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## FAQ: UBO register

Updated on 17 October 2018

### Table of content

1. Origin of the UBO register .....	2
2. What is an UBO? .....	2
3. Scope of the royal decree?.....	3
4. Which information should I transmit .....	4
4.1. What is a separate/grouped UBO.....	4
4.2. What is the difference between a direct UBO and an indirect UBO?.....	5
4.3. How to identify an indirect ultimate beneficial owner? .....	5
5. Can the legal representative mandate a third party to complete the register in his place? .....	8
6. What are the sanctions foreseen for breaches? .....	8
7. When do I need to register the information about my UBO or update it ? .....	8
8. Who will be able to consult the UBO register? .....	9
9. How can I connect with the application online? .....	9
10. What should I do in case the UBO is foreign? .....	9
11. Is the consulted information in compliance with the privacy laws? .....	9
12. Is there a user manual which helps me to register the required information? .....	10
13. Is it possible to obtain a deviation, to not appear in the UBO register? .....	10
14. Am I informed if I am identified as UBO in the register? .....	10
15. Can I consult the information registered on my name in the UBO register? .....	11
16. Whom can I get in touch with for more questions regarding the UBO register? .....	11

# 1. ORIGIN OF THE UBO REGISTER

The UBO register is a centralized register that contains certain information about the ultimate beneficial owners of legal entities which fall under this legislation. The legal entities obliged to disclose this information, hereinafter referred to as the 'Obligated Entities', are companies, (international) non-profit organizations, foundations, trusts, *fiducies* and other entities legally comparable to trusts and *fiducies*.

The UBO register is named after the term "Ultimate Beneficial Owner".

The UBO register has as objective to determine the natural persons who have effective control over the Obligated Entities (hereinafter referred to as "UBO").

It thus aims to determine who is effectively behind a legal entity, in order to be able to improve the battle against money laundering, terrorist financing and related crimes.

The register finds its origin in articles 30 and 31 of the European Directive 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.<sup>1</sup> This directive foresees in the establishment of such a register in each member state of the EU.

This directive was transposed by the law of 18 September 2017 on the prevention of money laundering and terrorist financing and on the restriction of the use of cash ("Law of 18 September 2017"). This law foresees in the establishment of a UBO register at the Administration of the Treasury on the one hand, and that the King is responsible for determining the operating procedures of this register on the other hand.

The royal decree of 30 July 2018 concerning the operating procedures of the UBO register (hereinafter referred to as "royal decree") was published on August 14<sup>th</sup>, 2018. It defines in particular: the type of information to be transmitted to the register, the access modalities to the register, the exemption possibilities, the monitoring competences of the General Administration of the Treasury and the sanctions which can be imposed in case of a breach.

## 2. WHAT IS A UBO?

The term UBO or ultimate beneficial owner refers to the natural person(s) who is (are) the ultimate owner of or have ultimate control over a Obligated Entity. Several categories of UBOs are foreseen, according to the type of control this beneficial owner has, and to the type of required information which he/she has.

As such, UBOs are defined<sup>2</sup> as follows:

- In case of companies:
  - The natural person(s) who has/have direct or indirect ownership of a sufficient percentage of the voting rights or ownership interest in that entity (indication of a sufficient percentage: 25%);
  - One or more natural person(s) who has/have control over the company by any other means;
  - In case none of the above persons is identified, the ultimate beneficial owner is/are the person(s) who hold the position of senior management official(s).
  
- In case of *fiducies*, trusts and other similar legal arrangements:
  - The founder;
  - The *fiducie* administrator or trustee(s);
  - The protector;

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<sup>1</sup> This Directive was amended by the Directive of 2018/843 which resulted in a number of changes for the operating procedures of the UBO register.

<sup>2</sup> Definition according to article 4, 27° of the Law of 18 September 2017.

- The beneficiaries, or where the individuals benefiting from the trust have yet to be determined, the class of persons in whose main interest the *fiducie* or trust is set up or operates;
  - Any other natural person exercising ultimate control over the *fiducie* or trust by means of direct or indirect ownership or by other means.
- In case of (international) non-profits and foundations:
- The persons who are member of the board of directors;
  - The persons entitled to represent the (international) non-profit or the foundation;
  - The persons in charge of the daily management of the (international) non-profit or the foundation;
  - The founders;
  - The natural persons or, when those persons have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;
  - Any other natural person exercising ultimate control over the (international) non-profit or the foundation by other means.

The above mentioned categories are cumulative. The Obligated Entities therefore have to mention all persons who can be considered UBOs, as well as the category to which they belong.

If a person falls under more than one category, a separate registration should be done in every category.

Take into account that for companies, only the first two categories are cumulative. You can only choose for the third category if no one can be identified in the first two categories. In this case, it is appropriate to provide proof of the steps which have been taken to obtain the information and the reasons why this information could not be obtained.

### 3. SCOPE OF THE ROYAL DECREE?

The royal decree is applicable to the entities obliged to disclose certain information ('Obligated Entities'). This covers:

- Companies;
- (international) non-profits and foundations;
- Trusts and *fiducies*;
- Legal constructions comparable to trusts or *fiducies*.

The legal representatives of these entities are required to transmit the information about each of their UBOs to the UBO register. This information is summed up in articles 3 and 4 of the royal decree. In case of a change, the information should be updated within a month.

It should be noted that for trusts and *fiducies*, the information concerning their UBOs is to be transmitted to the UBO register when:

- The trust or *fiducie* administrator is located, domiciled or residing in Belgium;
- The registered office, main establishment, seat of management or administration of the trustee or of the *fiducie* administrator is located in Belgium;
- The trustee or the *fiducie* administrator is not located, domiciled or residing in a member state or his registered office, main establishment, seat of management or administration is not located in a member state and, establishes a business relationship or purchases real estate in Belgium, as trustee or as *fiducie* administrator, in the name of the trust.

### 4. WHICH INFORMATION SHOULD I TRANSMIT?

The list of the information to be provided, depends on the type of Obligated Entity to which the UBO belongs. Articles 3 and 4 of the royal decree sum up the details to be provided. The Obligated Entity should, per UBO, transmit the following information:

- Name and first name;
- Date of birth;
- Nationality(ies);
- Complete residential address;
- The date on which he/she became UBO;
- Identification number of the National Register of natural persons or of the Crossroads Bank of social security, and, where applicable, every comparable means of identification which is provided by the state where he/she resides or of which he/she is citizen;
- The category(ies) of UBO to which he/she belongs.

Complementary information is requested from the UBOs of companies. In particular:

- For the UBOs that have shares or voting rights in the company<sup>3</sup>: whether it concerns a separate UBO or a UBO in group (together with other persons);
- In the case of a direct or indirect UBO and in the case of an indirect UBO, the number of middlemen and the full identification details of each of them;
- The scope of the ultimate interest in the Obligated Entity. In particular:
  - In case of a direct UBO and when the control results from ownership of shares or voting rights: the percentage of the shares or the voting rights in the Obligated Entity;
  - In case of an indirect UBO and when the control results from the indirect ownership of shares or voting rights in the Obligated Entity, the weighted percentages of the shares and the voting rights in the Obligated Entity.

In case the UBO does not have an eID card (e.g. a non-registered foreigner in the national register), this information should be manually inserted in the UBO register.

Note: it is important that all supporting documents of the information transmitted in the UBO register are added (according to the case and the appreciation of the Obligated Entity: the copy of the identity card/passport, the bylaws of the company, the shareholders' register, authentic instrument, etc.)

## 4.1. WHAT IS A SEPARATE/GROUPED UBO?

A UBO is “separate”, if he/she autonomously fulfills the conditions of the definition of the ultimate beneficial owner.

A UBO is “grouped”, if his/her control follows from the coordination with multiple persons. This can for example be the case for persons who have concluded a shareholder agreement.

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<sup>3</sup> Mentioned in article 4, 27°, a of the Law of 18 September 2017.

## 4.2. WHAT IS THE DIFFERENCE BETWEEN A DIRECT UBO AND AN INDIRECT UBO?

A “direct” UBO is a natural person who is direct owner of or has direct ownership over the Obligated Entity. This without that one or more intermediate legal entity(is) should be examined for this purpose.

An “indirect” UBO is a natural person who is the owner of or has control over the Obligated Entity through one or more intermediate legal entities (see chapter 4.3).

## 4.3. HOW TO IDENTIFY AN INDIRECT ULTIMATE BENEFICIAL OWNER?

This chapter describes the approach that should be followed to determine who are the ultimate beneficial owners who directly or indirectly have a sufficient percentage of the voting rights or a sufficient interest in the capital of a company that is an Obligated Entity. (Hereinafter: “indirect control”, see article 4, 27°, a), i) of the Law of 18 September 2017.)

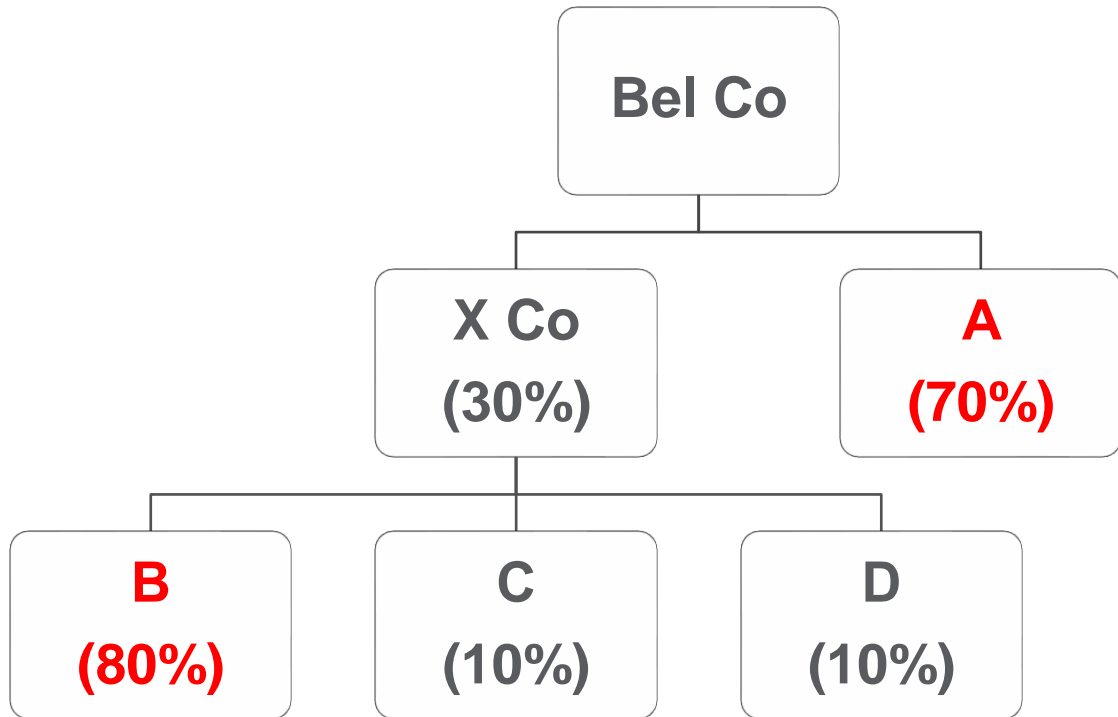
We speak of an indirect ultimate beneficial owner, when the ownership structure of a company is layered, due to the existence of one or more intermediate legal entities (i.e. a chain of ownership). In this case, these companies will have to examine all layers of the ownership structure, to ensure that the natural persons who have indirect control, are identified.

Indirect control in a chain of ownership, can be determined in two ways:

1. The first way (see article 4, 27°, a), i), §1 and 3 of the Law of 18 September 2017 juncto article 5 of the Companies Code), is when an intermediate entity has more than 25% of the shares or of the voting rights in the Obligated Entity, and a natural person has a majority interest in this intermediate entity (i.e. > 50% of the voting rights and the shares). The majority interest can be direct, but it can also concern a chain of ownership (i.e. when a natural person has a majority shareholding in the company that has more than 25%, through other intermediary companies).
2. The second way (see article 4, 27°, a), i), 1 and 2 of the Law of 18 September 2017), is when the weighted value of the participation of a natural person in the shares or rights in the Obligated Entity, through intermediate entities in a chain of ownership, is more than 25%.

A natural person who is identified according to one of these two approaches, is to be registered as an ultimate beneficial owner of the Obligated Entity in the UBO register.

Illustration of the first approach: see next page.

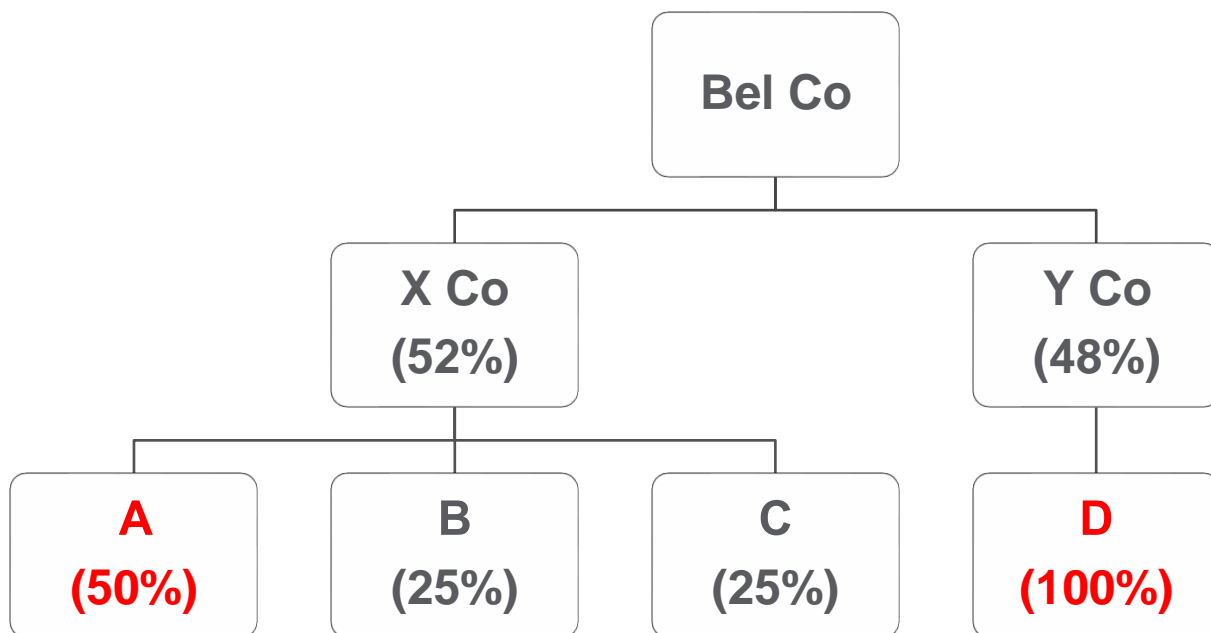


In the above diagram, Bel Co is a company of which 30% of the shares are in hands of X Co and the remaining 70% in hands of A. Consequently, A has a direct participation of more than 25% and is an ultimate beneficial owner of Bel Co.

B possesses 80% of the shares of S Co and a weighted indirect participation in the voting rights or shares of Bel Co of 24% (because  $80\% \times 30\% = 24\%$ ). This means that B does not have a weighted participation in Bel Co of more than 25%, but does have a majority shareholding (i.e. 80%) in an entity that holds more than 25% of the voting rights in Bel Co (i.e. 30%). Consequently, B is an indirect ultimate beneficial owner of Bel Co.

C and D both possess 10% of the voting rights or the shares of X Co. Both thus have an indirect participation in the shares of the Bel Co of 3% (because  $10\% \times 30\% = 3\%$ ). Without a weighted participation in Bel Co of more than 25% and without a majority shareholding in the intermediary entity which holds more than 25% of the voting rights or shares of Bel Co, C and D are not considered ultimate beneficial owners of Bel Co.

Illustration of the second approach: see next page.



In the above structure, Bel Co is a company of which 52% of the voting rights are held by X Co and 48% by Y Co.

A has an interest of 50% in X Co in direct ownership and a weighted percentage of 26 in Bel Co (because  $50\% \times 52\% = 26\%$ ). This means that A does not have a majority shareholding in an entity which holds more than 25% of the voting rights of Bel Co, but does have a weighted interest in the voting rights or shares of Bel Co of more than 25%. Consequently, A is an ultimate beneficial owner of Bel Co.

B and C both hold 25% of the shares of X Co and a weighted indirect participation in the voting rights of Bel Co of 13% (because  $25\% \times 52\% = 13\%$ ). As they have a weighted participation in the voting rights or shares of Bel Co of less than 25% and do not have a majority interest in an entity which holds more than 25% of the shares in Bel Co, they are not ultimate beneficial owners of Bel Co.

D has an ultimate interest of 100% in the assets of Y Co. That is why he indirectly holds voting rights of Bel Co or a weighted percentage of 48 of Bel Co (because  $100\% \times 48\% = 48\%$ ). This means that D has a majority shareholding in an entity which holds more than 25% of the voting rights or shares of Bel Co and has a weighted participation in the voting rights of Bel Co of more than 25%. That is why D is an ultimate beneficial owner of Bel Co, according to both tests.

## 5. CAN THE LEGAL REPRESENTATIVE MANDATE A THIRD PARTY TO COMPLETE THE REGISTER IN HIS PLACE?

Yes, two options are possible<sup>4</sup>:

- The “internal mandate” of the Role Management Administration (“RMA”): the legal representative of the Obligated Entity attributes this role to one of the members of his legal entity. This enables the latter to complete the register in the legal representative’s place, in his name and for his account;
- The “external mandate”: the legal representative mandates an external third party to complete the information in his name (e.g. the expert-bookkeeper, tax consultant, natural person or legal entity).

The RMA module is available today. The external mandate, on the contrary, is being developed and will be available as of the end of October 2018. You can subscribe to our newsletter to remain up to date about the launch of this feature.

## 6. WHAT ARE THE SANCTIONS FORESEEN FOR BREACHES?

In case of breaches of the articles concerning the identification and provision of information about the ultimate beneficial owners, the Obligated Entities are subject to a penal administrative fine of € 250 to € 50.000.

These fines are imposed on the directors and, if applicable, to one or more members of the legal body responsible for the Obligated Entity, their management committee and to persons who, in lack of a management committee, participate in the effective management.

## 7. WHEN DO I NEED TO REGISTER THE INFORMATION ABOUT MY UBO OR UPDATE IT?

Even though the royal decree enters into force on October 31<sup>st</sup>, 2018, Obligated Entities get the time until March 31<sup>st</sup>, 2019 to transmit the information about their UBO in the UBO register.

As soon as the application is online, the legal representatives of the Obligated Entity (or their mandated persons, see chapter 5 above) can provide the information about their ultimate beneficial owners by connecting through the MyMinFin portal online.

The information about the UBO that is registered in the UBO register should be adequate, precise and actual. Every change in the information that is contained in the register, should be shared within one month’s time.

The accuracy of the information in the UBO register should yearly be confirmed by the Obligated Entity.

It should be noted that for trusts and *fiducies*, the information concerning their UBOs is to be transmitted to the UBO register when:

- The trust or *fiducie* administrator is located, domiciled or residing in Belgium;
- The registered office, main establishment, seat of management or administration of the trustee or of the *fiducie* administrator is located in Belgium;
- The trustee or the *fiducie* administrator is not located, domiciled or residing in a member state or his registered office, main establishment, seat of management or administration is not located in a member state and, establishes a business relationship or purchases real estate in Belgium, as trustee or as *fiducie* administrator, in the name of the trust.

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<sup>4</sup> For more information about the role management, please visit one of the following websites:

<https://iamapps.belgium.be/rma/generalinfo?redirectUrl=/rma&language=en> or

<https://www.csam.be/en/management-mandates.html> or

[https://financien.belgium.be/sites/default/files/20180524\\_DefinitievandeFedIAM-rollen.pdf](https://financien.belgium.be/sites/default/files/20180524_DefinitievandeFedIAM-rollen.pdf)



## 8. WHO WILL BE ABLE TO CONSULT THE UBO REGISTER?

The information of the UBO register will be accessible for:

- The competent authorities referred to in article 2, 17° of the royal decree;
- The subjected entities referred to in article 5 of the Law of 18 September 2017 and this exclusively in context of compliance with their vigilance duties regarding their clients. Access for these entities is against payment;
- Any citizen in case of companies. This access is limited to a certain amount of information and is against payment;
- Any person who demonstrates a legitimate interest in case of UBOs of (international) non-profits, foundations, trusts, *fiducies* and other comparable legal entities;
- Any person who submits a written application at the Administration of the Treasury in case of (international) non-profits, foundations, trusts, *fiducies* and comparable legal constructions which have control over a company, (international) non-profit or foundation.

Access to the information about UBOs is in compliance with the privacy rules and can be subjected to online registration and payment of administrative costs.

The consultation of details in the register is monitored and saved for a period of ten years.

## 9. HOW CAN I CONNECT WITH THE APPLICATION ONLINE?

Connection with the application is exclusively possible through the MyMinFin or MyMinFin Pro online portal, tab Applications, or by clicking [here](#).

You can only connect with the online application through your electronic identity card of which another secured authentication method that is approved by the FPS Finance (such as a token, Itsme, mobileapp).

## 10. WHAT SHOULD I DO IN CASE THE UBO IS FOREIGN?

If the ultimate beneficial owner has a foreign nationality or resides in a foreign country, the legal entity at stake should complete the register in the same way as when the ultimate beneficial owner would be a Belgian citizen or reside in Belgium.

It speaks for itself that the nationality and the country or residence should be mentioned clearly, as well as the unique identification number that is issued by the respective country.

## 11. IS THE CONSULTED INFORMATION IN COMPLIANCE WITH THE PRIVACY LAWS?

The processing of personal data is subject to privacy legislation.

Every connection will be monitored and saved for a period of 10 years to detect and punish abuse or unjustified consultations.

## 12. IS THERE A USER MANUAL WHICH HELPS ME TO REGISTER THE REQUIRED INFORMATION?

Yes. For every user category, a user manual is written. These will be published on the website as soon as they are finished.

We request you to subscribe to our newsletter, to stay up-to-date about the publication of this user manual.

## 13. IS IT POSSIBLE TO OBTAIN A DEVIATION, TO NOT APPEAR IN THE UBO REGISTER?

Yes, the General Administration of the Treasury can, on the request of a UBO or his representative, hide a part of or all details about the UBO. Do note that this deviation only relates to the visibility of the registered information, and not to the duty to register this information.

A request for deviation can be submitted through the electronic platform of the UBO register. The ultimate beneficial owner should first be registered in the UBO register. As soon as the request has been submitted, the information concerning the ultimate beneficial owner will no longer be available for the subjected entities, any citizen or persons with a legitimate interest.

As soon as the request is submitted, the General Administration of the Treasury will assess whether the conditions of article 16 of the royal decree have been fulfilled and inform the requesting party about whether or not he/she will be granted a deviation.

A specific request can also be submitted per post, to the following address: Algemene Administratie van de Thesaurie, Kunstlaan 30, 1040 Brussels (visitors: Handelsstraat 96), attn. Alexandre De Geest, administrator-general. If necessary, a request for deviation can also be submitted by sending an e-mail to the address [ubobelgium@minfin.fed.be](mailto:ubobelgium@minfin.fed.be).

The request should be accompanied by a document or piece that demonstrates that the access to this information, exposes the UBO at stake to a disproportionate risk, a risk to fraud, kidnapping, blackmailing, extortion, bullying, violence or intimidation.

In case the UBO is a minor or is legally incompetent, this deviation can automatically be accepted when he registers his details in the UBO register.

## 14. AM I INFORMED IF I'M IDENTIFIED AS UBO IN THE REGISTER?

Yes, the Obligated Entities are required to disclose every registration to the UBOs. A notification should also be sent by the General Administration of the Treasury through the MyMinFin portal (tab "My documents").

Every person who is registered in the UBO register will also be informed about his registration by the Administration of the Treasury.

## 15. CAN I CONSULT THE INFORMATION REGISTERED ON MY NAME IN THE UBO REGISTER?

Yes, every person has access to his information through the electronic platform of the UBO register. A request hereto can be submitted to the General Administration of the Treasury to the following address: [ubobelgium@minfin.fed.be](mailto:ubobelgium@minfin.fed.be).

## 16. WHOM CAN I GET IN TOUCH WITH FOR MORE QUESTIONS REGARDING THE UBO REGISTER?

For further questions about the UBO register or how it works, please e-mail [ubobelgium@minfin.fed.be](mailto:ubobelgium@minfin.fed.be).

You can also consult our website by clicking [here](#). You can register for the UBO newsletter to stay updated about the new features and updates of the online application. The subscription form can be downloaded through the website above.