



July 2015

## Introduction of the UBO Register in the European Union

On May 20, 2015, the European Parliament adopted the fourth EU Anti-Money Laundering Directive (**AMLD**). The AMLD is designed to update and improve the EU's Anti-Money Laundering and Counter-Terrorist Financing laws. Importantly, it does so by introducing the obligation for Member States to ensure that corporate or legal entities established within their territory obtain and hold accurate and current information of their ultimate beneficial owners (**UBO**) in a central register. The AMLD has been published in the Official Journal of the European Union and came into force June 26, 2015. Member States have until June 26, 2017, to implement the AMLD into national law.

### *UBO and UBO register*

The AMLD defines a UBO as "a natural person who ultimately owns or controls the client and or a natural person on whose behalf a transaction is being conducted."<sup>1</sup> This definition is further specified for corporate entities to include the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership of a sufficient percentage of the shares, voting rights or ownership interest in that entity. This includes control or ownership through bearer shareholdings and other means. Persons who ultimately own or control a company listed on a regulated market that is subject to disclosure requirements, do not qualify as a UBO within the meaning of the AMLD.

The AMLD establishes that a shareholding of 25 percent plus one share or an ownership interest of more than 25 percent will be considered an indication of ownership.<sup>2</sup> A shareholding of 25 percent plus one share or an ownership interest of more than 25 percent held by a corporate entity, which is under the control of a natural person(s), or by multiple corporate entities, which are under the control of the same natural person(s), shall be an indication of indirect ownership. Additionally, if no UBO can be identified the natural person(s) holding the position of senior managing official are in principle required to register as the UBO.

<sup>1</sup> Directive (EC) 2015 /849 of May 20, 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing [2015] OJ L141/73. Art. 3 (6).

<sup>2</sup> *Ibid.* Art. 3 (6)(a)(i).

The AMLD requires Member States to put in place an adequate, accurate, and current UBO register of the UBO's of corporate and other legal entities in their territory. The UBO register should contain at least the following information on the UBO:

- > Name;
- > Month and year of birth;
- > Nationality;
- > Country of residence; and
- > The nature and extent of the beneficial interest held.<sup>3</sup>

#### *Accessibility of the UBO register*

Member States are furthermore required to ensure that the information contained in the UBO register is accessible to not only the competent authorities and financial intelligence agencies, but also to obliged entities such as banks, notaries and lawyers conducting their “customer due diligence” duties.<sup>4</sup> Moreover, the information must also be accessible to any person that demonstrates a “legitimate interest.”<sup>5</sup> At the same time, Member States are allowed to deny these obliged entities and persons with legitimate interest access to the UBO information in exceptional circumstances or on a case-by-case basis.

#### *Consequences for shareholder privacy*

The obligation placed upon Member States to maintain a UBO register aims to provide greater transparency in financial transactions. While the AMLD may contribute toward achieving the EU objective in making it more difficult for transactions to mask money laundering activity, it does raise various privacy concerns. The broader availability of information such as an individual's name, month and year of birth, nationality and details on ownership raises significant risks for the inappropriate access to or use of such data. This is primarily due to the fact that any person who can demonstrate “legitimate interest,” may access the UBO register's information. At this point, the EU press release lists “investigative journalists and concerned citizens,” which indicates a broad interpretation of the term “legitimate interest,” although the exact interpretation of “legitimate interest” remains uncertain. Furthermore, the AMLD provides that the only limit to public access to UBO information is exposure to risk of fraud, kidnapping, blackmail, violence, or intimidation. Ultimately, a balance must be found between combating money laundering and protecting the privacy of shareholders.

This *GT Alert* was prepared\* by **Jeroen den Dunnen**. Questions about this information can be directed to:

- > [Jeroen Den Dunnen](mailto:dendunnenj@eu.gtlaw.com) | +31 (0) 20 301 7447 | [dendunnenj@eu.gtlaw.com](mailto:dendunnenj@eu.gtlaw.com)
- > Or your [Greenberg Traurig](#) attorney

*\*Special thanks to Maxime van den Dijssel<sup>‡</sup> for her valuable contribution to this GT Alert.*

*<sup>‡</sup>Not admitted to the practice of law.*

---

<sup>3</sup> *Ibid.* Art. 32 (5).

<sup>4</sup> Under Article 2 (1) of the AMLD, the term “obliged entities” refers to: credit institutions, financial institutions, auditors, external accountants, tax advisors, notaries and independent legal professionals, trust or company service providers, real estate agents, natural or legal persons trading in goods, and providers of gambling services.

<sup>5</sup> Directive (EC) 2015 /849 of May 20, 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing [2015] OJ L141/73. Art. 30(5).

<b>Albany</b> +1 518.689.1400	<b>Denver</b> +1 303.572.6500	<b>New York</b> +1 212.801.9200	<b>Shanghai</b> +86 (21) 6391 6633
<b>Amsterdam</b> + 31 (0) 20 301 7300	<b>Fort Lauderdale</b> +1 954.765.0500	<b>Northern Virginia</b> +1 703.749.1300	<b>Silicon Valley</b> +1 650.328.8500
<b>Atlanta</b> +1 678.553.2100	<b>Houston</b> +1 713.374.3500	<b>Orange County</b> +1 949.732.6500	<b>Tallahassee</b> +1 850.222.6891
<b>Austin</b> +1 512.320.7200	<b>Las Vegas</b> +1 702.792.3773	<b>Orlando</b> +1 407.420.1000	<b>Tampa</b> +1 813.318.5700
<b>Boca Raton</b> +1 561.955.7600	<b>London*</b> +44 (0) 203 349 8700	<b>Philadelphia</b> +1 215.988.7800	<b>Tel Aviv^</b> +972 (0) 3 636 6000
<b>Boston</b> +1 617.310.6000	<b>Los Angeles</b> +1 310.586.7700	<b>Phoenix</b> +1 602.445.8000	<b>Tokyo‡</b> +81 (0)3 3216 7211
<b>Chicago</b> +1 312.456.8400	<b>Mexico City+</b> +52 (1) 55 5029.0000	<b>Sacramento</b> +1 916.442.1111	<b>Warsaw~</b> +48 22 690 6100
<b>Dallas</b> +1 214.665.3600	<b>Miami</b> +1 305.579.0500	<b>San Francisco</b> +1 415.655.1300	<b>Washington, D.C.</b> +1 202.331.3100
<b>Delaware</b> +1 302.661.7000	<b>New Jersey</b> +1 973.360.7900	<b>Seoul∞</b> +82 (0) 2 369 1000	<b>Westchester County</b> +1 914.286.2900
			<b>West Palm Beach</b> +1 561.650.7900

*This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. \*Operates as Greenberg Traurig Maher LLP. \*\*Greenberg Traurig is not responsible for any legal or other services rendered by attorneys employed by the strategic alliance firms. +Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ∞Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. ^Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. ‡Greenberg Traurig Tokyo Law Offices are operated by GT Tokyo Horitsu Jimusho, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ~Greenberg Traurig's Warsaw office is operated by Greenberg Traurig Grzesiak sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in Greenberg Traurig Grzesiak sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2015 Greenberg Traurig, LLP. All rights reserved.*