

Bill on the introduction of a UBO register

Legal persons and other legal entities will soon be obliged to register their ultimate beneficial owners. On April 4, 2019 the bill 'Implementation registration of ultimate beneficial owners of companies and other legal entities' ('the bill') was presented to the Lower House. The bill provides for the implementation of Directive 2018/843 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing ('the Directive'), in particular the obligation to introduce a register of ultimate beneficial owners ('UBOs') of companies and other legal entities ('the UBO register').

The implementation of the obligation to register UBOs must ultimately be realized on January 10, 2020. The UBO register will be included in the Trade Register Act 2007 and will be managed by the Chamber of Commerce.

1. Who is an UBO?

An UBO is the natural person who is the ultimate owner of or controls a company or other legal entity that is registered with the Trade Register. A description of the UBO for each type of company and entity can be found in our [previous memorandum](#).

2. Registration obligation

The registration obligation for the UBO register is in line with the registration obligation contained in the Trade Register Act. Companies established in the Netherlands as well as legal persons that have their registered office in the Netherlands according to their articles of incorporation, must enter their UBO in the UBO register. This currently concerns the following entities:

1. private limited liability companies (*besloten vennootschappen met beperkte aansprakelijkheid*), public limited companies (*naamloze vennootschappen*) (with the exception of listed public limited companies that are subject to certain disclosure requirements and their 100% subsidiaries), European public limited companies, European economic interest groupings (*Europese economische samenwerkingsverbanden*) and European cooperative companies (*Europese coöperatieve vennootschappen*);
2. cooperatives (*coöperaties*), mutual insurance companies (*onderlinge waarborgmaatschappijen*), associations (*verenigingen*), associations with full legal capacity (*verenigingen met volledige rechtsbevoegdheid*), associations without full legal capacity that carry on a business (*verenigingen zonder volledige rechtsbevoegdheid die een onderneming drijven*); and
3. foundations (*stichtingen*), partnerships (*maatschappen*), limited partnerships (*commanditaire vennootschappen*), general partnerships (*vennootschappen onder firma*) and shipping companies (*rederijen*).

The bill creates a new registration obligation that will be included in the Trade Register Act and thus also obliges those entities to enter an UBO in the UBO register. According to the Explanatory Memorandum to the bill, a business that is not, or no longer is, established in the Netherlands and is a member of a partnership, general partnership,

limited partnership or shipping company incorporated in the Netherlands, must re-register. In addition to the obligation for registration in the Trade Register, these entities are also obliged to enter the UBO in the UBO register. The Explanatory Memorandum expands the registration obligation to cover companies or other legal entities that were de-registered from the Trade Register before the bill took effect due to their departure from the Netherlands. This expansion is incomprehensible and illogical and the legislator must explain this in more detail.

Public welfare institutions (*algemeen nut beogende instellingen*; ANBIs) also fall under the scope of the bill if they have the form of a company or other legal entity. The UBO of an ANBI must therefore also be entered in the UBO register. The Minister indicated in the Explanatory Memorandum that there is no leeway for deviating from the Directive.

Foreign legal persons with a head office or branch in the Netherlands do not have to register their UBO in the Netherlands. Churches, sole proprietors, legal entities governed by public law (*publiekrechtelijke rechtspersonen*) and informal associations also do not fall under the obligation to register their UBO.

With regard to mutual funds (*fondsen voor gemene rekening*) the Explanatory Memorandum notes that these will fall under the obligation for trusts and similar legal arrangements to obtain information about their UBO and to enter this in a central register. These obligations will be implemented at a later date, in any case before March 2020.

Lastly, the Explanatory Memorandum emphasizes that a trust office foundation (*Stichting administratiekantoor*, STAK) will also fall under the scope of the registration obligation, as it was incorporated as a foundation.

3. Information in the UBO register

Some of the UBO data to be included in the UBO register will be made public (the so-called specific data):

- a. name;
- b. month and year of birth;
- c. country of residence;
- d. nationality; and
- e. the nature and extent of the economic interest held by the UBO.

With regard to the nature and extent (point e), the range within which the economic interest falls will have to be reported: 25% up to but not including 50%, 50% up to but not including 75% or 75% up to 100%. No monetary amounts are mentioned.

Besides the standard data, additional information must also be reported in the register. This data will only be accessible to competent authorities and the Financial Intelligence Unit (*Financiële Inlichtingen Eenheid*), which all have a confidentiality obligation:

- a. date of birth, place of birth and country of birth;
- b. address;
- c. if the following has been issued: the Citizen Service Number (*Burgerservicenummer*; BSN) and a foreign Tax Identification Number (TIN);
- d. copies of documentation verifying the UBO's identity.
- e. copies of documentation substantiating why a person has the status of UBO and showing the nature and size of the economic interest held by the UBO.

4. Data protection

In the bill, the Minister did not respond to the criticism voiced about data privacy during the consultation proceedings. UBOs can submit requests for data protection in the UBO register to the Chamber of Commerce, whereby they must show that one of the following situations is present:

1. exposure to a disproportionate risk;
2. a risk of fraud, kidnapping, blackmail, extortion, violence or intimidation;
3. minors are involved; or
4. other types of legal incapacity.

Until a decision on a data protection request becomes irrevocable, the UBO information in question will not be published.

5. Information that does not have to be registered, but does have to be updated

The obligation to report UBOs in the UBO register differs from the obligation to obtain and update UBO information. The obligation to obtain and update UBO information applies to the entities with a registration obligation listed under 2 above and also to owners' associations (*verenigingen van eigenaren*), churches and other legal entities governed by private law (*privaatrechtelijke rechtspersonen*). All these entities should obtain both the specific and the additional data from the UBO and are obliged to keep it up-to-date.

6. Penalties

The failure to comply with the obligation to register UBOs with the Trade Register is subject to both criminal and administrative penalties. According to the Minister, criminal penalties are necessary if aggravating circumstances occur, for example deliberately reporting wrong information about the UBO.

7. Implementation

The UBO register must be implemented no later than January 10, 2020. After the implementation Act has taken effect, all companies and legal entities registering with the Trade Register must also immediately register their UBO in the UBO register.

Existing companies and legal entities must initially report their UBO data in the UBO register within 18 months after the implementation Act takes effect. If the implementation Act takes effect on January 10, 2020, then this initial data must be reported no later than July 10, 2021. If the bill takes effect earlier, the registration will

also be moved up accordingly. It is unclear whether any changes in the UBO during the period between the date on which the implementation Act takes effect and the initial registration must also be entered in the UBO register.

If you have any questions about the above or about how the UBO register will affect your situation, please feel free to contact Meijburg Legal. We would be pleased to help you analyze how the UBO concept and the UBO register will affect your personal situation.

Meijburg Legal
April 2019

The information contained in this memorandum is of a general nature and does not address the specific circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.