

## LEGAL AND TAX ALERT

### LEGAL ALERT: Dutch entities are now required to register their ultimate beneficial owners (UBOs)

Sept. 28, 2020

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#### Short recap and introduction

With reference to an Alert posted July 10, 2020, the Dutch Implementation Act (the “Implementation Act”) regarding the registration of ultimate beneficial owners of entities (“UBOs”) entered into force on September 27, 2020. This Implementation Act is based on the Fourth Anti-Money Laundering Directive (the “AMLD4”)[\[1\]](#) and implements the obligation to maintain a central register with disclosure of UBOs of Dutch entities. As of September 27, 2020, newly incorporated Dutch entities are required to register their UBOs in the UBO register.

This Alert gives an outline on compliance and related issues under the Implementation Act.

#### Who is an UBO?

The Implementation Act defines an UBO as an individual who ultimately owns or controls a company or other legal entity by direct or indirect interest of more than 25% of the shares, voting rights or other ownership interests. However, an individual who does not hold more than 25% of the shares may still classify as an UBO if that person has ultimate ownership or control of the company in another way. In the Implementation Decree of the Anti-Money Laundering and Anti-Terrorist Financing Act (*Uitvoeringsbesluit Wwft 2018*), the definition of UBO is further elaborated for the various legal forms in the Netherlands.

#### Pseudo UBOs

Each entity has to register at least one UBO. However, in some situations there is no UBO or it is not entirely clear if the identified person really is the UBO. In such cases, the entity must identify and register one or more pseudo UBOs. A pseudo UBO is any natural person who is part of senior management of the entity, i.e. any natural person who, directly or indirectly, is a director under the articles of association.

#### Entities that are required to register their UBOs

The following entities incorporated in the Netherlands are required to register their UBOs: a private limited-liability company (*besloten vennootschap met beperkte aansprakelijkheid, B.V.*), a non-listed public company (*naamloze vennootschap, N.V.*), an association (*vereniging*), a foundation (*stichting*), a cooperative (*coöperatie*), a mutual insurance association (*onderlinge waarborgmaatschappij*), a private partnership (*maatschap*), a general partnership (*vennootschap onder firma, V.O.F.*), limited partnership (*commanditaire vennootschap, C.V.*) and a ship owning partnership/association (*rederij*).

A European company (*societas Europaea, SE*), a European cooperative society (*societas cooperativa Europaea, SCE*) and a European Economic Interest Grouping (*EEIG*) having its registered office in the Netherlands must register its UBOs as well.

#### Registered and accessible information

Entities must register the following information of any UBO:

- name;
- month and year of birth;
- nationality;
- country of residence; and
- nature and approximate extent of the beneficial interest held.

The above information is publicly available in the register of the Chamber of Commerce and accessible to any interested third party. In addition, certain other information has to be registered but will only be available to the competent authorities, e.g. the Dutch Central Bank, the Dutch Authority for the Financial Markets (the “AFM”), the Dutch tax authorities, the Dutch District Attorney, the Dutch Fiscal and Investigation Service (the “FIOD”) and the Dutch National Police. Such information includes:

- date of birth, place of birth and country of birth;
- residential address;
- social security number (*burgerservicenummer; BSN*)
- tax number and type (if applicable);
- copies of documents that can be used to verify the identity of the UBO (e.g. copy of passport);
- copies of documents regarding the nature and approximate extent of the beneficial interest.

At the time of writing this Alert, it is not yet known which documentation an entity should file to demonstrate the nature and approximate extent of the beneficial interest held by an UBO. Time will tell how the requirements will evolve.

## Registration process

The UBO register is maintained by the Dutch Chamber of Commerce. Dutch entities that are incorporated on or before September 27, 2020, are required to register their UBOs either when they first register with the Trade Register, or through a civil-law notary’s office who will then so register the information. Newly incorporated companies cannot register their UBOs online. In the event a Dutch entity does not register its UBOs, such entity will not receive a Chamber of Commerce registration number (in Dutch: “KvK-nummer”).

Dutch entities that were incorporated before September 27, 2020 will receive a letter from the Chamber of Commerce detailing how they can register their UBOs. However, since the UBO register opened on September 27, 2020, entities can register before receiving this letter. Registration is done online on the website of the Chamber of Commerce<sup>[2]</sup>, via mail, or through a civil-law notary’s office. Only the authorized representatives of an entity can register the UBOs of the entity and are required to do so within eighteen (18) months from September 27, 2020, i.e. no later than March 27, 2022. As soon as an UBO has been registered, the Dutch Chamber of Commerce will send a confirmation of registration to the entity and the UBO.

Changes in UBO information, such as a person no longer being an UBO, may only be registered once the changes have entered into force within the organization. Such changes must be registered within seven (7) days after the date of entry into force.

Failure to register the (correct) information will – with certain exceptions – constitute an economic offence (*economisch delict*) of the entity, which can be sanctioned by administrative and/or criminal sanctions.

## QUESTIONS OR FURTHER INFORMATION

If you have any questions or appreciate receiving more information on this Alert, please contact your regular contact at WLP-Law or any of the undersigned:

Neill André de la Porte at [andredelaporte@wlp-law.com](mailto:andredelaporte@wlp-law.com) or at +31 (0) 6 2611 2772.

Maarten van Buuren at [vanbuuren@wlp-law.com](mailto:vanbuuren@wlp-law.com) or at +31 (0) 6 5244 1991.

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WLP-Law is located at De Boelelaan 32-3, 1083 HJ Amsterdam, the Netherlands. For more info, please visit us at [www.wlp-law.com](http://www.wlp-law.com).

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[1] Directive (EU) 2015 /849 of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

[2] <https://www.kvk.nl/ubo>