

LEGAL AND TAX ALERT

Next steps Implementation Act UBO register in the Netherlands

July 10, 2020

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On June 23, 2020, the Dutch Implementation Act (the “Implementation Act”) regarding the registration of ultimate beneficial owners (“UBOs”) of enterprises was adopted. This 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. From July 8, 2020, all Dutch legal entities are obligated to obtain information about their UBOs and on September 27, 2020, the Implementation Act will enter into force. Existing Dutch entities are obligated to register their relevant UBO information within eighteen (18) months after the date the Act enters into force, i.e. no later than the end of March 2022. Newly incorporated Dutch entities will have the obligation to register their UBOs when they first register with the Trade Register as of September 27, 2020.

This Alert gives an outline of 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. 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.

The UBO register

The Implementation Act includes specific provisions on the beneficial ownership of entities and the registration thereof. Information on beneficial ownership is to be held in a central register, accessible to competent authorities, financial intelligence units and, as part of mandatory customer due diligence, (financial) institutions such as banks. In addition, any third party may have access to the registered info on UBOs (see below). The UBO register (the “Register”) will be maintained by the Dutch Chamber of Commerce.

Registration

The following entities incorporated in the Netherlands will be 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 general partnership (*vennootschap onder firma, V.O.F.*) and a limited partnership (*commanditaire vennootschap, C.V.*).

The UBOs of foreign companies doing business in the Netherlands will not be included in the register. The same applies to foreign legal entities with a principal or secondary unincorporated establishment in the Netherlands. They will have to comply with regulations in the country where they are incorporated, if any.

The managing director(s) of an entity and, in the absence thereof, the person(s) entrusted with the day-to-day management, shall register the relevant UBO information. The individual UBO is by law obligated to cooperate with any and all requests for disclosure. In addition, entities such as banks, accountants, attorneys-at-law, civil law notaries and certain authorities are required to provide information about UBOs. Any incorrect information and/or any information not registered in time will – with certain exceptions – in principle constitute an economic offence of the entity, which can be sanctioned by administrative or criminal sanctions.

Registered and accessible information

Entities are obligated to register information on all UBOs. The following information will be publicly available in the Chamber of Commerce and can be accessed by any interested third party:

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

In addition, certain information of the UBO has to be registered, but will not be made public. This is only available for 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 National Police. This concerns the following information:

- date of birth, place of birth and country of birth;
- residential address;
- social security number (*burgerservicenummer*)
- tax number and type;
- date and place of issue identification documents; and
- documentation regarding the nature and approximate extent of the beneficial interest.

Registration beneficiaries foundations

In addition to the registration in the UBO register, the board of a foundation is also obligated to internally register all beneficiaries who receive a distribution from the foundation of 25% or less of the total amount distributed in a year. Beneficiaries receiving a distribution of more than 25% must be registered as UBOs in the UBO-register under the Implementation Act.

What's next?

The UBO register should have been introduced in all EU Member States January 10, 2020. For the Dutch UBO register, the prescribed date was met. The Dutch government aspired the UBO register become effective in the spring of 2020, but it has been delayed. However, recently the First Chamber of

Parliament adopted the Implementation Act and as a result thereof September 27, 2020 the Implementation Act will enter into force. At the moment, no date has yet been set with regard to the identification of individuals who consult the UBO register and the number of times third parties consult the registered information (other than public sector parties).

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:

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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