



Legislative proposal UBO-register

On 10 December 2019 the legislative proposal with respect to the introduction of an UBO register in the Netherlands was approved by the Second Chamber of Dutch Parliament. The requirement to introduce an UBO register follows from the EU Anti-Money Laundering Directive. The UBO-register will enter into force on 10 January 2020.

This proposal obliges companies to register their Ultimate Beneficial Owners (UBO) with the Dutch Chamber of Commerce. An UBO is an individual (natural person) who ultimately (directly or indirectly) owns or controls more than 25% of the Dutch entity. In the event that an entity has multiple UBOs all of them need to be registered. If no UBO within the aforementioned definition can be identified, the company's higher management members - generally the company's management board director(s) - need to be registered as pseudo-UBO.

Pursuant to the introduction of the UBO-register, the UBO of an entity established in accordance with Dutch law (e.g. B.V., N.V. association, foundation, cooperative, (limited) partnership) needs to be registered with the Dutch Chamber of Commerce. This also includes entities which have been incorporated in the Netherlands, but which are effectively management and controlled from outside the Netherlands. A foreign entity with a branch in the Netherlands is not obliged to register its UBO(s) in the Netherlands. It is of course possible that such foreign entity may be required to register its UBO(s) in its home country.

The legislative proposal includes a transitional regime for entities already existing at the moment of the legislation entering into force on the basis of which such entities are required to register their UBO(s) in the UBO register within 18 months. Entities newly incorporated after the UBO-register entering into effect are obliged to register their UBO simultaneously with the registration of the entity in the Dutch Chamber of Commerce. Non-compliance with registering the UBO(s), a non-complete registration or failing to keep the registration up-to-date, constitutes an economic felony under the Economic Felony Act that can be penalized with a maximum fine of EUR 20,750 per felony.

The UBO register is a public register. The Financial Intelligence Unit (FIU) and other competent authorities have access to all of the information in the UBO-register. All other parties have limited access (see below). After deregistration of the entity with the Dutch Chamber of Commerce the information is kept for 10 years.

The following information of the UBO needs to be registered

(public access)

- name
- month of birth and year of birth
- nationality
- country of residence
- nature and size of the beneficial ownership interest of the UBO in the company only disclosed on the basis of a range (25%-50%, 50%-75% or 75% - 100).

(additional information only accessible for FIU and competent authorities)

- UBO tax registration number
- date of birth
- place of birth and country of birth
- full living address details
- supporting documentation on the basis of which the identity of the UBO has been verified and which confirms the exact beneficial ownership interest.

Upon request of an UBO the Dutch Chamber of Commerce may limit disclosure of the information in the UBO register to the general public. This is possible only if the disclosure of the information would expose the UBO to a disproportional risk, e.g. a risk of fraud, abduction, blackmail, extortion, harassment, violence or intimidation or if the UBO is a minor or is legally incapacitated.

As an add-on to original legislative proposal the identity of the individual who consults the UBO register will be registered. Upon their request the identity of persons who consult the UBO register is disclosed to the FIU and the competent authorities. Furthermore, the UBO can upon request gain insight into how many times information has been disclosed per user-category (government, notary, bank, etcetera).

A register will also be established for mutual funds and trusts to be implemented via a separate legislative proposal.

An entity (e.g. services provider) that is subject to EU Anti-Money Laundering and Anti-Terrorist Financing Act Procedures (e.g. a tax consultancy firm) is required to identify its client's UBO(s). If their UBO information deviates from the information in the UBO register of the Dutch Chamber of Commerce, such service provider is obliged to report this to the Dutch Chamber of Commerce. Non-compliance with this reporting obligation can trigger a penalty for such service provider for a maximum amount of EUR 20,750 per felony.

We are happy to support you with the registration of the UBO. If you have any questions or comments, please do not hesitate to contact Rolf van den Eerenbeemt or Diederik Hauser.