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Dutch Ultimate Beneficial Owner (UBO) Trust Register Implementation

This GT Alert expounds on the implementation of the Dutch register of ultimate beneficial owners (UBOs) of trusts and similar legal arrangements (trust register). The obligation to arrange a trust register derives from the Fifth Money Laundering Directive ((EU) 2018/843) (5MLD). The aim of the trust register resembles the aim of the [UBO register](#); preventing the financial system from being used for the purposes of money laundering or terrorist financing.

The Dutch Implementing Act for the trust register (the draft Bill) is currently under internet consultation.

This GT Alert covers:

- The obligation to register and maintain information on UBOs and trusts or similar legal arrangements.
- Registration requirements, timing of registration and access to registered information.
- Reporting obligations where there are discrepancies in registered information.
- Applications to shield UBO information and information about the trust or similar legal arrangements from public access.
- Ongoing obligations and sanctions.

What qualifies as a trust or a similar legal arrangement?

Trust

According to the Hague Convention on the Law Applicable to Trusts and on their Recognition, the term ‘trust’ refers to the legal relationship created – *inter vivos* or on death – by a person, the settlor, when assets have been placed under the control of a trustee for the benefit of a beneficiary or for a specified purpose. A trust has the following characteristics:

- The assets constitute a separate fund and are not part of the trustee’s own estate;
- Title to the trust assets stands in the name of the trustee or in the name of another person on behalf of the trustee;
- The trustee has the power and the duty, in respect of which he is accountable, to manage, employ or dispose of the assets in accordance with the terms of the trust and the special duties imposed upon him by law.

The reservation by the settlor of certain rights and powers, and the fact that the trustee may himself have rights as a beneficiary, are not necessarily inconsistent with the existence of a trust.

Similar legal arrangements

Under the draft Bill, legal arrangements equivalent to a trust will also be obliged to register themselves and their UBOs.

Article 2(3) of the draft Bill defines two types of similar legal arrangements:

- An arrangement that meets the following characteristics:
 - A fund established by agreement or a combination of agreements, without legal personality and excluding enterprises or legal entities as defined in the Trade Register Act 2007;
 - The accumulation of capital by participants;
 - The assets are invested or used otherwise for joint account for the benefit of the beneficial owner(s) of the fund; or
- A legal arrangement included in the consolidated list referred to in Article 31(10) of the 5MLD.

For Dutch entities, the explanatory memorandum clarifies that similar legal arrangements cover open-end and closed-end mutual funds (*open en gesloten fondsen voor gemene rekening*).

If a similar legal arrangement is established in the form of a legal entity or a partnership, such as a Trust Office Foundation (*Stichting Administratiekantoor*), the UBO registration obligation for companies and other legal entities applies and not the UBO trust registration obligation.

Who qualifies as a UBO within a trust and a similar legal arrangement under the trust register?

According to article 3(e) of the Implementation Decree Money Laundering and Terrorist Financing (Prevention) Act 2018, persons relating to the following categories are considered UBOs, irrespective of the percentage of their interest in the trust:

- The incorporator or incorporators;
- the trustee or trustees;
- in so far applicable, the protector or protectors;
- the beneficiaries or, if it cannot be determined who the individuals benefitting from the legal arrangement or entity are, the group of persons in whose benefit the trust is mainly set up or operating;
- Any other natural person who by way of direct or indirect ownership or by other means exercises ultimate control over the trust.

In respect of similar legal arrangements, the natural persons who are in an equivalent position as listed above shall be considered UBOs of that similar legal arrangement.

What if there is no natural person that meets the requirements of a UBO?

For companies and other legal entities a fallback option is in place whereby, in case no UBO can be identified, a so-called pseudo UBO should be registered, being the management board members of the company or legal entity. This fallback option does not apply to trusts and similar legal arrangements. This means that if there is no natural person that can be identified as UBO based on the abovementioned categories, the trust continues to exist without a UBO.

When do trusts and similar legal arrangements need to be registered?

Trusts or similar legal arrangements need to be registered if:

- The trustee of a trust is a resident or established in the Netherlands; or
- The trustee of a trust is a resident or established outside of the EU and enters into a business relationship or acquires real estate in the Netherlands on behalf of the trust.

An exception to the registration requirement applies if the trust concerned is already registered in the trust register of another EU Member State. This may occur if a trust is established under the law of another EU Member State or if a trust from outside the EU previously acquired real estate in another EU Member State.

Registration requirements

With respect to the information to be included in the trust register, the draft Bill distinguishes between the UBOs of the trust or similar legal arrangements and the trust or similar legal arrangement itself. The information required of the UBOs of the trust or similar legal arrangement mirrors the information required under the bill on the Register of UBOs, this includes:

- Name;
- Date, place and country of birth;
- Home address;
- Place of residence and nationality;
- Dutch citizen service number (BSN) or foreign identification number, as applicable;

- Nature and extent of the economic interest held by the UBO indicated in classes.

For the trusts and similar legal arrangements themselves, the following information must be recorded:

- Name;
- Type;
- Date and place of creation;
- Purpose for which it was created.

Registration timing

If a registration obligation applies, the trustee must comply within one week after the occurrence of the event pursuant to which the obligation to register the UBO arises. The trust is assigned a unique number, which is included in the register. This registration number, which resembles the commercial register number, must be stated on all written communication of the trust.

The draft Bill provides a transitional arrangement relating to the first registration. Rather than the deadline of one week aforementioned, a period of three months after the effective date of the draft Bill will apply to existing trusts. This transitional period is significantly shorter than the period for registration of the UBOs of companies and other legal entities in the UBO register (which was 18 months for existing companies and entities).

Access to registered information

Similar to the UBO register of companies and other legal entities, the trust register will also be accessible to the public. Public access in this context implies that a register is accessible to anyone via the internet. Aside from information regarding the trust or similar legal arrangement itself, the following information is made public:

- Name;
- Month and year of birth;
- Place of residence and nationality; and
- Nature and extent of the economic interest held by the UBO, indicated in classes.

The other data can only be viewed by the Dutch Financial Intelligence Unit and other authorized bodies, such as the Financial Supervisory Authority and investigative authorities.

Reporting obligations

Under the draft Bill, the trustee is responsible to register the UBO information. Due to the trustee being dependent on the UBOs for the collection and maintenance of the requested information regarding those UBOs, an obligation of cooperation will be imposed on the UBOs.

Competent authorities and *Wwft* (*Wet ter voorkoming van witwassen en financieren van terrorisme*) (Anti-Money Laundering and Anti-Terrorist Financing Act) institutions have a duty to report discrepancies. This entails an obligation to report to the Dutch Chamber of Commerce if they encounter any discrepancy between the information in the trust register and the UBO information at their disposal.

Shielding UBO information from public access

A UBO can request that the Dutch Chamber of Commerce shields part of the personal information of the UBO. However, the nature and extent of the interest held by the UBO cannot be shielded. Shielding information relating to the UBO can only be requested for persons under the age of 18, persons under guardianship, and persons protected by the government.

Ongoing obligations and sanctions

Violating the obligations under the draft Bill is considered an economic offence and can be enforced with both criminal and administrative sanctions. Additionally, an order subject to a penalty for noncompliance can be imposed. Intentional violations can lead to a prison sentence of up to two years, community service, or a fine.

**This GT Alert is limited to non-U.S. matters and law.*

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