

Ultimate Beneficial Owner (UBO) Register: Registration and Maintenance (The Netherlands)

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Practice notes | **Maintained** | The Netherlands

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

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This Practice 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 Practice Note furthermore explains which entities are 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 turn is upheld by the CoC on behalf of the Dutch Ministries of Finance and Justice & Security.

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 Practice 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 anti-money laundering (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 Practice Note).
- How to apply to shield or protect UBO information from public access.

Which Entities must Register UBOs?

UBO Register

The following Dutch entities are 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*).
- Church denominations (*kerkgenootschappen*).

- 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 (*fondsen voor gemene rekening* (FGR)). Trusts and trust-like structures are required to register UBOs in the Trust Register if:

- It has a trustee in the Netherlands.
- A FGR is created under Dutch law.
- A trust or similar legal arrangement, whose trustee is domiciled or established outside the EU, enters into a business relationship with an AML reporting institution or acquires immovable property in the Netherlands on behalf of the trust or similar legal arrangement.

The obligation to register UBOs in the Trust register in the Netherlands is only applicable if the UBOs have not already been registered in another UBO register within the European Union.

Do Foreign Legal Entities have to Register UBOs in the UBO Register?

Unlike for the Trust Register, only legal entities that are incorporated in the Netherlands under the incorporation principle are obliged to register their UBOs in the Dutch UBO Register.

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, Foreign 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 is, and this obligation rests on the 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 are not obliged to register their UBOs in the Netherlands. The same principle applies to branches of foreign entities registered in the Netherlands (see [Practice Note, Foreign Companies: Establishing a Presence in the Netherlands: Branch](#)).

Trusts and the Trust Register

As of 1 November 2022, all newly incorporated 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 FGRs are obliged to register their UBOs in the Trust Register. This obligation stems from 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 law in its turn also stems from the 4MLD and 5MLD.

Non-compliance with the UBO registration obligations for trusts (such as untimely registration or incorrect registration of information) can result in sanctions such as monetary penalties of more than EUR22,500 and the initiation of criminal investigations against the trustee as well as the defaulting UBOs.

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 therefore must 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 companies (BVs) and public companies (NVs), as well as comparable other legal entities, such as European public 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 *Article 3(1)(a) of the Wwft Implementation Decree 2018 (Uitvoeringsbesluit Wwft 2018)*.

However, the WWFT Implementation Decree also provides that an individual, who holds less than 25% of the shares, voting rights or ownership interest in a legal entity, can also be qualified 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 who qualifies as the UBO.

Individuals who hold bearer shares (for more information, 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.

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 profits 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](#).

Church Denominations

UBOs of church denominations are either:

- Natural persons appointed as legal successors in the constitutional and organizational of the denomination (*statuut*) upon its dissolution.
- If after exhausting all possible means and provided that there are no grounds for suspicion, none of the persons referred to in the bullet above has been identified, or if there is any doubt as to whether a person referred to is the beneficial owner or has control, or is the natural person on whose behalf a transaction is carried out, the natural persons who are listed as directors in the constitutional and organizational documents of the denomination (*statuut*), or, if possible, are listed as directors in the documents of the church denominations.

Trusts

With respect to a trust, a FGR or a trust-like structure (as defined in [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 (or trust-like structure) 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.

Registration Requirements

All entities, which 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.
- Dutch citizen service number (BSN) or foreign tax identification number, as applicable.
- For the trust and FGR the e-mail address of the UBO should also be registered.

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 (*Article 35b Handelsregisterbesluit 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 can so notify the Trade Register, by 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 for registration with the Trade Register at the CoC.

Existing corporate entities, which did not register their UBOs by 27 March 2022, will be notified thereof by the Trade Register and the Trade Register 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.

Suspension of Public Access to UBO Register following ECJ Judgment

On 22 November 2022 the European Court of Justice (ECJ) passed a judgement in the combined Luxembourg cases [C-37/20 Luxembourg Business Registers](#) and [C-601/20 Sovim](#). The Court held that the provision in the 4MLD, as amended by the 5MLD, which requires Member States to ensure that any member of the general public should have access to UBO information, was insufficiently substantiated and therefore invalid.

Following the ECJ decision the Dutch Minister of Finance has asked the trade register (*Handelsregister*) to block public access to the UBO Register until further notice. As a result the UBO Register is temporarily blocked for public access. It can, however, still be consulted based on a request from the public prosecutor.

The obligation to enter information in the UBO Register, and the obligation to keep the information up to date, however, remain as they were. Relevant parties will thus continue to be obliged to register and update the required information in the UBO Register.

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As a result of the ECJ ruling, the general public does not have access to the UBO Register. As a consequence [Article 21 of the Dutch Trade Register Act 2007](#) should be amended to limit the accessibility to the UBO Register to competent authorities and the Finance Intelligence Unit (FIU), AML reporting institutions, and individuals as well as organizations that can demonstrate a legitimate interest. To this end, a draft legislative proposal is expected to be published in the summer of 2023.

The Dutch Minister of Finance states that the same considerations apply around public access to the information in the UBO-register for trusts. Therefore, the UBO-register for trusts will also not be accessible to the general public. To that end, the relevant law will also be amended.

Reporting Obligations Of Institutions Subject To AML

As of 28 March 2022, AML-regulated institutions are obliged to have an extract from the UBO Register on file when entering a new business relationship with a new client. This has also been applicable to existing clients from 1 September 2022.

Since access to the UBO Register is currently restricted for AML-institutions, AML-institutions are obliged, if an extract from the UBO-register is not available to the client, to establish that the declaration has been made, with the client's explanation which UBO data and underlying documentation were thereby provided.

AML-regulated institutions must report to the UBO Register any discrepancies found between information about a client's UBO that they have on file and the information as included in the UBO Register. If AML-institutions are not able to consult the UBO Register, they cannot and are not obliged to perform his reporting obligation.

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, Dutch Anti-Money Laundering and Terrorism Financing (Prevention) Act* 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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RESOURCE HISTORY

Updated following ECJ ruling (combined cases C 37/20 and C 601/20) as a result of which public accessibility of the UBO register has been suspended until further notice..

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