBE") can be adopted and confirmed in the UBO register.

According to the FAQ of the FPSF, the fifth category of UBOs of foundations that are structured to certify shares of a company, i.e. the *Stichting Administratiekantoor*, corresponds to the category 'certificate holders'.

3.3 UBOs of trusts, fiduciaries and similar entities

The obligations with respect to the UBO register also apply to trusts, fiduciaries and similar entities, provided that they have a link with Belgium (e.g. acquire a property in Belgium). Please contact your Loyens & Loeff advisor should you have any questions in this regard.

3.4 Usufruct and bare ownership

If the bare owner holds more than 25% of the shares, the bare owner must be registered as the UBO who holds a sufficient ownership interest.

If the usufructuary holds more than 25% of the shares and is entitled to the voting rights attached to these shares, the usufructuary must be registered as the UBO who holds a sufficient percentage of voting rights.

Both the bare owner and the usufructuary will be registered as UBO of the first category (see point 3.1).

4 What type of information should be reported?

Adequate, accurate and current information on the UBO needs to be reported.

4.1 UBOs of companies

For UBOs of companies, the information that needs to be registered in the UBO register is:

1. The name of the UBO;
2. The first name of the UBO;
3. The day of birth of the UBO;
4. The month of birth of the UBO;
5. The year of birth of the UBO;
6. The nationality of the UBO;
7. The country of residence of the UBO;
8. The full address of the UBO;
9. The starting date of UBO'ship;
10. The ID-number of the UBO;
11. The categor(y)(ies) of UBO'ship;
12. Whether the UBO is a sole UBO or is part of a group of UBOs;
13. Whether the UBO is a direct or an indirect UBO;
14. In case of an indirect UBO, the number of the intermediate entities and details on the intermediate entities (including at least the name, date of incorporation, trade name, legal form, address and company number) irrespective of their State of establishment; and
15. The extend of the interest held (percentage of shares / voting rights or weighted percentages if it concerns an indirect UBO).

4.2 UBOs of foundations and (I)NPOs

For UBOs of foundations and (I)NPOs, the information that needs to be registered in the UBO register is:

1. The name of the UBO;
2. The first name of the UBO;
3. The day of birth of the UBO;
4. The month of birth of the UBO;
5. The year of birth of the UBO;
6. The nationality of the UBO;
7. The country of residence of the UBO;
8. The full address of the UBO;
9. The starting date of UBO'ship;
10. The ID-number of the UBO;
11. The categor(y)(ies) of UBO'ship;
12. Whether the UBO is a sole UBO or is part of a group of UBOs.

5 Who is responsible for reporting UBO information?

All Belgian legal entities (companies, foundations and (I)NPOs) are required to collect and hold information on their UBOs. The information needs to be adequate, accurate and current.

Directors / legal representatives of companies, foundations and (I)NPOs must report the UBO information required within one month after it becomes known or is changed. The accuracy of the information needs to be confirmed annually. The one-year period starts with the initial registration or with the most recent change. In principle, an automatic reminder will be sent by the UBO platform one month before the deadline expires.

Administrative fines up to EUR 50,000 may apply to directors (and / or other senior managing officials who can be held responsible) for non-compliance with the obligations related to the UBO register. Criminal fines up to EUR 5.000 (to be multiplied by 8) may also apply.

6 How to report the information?

The information needs to be reported electronically, via the *MyMinFin* platform.

In principle, a (Belgian) e-ID card is required in order to access the platform and report the information.

7 Can an entity give a mandate?

Entities can mandate a third party to fulfil the obligation to register their UBOs.

8 Who informs the UBOs?

Belgian entities are obliged to inform their UBOs about:

1. Their obligation to report information on the UBOs to the Belgian UBO register;
2. The registration and the keeping of the information in the UBO register;
3. The name and the address of the General Administration of the Treasury, charged with the management of the Belgian UBO register;
4. Access modalities for competent authorities, obliged entities and citizens;
5. The right of the UBO to consult the reported information;
6. The right of the UBO to have the Belgian entity correct or delete incorrect information, registered about him in the UBO register;
7. The term during which the information is kept in the UBO register.

The FPSF notifies the UBOs about the registration in the UBO register and informs them about the registered information.

9 Who has access to the information in the UBO register?

The Belgian UBO register will be established within the FPSF.

Access to the information of UBOs depends on the type of entity.

9.1 Access to UBO register of companies

The following entities / persons will have access to the UBO register of Belgian companies:

- 1 The competent authorities;
- 2 The obliged entities within the framework of their client identification obligations (e.g. banks, notaries, lawyers, ...);
- 3 Every citizen (with or without legitimate interest).

Every citizen has, in principle, access to the information listed in points 1°, 4° to 7°, 9° and 11° to 15° (see point 4.1). Citizens will have no access to:

- The first name of the UBO;
- The day of birth of the UBO;
- The full address of the UBO;
- The ID number of the UBO.

9.2 Access to UBO register of foundations and (I)NPOs

The following entities / persons will have access to the UBO register of Belgian foundations and (I)NPOs:

- 1 The competent authorities;
- 2 The obliged entities;
- 3 Every person or organization who can demonstrate a legitimate interest;
- 4 Every person upon submission of written request for a foundation or a(n) (I)NPO that controls a company, a(n) (I)NPO or a foundation.

The FAQ of the FPSF confirms that, if a company is held via a foundation, a(n) (I)NPO, a trust, or a fiduciary, the information about the company's UBOs will only be accessible to the public if a legitimate interest can be demonstrated.

The legitimate interest should be linked to the fight against money laundering or the financing of terrorism.

9.3 How to limit access to registered information?

Upon specific request of the UBO(s), the FPSF can limit access to the UBO register for (certain) obliged entities and citizens.

The access can either be fully blocked or limited to certain information about the UBO.

The FPSF will allow the access limitation if the UBO can demonstrate that, due to the exceptional circumstances of the case at hand, (unlimited) access to his / her personal information leads to a disproportionate risk of fraud, kidnapping, blackmail, harassments, violence or intimidation.

The request needs to include at least:

- 1 The company number;
- 2 All elements demonstrating the disproportionate risk;
- 3 Power of attorney if the request is not submitted by the UBO.

The FPSF provides the following examples of evidentiary documents:

- 1 A reasoned derogation granted by another country with a similar register;
- 2 The conclusions of a risk analysis report drawn up by an independent third party;
- 3 A complaint to the police, a conviction or decision, measures of police protection; and
- 4 Any other document demonstrating the existence of any of the above risks.

The request / approval of the access limitation does not exempt the entity from reporting the required information to the UBO register.

Upon the registration of the required information on the UBOs, the request can be submitted via the *MyMinFin* platform. As soon as the request has been submitted, the information will be blocked for (certain) obliged entities and citizens until a final decision has been made. In any case, the information regarding intermediate entities remains visible.

The limitation of access to information of minors and UBOs who are incapable will in principle be automatically granted.

A Ministerial Order can further implement the modalities of the request to limit access.

10 How to consult information in the UBO register?

The Royal Decree states that citizens will only be able to ask for information about UBOs on the basis of either the company number or the name of the entity, and therefore not on the basis of the name of the UBOs.

A Ministerial Order can further implement the access for citizens.

Every consultation of the UBO register will be registered and kept for 10 years.

11 Deadline?

The UBOs of Belgian entities need to be registered by 30 September 2019 at the latest.

12 Is the UBO register GDPR compliant?

As UBOs are by definition physical persons, the information that needs to be registered in the Belgian UBO register qualifies as personal data under the EU General Data Protection Regulation 2016/679 ("GDPR").

The GDPR requires data controllers to have a valid legal ground for each type of personal data processing. In the context of the UBO register, this is the necessity for the data controller (the company) to comply with its legal obligations, which established in the public interest (the prevention of money laundering and terrorist financing). This legal basis can also serve as justification for the collection and processing of the identification number of the National Register of the UBOs (which is as a general rule forbidden).

In addition, the GDPR contains a strict legal framework for the processing of personal data. As data controller, companies have internal record-keeping obligations, data security obligations, an obligation to transparently inform all UBOs's about the processing of their personal data, to comply (under certain conditions) with requests for information, rectification, deletion, etc.

The application of the GDPR also means that the personal data of UBOs may not be processed in any way that goes beyond the controller's legal obligations, that an information notice (complying with Article 13 of the GDPR and with the Royal Decree of 30 July 2018) must be presented to the UBO, that any outdated or erroneous data must be rectified or deleted without delay, and that the UBO's personal data may not be kept for longer than 10 years.

Also the FPSF, as distinct data controller, will have to comply with these obligations, as set out in more detail in the Royal Decree of 30 July 2018.

13 Remarks!

Both the FAQ and the manuals of the FPSF, as well as the UBO application itself are not fully in accordance with the AML law and the Royal Decree.

The FAQ and the manuals of the FPSF can be consulted on the website of the FPSF, please note however that certain information (e.g. FAQ and manuals) is only available in Dutch and French;

- <https://finance.belgium.be/en/E-services/register-beneficial-owners> (ENG);
- <https://financien.belgium.be/nl/E-services/Ubo-register> (NL);
- <https://finances.belgium.be/fr/E-services/ubo-register> (FR).