

Family Owned Business & Private Wealth

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Implementation of the Dutch UBO-register postponed

On 20 April 2018 the Dutch Minister of Finance sent a letter to Parliament regarding the implementation of the Dutch 'UBO-register', a register that will contain details on the individuals that are the 'ultimate beneficial owners' (UBOs) of legal entities in the Netherlands. The Dutch Minister writes that the legislative proposal on the implementation of the UBO-register is expected to be submitted to Parliament early 2019.

The reason behind this postponement is the expected entry into force of the Fifth EU Anti-Money Laundering Directive within the European Union (EU). This Directive contains, inter alia, provisions regarding the UBO-register, which provisions differ from the provisions on the UBO-register included in the current Fourth EU Anti-Money Laundering Directive (AMLD 4). On 19 April 2018 the Fifth EU Anti-Money Laundering Directive (AMLD 5) was adopted by the European Parliament and will enter into force shortly.

Dutch implementation of the UBO-register

The introduction of a UBO-register is one of the measures included in the current AMLD 4. Under AMLD 4, Member States had until 26 June 2017 to implement a UBO-register.

Several Member States, including the Netherlands, have not yet implemented a UBO-register. On 31 March 2017 the Netherlands published a draft legislative proposal for the implementation of the UBO-register and launched an online public consultation, providing anyone interested with the opportunity to comment on the draft legislative proposal. We refer to our [newsletter of 3 April 2017](#). In addition the Netherlands published draft Decrees that include the Dutch UBO-definition for various types of Dutch legal entities. We refer to our [newsletter of 10 April 2018](#).

The final legislative proposal for the implementation of the UBO-register based on the AMLD 4 has not been sent to Parliament yet. Due the expected entry into force of AMLD 5, the government anticipates a final legislative proposal to be sent to Parliament early 2019.

Fifth EU Anti-Money Laundering Directive

In December 2017 the EU reached an agreement on the proposal for a directive amending AMLD 4, including the UBO-register contained therein. These amendments are included in AMLD 5 and on 19 April 2018 this Directive was adopted by the European Parliament.

In accordance with the new Directive, the UBO threshold (25% plus one) will not be lowered and all EU UBO-registers for companies and other legal entities must be accessible to the general public. These amendments are in keeping with the published outlines of the Dutch UBO-register.

In addition, the new Directive clarifies that only in exceptional circumstances Member States can provide for exemptions to the disclosure of beneficial ownership information, i.e. if the public availability of the information would expose the beneficial owner to disproportionate risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation. Member States should ensure that these exemptions are granted upon a detailed evaluation of the exceptional nature of the circumstances. This approach is also in keeping with published outlines of the Dutch UBO-register.

Furthermore, all EU Member States must provide for a UBO-register for trusts that are established in, are residing in, are managed in (for example because the trustee is residing there) or enter into certain business transactions in that Member State. The UBOs of a trust are the settlor(s); the trustee(s); the protector, the beneficiaries or classes of beneficiaries and any other natural person exercising ultimate control over the foundation by other means.

The UBO-register for trusts will not be publicly accessible, but will only be available to persons who can demonstrate a 'legitimate interest'.

The entry into force

The UBO-register for legal entities should, under AMLD 5, be implemented within 18 months after the new Directive enters into force. The UBO-register for trusts should be implemented within 20 months after the new Directive enters into force.

These implementation periods have caused the Dutch government to announce it will send the legislative proposal for the implementation of the UBO-register for companies and other legal entities to Parliament early 2019. The implementation of the UBO-register for trusts and similar legal structures will be done through a separate legislative process. This process will commence after AMLD 5 enters into force.

Contact

If you have any questions regarding the UBO-register, or if you would like to make an appointment for a free and non-obligatory consultation, please contact your Loyens & Loeff consultant or one of our consultants on the [Family Owned Business & Private Wealth Team](#). We will gladly help clarify the effects of the UBO-register for your specific situation.

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