

Implementation of the Ultimate Beneficial Owner (UBO) register in the Netherlands

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This note explains the implementation of the Ultimate Beneficial Owner (UBO) register in the Netherlands.

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Scope of this note

This note explains the implementation of the Dutch register of ultimate beneficial owners (UBOs). A UBO is a natural person who is the ultimate owner or who exercises ultimate control over entities or assets.

The obligation to set up a UBO register stems from the *Fourth Money Laundering Directive ((EU) 2015/849)* (4MLD), as amended by the *Fifth Money Laundering Directive ((EU) 2018/843)* (5MLD). The UBO register aims to prevent the financial system from being used for the purposes of money laundering or terrorist financing.

This note covers:

- The obligation to register and maintain information on UBOs and which entities must comply with it.
- Registration requirements for UBO information.

- Reporting obligations by regulators where there are discrepancies in registered information.
- Applications to shield or protect UBO information from public access.

Which entities must register UBOs?

A UBO is a natural person who is the ultimate owner or who exercises ultimate control over entities or assets (see [Who qualifies as a UBO?](#)).

The following Dutch entities will be required to register their UBOs:

- BVs (*Besloten Vennootschappen*) (private limited companies) and NVs (*Naamloze Vennootschappen*) (public limited companies), except listed companies and their 100% directly and indirectly wholly owned subsidiaries.
- European companies (SEs) and European co-operative societies (SCEs) having their registered office in the Netherlands.
- Foundations (*stichtingen*).
- Associations (*verenigingen*).
- Co-operatives (*coöperaties*).
- Mutual insurance associations (*onderlinge waarborgmaatschappijen*).
- Private partnerships (*maatschappen*).
- Limited partnerships (*commanditaire vennootschappen*).
- General partnerships (*vennootschappen onder firma*).
- European economic interest groupings (EEIGs).
- Ship owning partnerships or associations (*rederijen*).
- Dutch-qualified Public Benefit Organizations (PBO, or *Algemeen Nut Beogende Instelling* (ANBI)). Although a PBO has no UBO, as its sole beneficiary is the public benefit, its board members must nevertheless be included in the UBO register. The register will state that the directors do not "own" the PBO.

For more information on Dutch trading vehicles, see [Practice note, Trading vehicles: overview \(The Netherlands\)](#).

Trusts and mutual funds

Trusts (with a trustee domiciled in the Netherlands, or representing a trust in a commercial transaction or the acquisition of real estate in the Netherlands) and Dutch mutual funds (*fondsen voor gemene rekening*) will soon also be obliged to register their UBOs on the basis of a separate Bill, which was distributed for consultation on 17 April 2020 ([Implementation Act on the registration of beneficial owners of trusts and similar legal structures \(Implementatiewet registratie uiteindelijk belanghebbenden van trusts en soortgelijke juridische constructies\)](#)).

Do foreign legal entities have to register UBOs?

Only legal entities that are incorporated in the Netherlands under the incorporation principle will be obliged to register their UBOs in the Netherlands.

Dutch corporate law determines the nationality of a legal entity, and thus the law which will govern its existence and validity, based on the law of the state or country of its incorporation. Consequently, entities incorporated under Dutch law that migrate to another jurisdiction will remain in principle Dutch entities.

Conversely, entities incorporated outside of the Netherlands, but which migrate into the Netherlands, remain subject to the law of the state or country of their incorporation (see *Practice note, Overseas companies: establishing a presence in the Netherlands: Companies incorporated under the Companies Formally Registered Abroad Act*). Such "formally foreign legal entities" are required to file their accounts in the Netherlands in the same way a Dutch entity would be obliged to, and this obligation rests on the managing directors (see *Practice note, Directors' duties (The Netherlands): Duties relating to registration and incorporation*). However, formally foreign legal entities are not legal entities incorporated under Dutch law. Therefore, they will not be obliged to register their UBOs in the Netherlands. The same applies to branches of foreign entities registered in the Netherlands (see, *Practice note, Overseas companies: establishing a presence in the Netherlands: Branch (filiaal)*).

Who qualifies as a UBO?

The Dutch law definition of a UBO is provided in the general *Dutch Anti-Money Laundering and Terrorism Financing (Prevention) Act (Wet ter voorkoming van witwassen en financieren van terrorisme)* (Dutch AML Act) and in secondary legislation (the *Wuvt Implementation Decree 2018 (Uitvoeringsbesluit Wuvt 2018)*). It includes natural persons within the entities listed above (see *Which entities must register UBOs?*). The legislation provides criteria by type of entity that determine who qualifies as a UBO and must therefore be registered in the UBO register.

Generally, individuals with an ownership interest of more than 25% in an entity will be considered UBOs. In certain circumstances, individuals holding less than 25% may also be considered UBOs.

Different rules apply to trusts, or trust-like structures (see *Trusts*).

NVs and BVs

For private limited companies (BV's) and public limited companies (NV's), as well as comparable other legal entities such as European public limited companies and European co-operative companies, UBOs are those individuals (natural persons) who directly or indirectly hold more than 25% of the shares, voting rights or an ownership interest in the company.

However, an individual holding less than 25% of the shares, voting rights or ownership interest in a company can also be classified as a UBO if such person has ultimate ownership or control of a company in any another way. If the ultimate ownership of, or control over, a company is held indirectly (for example through another legal person, such as a trust office foundation, or any other structure of legal persons), it is the natural person (or persons) with the ultimate ownership interest or control of that structure that is to be regarded as the UBO.

Individuals who hold bearer shares in a company can also be considered UBOs. If an individual holds a qualifying ownership interest in a corporate entity through depository receipts issued by a Dutch foundation (*stichting administratiekantoor*), the individual will still qualify as a UBO of the company.

Foundations, associations, co-operatives and mutual insurance associations

Foundations, together with associations, mutual insurance associations and co-operatives, are considered "other legal entities". UBOs are the individuals who directly or indirectly have an ownership interest of more than 25% in this type of legal entity, can exercise more than 25% of the voting rights in respect of changes of the articles of association, or who can exercise effective control over the entity. The statutory director of a foundation and association will often also be the UBO.

Partnerships

Natural persons who hold more than 25% of the ownership interest in a partnership such as the general, professional or limited partnership, or who, in more specifically defined cases, can exercise more than 25% of the voting rights regarding changes of the limited partnership agreement or are able to exercise actual control in a partnership, are UBOs. For more information on partnerships generally, see [Practice note, Trading vehicles: overview \(The Netherlands\): Partnerships](#).

Ownership interest includes a right to distribution of the profit or reserves of the partnership, or to a surplus to be distributed after liquidation.

Trusts

With respect to a trust, or trust-like structure (as defined under article 1, paragraph 2 of the [Trust Supervision Act \(Wet toezicht trustkantoren 2018\)](#)), all persons belonging to any of the following categories are considered UBOs, irrespective of the percentage of their interest:

- The incorporator (or incorporators).
- The trustee (or trustees).
- The protector (or protectors).
- The beneficiaries, or where the individuals benefitting from the legal arrangement or entity have yet to be or cannot be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates, irrespective of interest allocated to such beneficiaries individually.
- Any other natural persons exercising ultimate control over the trust by means of direct or indirect ownership or by other means.

Natural persons who meet the UBO threshold, through direct or indirect ownership, or who exercise control over the trust by any other means, also qualify as UBOs.

Registration requirements

All entities who must register their UBOs must ensure the following information about their UBOs is registered at the Trade Register:

- Name.

- Country of residence and nationality.
- Nature and extent of the economic interest held by the UBO (voting rights or ownership interests, ranging from more than 25% to 100%).
- Date, place and country of birth and home address.
- Dutch citizen service number (BSN) or foreign tax identification number, as applicable.

Entities must provide copies of relevant documents used to verify these personal details (such as a copy of the UBO's passport) and any relevant copies of documents evidencing the nature and extent of the economic interest held or documents which provide the basis for ultimate beneficial ownership (*section 35b(2), Trade Register Decree 2008 (Handelsregisterbesluit 2008)* (as amended by the *Implementation Decree on registration of ultimate beneficial owners of companies and other legal entities (Implementatiewet registratie uiteindelijk belanghebbenden van vennootschappen en andere juridische entiteiten)*)). Among other things, this obligation extends to full copies of registers of shareholders (for NVs and BVs), articles of association, registers of depositary receipt holders or members (in the case of associations), instruments and contracts of incorporation, (other) notarial deeds, copy of registrations in the Trade Register and organisational charts.

Registration timing

All newly incorporated entities must provide the required UBO information on registration with the Trade Register. Existing entities have 18 months from September 27, 2020 to register its UBOs with the Dutch Chamber of Commerce. Within those months, the Chamber of Commerce will notify the entities about the obligation to register the UBOs in phases. If the respective entity does not subsequently register its UBOs within the given timeframe, the Chamber of Commerce will send one more notification and will subsequently inform the Economic Enforcement Agency (*Bureau Economische Handhaving*), in case of non-compliance after the second notice. The Agency may send a final notice and may subsequently take enforcement action if needed.

Access to registered information

The personal UBO information such as name, country of residence and nationality (see *Registration requirements*) will generally be available for access by the public, except where the information is shielded from access (see *Shielding UBO information from public access*). All other UBO information will only be accessible to the Financial Intelligence Unit and specific authorities such as the Dutch Central Bank (DNB), the Dutch Financial Supervisory Authority (AFM), the Dutch Public Prosecution Service and the Dutch National Police.

Members of the general public can only access the publicly accessible UBO information with a valid registration and with payment of a fixed fee. The identity of the persons who access the UBO register will be recorded at the Chamber of Commerce. UBOs will be able to see the number of times their information has been consulted. Checks by the Financial Intelligence Unit and competent authorities are excluded from being so disclosed.

Reporting obligations

Where anti-money laundering reporting authorities (such as banks, accountants, tax and legal advisers, or civil law notaries) find any discrepancies between their actual findings resulting from their mandatory AML UBO investigation and the information registered in the UBO register, they must report such discrepancies to the UBO register under the Dutch AML Act. This means that even if a UBO refuses to provide their information to the company

that is obliged to register the UBO, the Trade Register will be updated due to the discrepancy reporting obligations of AML reporting authorities.

Shielding UBO information from public access

In certain cases, otherwise publicly available information may be shielded from public access, for example in relation to a UBO who is underage, lacks legal capacity to act, or is placed on a list of persons for whom the government provides protection (government protection list).

UBOs who believe that the disclosure of their information in the UBO register would pose a disproportionate risk can contact the police or the Public Prosecution Service. The authorities will assess on a case-by-case basis whether government protection is necessary due to the existence of a (credible) threat. Whether a person should be placed on this list is judged by the degree of "seriousness" and "probability" of a threat and by the person's ability to independently counter the threat or risk.

UBOs may have a high burden of proof, certainly in respect of threats posed in jurisdictions other than the Netherlands where a threat assessment cannot be easily made by Dutch authorities. In some cases, access to information will not be shielded because of the nature and extent of the economic interest held by a UBO. The precise criteria applied to determine whether or not an individual's information should be shielded are yet to be developed.

If the competent criminal authority grants a UBO's request for placement on the government protection list, a request to shield access to the UBO information in the Trade Register can be submitted to the Chamber of Commerce by the UBO or on their behalf by the entity obligated to register. No specific form is required to submit the request. The Chamber of Commerce will not consider the merits of such a request and will only verify whether the person concerned has been placed on the list of protected persons. If the UBO has been placed on the list, their UBO data will be shielded for a period of five years.

Until the UBO register procedures have been fully developed, any potentially threatened UBO may wish to consider making a shielding request to the Chamber of Commerce by notifying the competent principal public prosecutor of the need to be placed on the list of protected persons. In some specific situations, having made such a request and filing objections or appeals against a negative decision may offer temporary relief.

Ongoing obligations and sanctions

In addition to the submission of information about their UBOs to the Trade Register, entities must maintain accurate and up-to-date information about their UBOs at the registered office and update the information held by the Trade Register as required. UBOs are obliged to provide all necessary information on the company's request. Foundations are subject to an additional obligation to keep an internal register of distributions (*article 10b, Wvft Implementation Decree 2018*, and *article 2:290, Dutch Civil Code*).

Failure to comply with these obligations may result in the imposition of an administrative fine of EUR21,750 or a penalty payment (or both) (*article 6, paragraph 1(2), Economic Offenses Act (Wet economische delicten)*). Criminal sanctions may apply where there are aggravating circumstances such as fraud. Imprisonment may be for between six months to six years depending on the seriousness of the violation or crime.

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