



Bill for the Dutch implementation of the Trust register approved by Senate

On 23 November 2021, the legislative proposal for the implementation of a 'UBO-register' for trusts (the Trust register) was approved by the Dutch Senate. The Trust register is a publicly accessible register that contains certain personal information of ultimate beneficial owners (UBOs) of trusts and similar legal arrangements, including the Dutch mutual fund (FGR).

The implementation of a Trust register is one of the measures that is included in the (amended) fourth EU Anti-Money Laundering Directive (**Directive**). The Trust register will be controlled as a separate register by the Dutch Chamber of Commerce.

In this newsletter we set out the main aspects of the legislative proposal. 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 Quoted '[The Dutch UBO-register for corporate and other legal entities](#)'.

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

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 specific purpose. Trusts can be used for business reasons, family affairs or for cultural and charitable purposes.

Similar legal arrangements

Each Member State of the European Union (**EU**) 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 has qualified 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 (*fonds voor gemene rekening (FGR)*). It is irrelevant whether the mutual fund qualifies as transparent or opaque for tax purposes.

If an enterprise must be registered in the Dutch Trade Register, that enterprise does not qualify as a legal arrangement similar to trusts, even though it has characteristics similar to a legal arrangement.

Who is subject to registration?

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 of a trust or similar legal arrangement (hereafter: **trust**) 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 EU and acquires Dutch real estate or enters into a business relationship with an obliged entity in the Netherlands on behalf of the trust. Examples of such business relationships are a (durable) relationship with a financial institution such as a bank, an accountant, lawyer, civil-law notary or tax adviser.

Trusts 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 EU.

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. 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 in 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.

Based on a draft resolution, an exception might be introduced for the registration of individual beneficiaries for certain investment funds which are driven in the form of a Dutch mutual funds. This exemption applies for an investment fund (FGR) that: (i) has at least 150 participants, (ii) is managed by a certified manager in the meaning of the Financial Supervision Act and (iii) is under the supervision of the AFM or DNB. If these criteria are met, it is expected to be sufficient to describe the group in whose interest the FGR is primarily established or operates for (for example: "participants investment fund").

If it is not possible to determine the individual beneficiary, for example because the beneficiary cannot be determined until in the future, then the group of individuals should be described accurately on the basis of specific characteristics or per category so that upon distribution or if the specific rights of a beneficiary can be determined, the trustee can proceed with updating the information in the Trust register.

What information will be registered?

Trustees must register information in the Trust register for every trust. 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. The UBO will be informed about the registration through an automatic process.

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 UBO-information

concerning the trust:

- name and type;
- date and place of establishment;

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 (probably in fixed ranges of 0% to 25%, more than 25% to 50%, more than 50% to 75% or more than 75% up to and including 100%)

Not publicly accessible UBO-information

concerning the trust:

- documentation supporting the information concerning the trust.

with respect to each UBO:

- Citizen Service Number (Burgerservicenummer, 'BSN' / foreign tax identification number (TIN));
- date 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 confirming the information concerning the UBO.

If a UBO has no beneficial interest regarding the trust, but for example solely has voting rights, this could be indicated upon registration. The Trust register will be set up accordingly.

If the size of the beneficial interest of the UBO is still unclear or uncertain, a draft resolution proposes that for those situations all UBOs are presumed to have a proportional interest. This means that in case of four UBOs from whom the exact size of the beneficial interest is unclear or uncertain, the trustee will register the UBOs and state that each UBO has a 25% interest.

The UBO-information will remain accessible for a period ending ten years after the grounds for the registration of such information ceases to exist.

Will individuals who access the Trust 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 Trust register will be registered by the Chamber of Commerce. The Chamber of Commerce may register the Citizen Service Number of persons who access the Trust register. The Financial Intelligence Unit and competent authorities have upon request access to that information. Upon request it will be visible to UBOs how often their information has been consulted. Consultations by the Financial Intelligence Unit and competent authorities are excluded.

Can UBO-information be shielded?

Based on the Directive, Member States may provide for public access to UBO-information to be shielded, on a case-by-case basis, if the UBO is a minor or legally incapable, or if the publication of UBO-information would expose the UBO to a disproportionate risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation.

In the Netherlands, the UBO-information of a minor or person who is legally incapable will be shielded. In other cases, UBO-information will only be shielded if a UBO is under "police protection": this is the case if a UBO is under the protection of the Public Prosecutor or the National Coordinator for Counterterrorism and Security. The grounds for the shielding of information in the Trust register are equal to the grounds of the 'regular' UBO-register.

When does the Trust register enter into force?

Based on the Directive, the Trust register should have been implemented on 10 March 2020. The Netherlands did not achieve the deadline. The Trust register will enter into force at a date that will be determined by a separate Royal Decree. It is expected that the Trust register will enter into force in October 2022. After entering into force, trustees will have 3 months to register the UBOs of trusts. After this transition period, trustees must comply with the registration requirements within one week. Changes of the UBO must also be registered within one week after occurrence.

Which other obligations apply?

Competent authorities and qualifying institutions will be obligated to report to the Chamber of Commerce any mismatch between the information included on a trust in the Trust register and the information they have about a UBO. Competent authorities only have to report the mismatch if appropriate and to the extent that this requirement does not interfere with their duties.

What are the possible sanctions?

Violation of the 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.

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 one of our dedicated advisers in the [Family Owned Business & Private Wealth department](#).

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