



FAMILY OWNED BUSINESS & PRIVATE WEALTH

Dutch implementation UBO-register for trusts and mutual funds

On 17 April 2020, a legislative proposal for the implementation of a 'UBO-register' for trusts was published for consultation. This publicly accessible register will contain certain personal details of ultimate beneficial owners (UBOs) of trusts and similar legal arrangements (the Trust register).

The implementation of a Trust register is one of the measures that are included in the (amended) fourth EU Anti-Money Laundering Directive. The Trust register will be created in addition to the UBO-register for Dutch corporate entities and other legal entities. For more information on the UBO-register for corporate entities and other legal entities we refer to [our newsletter of 11 December 2019](#).

If the draft legislative proposal enters into force without amendment, Dutch trustees and administrators of similar legal arrangements will have to register certain information concerning the UBOs of the trusts they manage. Under circumstances, the registration requirements also apply to trustees and administrators resident outside the European Union. In the Netherlands, mutual funds will for purposes of the Trust register be treated as a 'similar legal arrangement'.

Interested parties have until 15 May 2020 to respond to the draft legislative proposal. It is expected that the (amended) legislative proposal will be submitted to Parliament in the second half of 2020.

Which legal arrangements fall under the scope of the Trust register?

Based on the draft legislative proposal, the Trust register is applicable to (i) trusts and (ii) similar legal arrangements.

Trusts

The trust originates in Anglo-Saxon law and is, in short, a legal relationship under which assets have been placed under the control of a trustee, who manages those assets in accordance with the terms of the trust for the benefit of one or more beneficiaries or for a specified purpose. Trusts can be used for business reasons, family affairs or for cultural and charitable purposes.

Currently, in the Netherlands trusts or similar legal arrangements are not formally registered, as a result of which a formal definition of these arrangements does not exist. Under the Trust register, a trust will be defined as: a legal relation created through a legal act by a person (the settlor), whereby assets have been placed under the control of a trustee for the benefit of a beneficiary or for a specified purpose.

Similar legal arrangements

Each member state of the European Union has determined which legal arrangements under its domestic laws are considered to be similar to a trust. The Dutch Trust register also applies to those legal arrangements.

The Netherlands itself qualifies certain funds without legal personality as legal arrangement similar to trusts. The most common example of a fund that falls under the scope of the Trust register is the Dutch mutual fund. It is irrelevant whether the mutual fund qualifies as transparent or opaque for tax purposes.

Who is subject to registration?

In the draft legislative proposal, the obligation to obtain, hold and register information in the Trust register is imposed on the trustee of a trust, or the person fulfilling a comparable position for a similar legal arrangement (the **trustee**). In case of a mutual fund, the manager of that fund will generally be considered the 'trustee'.

Not every trustee is obliged to register information in the Trust register. The registration requirements are applicable to a trustee that:

1. resides or is established in the Netherlands; or
2. resides or is established outside the European Union and acquires Dutch real estate on behalf of the trust or enters into a business relationship in the Netherlands on behalf of the trust with an obliged entity. Examples of such business relationships are a business or commercial relationship with a financial institution such as a bank, an accountant, lawyer, civil-law notary or tax adviser.

Trustees who are established within the European Union, but outside the Netherlands, are not subject to the registration requirements in the Netherlands if the trust and its UBOs are registered in a Trust register of another member state of the European Union.

UBOs will have an obligation to comply and provide all relevant information which is necessary for a trustee to meet the registration requirements.

Who is UBO?

In the Dutch Anti Money Laundering and Terrorism Financing Decree 2018 (**Decree**) it is defined which individuals must in any event be registered as UBO for trusts or similar legal arrangements (**trust**). It is explicitly stated that the enumeration is not exhaustive.

The following individuals must in any event be considered a UBO of a trust:

- the settlor(s);
- the trustee(s);
- the protector(s), if applicable;
- the beneficiaries, or if no individual beneficiaries can be determined, the group of individuals in whose interest the trust is principally established or active; and
- any other individual who through direct or indirect ownership interest or through other means can ultimately exercise control over the trust.

Contrary to the 'regular' UBO-register, no indicative minimum percentage is included in the UBO definition for trusts. It is therefore not necessary that an (ownership)interest of more than 25% exists.

What information will be registered?

Trustees must register information in the Trust register for every trust and notify its UBOs of such registration. Upon registration, a unique reference number is assigned to the trust, which must be included in all written statements made on behalf of the trust.

Part of the registered information will be publicly accessible through the Trust register. Another part of the information is only accessible to certain competent authorities and the Financial Intelligence Unit:

Publicly accessible information

concerning the trust:

- Name and type;
- Date and place of establishment;
- Purpose

with respect to each UBO:

- Surname and last name;
- Month and year of birth;
- Nationality;
- Country of residence; and
- Nature and size of the beneficial interest held (presented in fixed ranges)

Not publicly accessible information of the UBO of a trust

- 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; and
- Documentation supporting the information concerning the trust.

Can access to the UBO-information be restricted?

Similar to the regular UBO-register, UBOs of a trust can request shielding of their information from the public if access to such information would expose the UBO to a disproportionate risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation. Based on the draft legislative proposal, UBO-information will only be restricted if a person is under protection of the Public Prosecutor or the National Coordinator for Counterterrorism and Security.

Furthermore, UBOs of a trust can request shielding of UBO-information if the UBO is a minor or person who is otherwise legally incapable.

When does the Trust register enter into force?

The Trust register had to be implemented on 10 March 2020. After the consultation period, which ends on 15 May 2020, the (amended) legislative proposal will be submitted to Parliament. This is expected for the second half of 2020.

Upon the Trust register entering into force, based on the legislative proposal, trustees will have three months to submit the relevant information. The Trust register will be administered by the Chamber of Commerce.

If the registration obligation arises after the entering into force of the Trust register, trustees will be required to register the UBO-information within one week after the event occurs as a result of which the registration obligation arises.

Contact

Do you have any questions about the Trust register? Maybe an informal introductory meeting would be of interest? Please contact your Loyens & Loeff adviser or get in touch with in one of our dedicated advisers in the Family Owned Business & Private Wealth department. We are happy to be of help to set out the consequences of the Trust register in your situation.

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