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The UBO register is coming

In an [earlier newsflash](#) we reported to you that, in accordance with a European directive, the "ultimate beneficiaries" of every company will have to be included in a national register. In the meantime, the Belgian law implementing this directive, the new so-called Anti-Money Laundering Act, was adopted on 18 September 2017. This law entered into effect on 16 October 2017.

The ultimate beneficiary is in fact technically referred to as the "UBO", short for "Ultimate Beneficial Owner", which is why the law refers to this register as the "UBO register".

The new law replaces the Act of 11 January 1993 and thus constitutes the preventive pillar in the fight against money laundering. By far the most important novelty in the new law is the introduction of the UBO register.

The law already sketches out the essence of the UBO register, but its functioning will be further fleshed out in a Royal Decree that is expected in June 2018. The register thus might enter into effect in the second half of 2018 at the earliest.

We sum up what is already established.

I. The law defines who the ultimate beneficiaries are, inter alia in the case of a company (art. 4, 27° of the new act):

The ultimate beneficiaries are the natural persons who are owners of or have control over an entity.

In the case of companies, there are several distinct cases for determining who the ultimate beneficiary is.

- Firstly, these are the natural persons who, directly or indirectly, hold a "sufficient" percentage of the voting rights or of the ownership interest in the company.

An interest of 25% of the voting rights or of the shares is regarded as an indication of such a sufficient percentage.

- The natural person who holds 25% of the shares in a company that holds 25% of the shares in another company, is thus the ultimate beneficiary of both companies, unless of course there are other shareholders with an even "more sufficient" percentage.

- In addition, a natural person can also have control over a company by other means, for example:

- If he has the right to appoint and dismiss a majority of the members of the governing body, if he is also a shareholder;
- If, under an agreement, he has the right to exercise a dominant influence over the company, if he is also shareholder;
- Etc.

- Finally, if, after running through the above-mentioned criteria, it cannot be determined who the ultimate beneficiary is, or if doubt exists on this, the persons belonging to the senior managerial personnel are deemed to be the ultimate beneficiaries.

2. The companies have an obligation to keep information about their ultimate beneficiary and to communicate this information to the register (art. 153 of the new law that introduces art. 14/I into the Companies Code).

Exactly what data have to be put into the register will be further supplemented by the Royal Decree. The law already provides that the companies must in any event keep (and update) the following information about their ultimate beneficiary:

- Name;
- Date of birth;
- Nationality;
- Address; and
- Nature and scope of the economic interest held.

The directors then have to electronically transfer these data within one month as of the time when the information is known or modified to the UBO register.

3. The law contains sanctions for directors of companies that do not comply with this.

First there are administrative fines applicable under art. 132 of the new law which can amount to anywhere between 250 and 50,000 EUR, both if no information is turned over to the register and if the quality of the data turned over is inadequate.

Account is taken of the following circumstances in order to determine the level of the penalty within this broad range:

- The seriousness and duration of the violation;
- The degree of responsibility of the director involved;
- The financial capacity of the director involved, as may appear from his own annual income or from the turnover of the legal entity involved;
- The advantage or profit that the violations generated;
- The harm suffered by third parties because of the violation;
- The extent to which the director involved cooperates with the competent authority;
- Any earlier committed violations.

Members of the executive committee or individuals who participate in the actual management of the company and who are responsible for the violation can also be sanctioned in this way.

Secondly, there are also criminal-law sanctions, contained in the new art. 14/2 CC as introduced by art. 155 of the new act. Only the directors can be subject to such a penalty, which can amount to between 50 and 5,000 EUR (to be increased by the surcharge, thus currently to be multiplied by eight).

4. Finally, in practical terms, the law specifies where the register must be kept.

The UBO register will be set up within the General Administration of the Treasury of the FPS Finance (art. 73 of the new act). This body will collect the data, keep it, manage it, verify its quality and make the data available to the individuals who are entitled to access the register.

The concrete manner in which the information will be collected, the content thereof, the management, the access and use of the data, the methods for the verification and functioning of the register will all be further elaborated in the Royal Decree that has been announced to be forthcoming.

It is expected that the fifth anti-money laundering directive will further specify the conditions for accessing the register. Until then, one can proceed on the assumption that in principle the register will only be accessible for the purposes of the law, i.e. preventing money laundering and combatting the financing of terrorism. Even the tax authority would only be able to get access to the register within that framework.

Thus, for company directors, in the near future it will be a new and important point of attention to update the information in the UBO register whenever there are changes in the shareholding body, e.g. in connection with the company acquisitions.

For more information on this topic you can consult Sophie Deckers (author) and Gwen Bevers (unit head).

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