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Draft legislative proposal offers a closer look at the forthcoming Dutch register of ultimate beneficial owners

A draft legislative proposal regarding a Dutch register of ultimate beneficial owners (UBOs) was published for consultation on 31 March 2017. This is more than a year after the proposed form and function of the register was announced, as discussed in our [March 2016 Newsletter](#). Although this is a first draft and therefore possibly subject to change, it is important to know what this legislative proposal entails.

What is the UBO register?

As part of the fourth EU anti-money laundering directive (AMLD4), adopted by the European Parliament in May 2015, all member states are obliged to set up a UBO register. Each national register will contain information on the ultimate beneficial owner of each company or legal entity incorporated in that country. In the Netherlands, it will be a public register, part of the Trade Register of the Chamber of Commerce. The goal of setting up the UBO registers is to provide transparency in order to help prevent money laundering and terrorist financing.

Who is a UBO?

A UBO is a natural person who directly or indirectly owns or controls a company or legal entity, eg, by holding more than 25% of the shares. Under the current rules, if nobody qualifies as a UBO based on the ownership or control requirement, the company has no UBO. Under AMLD4, however, the company must then designate a senior managing official as a UBO. A 'pseudo-UBO,' so to speak.

The Dutch legislative proposal does not provide any additional clarity on who exactly is to be regarded as a UBO. This will be specified for each type of company or legal entity by a separate decree.

Which companies are affected?

The following Dutch companies and legal entities will be required to register a UBO with the Trade Register:

- private companies with limited liability
- public companies, other than those listed on a regulated market
- foundations
- associations with full legal capacity
- associations with limited legal capacity registered with the Trade Register
- shipping companies
- all types of partnerships
- cooperatives
- mutual insurance associations
- European economic interest groupings
- European public companies (SEs)
- European cooperative companies (SCEs)

Mutual funds may be added to this list in the final legislative amendment.

What UBO information will be accessible?

The following details of a UBO will be publicly available in the UBO register:

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

Furthermore, the Dutch Financial Intelligence Unit as well as certain specifically designated government institutions charged with supervision or investigation will have access to the following additional information:

- day, place and country of birth
- current address
- citizen service number or foreign tax identification number
- type, identifying number, date and place of issuance of the document used to verify the identity of a UBO
- all relevant documents that prove the beneficial ownership of a UBO, ie, the shareholders' register, deeds of share transfer and similar documents.

How is a UBO's privacy safeguarded?

The Dutch legislature has applied the option provided by AMLD4 to make the UBO register a public register. This could have severe consequences for the privacy of UBOs. Therefore, the following four safeguards have been suggested:

- A record will be kept of all parties that retrieve information from the register.
- A fee will be charged for accessing the register.
- Most parties that consult the register will only be allowed access to a limited amount of the available information.
- If access to the information poses a risk for the UBO (for example blackmail, extortion or kidnapping), then access to this information may be further restricted.

Who is charged with providing the UBO information?

The company

Each company must obtain information on its UBO and register it with the UBO register. This obligation lies with each managing director (or similar official) or the person to whom the business belongs. The company must keep the UBO register up to date and register any changes that take place.

The UBO

The relevant UBO must provide the required information to the company of which it is the ultimate beneficial owner.

Users of the UBO register

Users of the UBO register who are required by law to obtain UBO information for KYC purposes, such as law firms and banks, must notify the UBO register of any inconsistencies found between the UBO information that they received from their client and the information in the register.

What happens if the UBO information is not provided?

If the company, the UBO or one of the users of the UBO register does not comply with the requirements imposed on them, they can be held criminally liable. This could result in a fine or a prison sentence.

When will the register be ready?

AMLD4 must be implemented in each EU Member State by 26 June 2017. At this point, the Netherlands is unlikely to meet this deadline. January 2018 seems like a more realistic option. Once the Dutch legislation on the UBO register enters into force, the relevant companies and legal entities have to register their UBO information within 18 months.

What to do?

Even though the legislative process has just begun, we would recommend that you start preparing for the UBO register. For this purpose, you need to determine the UBO (or pseudo-UBO) of each company and legal entity within the group and obtain all relevant information. This way, when the UBO register is actually installed, you will be able to comply with the registration requirement quickly and smoothly.



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