

UBO Update: Administrative Tolerance until 31 December 2019 and Last-Minute Changes Before the Registration Deadline



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The UBO registration deadline of 30 September 2019 is fast approaching. However, the FPS Finance announced yesterday that it will apply a policy of tolerance until 31 December 2019, the deadline for UBO registration set by EU legislation. During this period, incorrect or incomplete registrations will not be sanctioned. In addition, the FPS Finance recently clarified or modified a number of points relating to the registration of UBOs.

Listed companies and wholly owned subsidiaries

Contrary to what the FPS Finance initially stated, companies listed on a regulated market are now exempt from the obligation to identify and register their ultimate beneficial owners (UBOs). Belgium now applies the same exemption as other EU member states. Furthermore, direct and indirect wholly owned subsidiaries of such listed companies are also, in theory, exempt from the registration obligation. However, in order to prove that they are in fact wholly owned by a company listed on a regulated market, such subsidiaries must submit to the UBO register information about their ownership structure, including all intermediate entities up to the level of the listed company.

Companies governed by public law

If a company is more than 25% owned by a legal entity governed by public law, a "cascading test" must be applied. In other words, if the government holds more than 25% of a company's shares, the company must first identify the natural person(s) entitled to exercise the rights attached to these shares. It must then check whether these persons are acting independently or on behalf of one or more other persons (e.g. a minister, mayor, board, commission, etc.). In this context, persons who control the company by other means will always be regarded as UBOs, namely:

- a person who independently exercises the rights attached to the company's shares;
- a person instructing another person how to act; and
- several persons acting jointly to give instructions.

StAK

The FPS Finance has published an FAQ on the UBO register and the Stichting Administratiekantoor (trust office foundation) in which it clarifies the position and treatment of this type of entity. Both Belgian StAKs and Belgian companies or legal entities held through a StAK, as an intermediate entity, are required to obtain accurate and up-to-date information about their ultimate beneficial owners. The UBO rules for companies must be followed to determine the UBO(s) of a Belgian company whose shares are directly or indirectly held through a Belgian or foreign StAK.

More information about registration of the UBOs of a StAK is available here: [Dutch](#) - [French](#).

Other changes

The abovementioned modifications as well as new and/or updated questions can be found in the latest Q&A ([Dutch](#) - [French](#)) .