

# Ultimate Beneficial Owner (UBO) Register: registration and maintenance (The Netherlands)

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# Ultimate Beneficial Owner (UBO) Register: registration and maintenance (The Netherlands)

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This note explains the registration in and maintenance of the Ultimate Beneficial Owner (UBO) register in the Netherlands.

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This note explains which Dutch entities need to register and maintain information on their Ultimate Beneficial Owners in the Ultimate Beneficial Owner (UBO) Register as well as the requirements and deadlines for such registration. This note furthermore explains which entities will be required to register and maintain UBO information in the Trust Register. The Dutch Chamber of Commerce (CoC) has been appointed to maintain and keep UBO registration details in the UBO Register and Trust Register, both of which are a part of the Trade Register which latter register in its turn is held by the CoC.

The obligation to set up and maintain a UBO Register entered into effect on 27 September 2020 and 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 for Dutch entities to register and maintain information on UBOs in the UBO Register and the obligation of trusts to register and maintain information on their UBOs in the Trust Register.
- Who qualifies as a UBO.
- What UBO information must be registered and where.
- Reporting obligations of institutions that are subject to the AML obligations where there are discrepancies found in their onboarding process compared to registered information. (The obligation imposed on regulators to report such discrepancies as well is not covered by this note)
- How to apply to shield or protect UBO information from public access.

## Which Entities must Register UBOs?

The following Dutch entities will be required to register their UBOs in the UBO Register:

- 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 \(The Netherlands\)](#).

## Trust Register

The Trust Register is a separate UBO Register that is part of the Trade Register kept by the CoC for the registration of the UBOs of trusts, as well as mutual funds. These will be required to register UBOs in the Trust Register:

- If a trust has a trustee in the Netherlands.
- If a mutual fund is created under Dutch law (“*fondsen voor gemene rekening (FGR)*”).

## 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*). 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 principle applies to branches of foreign entities registered in the Netherlands (see, Practice note, Overseas companies: establishing a presence in the Netherlands: Branch ( filiaal )).

## Trusts and the Trust Register

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 (*FGR*) are obliged to register their UBOs in the Trust Register on the basis of a bill which was adopted by the Dutch senate on 23 November 2021, being the Implementation law on registration of beneficial owners of trusts and similar legal arrangements (*Implementatiewet registratie uiteindelijk belanghebbenden van trusts en soortgelijke juridische constructies*), which bill in its turn also stems from the 4MLD and 5MLD. The effective date of the new law will be determined at a later stage, but this is assumed to be October 2022, allowing for a transitional period of three months. After the expiry of this transitional period, within one week the trustee will be obliged to register the UBOs (and any later changes as regards them).

## Who Qualifies as a UBO?

A UBO is a natural person who is the ultimate owner or who exercises ultimate control over entities or assets (). 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 *Wwft Implementation Decree 2018 (Uitvoeringsbesluit Wwft 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 Dutch private limited companies (BVs) and public limited companies (NVs), 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 legal entity (*article 35b Handelsregisterbesluit 2008*) The minimum percentage pursuant to which a natural person qualifies as UBO has been provided for by section 3(1)(a) of the Wwft Implementation Decree 2018 (*Uitvoeringsbesluit Wwft 2018*) (WWFT Implementation Decree).

However, the WWFT Implementation Decree also provides that an individual holding less than 25% of the shares, voting rights or ownership interest in a legal entity can also be classified as a UBO if such person has ultimate ownership or control of a company in 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 (for more information on bearer shares, see *Practice note, Shareholders' Rights and Responsibilities: Overview (The Netherlands): Share Capital*) 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 of these legal entities are the individuals who directly or indirectly:

- Have an ownership interest of more than 25%.
- Can exercise more than 25% of the voting rights in respect of changes of the articles of association.
- Can exercise effective control over the entity.

The statutory director of a foundation and association will often also be the UBO.

## Limited Partnerships

UBOs of limited partnerships are natural persons who:

- Hold more than 25% of the ownership interest in a partnership. Ownership interest includes a right to distribution of the profit or reserves of the partnership, or to a surplus to be distributed after liquidation.
- In more specifically defined cases, can exercise more than 25% of the voting rights regarding changes of the limited partnership agreement
- Are able to exercise actual control in a partnership,.

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

## Trusts

With respect to a trust, Dutch mutual funds ( *FGR*) 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, the first four irrespective of the percentage of their interest:

- The incorporator (or incorporators).
- The trustee (or trustees).
- The protector (or protectors).
- Any other natural persons exercising ultimate control over the trust by means of direct or indirect ownership or by other means.
- 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, having an interest of at least 3%. If no individual qualifies as having an interest of 3% or more, the beneficiaries will be defined as a group.

Natural persons who meet the UBO criteria, 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 Registry:

- Name.
- Month and year of birth.

- Country of residence and nationality.
- Nature and extent of the economic interest held by the UBO (voting rights or ownership interests, ranging from 3% up to 25% for the UBO of a trust or FGR, or from more than 25% to 100%.for the UBO of Dutch legal entities.
- Date, place and country of birth and home address.
- For the trust and FGR the e-mail address of the UBO should also be registered.
- 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.

In addition, for registration in the Trust Register a trust or FGR must provide the following information about the entity itself:

- Name and type of the trust or FGR.
- Date and place of its establishment.
- Purpose of the trust or FGR.

The NV and BV entities that are exempted from filing their UBO(s) under the Implementation Decree should notify the Trade Register to that effect, by reporting via filing form number 18 from the Trade Register that the entity is exempted because of its listing or the listing of its direct or indirect 100% parent entity.

## When to Register UBOs?

From 27 September 2020, all newly incorporated Dutch entities must provide the required UBO information on registration with the Trade Register at the CoC.

Existing Dutch entities must register UBOs with the Trade Register at the CoC by 27 March 2022. If the respective entity does not subsequently register its UBOs by this date, the Trade Register will notify the respective entity and will subsequently inform the Economic Enforcement Agency (*Bureau Economische Handhaving*), in case of non-compliance after this notification. The Agency may send a final notice and may subsequently take enforcement action if needed.

## Shielded Access to the UBO Register for Protected Persons

If the competent criminal authority grants a UBO's request for placement on a list of protected persons, a request to shield access to the UBO information in the UBO Register can be submitted to the Chamber of Commerce either by the UBO itself or on its behalf by the entity that must register the UBO information. 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, the UBO data will be shielded for a period of 5 years. Thereafter the UBO may reapply for shielded status

### **Criteria for Shielded Access**

Whilst the principle of protecting certain UBOs by allowing them to shield their information from the public has been set out in the legislation, the criteria to be used when deciding protection applications are still to be developed. At present it is unclear how the legislature, police, and Public Prosecution Service will deal with this issue, since there is no policy on how to judge such applications. Consequently, 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 put on a 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.

### **Access to the UBO Register by General Public**

The general public can only access the publicly accessible UBO information with a valid registration and with payment of a fixed fee of EUR2.50. 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 however, checks by the Financial Intelligence Unit and competent authorities are excluded from being so disclosed.

On 20 January 2022 the Advocate General of the Court of Justice of the European Union issued an opinion on preliminary questions raised by the Luxembourg court regarding the UBO Register. According to the opinion, the UBO information should be made publicly available for the purpose of the fight against money laundering and financing of terrorism, but the UBOs should be entitled to know who has accessed their data. Furthermore, the Advocate General stated that it should be made less complicated for a UBO to request for its information to be shielded.

## **Ongoing Obligations and Sanctions**

In addition to submitting information about their UBOs to the Trade Register, Dutch legal entities must maintain accurate and up-to-date information about their UBOs at the registered office and update the UBO information held by the Trade Register. 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, Wwft 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 EUR 21,750 or a penalty payment (or both) (*article 6, paragraph 1(2), Economic Offenses Act (Wet Economische Delicten)*). Such penalty payment can be a fine of EUR22,500 up to a fine of EUR 90,000 for recurring infringements. 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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