



## UBO-REGISTER

### OBLIGATION FOR COMPANIES TO IDENTIFY THEIR ULTIMATE BENEFICIAL OWNER AND REGISTER IT WITH THE UBO-REGISTER

On 18 September 2017 the fourth Anti-Money Laundering Directive 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing was transposed into Belgian law. The Act on the prevention of money laundering and terrorist financing and the limitation of the use of cash was published in the Belgian State Gazette on 6 October 2017 and entered into force on 16 October 2017 (the “**AML-Act**”). The AML-Act added, among others, article 14/1 and 14/2 to the Company Code. The AML-Act was elaborated by the Royal Decree of 30 July 2018 regarding the operating procedures of the UBO-register (the “**Decree**”).

The most important novelties which have been introduced by the AML-Act are (i) the obligation for companies and other legal entities to collect and record adequate, accurate and up-to-date information regarding their ultimate beneficial owner and (ii) the establishment of a central Belgian register of ultimate beneficial owners (the “**UBO-register**”).

### AIM OF THE UBO-REGISTER?

The introduction of the UBO-register aims to provide adequate, accurate and up-to-date information on the beneficial owners of Belgian companies, non-profit associations, trusts, foundations and similar legal entities.

### WHO HAS TO PROVIDE INFORMATION TO THE UBO-REGISTER?

All Belgian companies (including listed companies), (international) non-profit associations, trusts, foundations and similar legal entities will have to provide information regarding their ultimate beneficial owner(s) to the UBO-register.

### WHO QUALIFIES AS AN ULTIMATE BENEFICIAL OWNER?

Pursuant to the AML-Act the ultimate beneficial owner is any natural person(s) who ultimately owns or controls the legal entity, the proxyholder of the legal entity and/or the natural person(s) for whose account a transaction is executed, or a business relationship is entered into.

The following categories of natural persons are considered to be the ultimate beneficial owner of (i) companies and (ii) (international) non-profit associations and foundations:

#### A. COMPANIES

- i. The natural person(s) who directly or indirectly own(s) or control(s) a sufficient percentage of the voting rights or the ownership rights, including bearer shares, in a company:
  - a. A natural person who owns more than 25% of the voting rights or more than 25% of the shares or capital of the company is considered to be an indication of direct ownership;
  - b. A participation of more than 25% of the shares or more than 25% of the capital of the company held by a company under the direction of (i) one or more natural person(s) or (ii) one or more companies under the direction of the same natural person(s) is considered to be an indication of indirect ownership.
- ii. The natural person(s) who exercise(s) control over the company through other means.
- iii. In case no beneficial owner can be identified pursuant to the criteria mentioned under i. and ii., the natural person(s) who are senior managers of the company (e.g. directors or managers) shall be considered as ultimate beneficial owner of the company.



## **B. (INTERNATIONAL) NON-PROFIT ASSOCIATIONS AND FOUNDATIONS**

- i. The director(s), managing directors(s), authorized representative(s) of (international) non-profit associations and foundations.
- ii. The founders of a foundation.
- iii. The natural persons, or in case these persons were not yet indicated, the category of natural persons, in whose interest the (international) non-profit association or foundation was incorporated or is active.
- iv. Any other natural person who exercises control over the (international) non-profit association or foundation through other means.

### **WHAT TYPE OF INFORMATION SHOULD BE INCLUDED IN THE UBO-REGISTER?**

Adequate, accurate and up-to-date information on the ultimate beneficial owners of Belgian companies, non-profit associations, trusts, foundations and similar legal entities should be included in the UBO-register. In particular, the following information on each beneficial owner of a Belgian company should be provided to the UBO-register:

- Last and first name;
- Date of birth;
- Nationality;
- Country of residence;
- Full address of residence;
- Date on which the ultimate beneficial owner has become ultimate beneficial owner of the company;
- National identification number or a similar identification issued by the state in which the ultimate beneficial owner resides or in which he is a citizen;
- Category to which the ultimate beneficial owner belongs (see above);
- Whether the ultimate beneficial owner is one natural person who fulfils the

conditions or several natural persons who fulfil the conditions;

- Whether it concerns a direct or indirect ultimate beneficial owner. In case it concerns an indirect ultimate beneficial owner, the following information has to be provided as well: the number of intermediaries, and for each intermediary a full identification with at least the name, date of incorporation, trade name, legal form, registered office and enterprise identification number or a similar identification issued by the state in which the intermediary is registered.
- The extent of the interest held by the ultimate beneficial owner.

### **WHO HAS ACCESS TO THE UBO-REGISTER?**

As regards companies, the UBO-register can be consulted by:

- Competent authorities (including tax authorities);
- Entities in the framework of complying with their obligations pursuant to the AML-Act;
- Each citizen via a (paying) request on the basis of the enterprise identification number or the name of the company.

### **HOW AND WHEN TO COMPLY?**

The directors of the company have an obligation to register the information on the ultimate beneficial owner(s) of the company in which they are director with the UBO-register, within one month as of the date on which the information becomes known or is modified.

The Decree enters into force on 31 October 2018. Consequently, the directors have to file the relevant UBO information with the UBO-register for the first time by 30 November 2018.

The UBO-register will soon be available and will be managed by the Treasury Administration with the Federal Finance Department. In order to register the aforementioned information with the UBO-register you will have to log in to the MyMinFin platform with a Belgian e-ID card.



## HOW CAN YOU ALREADY PREPARE?

In view of registering the UBO information with the UBO-register by 30 November 2018, the follow actions can already be undertaken:

- You can ensure that your company has a legal representative or proxy holder with an e-ID who can register the UBO information with the UBO-register;
- You can already determine to which category the ultimate beneficial owner of your company belongs;
- You can already collect accurate and extensive information regarding the ultimate beneficial owner of your company and the legal entities used by the ultimate beneficial owner of your company to exercise control over your company;
- You can already collect evidence which shows that your information is adequate, accurate and up-to-date; and
- It is also advisable that your company ensures to have procedures in place in order to make sure that any change regarding the UBO information is provided to the UBO-register within one month.

## SANCTIONS IN CASE OF NON-COMPLIANCE?

In case it is omitted to collect or maintain information on the ultimate beneficial owner or this information is not provided to the UBO-register, this can be sanctioned with administrative and criminal fines (see further). Providing incorrect or incomplete information can only be sanctioned by administrative fines.

The Minister of Finance can impose administrative fines of 250 EUR to 50,000 EUR to one or more directors of a non-complying company, and, as may be appropriate, to members of the management committee, or, in the absence of a management committee, to other senior manager of the company, which are responsible for the aforementioned breaches.

Directors of companies can for certain breaches, as mentioned above, be sanctioned with a criminal fine.

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CREDO can assist you with all your questions regarding the UBO-register and complying with the registration formalities with the UBO-register. For more information, please contact Davy Smet, lawyer via [davy.smet@credo-law.be](mailto:davy.smet@credo-law.be).