

# The implementation of the UBO Register in Belgium

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Following the Fourth AML Directive, the law of 18 September 2017 on the prevention of money laundering and the financing of terrorism, and the limitation of the use of cash (the “**Law**”) introduced in Belgian law an obligation for Belgian companies, (international) nonprofit organizations, foundations and trusts (the “**Legal Entities**”) to identify and record their ultimate beneficial owners and to register this information into a register of beneficial owners (the “**UBO register**”; one for Belgian companies and another for the other Legal Entities).

A Royal Decree has been awaited to put this new register in place. Following the adoption in the meantime of the Fifth AML Directive, the Royal Decree of 30 July 2018 concerning the operating procedures of the UBO register (the “**Royal Decree**”) finally implements this new tool of the AML framework into Belgian law.

The Royal Decree provides detailed rules on the operation of the UBO register, e.g. which information must be submitted to the UBO register, the process for registration of this information into the UBO register, and who has access to this information (the principle being access to the general public).

The Royal Decree will enter into force on 31 October 2018 and legal entities have until 30 November 2018 to provide information regarding their beneficial owners.

## Definition of beneficial owners

According to the Law, beneficial owners are (i) natural person(s) who ultimately own(s) or control(s) the company and (ii) natural person(s) on whose behalf a transaction or activity is being conducted. The Law provides specific definitions of beneficial owners depending upon the type of beneficial owner (see our previous [Client Alert](#) for further details).

For companies, the Law provides a two-step approach: (i) first determining whether one or more individuals own(s) 25% of the shares or of the voting rights, or controls the company by other means, and (ii) if this is not successful, or if it is not certain that the person(s) identified is/are beneficial owner(s), the beneficial owners should be the senior management (such as the CEO).

## Information available in the UBO register

Each Legal Entity is required for AML identification purposes to obtain and hold information on their beneficial owners and to transmit this information to the UBO register.

More specifically, Legal Entities must provide identification information, such as the beneficial owner's surname and first name, date of birth, nationality, country of residence, residential address and identification number of the Belgian National Register (or equivalent foreign register), information on whether the beneficial owner has an ownership interest in the Legal Entity or belongs to the residual category of beneficial owners, whether the beneficial owner is a direct or indirect beneficial owner, and the percentage of shares or voting rights the beneficial owner holds.

Thus, it comprises far-reaching information regarding the nature and extent of the beneficial owner's interest in the Legal Entity and is not limited to identification of the beneficial owner.

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The Legal Entities are obliged to share the information sent to the UBO register with their beneficial owners for data privacy reasons. In addition, beneficial owners will be informed by the Treasury Administration of their registration in the UBO register and of the information recorded in the UBO register in their name. However, beneficial owners will not be informed of any searches made in the UBO register regarding them. Such information will be retained for a period of ten years after the date the relevant company has lost its legal personality or definitively ceases its activities.

All information must be transmitted to the UBO register within one month from the moment the information regarding the beneficial owners is known or has changed. For the implementation, Legal Entities have until 30 November 2018 at the latest to transmit the required information to the UBO register for the first time.

Legal Entities are required to keep this information up to date.

## **Access to the UBO register**

The UBO register of companies is accessible to:

- Competent authorities entrusted with the enforcement of the AML regulation, including tax authorities;
- AML-obliged entities, if they demonstrate that access is required for the purpose of their customers' due diligence; and
- Members of the "general public" (this access is limited to the last name, month and year of birth, citizenship, country of residence, and nature and extent of interest held by the beneficial owner).

Access to the UBO register of companies by the general public is imposed by the Fifth AML Directive. This general right of access raises important questions of privacy. Indeed, in its opinion on the draft Royal Decree, the Belgian Data Protection Authority deemed such unlimited access by the public disproportional, and suggested preserving the prior legal obligation to demonstrate a legitimate interest. The preparatory work to the Royal Decree mainly refutes this critique by stating that the general public (i) has limited access to information, (ii) cannot conduct general searches on the name of the beneficial owner but only on the company's number or name, and (iii) must register with an ID card when consulting the register. We can, however, question whether these elements will adequately protect the privacy of the beneficial owners named in the UBO register.

With respect to access to the UBO register of (international) nonprofit organizations, foundations, trusts or similar legal entities, the rights of access are similar but the general public must file a request with the Treasury Administration and demonstrate a legitimate interest. Legitimate interest should be interpreted with reference to the fight against money laundering, terrorism financing or underlying criminal offences.

Furthermore, beneficial owners have the right to access all information under their own name (and thus not only the publicly available information) and to request the deletion or modification of inaccurate information. Additionally, beneficial owners have the opportunity to request the Ministry of Treasury to limit the access to information under their name by AML-obliged entities or the general public, if complete access would create a disproportionate risk, a risk of the commitment of serious crimes, or if the beneficial owner is a minor or incapacitated.

Except for the competent enforcement authorities, access to the information available in the UBO register by obliged entities and the public will be subject to the prior payment of an administrative fee (which will need to be determined by the Minister).

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