

18 August 2020

Implementation registration of UBO's in the Netherlands

As of 27 September 2020, Dutch legal entities will be obliged to register their ultimate beneficial owners (UBOs) with the UBO register.

The act to implement the UBO register, to be kept by the Dutch trade register of the Chamber of Commerce (CoC) is adopted.

I. The act will enter into force in stages:

From 8 July 2020:

1. All Dutch legal entities will be obliged to obtain information about their UBOs.
2. Foundations are obliged to keep an internal register of distributions of 25% or less of the total amount distributed in a year.
3. The sanctions involved.

From 27 September 2020:

4. The obligation to register with Dutch trade register.

On a date yet to be determined:

5. Rules related to the identification of persons who consult the UBO-register; and
6. Providing UBOs with insight into the number of times their information has been provided to third parties other than government parties.

II. Who is subject to registration?

The following Dutch legal entities are subject to registration:

1. Private companies with limited liability (BV) and (not listed) limited companies (NV);
2. European limited companies (SE), European economic interest groupings (EESV) and European cooperative companies (SCE) having their seat in the Netherlands;
3. Cooperatives (*coöperaties*) and mutual insurance associations (*onderlinge waarborgmaatschappijen*);
4. Associations (*verenigingen*) with full legal capacity and associations with limited legal capacity operating a business;
5. Foundations (*stichtingen*) including foundations with ANBI-status and so called STAK (*stichtingen administratiekantoor*);
6. All partnerships (*vennootschappen onder firma, maatschappen, commanditaire vennootschappen*);
7. Shipping companies (*rederijen*); and
8. Churches (*kerkgenootschappen*).

Exceptions:

9. One-man businesses (*eenmanszaken*);
10. Listed entities that are subject to disclosure requirements laid down in the EU Transparency Directive or equivalent international disclosure requirements and their direct and indirect wholly (100%) owned subsidiaries;
11. Owners' associations (*verenigingen van eigenaars*);
12. Entities, still to be incorporated;
13. Associations with limited legal capacity and not operating a business;
14. Public law legal persons;
15. Other private legal entities, such as historical private legal entities (*hofjes – gilden*)

III. Who are the UBOs?

An UBO is generally defined as an individual with ultimate ownership or control over an entity. An entity can have more than one UBO. By decree (the WWFT Implementation Decree) it was determined that in the following individuals qualify as UBOs:

1. BV, NV (not listed), SE and SCE:

individuals who ultimately own or control the entity

- (i) through direct or indirect ownership of more than 25% of the shares, voting rights or ownership interests or
- (ii) by other means, such as the right to appoint or dismiss the majority of the members of the entity's administrative, management or supervisory body;

2. Foundations, associations, cooperatives, mutual insurance associations and EESV:

individuals who ultimately own or control the entity through

- (i) a direct or indirect ownership interest of more than 25%,
- (ii) the ability to directly or indirectly exercise more than 25% of the voting rights in relation to an amendment of the entity's articles of association or
- (iii) the ability to exercise effective control over the entity;

3. Partnerships and shipping companies:

individuals who ultimately own or control the partnership through

- (i) a direct or indirect ownership interest of more than 25%,
- (ii) the ability to directly or indirectly exercise more than 25% of the voting rights in relation to an amendment of the entity's constitutional agreement or
- (iii) the ability to exercise effective control over the entity.

The above is not an exhaustive list of the criteria used to identify the UBO. An individual can also qualify as an UBO without meeting the abovementioned criteria, e.g. if there is a contractual right to appoint or dismiss managing directors.

4. Churches:

It is still to be determined on which moment churches will be able to fulfill their obligation to register.

If, after using all possible resources, no UBO can be identified on the basis of the ownership and/or control criteria or if there is any doubt that the identified individuals are in fact the UBOs, the entity must register one or more "pseudo UBOs". In that case the individuals who hold the position of senior managing officials will be deemed to be the UBOs and will be registered as such in the UBO register.

In case of legal entities the pseudo UBOs will be the managing directors and in case of partnerships the pseudo UBOs will be the partners (excluding limited partners).

IV. What UBO-information will be registered?

Entities are required to submit UBO information on all their UBOs.

All the information is accessible to certain competent authorities and the Financial Intelligence Unit.

The public can only access the publicly accessible UBO-information with a valid registration and in exchange for a fixed fee.

Public UBO-information

- a. surname and last name
- b. Month and year of birth;
- c. Nationality;
- d. Country of residence;
- e. Nature and size of the beneficial interest held (presented in fixed ranges of 25%-50%, 50%-75% or 75%-100%). Monetary amounts will not be specified.

Non-public UBO-information

- f. Citizen Service Number (burgerservicenummer (BSN) and/or foreign tax identification number (TIN));
- g. Date of birth;
- h. Country and place of birth;
- i. Address;
- j. Copy of passport / ID;
- k. Documentation supporting (i) the conclusion that the individual qualifies as UBO and (ii) the nature and size of the beneficial interest held.

Shielding of UBO-information

Upon request, access to UBO-information can be restricted, if

- an UBO is a minor or otherwise legally incapable;
- the publication of UBO-information would expose the UBO to a disproportionate high risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation.

The UBO-information will not be public as of the moment of the request for restriction. The restrictive access will be lifted once the request is rejected and the decision in a formal objection and appeal procedure (if any) has become final.

Retention period

The UBO-information will remain accessible for a period of ten years after the deregistration of the corporate entity or other legal entity.

V. When must the UBO-information be registered?

Existing entities already registered

Within 18 months as of 27 September 2020, so at the latest 27 March 2022, the UBO-information needs to be registered. Entities must register the UBOs that qualify as UBO on the moment of registration.

The registration obligation does not have retroactive effect. It is therefore not necessary to register persons who qualified as UBO between the implementation of the act (8 July 2020) and the moment of the first registration of the UBO.

Newly incorporated entities

Newly incorporated entities as of 27 September 2020 will need to register their UBO-information simultaneously with their first registration with the CoC.

Changes after the first registration

If the UBO changes after registration, this must be reported to the CoC within the normal terms of 2 weeks (within one week before and one week after the change).

VI. What other registration requirements are there for foundations?

Together with the implementation of the UBO-register, the board of a foundation will be obliged to internally administer all beneficiaries (individuals as well as entities) who receive a distribution of 25% or less of the total amount distributed in a year. The information to be registered are the name, address, date of the distribution and the distributed amount.

The internal register of the foundation is not available publicly. It is just to allow the tax authorities easily access to the distributions of the foundation and must be accurate and be updated regularly.

Beneficiaries receiving a distribution of more than 25% must be registered as UBOs in the UBO-register.

VII. What other additional obligations and sanctions are there?

At the latest the obligation to register the UBOs of already registered entities needs to be settled at the latest 27 March 2022 by the board of the entity.

Furthermore after the first registration the board of the entities will be obliged to obtain and keep accurate and up-to-date the information of their UBOs. UBOs are obliged to provide all necessary information upon request.

Failure to comply with these obligations may result in the imposition of administrative sanctions (e.g. an administrative fine of € 21,750 (2020)).

In the event of aggravating circumstances such as noncompliance accompanied by forgery even criminal sanctions (economic crime).

VIII. Do foreign entities to be registered?

Non-Dutch entities having a branch office in the Netherlands do not have to register their UBO in the Dutch UBO-register.

IX. Do trusts and mutual funds to be registered?

The UBO-register is a separate register form the UBO-register for trusts and mutual funds (*fonds voor gemene rekening*).The legislative proposal for that register is not yet completed.