

## DUTCH UBO REGISTER SOON EFFECTIVE

On 23 June 2020, the Upper House of the Dutch Parliament adopted the bill (the "Law") creating a register for ultimate beneficial owners ("UBOs") implementing Directive (EU) 2015/849 of the European Parliament and the European Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (the "EU Directive").

The EU Directive had to be implemented on 10 January 2020. The legislative proceedings in the Upper House of Parliament have now finished, and it is expected that the Law will enter into effect on July 1<sup>st</sup> 2020.

### 1. The UBO register in a nutshell

The UBO register is a partially public register and contains certain personal information (see no. 5) on ultimate beneficial owners ("UBO(s)") of certain Dutch entities (see no. 2). The UBO is a natural person who ultimately owns or controls (see no. 4) the entity.

### 2. Who is obliged to register personal information on UBOs; exemption

The following Dutch entities (the "Entities") are obliged to register the personal information on their UBOs mentioned below:

- legal entities which are incorporated under Dutch law: companies (BVs and NVs), SEs and SCEs with registered seat in the Netherlands, foundations, associations, co-operatives and mutual insurance associations;
- limited partnerships (CVs, *vofs* and *maatschappen*, *rederijen* and EEIGs) which are established under Dutch law;
- churches (*kerkgenootschappen*).

An *exemption* applies to Dutch companies listed on any regulated market within the EEA (including Euronext Amsterdam) or on any similar market outside the EEA, provided they are subject to certain disclosure standards, as well as their Dutch direct and indirect 100% subsidiaries.

The Law does not apply to trusts and mutual funds; the draft bill for registration of UBOs of these entities was published for public consultation on 17 April 2020 (<https://www.internetconsultatie.nl/ubotrust>).

### **3. Procedure and time path for registration**

Pursuant to the Law:

- 1) Entities existing and registered at that date must register their UBOs within 18 months after the date the Law became effective. These entities will receive a notice from the Dutch Commercial Register to register their UBOs.
- 2) Entities established or incorporated as from that date are obliged to register their UBOs together with their own registration; they will not be registered if they have not provided the personal information on their UBOs.

### **4. Who qualifies as an UBO?**

The UBO is a natural person who ultimately owns or controls the Entity. This means:

- if the Entity is a company: a natural person who (i) directly or indirectly holds more than 25% of the shares, voting rights, or ownership interest in the company, or (ii) has the ultimate control over the Entity (i.e. can take all decisions solely);
- if the Entity is a foundation, association or co-operative: a natural person who (i) owns directly or indirectly more than 25% of the ownership interest; (ii) can exercise directly or indirectly more than 25% of voting rights in respect of an amendment of the articles of association; or (iii) can exercise factual control over the Entity;
- if the Entity is a limited partnership: a natural person who (i) owns directly or indirectly more than 25% of the ownership interest; (ii) can exercise directly or indirectly more than 25% of voting rights in respect of an amendment of the partnership agreement; or (iii) can exercise factual control over the Entity; or
- if the Entity is a church: a natural person who is designated in the church's statute as legal successor in case of the church's dissolution.

Given the above criteria, it may well be that an Entity has more than one UBO.

If, with respect to an Entity, none of the above requirements leads to the qualification of a natural person as UBO, the management board members jointly (in case of companies, foundations, churches, associations and co-operatives), or the general partners jointly (in case of limited partnerships), respectively, will be considered the UBOs (so called "pseudo-UBOs").

## **5. Personal information of UBOs to be registered in the Dutch Commercial Register**

Publicly accessible information:

- a) name;
- b) month and year of birth;
- c) country of residence;
- d) nationality;
- e) the nature and size of the beneficial interest (most likely presented in classes of 25%-50%, 50%-75% and 75%-100%).

Certain of the above information can be excluded from the publicly accessible information in a few exceptional cases (i.e. minority age, exposure to a disproportionate risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation) if requested by the UBO, but this information remains visible for competent authorities, the Financial Intelligence Unit, banks and other AML obliged entities, and notaries.

Information accessible only to certain authorities, i.a. the Financial Intelligence Unit:

- a) citizen service number of Dutch residents; or fiscal registration number of non-Dutch residents;
- b) day, place and country of birth of UBO;
- c) residential address of UBO.

## **6. Registration of searches in UBO register**

The identity of persons consulting the UBO register will be registered. The Financial Intelligence Unit and other authorities may request the Chamber of Commerce to provide them with information on these consultations.

## **7. Reporting obligations regarding discrepancies in UBO register**

AML obliged entities (such as banks, other financial institutions, law firms and notaries) are obliged to report any discrepancies between the information available in the UBO register in relation to the UBO of an Entity and the information available to them from other sources. This reporting obligation overrides the professional duty of confidentiality.

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