


Ultimate Beneficial Owner (UBO) Register



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Ultimate Beneficial Owner (UBO) Register

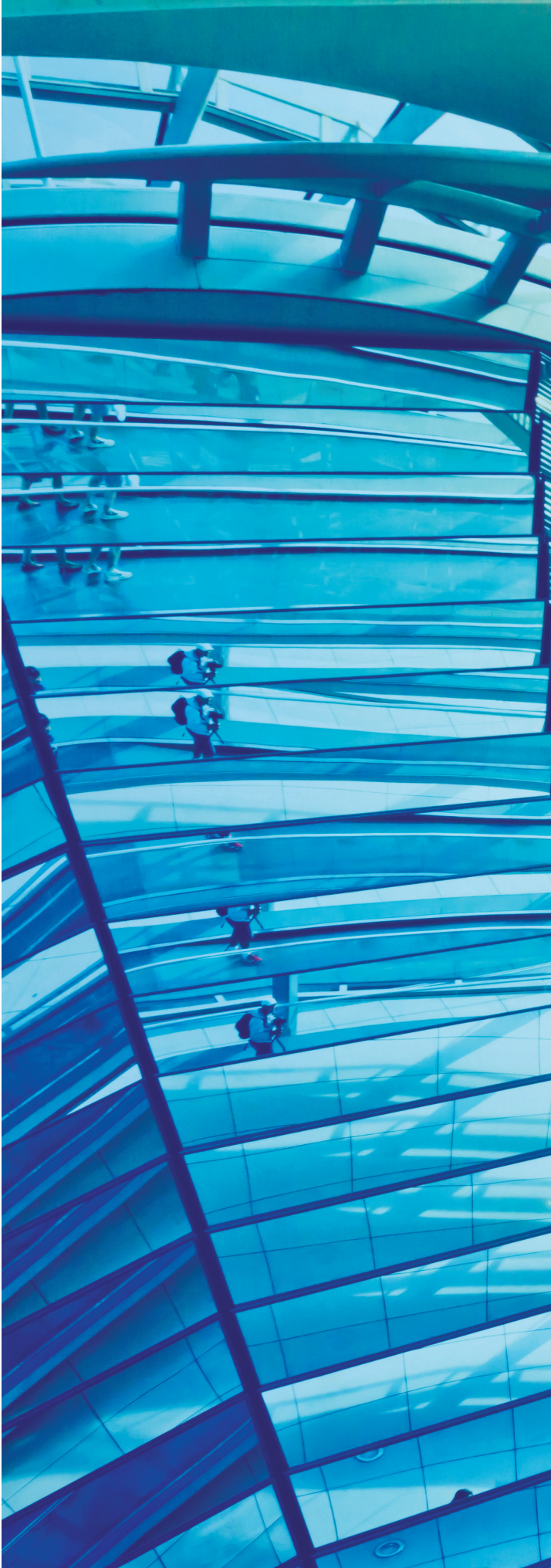
On 20 May 2015, the fourth EU Anti-Money Laundering Directive was adopted by the European Parliament and the Council (AMLD 4). The implementation of an Ultimate Beneficial Owner (UBO) register is one of the measures included in the AMLD 4.

In a nutshell, specific information shall have to be filed with regard to the UBO, i.e., any natural person who ultimately owns or controls a corporate or a legal entity, or on whose behalf a transaction or activity is being conducted. The obligation to collect and to file this information, as well as the obligation to keep it accurate and up to date, shall lie on all covered entities but not on the UBOs themselves.

In execution of these European measures, laws have been adopted in different Member States, including Belgium and Luxembourg, while a legislative proposal has been introduced in the Netherlands.

While several Member States have not yet implemented this UBO register, the European Parliament adopted in the meantime the fifth EU Anti-Money Laundering Directive of 25 May 2018 (AMLD 5). This Directive, introducing mandatory disclosure rules for professional intermediaries and advisors, also includes some amendments to AMLD 4 that have an impact on the UBO register.

The below summary provides a brief overview of the impact of the European mandatory disclosure of UBOs of Belgian entities.



Obligation to collect and file information with the UBO register

Which entities are concerned?

The obligation to collect and file information with the Belgian UBO register applies to the following entities:

- (i) **Belgian companies**, irrespective of their corporate form and including those without legal personality, but other than listed companies and their 100% subsidiaries;
- (ii) **Belgian foundations and (international) non-for-profit associations**; and
- (iii) **Fiduciaries, trusts and other comparable constructions.**

These legal forms do not exist under Belgian law. However, foreign fiduciaries or trusts are covered (a) when the fiduciary or the trustee has his main residence or head office located in Belgium, or, (b) if the trustee or fiduciary is not domiciled, established or managed within a EU Member State, when the fiduciary or trustee establishes a business relationship or purchases a real estate asset in Belgium.

Each such entity is required to:

- (i) collect adequate, accurate and current information on their ultimate beneficial owner (UBO); and
- (ii) file such information in the newly created UBO register.

Specific case: listed companies

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's¹. 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 to the UBO-register and to register their ownership structure by listing all intermediate entities, including the listed company.

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.

Whose data needs to be filed?

Information needs to be filed with regard to any natural person who ultimately owns or controls the entity through a direct or indirect ownership of a sufficient percentage of its shares, its voting rights, any ownership interest in that entity, or through control via other means.

The filing is cumulative and therefore mandatory for all the different categories of UBOs, listed below.

Companies

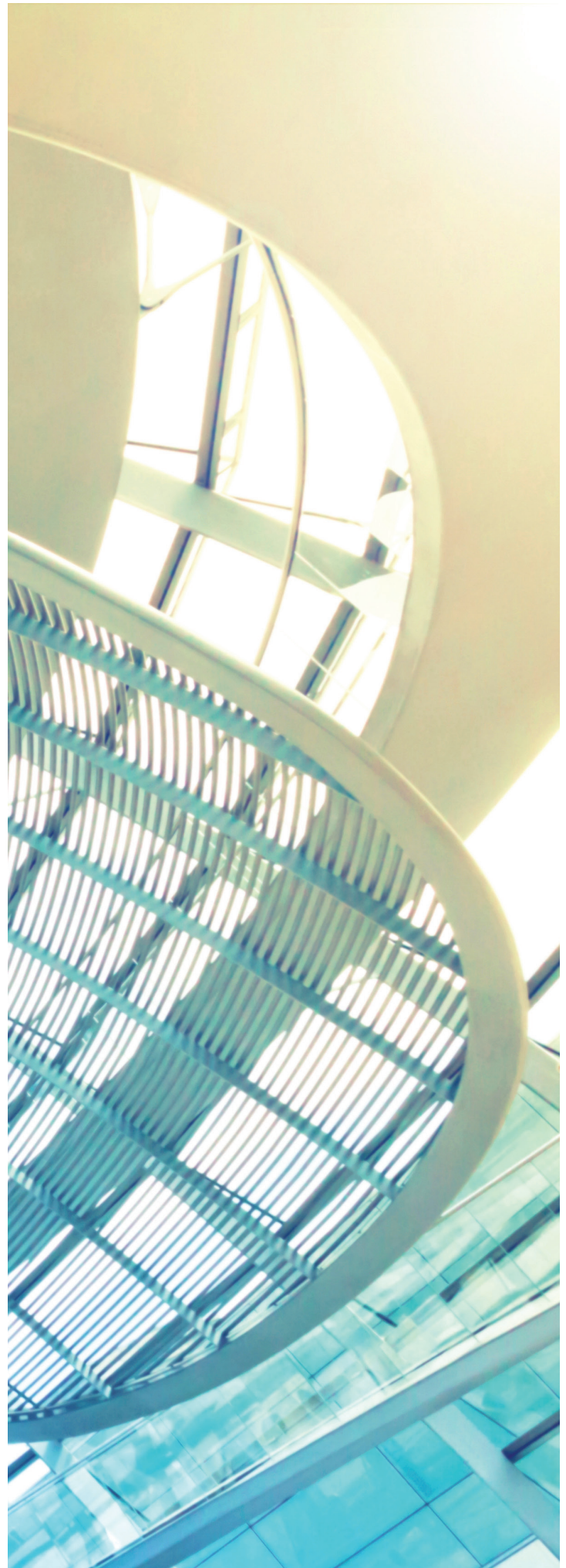
A shareholding of 25% plus one share or an ownership interest of more than 25% in the entity which is held by a natural person shall be an indication of a direct ownership of a corporate entity. A shareholding of 25% plus one share or an ownership interest of more than 25% in the entity which is held by a corporate entity, which is under the control of a natural person(s), (or by multiple corporate entities, which are under the control of the same natural person(s)), shall be an indication of an indirect ownership. This however does not mean that a person who owns a shareholding of 25% or less is automatically not a UBO, since that person may exercise actual control via other means.

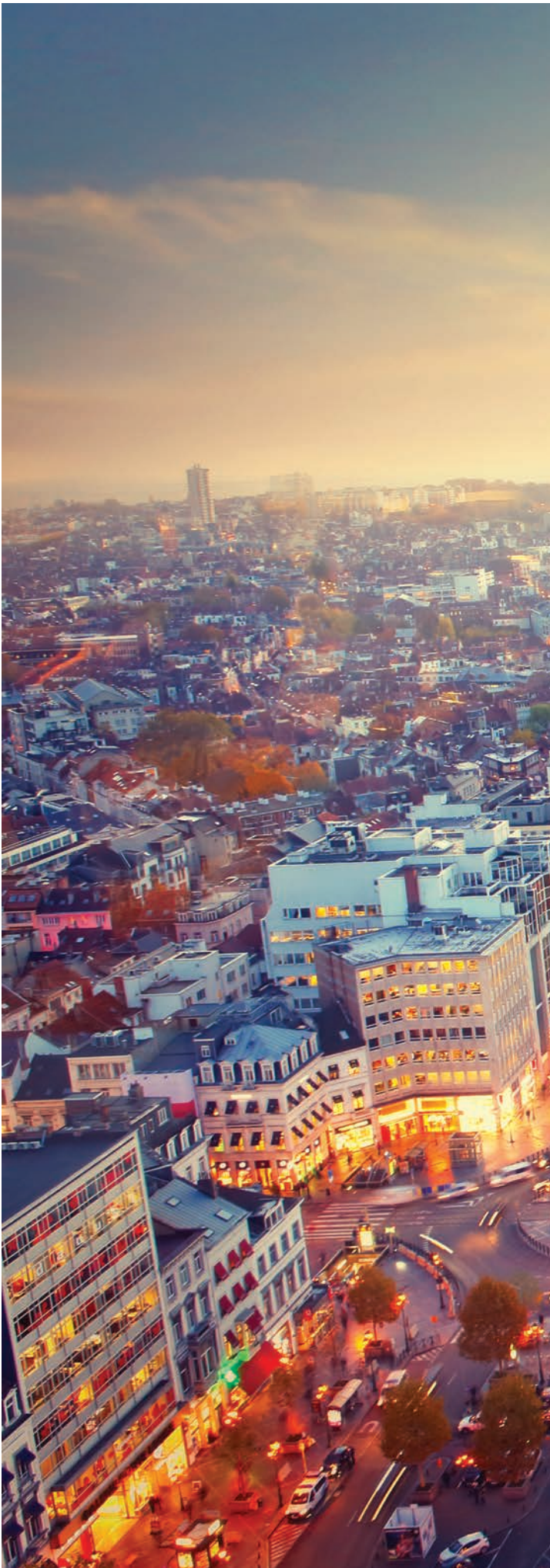
If, after having exhausted all possible means, no UBO can be identified, or if there is any doubts that the person(s) being identified actually are the UBO(s), information has to be provided with respect to the natural person(s) holding the position of senior managing official(s) in the corporate entity having to file the UBO information (the so-called 'pseudo-UBO').

Trusts and fiduciaries

Each of the following categories are considered to be the UBOs of trusts, fiduciaries and equivalent constructions:

- (i) founder(s)/settlor(s);
- (ii) trustee(s);
- (iii) protectors (if any);
- (iv) beneficiary or category of beneficiaries in whose interest the entity has been set up; and
- (v) any person controlling the entity through other means.





Whose data needs to be filed?

Foundations and associations

Each of the following categories are considered to be the UBOs of foundations and (international) non-for-profit associations:

- (i) board member(s);
- (ii) person(s) entrusted with the daily management;
- (iii) representative(s) of the entity;
- (iv) beneficiary or category of beneficiaries in whose interest the entity has been set up;
- (v) founder(s) (only for foundations); and
- (vi) any UBOs controlling the entity through other means.

Specific case: StAK

A foundation can act as *Stichting Administratiekantoor* (StAK), (i.e. it holds shares in other entities in ownership and issued certificates representing such shares to the certificate holder). The UBO(s) of a Belgian StAK are determined in accordance with the categories set out above for foundations. However, to determine the UBO of a company the shares of which are (indirectly) held by a StAK, one must apply the rules for companies and look through the StAK.

What data needs to be filed?

General rule

The UBO register will, for all targeted entities, list at least the following information on the UBO(s): name, date of birth, nationality, exact private address, national identification number (e.g. the number of the ID card), the category of the UBO and the date as of which the natural person became a UBO.

For companies, in addition to the above, the size of the economic or voting interest of the UBO also needs to be disclosed.

The intermediary entities (if any) between the UBO and the targeted entity (company, trust, fiduciary, foundation and association alike), need to be identified as well.

If, however, in the case of a company, one needs to revert to a pseudo-UBO, because no other UBO exists or can be identified, there is no need to register any information on intermediary entities.

Data protection

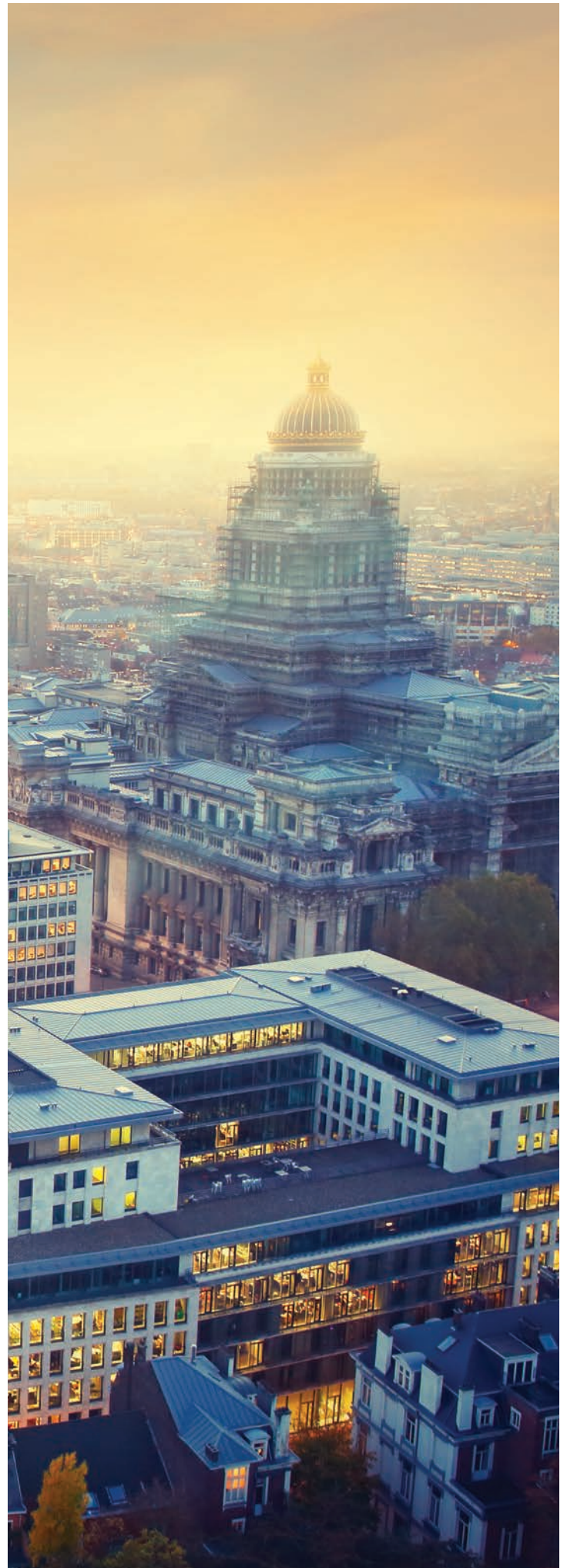
Any personal data will have to be treated in compliance with national and European data protection regulations.

Who must collect and file the information?

The obligation to file the information with the UBO register lies on the targeted entities but not on the UBOs themselves.

Any change with regard to the relevant information has to be reported within one (1) month after such change is known (or should have been known) to the entity.

All professionals having access to the UBO register (e.g. financial institutions, AIF management companies, lawyers or notaries) have to inform the competent authority for the administration of the UBO register if they notice any discrepancy with their available information.





Access to information with the UBO register

Who can access the UBO register?

Access to the UBO register is granted to the competent authorities in charge of the fight against terrorism and money laundering, including the tax authorities, and to the entities that are subject to a vigilance obligation towards their clients in the framework of AML legislation, such as banks, lawyers, notaries and accountants.

Every citizen will be able to consult the UBO register without having to demonstrate a legitimate interest, but the accessible information is limited to UBOs of companies and does not include e.g. the private address or the national identification number.

Demonstration of a legitimate interest is necessary to consult the UBO register in case of foundations, associations, fiduciaries, trusts and other comparable constructions. In the event that a foundation (including StAKs), association, fiduciary, trust or comparable construction holds a significant interest in a company, the publicly accessible data will only show the such intermediary entity, but not its UBOs. A legitimate interest will need to be demonstrated to consult information on the UBOs that hold their interest in the company via such structure.

Limitation of access in exceptional circumstances

Based on a case by case assessment by the competent authority, a restriction to access can be applied in exceptional circumstances where access to information available in the UBO register could expose the UBO to a risk of fraud, kidnapping, blackmail, violence, intimidation or where the UBO is either a juvenile or legally disabled (*incapable*).

Filing deadlines

Belgium

The Belgian law dated 18 September 2017, and completed by a royal decree dated 30 July 2018 which is already forecasting the amendments provided by AMLD 5, entered into force on 31 October 2018.

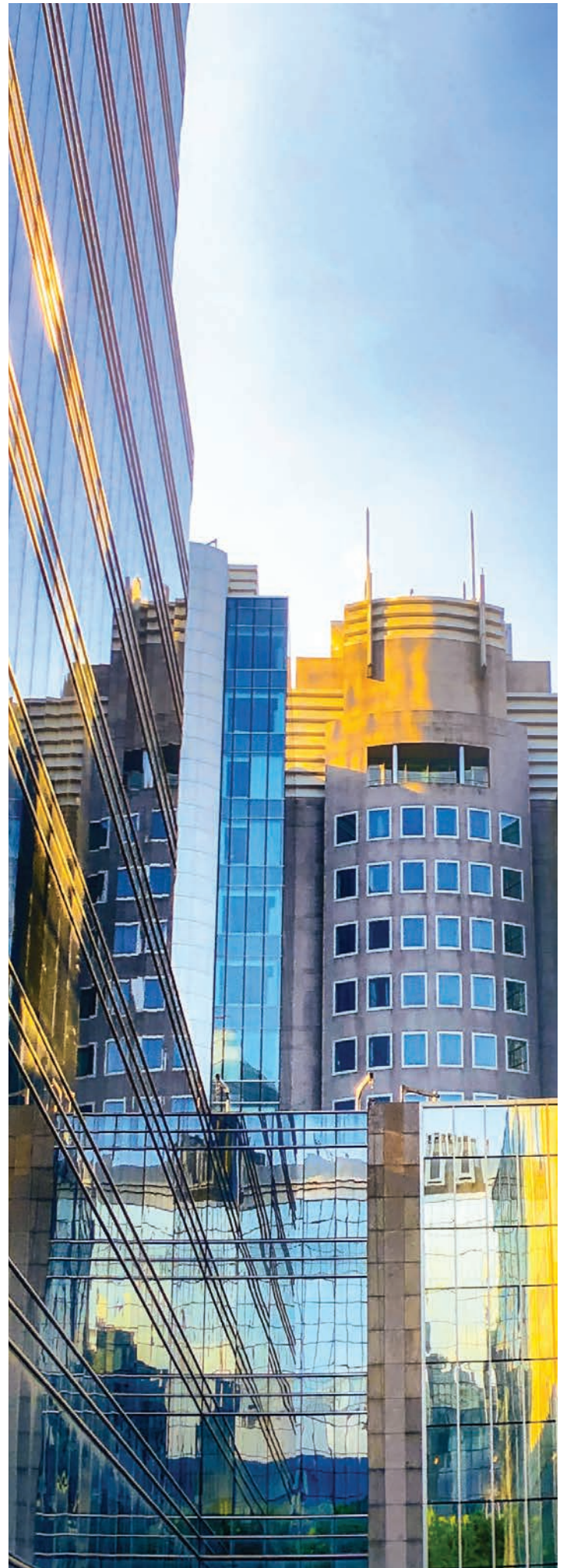
Corporate and legal entities have to comply and file the relevant information no later than **30 September 2019**.

Any change with regard to the relevant information has to be reported within one (1) month after such change is known, and the accuracy of the information has to be formally confirmed at least once a year.

Luxembourg

For your information, we also bring to your attention that the deadline for registration of Luxembourg entities is approaching even more rapidly.

The Luxembourg law dated 13 January 2019 and implementing AMLD 4 entered into force on 1st March 2019 and all covered entities must register their UBOs by **1 September 2019**.





Sanctions

Non-compliance with the obligation to collect and maintain the required information, to submit the information to the UBO register or submission of incomplete or incorrect information to the UBO register, can lead to administrative and criminal sanctions.

An administrative fine up to EUR 50,000 can be imposed on the entity or on the directors and, if applicable, on one or more members of the statutory board or of the management committee and on persons who, in the absence of a management committee, participate in the effective management of the entity when they are responsible for one of the abovementioned infringements.

Furthermore, the members of the management body of a non-compliant Belgian entity can be held criminally liable and sanctioned with a criminal fine up to EUR 40,000.

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