

Family Owned Business & Private Wealth

LOYENS  LOEFF

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Update: implementation UBO-register in the Netherlands

On 31 January 2018 the Dutch government took another step forward in the process of implementing a Dutch UBO-register; a register containing the details of the individuals that are the 'ultimate beneficial owners' (UBOs) of legal entities in the Netherlands. The Ministry of Finance published a draft decree (the draft "Decree") that provides further details on the definition of a UBO.

The draft Decree stipulates which individuals must in any event be considered as UBO for several types of legal entities in the Netherlands. Although the UBO-definition in the draft Decree is not the final implementation of the UBO-definition for the future UBO-register, the definition in the draft Decree will materially correspond to the UBO-definition that will apply for the UBO-register.

The Dutch law implementing the UBO-register is expected to be sent to Parliament in the first half of 2018. It is further expected that at that time the UBO-definition for purposes of the UBO-register will be further detailed.

Fourth EU Anti-Money Laundering Directive

The introduction of a UBO-register is one of the measures included in the fourth EU Anti-Money Laundering Directive ([see our newsletter of 3 April](#)). Furthermore, the EU Anti-Money Laundering Directive contains the obligation for intermediaries such as bankers, accountants, lawyers, tax advisers and notaries to conduct client due diligence prior to entering into a business relationship with their potential client. In the context of these measures intermediaries are obliged to identify the UBO of their potential client. The UBO-definition in the draft Decree of 31 January 2018 is tailored to identify the UBO in client due diligence. At a later stage the UBO-definition in the UBO-register will be further detailed. Both definitions will be materially the same.

UBO-definition

For each type of legal entity the draft Decree defines which individuals must in any event be considered a UBO. The Dutch government emphasizes that the enumeration is not exhaustive and that legal entities may have more than one UBO.

Below, we will exemplify which individuals must in any event be considered a UBO under the draft Decree in relation to a Dutch NV, BV and foundation. A UBO-definition for limited partnerships, associations and trusts is included in draft Decree as well.

- in case of NV's, BV's and other corporate entities: UBOs are the natural persons who ultimately have a shareholding, the voting rights or an ownership interest of more than 25% in the corporate entity, or that have ownership or control via other means. If a natural person holds a sufficient ownership interest in a corporate entity through depository receipts issued by a Dutch foundation (*Stichting administratiekantoor*), the natural person will still qualify as UBO. If no natural person can be identified, or if there is any doubt whether the person(s) identified are the beneficial owner(s), the natural person(s) who hold the position of senior managing official(s) will be considered the UBO(s).

The abovementioned individuals do not qualify as UBO of companies that are subject to disclosure requirements for listed entities.

- In case of foundations: UBOs are the settlor(s); the trustee(s); the protector, the beneficiaries and any other natural person exercising ultimate control over the foundation by other means. If no natural person can be identified as individual beneficiary, the class of persons in whose main interest the foundation is set up or operates will be considered the UBO(s).

The draft Decree provides no guidance on how to deal with the holders of depository receipts issued by a Dutch foundation (*Stichting administratiekantoor*).

Fifth EU Anti-Money Laundering Directive

The law implementing the Dutch UBO-register is expected to be sent to Parliament in the first half of 2018. The law implementing the UBO-register and the aforementioned draft Decree are both based on the fourth EU Anti-Money Laundering Directive. In the meantime the European Parliament, the Council and the Commission reached an agreement on the proposal for a directive amending fourth EU Anti-Money Laundering Directive and consequently the UBO-register. Once final, these amendments will be incorporated in a fifth EU Anti-Money Laundering Directive. In accordance with this agreement, the UBO threshold (25% plus one) will not be lowered and all EU UBO-registers must be accessible to the general public. These amendments are in keeping with the published outlines of the Dutch UBO-register. Finally, all EU member states must provide for a UBO-register for trusts that are established in, are residing in, are managed in or enter into certain business transactions in that member state. The UBO's of a trust are the settlor(s); the trustee(s); the protector, the beneficiaries and any other natural person exercising ultimate control over the foundation by other means. The UBO-register for trusts will not be publicly available

The public will only have access to the UBO-register for trusts if they can demonstrate a 'legitimate interest' (i.e. in respect of money laundering, terrorist financing and the associated predicate offences such as corruption, tax crimes and fraud).

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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