



Laga Newsflash

Belgium's UBO register: updated FAQ published

The long awaited update to the UBO FAQ is available on the Treasury's website since 2 April 2019 ([Dutch](#) | [French](#)). In addition to the FAQ, the user manual for legal representatives of non-profit associations and foundations has also been updated.

This update also provides some details on more complex issues, which remained unaddressed in earlier versions of the FAQ. What follows is a selection of the most important clarifications from a private client's perspective.

- The FAQ provides details on who will be regarded as UBO of a non-profit association, foundation, trust or similar entity. Specifically regarding the main interest test, UBOs are persons named individually in the articles of association of a non-profit association or foundation, and in whose interest the association or foundation was set up. If no person is named individually, the UBO is a class of persons in whose main interest the legal arrangement or entity is set up or is in operation. The FAQ provides several examples regarding such 'class of persons'.
- Furthermore, the FAQ states all UBOs of a non-profit association, foundation, trust, or similar entity should be regarded as UBO of the Belgian company held by said entities. In Greenille by Laga's view, the FAQ does not clarify the position of certificate holders (*certificaathouders*) of a Belgian or Dutch Foundation Administration Office (*Stichting-Administratiekantoor*). The Treasury may address this issue in a separate document.
- 'Holding control by any other means' does not refer to any kind of control. The FAQ confirms this by referring to European Directive 2013/34/EU and the applicable articles of the old and new Code of Companies and Associations (CCA) (e.g. holding a majority of shareholder voting rights

or having the right to appoint or remove a majority of members from the company's administrative, management or supervisory body).

- Civil law partnerships (*maatschappen/sociétés simples*) are not mentioned separately in the FAQ, but are treated like other companies for UBO purposes, which is consistent with the CCA. This implicitly follows the FAQ, where it refers to the date on which the individual has become UBO of a civil law partnership (*maatschap/société simple*). The FAQ explains that the registration can take into account the first registration date of the civil law partnership in the Crossroads Bank for Enterprises (i.e. any date after 1 November 2018). It is possible to mention the actual date of constitution as an added note.
- In situations of split property, as expected, the FAQ provides that (in general) both the usufruct holder and the holder of bare ownership will be regarded as UBO (if above the 25% limit), taking into account any agreement between these two parties (e.g. as to who will exercise voting rights). A controlling participation held by UBOs in undivided co-ownerships requires the reporting of UBOs as a 'group' (additional comments to be added in the title). The interpretation of 'undivided co-ownership' seems to be limited to the 'civil' undivided co-ownerships that arise upon (e.g.) donations (and not to company law based undivided co-ownerships, e.g. a civil law company).
- The FAQ also addresses the impact of the marital property status of shares (shares held in a regime of separation of property versus shares that belong to the community property between spouses). For community property, the 25% limit will be judged at community property level.
- For listed companies, the FAQ confirms that they are not exempt from UBO-registration, but acknowledges that there may be an overlap with other existing obligations regarding the disclosure of major holdings in listed companies to the FSMA. The FAQ suggests that there might be a possible exchange of information between the FSMA and the UBO-registration in the future.
- The FAQ provides details on who will be regarded as senior management officials. This is primarily the Chief Executive Officer or the supervisory board president, and in absence thereof, the director, the person responsible for daily management, or a supervisory board member. The FAQ clearly refers to the requirement of having the 'most' decisive influence.
- The previous FAQ provided an obligation (without legal basis in Greenille by Laga's view) to include some documents upon UBO-registration (e.g. articles of association and other deeds). This has been replaced by the possibility to add supportive evidence documentation, such as an organisational chart.
- If a Belgian company or entity is held by a foreign legal entity, one should first consult the UBO register's foreign equivalent. In the absence thereof, one should ask the board of directors by registered mail to provide information

on the UBO's identity. If the foreign law forbids the legal entity from providing any information, the Belgian company or entity should keep this decision as supportive evidence.

- The FAQ provides further guidance regarding technical issues for foreign legal representatives or individuals without a Belgian e-ID.

The FAQ also refers to the postponed deadline for the first registration of UBOs in the Registry before 30 September 2019.

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