contrast



The UBO register: the moment of truth

Imagine…

You are a senior executive in the Belgian office of a large multinational company and last year you were registered by the board of directors as UBO in the UBO register.

A few months later, your curious neighbour casually mentions that he'd taken a look at your UBO registration and he had not known before that you were the owner of a multinational.

You are most surprised. Why is your neighbour aware of your registration in the UBO register? What other information can he get access to? Doesn´t privacy mean *anything* any longer?

A brief clarification.

The registration duty that rests upon the Ultimate Beneficial Owner ("*UBO*") of a company derives from the European directives on detecting terrorism and combatting money laundering offences (the fourth and fifth anti-money laundering directives). The directives oblige all Member States to have a "UBO register" before 10 January 2020. The objective is to link up the UBO registers of the Member States with one another, so that in this way the ultimate beneficial owners of all subject entities within the EU can be identified.

In Belgium, the UBO registration duty was anchored in the Belgian Anti-Money Laundering Act of 18 September 2017, as elaborated in a Royal Decree of 31 October 2018.

Concretely, each natural person who is identified as an ultimate beneficial owner must be registered.

For companies, this is every natural person who directly or indirectly holds a financial interest of more than 25%, or who exercises control over the company via other means. If there are no such natural persons, the "senior management personnel" are registered as UBO´s.

Registration is mandatory. Only listed companies and their 100% subsidiaries are exempted from the registration obligation.

The UBO registration must be validated annually. Any change has to be notified within one month, so that the registered information remains adequate, accurate and up-to-date.

In Belgium, the deadline for first registration expired on 30 September 2019 – after earlier having been postponed twice. Nevertheless, a grace period currently applies until 31 December 2019, because the register still required technical fine-tuning. Sanctions in the event of non-compliance with the registration obligation will therefore only be imposed as of January 2020. Such sanctions consist of administrative fines that can range from 250 to 50.000 euros. In addition, directors who fail to comply with the registration obligation on the basis of the Code of Companies and Associations risk a criminal fine ranging from 50 to 5.000 euros (increased by a surcharge).

The data in the UBO register are accessible at all times for the competent authorities, such as the tax authorities and the anti-money laundering unit.

Each citizen has access to the data as well, albeit against payment of a fee and limited to certain information. For example, there will be no access to the first name, the date of birth, the national identification number and the full address of the UBO´s.

Moreover, the UBO register can only be consulted on the basis of the company's name or its enterprise number registered with the Crossroads Bank for Enterprises to discover who are the UBO's of the company in question. Conversely, however, it is *not* possible to do a search on the basis of the UBO in order to find out the companies in which this person holds participating interests.

Each UBO can ask to be informed of all government authorities, institutions and individuals who have consulted his or her data over the past six months. Each UBO can also request that the information in question be fully or partially hidden from the general public. Hereto he or she must show that there is a disproportionate risk of fraud, abduction, blackmail, extortion, intimidation or violence.

If the UBO of your company is not registered yet, you still have time (until 31 December 2019) to do so in order to avoid the risk of sanctions.

Concretely:

- The European antimoney laundering directive requires Member States to collect data on the "*Ultimate Beneficial Owners*" of companies in a centralised UBO register set up for this purpose. The UBO register must enter into operation before 10 January 2020.
- In Belgium, the UBO register has been operational since 1 October 2018. Each subject entity had to register its UBO´s before 30 September 2019.
- Companies can still register their UBO´s without running the risk of sanctions until 31 December 2019.
- In principle, everyone can gain access to the registered information about the UBO of the company.

However, a fee is charged for this access, which is also limited to certain information in order to protect the privacy of the UBO.

Want to know more?

- The UBO register can be found via: https://finance.belgium.be/en/E-services/register-beneficial-owners
- An FAQ about the UBO register can be found via: https://financien.belgium.be/sites/default/files/20190916_FAQ_UBO_NL_FINAL_Add2.pdf
- The Belgian anti-money laundering act can be found via: http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&table_name=wet&cn=2017091806
- The Royal Decree concerning the operating procedures of the UBO register can be found via: http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2018073019&table_name=wet