



Implementation of the UBO-register in the Netherlands

On 31 March 2017, a draft legislative proposal for the implementation of the 'UBO-register' in the Netherlands was published. The Dutch government has launched an online public consultation, providing anyone interested with the opportunity to comment on the draft legislative proposal. The online public consultation closes on 28 April 2017.

What is the UBO-register?

The UBO-register is a central register containing information on Ultimate Beneficial Owners of corporate and other legal entities incorporated in the Netherlands and will form an integral part of the Dutch trade register. A substantial part of the information included in the UBO-register will be publicly accessible. The institution that will manage the UBO-register is the Chamber of Commerce.

The principles on which the draft version of the legislative proposal is based are in keeping with the outlines of the UBO-register published in 2016 by the Minister of Finance (see in this respect [our newsletter of 16 February 2016](#)). On various important issues the draft legislative proposal does not yet contain detailed provisions. For example, it does not include a detailed definition of *ultimate beneficial owner* ('UBO'), which is of the essence for the UBO-register.

The main features of the proposed UBO-register are briefly outlined below. We will, of course, keep you informed of any further developments in this area.

Which entities must register their UBOs?

Pursuant to the draft legislative proposal, the UBO-register will contain information on the UBOs of (i) enterprises in the Netherlands and (ii) legal entities with their official seat in the Netherlands pursuant to their articles of association. Examples are the UBOs of a private limited liability company (Besloten Vennootschap), a public limited liability company (Naamloze Vennootschap), or a foundation (Stichting). The draft legislative proposal expressly states that there will be no register for trusts (or trust-like entities) as Dutch law does not recognize these legal concepts. Similarly, foreign legal entities with their principal place of business or a branch office in the Netherlands, as well as funds for a joint account are, for now, not required to register their UBOs under the draft legislative proposal.

Who is the UBO?

The draft legislative proposal defines the UBO of an entity as “a natural person who ultimately owns or controls an enterprise or legal entity”, but does not provide further details. The government clarifies that, at a later time, it shall be laid down in subordinate legislation which individuals must in any event be considered UBOs for each type of enterprise or legal entity.

Information to be included in the UBO-register

The following UBO information will be included in the publicly accessible part of the UBO-register:

- Name;
- Month and year of birth;
- Nationality;
- Country of residence; and
- Nature and extent of the beneficial interest held (through shares, voting rights or ownership: 25%-50%, 50%-75% or 75%-100%).

Additional information will be accessible only to competent authorities and the Financial Intelligence Unit ('FIU'). Such additional information includes the UBO's Citizen Service Number (*Burgerservicenummer*, 'BSN'), a copy of his/her identification, date of birth, place of birth and address information, as well as documentation supporting the ultimate beneficial interest held.

The UBO information must be submitted by the entity whose UBOs are included in the UBO-register. The UBO is required to cooperate in submitting and filing this information. At a later time a 'reporting obligation' will be implemented for institutions governed by the Dutch Money Laundering and Terrorist Financing (Prevention) Act (such as banks, lawyers, civil-law notaries, and tax advisers), specific competent authorities and the FIU. Under this obligation these institutions are required to report to the Chamber of Commerce any information they encounter that deviates from the information included in the UBO-register.

Privacy protection

The draft legislative proposal provides for a limited number of safeguards to protect the privacy of UBOs:

- Registration of users;
- A fee to get access to the register;
- A limited set of publicly accessible information (see above); and
- Non-disclosure of all UBO information to the public (except for information on the nature and extent of the beneficial interest) if the UBO is a minor or otherwise legally incompetent, or if the UBO convincingly argues that the publication of his/her information will expose him/her to the risk of fraud, kidnapping, blackmail, violence or harassment. This will be determined on a case by case basis.

Finally, the registration of the UBO information may be opposed through objection and appeal.

No time frame for implementation

The government seeks to implement the UBO-register in the Netherlands as soon as possible, but does not outline a specific time schedule. All EU Member States must have implemented a UBO-register by 26 June 2017. The draft legislative proposal provides for a period of 18 months following the entry into force of the act, within which period entities that (i) are required to register their UBOs and (ii) that are at that moment included in the trade register, must provide the Chamber of Commerce with information on their ultimate beneficial owner(s).

Possible amendments upon implementation

The draft legislative proposal forms part of the implementation of the 'Fourth EU Anti-Money Laundering Directive' of the European Union. The European Union is presently internally negotiating an amendment to this Directive and the UBO-register to which it refers. This means that the UBO-register as currently included in the draft legislative proposal may have to be amended shortly after its implementation. Such amendment may involve a lower UBO qualification threshold, the introduction of a UBO-register for trusts administered in the Netherlands, and the implementation of a connection between UBO-registers within the European Union.

Other home markets Belgium, Luxembourg and Switzerland

In our home market Belgium, a draft legislative proposal was submitted to the Council of State on 31 March 2017. The government of our other home market, Luxembourg, has not yet published any national legislation outlines or proposals for implementing the UBO-register. Switzerland is not an EU Member State and therefore falls outside of the scope of the Directive and has no UBO-register.

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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