

## CLIENT ALERT

### New Obligation for Belgian Entities to Register Ultimate Beneficial Owners by March 31, 2019

Oct.02.2018

In 2015, the European Union adopted its Fourth Anti-Money Laundering Directive, which imposed on Member States the obligation to establish a register containing the details of the ultimate beneficial owners (UBOs) of corporate and other legal entities within the European Union (the so-called UBO register). By way of the Act of September 18, 2017, the UBO register became part of Belgian law, and a Royal Decree of July 30, 2018 now provides the required details about the operation of the Belgian UBO register. The Royal Decree obliges all Belgian companies, foundations, (international) non-profit organizations, fiduciaries, and trusts to submit information about their ultimate beneficial owners to this UBO register, which is administered by the Belgian Ministry of Finance. The information must be submitted by March 31, 2019.

#### Introduction

The need for accurate and up-to-date information regarding beneficial ownership is key in tracing criminals who might otherwise hide their identity behind a corporate structure.

With this in mind, the Fourth Anti-Money Laundering Directive (Directive (EU) 2015/849 of May 20, 2015), implemented into Belgian law by the Act of September 18, 2017, introduced an obligation on Member States to ensure that:

- i. Corporate and other legal entities incorporated within their territory obtain and hold adequate, accurate, and current information on their beneficial ownership.
- ii. This beneficial ownership information is submitted by the directors of the entities in question and held in a national Ultimate Beneficial Owner register (UBO register).

Among other things, the Act of September 18, 2017 (i) added to article 14/1 of the Belgian Companies Code an obligation to obtain and hold adequate, accurate, and current information concerning beneficial ownership and (ii) provided for the Belgian UBO register to be controlled by a service of the Ministry of Finance.

However, the terms of operation of the Belgian UBO register still needed to be determined. These terms have now finally been set out in a Royal Decree of July 30, 2018.

#### Subject matter of the UBO register

The UBO register is intended to collect, store, control, and make available accurate and up-to-date information regarding the ultimate beneficial owners of all Belgian companies, foundations, (international) non-profit organizations, fiduciaries, and trusts (hereinafter referred to as 'legal entities'). The information about the ultimate beneficial owner that the legal entities must submit includes *inter alia*: the beneficial owner's name, date of birth, nationality, domicile, national number, as well as the type of the beneficial ownership, and its start date.

The information must be submitted to the UBO register within one month of the board of the legal entity being informed about this ownership or about any change in the ownership. The submission needs to be done electronically.

In order to ensure the accuracy of the registered information, the accuracy of the content of the UBO register must be confirmed annually.

If the directors or executive bodies of the legal entities fail to comply with the reporting obligations detailed above, this will not only trigger director liability but can also result in administrative sanctions ranging from 250 to 50,000 EUR, with possible additional court-imposed fines ranging from 50 to 5,000 EUR.

### **Who is considered to be a UBO?**

The Act of September 18, 2017 describes per type of entity which private individuals qualify as an ultimate beneficial owner.

For *companies*, the following are qualified as an ultimate beneficial owner: (i) private individuals who have a direct or indirect interest in a company of more than 25 percent of the shares or voting rights or (ii) private individuals that have control of the company by other means than shares or voting rights. If the individuals that fall under (ii) cannot be identified, then (iii) the highest executive staff members are qualified as ultimate beneficial owners.

The ultimate beneficial owners of *non-profit organizations* are: (i) persons that act as members of the board of directors, (ii) persons that are mandated to represent the organization externally, (iii) persons that are mandated with the daily management of the organization, (iv) the private individuals in whose main interest the organization was incorporated, or (v) any other private individual who through other means exercises ultimate control of the organization.

### **What should Belgian legal entities do and when?**

Although the aforementioned Royal Decree of July 30, 2018 enters into effect on **October 31, 2018**, the directors of Belgian legal entities initially had until November 30, 2018 to make their first submission to the UBO register. The Belgian Ministry of Finance recently extended this deadline to March 31, 2019.

Bearing this deadline in mind, the Belgian Ministry of Finance advises legal entities to take the following preparatory measures:

1. Appoint a representative or proxy holder who is in possession of an electronic ID card and who can provide, on behalf of the legal entity, the information required on the electronic platform "[MyMinFin](#)".
2. Determine what category of ultimate beneficiary owner is appropriate.
3. Collect all the necessary accurate and precise information about the ultimate beneficial owner(s) of the legal entity, as well as any such information relating to legal entities that are used to control the legal entity.
4. Gather all supporting documents that prove the correctness and accuracy of the supplied information.
5. Establish and implement procedures which ensure that every change of information concerning the ultimate beneficial owner will be transferred to the UBO register within one month.

## Access to the UBO register

The section concerning the ultimate beneficial owners of companies in the Belgian UBO register is very broadly accessible, being open to (i) all competent authorities, (ii) the companies that are subject to the reporting obligation, and (iii) all private persons. Private persons under this last category do not need to demonstrate any legitimate interest.

Conversely, access to the Belgian UBO register regarding the ultimate beneficial owners of non-profit organizations, foundations, (international) non-profit organizations, fiduciaries, and trusts is restricted to (i) all competent authorities, (ii) the entities that are subject to the reporting obligation, (iii) private persons or organizations that can demonstrate a legitimate interest, and (iv) any other person that files a written application to the competent service at the Ministry of Finance on behalf of an (international) non-profit organization, foundation, trust, fiduciary, or similar legal entity, and who has control over a company, (international) non-profit organization, or foundation.

Except for access applications by the ultimate beneficial owners themselves, application for access to the UBO register can be made only by supplying the name or company number of the concerned legal entity. The application cannot be made directly based on the name of the ultimate beneficial owner.

The ultimate beneficiaries concerned can request the Ministry of Finance to partially or completely restrict access to their information in the UBO register. Regardless of such a request, the competent authorities will retain full access.

Consultation of the UBO register will be subject to the payment of a limited administrative fee. This fee is to be determined by the Minister of Finance.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

### **Emmanuel Plasschaert**

Partner – Brussels

Phone: +32.2.282.4084

Email: [eplasschaert@crowell.com](mailto:eplasschaert@crowell.com)

### **Frederik Van Remoortel**

Partner – Brussels

Phone: +32.2.282.1844

Email: [fvanremoortel@crowell.com](mailto:fvanremoortel@crowell.com)