



FAMILY OWNED BUSINESS & PRIVATE WEALTH

Update July 7, 2020 - The entry into force of the UBO-register itself is foreseen on September 27, 2020. For now, no date of entry into force has been set with regard to the identification of individuals who access the UBO-register and with regard to enabling UBOs to review how often their information has been consulted by third parties, not being public sector parties (Stb. 2020, 232).

Dutch UBO-register bill approved by Senate

On 23 June 2020, the Dutch Senate approved the 'Act on the registration of ultimate beneficial owners of corporate entities and other legal entities' (the UBO-register). The UBO-register is a register that contains certain personal details of ultimate beneficial owners (UBOs) of Dutch corporate entities and other legal entities.

The implementation of a UBO-register is one of the measures that is included in the (amended) fourth EU Anti-Money Laundering Directive. Now the legislative proposal has been approved by the Senate, we expect that the UBO-register will soon enter into force.

In this newsletter the consequences of the implementation of the Dutch UBO-register and certain practical aspects are described. This UBO-register is a separate register from the UBO-register for trusts and mutual funds. The legislative proposal for that register has not yet been published. We refer to [our newsletter of 21 April 2020](#).

When must the UBO-information be registered?

Existing entities have 18 months to submit their relevant UBO-information to the Chamber of Commerce (**CoC**). Under the assumption that the UBO-register enters into force in June, the registration deadline ends in December 2021. The CoC will notify all entities that are required to submit UBO-information within these first 18 months. Entities must register the UBOs that qualify as UBO on the moment of registration. The registration obligation does not have retroactive effect. It is therefore not necessary to register individuals who qualified as UBO between the implementation of the UBO-register and the first registration. However, if the UBO changes after registration, this must be reported to the CoC immediately.

Newly incorporated entities will need to register their UBO-information simultaneously with their registration with the CoC. The registration of UBO-information will be a prerequisite to obtaining CoC registration.

Who is subject to registration?

The following entities that are incorporated or established under Dutch law are required to submit UBO-information to the CoC:

- Private limited companies (*BV's*) and public limited companies (*NV's*);
- Foundations (*stichtingen*), associations (*verenigingen*), mutual insurance associations (*onderlinge waarborgmaatschappijen*) and cooperatives (*coöperaties*);
- Limited partnerships (*maatschappen, vennootschappen onder firma and commanditaire vennootschappen*); and
- Churches and spiritual organisations.

Non-Dutch entities are not required to submit information on their UBOs to the Dutch UBO-register, even if they have their principal place of business or a branch office in the Netherlands. Dutch listed companies that are subject to certain disclosure requirements are also not required to submit UBO-information. Dutch (indirect) 100% subsidiaries of companies that are listed on a regulated market are under conditions likewise exempt from the requirement to submit UBO-information.

Business enterprises outside of the Netherlands that are held by certain limited partnerships established under Dutch law are obligated to (re-)register with the CoC and subsequently submit their relevant UBO-information.

Who is UBO?

A separate Decree (The Dutch Anti Money Laundering and Terrorism Financing Decree 2018) defines which individuals must in any event be registered as a UBO for various types of entities. This enumeration is not exhaustive and entities may have more than one UBO.

Below we describe which individuals, under the Decree, must in any event be considered a UBO for BV's and NV's, foundations and limited partnerships:

- For BV's and NV's: UBOs are the individuals who directly or indirectly hold more than 25% of the shares, voting rights or the ownership interest in the company, or who through other means ultimately own or control the company. If no individual can be identified, or if there is any doubt whether the individual(s) identified are the beneficial owner(s), the individual(s) who hold the position of statutory board member(s) will be considered the UBO(s). If an individual holds a sufficient ownership interest in a corporate entity through depository receipts issued by a Dutch foundation (*stichting administratiekantoor*, **STAK**), the individual will still qualify as UBO of the company. However, the individual does not automatically qualify as UBO of the STAK.

- For foundations the UBO-definition follows the UBO-definition for other legal entities: UBOs of a foundation are the individuals who directly or indirectly have an ownership interest of more than 25%, who can exercise more than 25% of the voting rights in respect of changes of the articles of the foundation, or who can exercise effective control over the foundation. If no individual can be identified, or if there is any doubt whether the individual(s) identified are the beneficial owner(s), the individual(s) who hold the position of statutory board member(s) will be considered the UBO(s).
- For limited partnerships: UBOs are the individuals who directly or indirectly have more than 25% ownership interest in the partnership, who directly or indirectly can exercise more than 25% of the voting rights regarding changes of the limited partnership agreement or regarding the execution of that agreement other than through acts of management to the extent that decision making by majority vote is required in that agreement, or who can exercise effective control over the limited partnership. If no individual can be identified, or if there is any doubt whether the individual(s) identified are the beneficial owner(s), the individual(s) who hold the position of general partner will be considered the UBO(s).

In the aforementioned cases, an ownership interest exists if an individual is entitled to (>25%) distributions of profits or reserves of an entity or partnership, or is entitled to the balance of liquidation. It will be visible in the UBO-register if the statutory board members or general partners are registered in their capacity as statutory board members or general partners.

What UBO-information will be registered?

Entities are required to submit UBO information on all their UBOs. Part of this information will be publicly accessible in the Dutch Trade Register. Another part of the information is only accessible to certain competent authorities and the Financial Intelligence Unit.

Publicly accessible UBO-information

- Surname and last name;
- Month and year of birth;
- Nationality;
- Country of residence;
- Nature and size of the beneficial interest held (presented in fixed ranges of 25%-50%, 50%-75% or 75%-100%).

Not publicly accessible UBO-information

- Citizen Service Number (*Burgerservicenummer*, 'BSN') / foreign tax identification number (TIN);
- Date of birth;
- Country and place of birth;
- Address;
- Copy of passport / ID;
- Documentation supporting (i) the conclusion that the individual qualifies as UBO and (ii) the nature and size of the beneficial interest held.

The UBO-information will remain accessible for a period of ten years after the deregistration of the corporate entity or other legal entity.

Will individuals who access the UBO-register be identified?

The public can only access the publicly accessible UBO-information with a valid registration and in exchange for a fixed fee. The identity of the persons who access the UBO-register will be registered at the CoC and it will be visible to UBOs how often their information has been consulted. Consultations by the Financial Intelligence Unit and competent authorities are excluded. The CoC may register the Citizen Service Number of persons who access the register. It will be investigated whether the UBO-register can be designed in a way that certain categories of users can be distinguished. This should enable UBOs to review how often their information has been consulted per category of user (competent authorities, civil-law notary, bank, etc.).

Can access to UBO-information be restricted?

Upon request, access to UBO-information can be restricted to the public if the UBO is a minor or otherwise legally incapable, or if the publication of UBO-information would expose him to a disproportionate high risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation. The Netherlands restrictively makes use of its option to shield information: only the UBO-information of a minor or person who is otherwise legally incapable will be restricted or if a person is under protection of the Public Prosecutor or the National Coordinator for Counterterrorism and Security. If access to UBO-information is restricted, only the nature and size of the beneficial interest held will be registered.

The registration process will be designed in such a way that it is possible to indicate upon registration whether UBO-information should be shielded (based on one of the conditions as mentioned above, for example being a minor). A request for restriction of access to UBO-information will directly lead to shielding of UBO-information. This restrictive access will be lifted once the request is rejected and the decision in a formal objection and appeal procedure (if any) has become final. UBOs that expect that the publicly accessible UBO-information would expose them to a disproportionate risk can contact the police or Public Prosecutor in advance.

Which other obligations are there?

Entities that are required to submit UBO information are obligated to ensure that the information in the UBO-register is adequate, accurate and current. UBOs have an obligation to comply and provide all relevant information which is necessary for entities to meet their UBO-requirements.

The competent authorities and qualifying institutions (such as banks, lawyers, civil-law notaries, accountants and tax advisers) are obligated to report to the CoC any mismatch between the UBO-information in the CoC and the information they have about a UBO. The competent authorities only have to report the mismatch if appropriate and to the extent that this requirements does not interfere with their duties.

Violation of the above mentioned obligations is considered an economic offence which can be sanctioned by criminal or administrative sanctions. Furthermore, a penalty for noncompliance may be imposed as a 'remedial sanction'. If the violation was intended then the criminal sanctions could include imprisonment for a maximum period of two years, a community punishment or an administrative fine.

Registration requirements foundations

Simultaneously with the implementation of the UBO-register, a new administration requirement for foundations is introduced. As a consequence, the board of a foundation is obligated to internally administer all beneficiaries who receive a distribution from the foundation of 25% or less of the total amount distributed in a year. Beneficiaries receiving a distribution of more than 25% must be registered as UBOs in the UBO-register. The board of a foundation must internally register the name, address and the distributed amount of each beneficiaries to whom in a given year a distribution has been made.

Contact

Do you have any questions about the UBO-register? Maybe an informal introductory meeting would be of interest? Please contact your Loyens & Loeff adviser or get in touch with one of our dedicated advisers in the [Family Owned Business & Private Wealth](#) department.

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