

Bill on implementation of UBO register presented for public consultation

On March 31, 2017 the draft bill on the Registration of Ultimate Beneficial Owners Implementation Act (hereinafter: the bill) was presented for [public consultation](#). The bill seeks to implement the obligation to maintain a central register with information on the ultimate beneficial owners (hereinafter: UBOs) of companies and other legal entities incorporated in the Netherlands. This obligation stems from European Directive 2015/849 (hereinafter: the Directive) on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

Below we briefly summarize what the most important consequences will be if the bill is introduced in its current form. Incidentally, the draft text of the associated Order in Council (*algemene maatregel van bestuur*), which explains many of the definitions used, is not yet available.

Definition of UBO

The bill defines a UBO as an individual who is the ultimate owner of or has control over a business or legal entity. No specific percentage is stated in respect of the size of shareholding or control. Just who the UBO for each type of business and legal entity is, will be laid down in an Order in Council. At present, it is thus still uncertain whether the [previously published](#) percentage of 25% shareholding or control still applies or whether a lower percentage may apply.

Entities for which UBO information will be registered

With regard to the entities for which UBO information must be entered in a register, these will as much as possible be in line with the entities referred to in Sections 5 and 6 of the Commercial Register Act 2007: businesses established in the Netherlands and legal entities with a registered office in the Netherlands, according to their articles of incorporation. In addition, the Minister refers to the mutual fund as an example of an entity that could fall within the scope of the UBO register. The details of the UBOs of one-person businesses, owners' associations and legal entities governed by public law will (for the time being) not be entered in the UBO register.

Provision of information

Entities that will be obliged to provide information on their UBOs must continuously monitor whether this information is still accurate. Failing to provide information about a UBO, providing information that is inaccurate or incomplete, or not providing this information on time is a financial offense. UBOs must cooperate with the provision of the information. It is proposed giving effect to the obligation to ensure that the UBO information in the central register is adequate, accurate and up-to-date by introducing an obligation to report back for *Wwft* institutions (institutions that fall under the Money Laundering and Terrorist Financing Prevention Act; *Wet ter voorkoming van witwassen en financieren van terrorisme*; *Wwft*), designated competent authorities and the Financial Intelligence Unit. This obligation to report back means that the above institutions must notify the Commercial Register if they have any doubts about the accuracy or the absence of certain UBO information. After all, by virtue of the *Wwft* these institutions can access information about UBOs from sources other than the Commercial Register.

UBO information to be recorded

The following details about a UBO must, in any case, be recorded: name, month and year of birth, nationality, State of residence, and the type and size of the economic interest held by the ultimate beneficial owner (hereinafter: the limited set of data). The following data will supplement this information: date of birth, place and country of birth, address, and Citizen Service Number or foreign tax identification number. Furthermore, this must include copies of documents verifying the identity of the UBO, which serves to substantiate why a person has the status of a UBO and shows the type and size of that interest. The forthcoming Order in Council will elaborate on this in more detail.

Access

In principle, everyone will be able to access the limited set of data. Certain authorities and the Financial Intelligence Unit will have access to additional information that is relevant for their monitoring and investigation activities. Access to UBO information is accompanied by safeguards for the protection of the privacy of the registered UBOs.

- 1) Parties accessing the register will be registered insofar as they are not designated competent authorities or the Financial Intelligence Unit.
- 2) A fee will be charged to inspect the register.
- 3) Parties other than designated competent authorities and the Financial Intelligence Unit will be granted access to the limited set of data on UBOs prescribed by the Directive as a minimum.
- 4) All the information about a UBO, except that on the type and size of the economic interest held by the UBO, will be blocked if a UBO is a minor, otherwise (demonstrably) legally incapacitated, or if by making the information publicly available this would risk the person being exposed to fraud, kidnapping, blackmail, violence or intimidation.

Effective date

Pursuant to the 4th Anti-Money Laundering Directive, the legislation must be implemented no later than June 26, 2017. Whether this is feasible remains to be seen. The entire legislative process must be carefully completed and the Commercial Register will subsequently have to implement the UBO register.

As stated above, this concerns a draft bill. We will of course keep a close eye on the legislative agenda and update you on its progress. We will inform you further as soon as the bill and accompanying Orders in Council become available. If you have any questions about the bill or what it means for you, please get in touch with Meijburg & Co and Meijburg Legal.

Meijburg & Co en Meijburg Legal
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