

IMPLEMENTATION OF THE UBO-REGISTER IN THE NETHERLANDS

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On March 31, 2017 the Dutch draft legislative proposal on the implementation of the ‘UBO-register’ (“the proposal”) has been presented for consultation. The UBO-register will include information on the ultimate beneficial owners (“UBOs”) of – both small and big – companies and legal entities and is intended to prevent financial and economic crime and promote legal certainty.

INTRODUCTION

The Dutch proposal regarding the UBO-register is a result of the international consensus to prevent financial and economic crime and promote legal certainty, codified in the European Union Fourth Anti-Money Laundering Directive (the “Directive”). Based on the proposal, companies and legal entities will be obliged to register their (in)direct ultimate beneficial owners in the new UBO-register.

The UBO-register is a central register containing information on Ultimate Beneficial Owners of corporate and other legal entities incorporated in the Netherlands and will form an integral part of the Dutch trade register. UBO-register will be managed by the Dutch Chamber of Commerce. An important part of the information included in the UBO-register will be publicly accessible.

DUTCH TRADE REGISTER

The Dutch trade register managed by the Dutch Chamber of Commerce – which has been around for years – proves that registration of the information of corporate and other legal entities in a public register is nothing out of the ordinary. The Dutch trade register contains information on who the directors of a company are, the name of the sole shareholder, the filed annual accounts and concern relations.

Contrary to the proposed UBO-register, the central register at the Dutch trade register records only the sole shareholders of

companies and legal entities. As a result, it has proven to be (nearly) impossible to determine the shareholders of such companies and legal entities if they have more than one shareholder.

ULTIMATE BENEFICIAL OWNER

The UBO-register requires the identity of the natural person who is entitled to a legal entity, or who exercises control over it, to be determined. Ultimate beneficiaries are in any case considered to be shareholders if they are (directly or indirectly) entitled to more than 25% of the shares or voting rights, or if their shareholding exceeds 25%. If no beneficiary or owner can be identified - in the most extreme case - a natural person who is part of the senior executive management will have to be considered the UBO.

QUALIFYING COMPANIES FOR UBO-REGISTRATION

Under the proposal approximately 1,5 million companies and legal entities will have the obligation to register their UBOs. The Dutch UBO-register will contain information on the UBOs of (i) enterprises in the Netherlands and (ii) legal entities with their official seat in the Netherlands pursuant to their articles of association. Examples of such companies and legal entities incorporated under Dutch law are:

- BVs;
- NVs (non-listed);
- Foundations (including public benefit organizations (“ANBIs”));
- associations which are registered in the Dutch trade register;
- partnerships; and
- cooperatives.

According to the explanatory memorandum the possible UBO-registration of mutual funds is still being examined.

The draft legislative proposal expressly states that there will be no register for trusts (or entities

similar to a trust) as Dutch law does not recognize these legal concepts. Furthermore - under the proposal - foreign legal entities with a branch office- or their principal place of business in the Netherlands are not required to register their UBOs. Other entities and companies without an UBO (registration) are: mutual funds, public entities, associations of owners, religious communities and certain historical legal entities.

REGISTRATION OF UBO-INFORMATION

The obligation to register the UBO-information rests with the person who owns the company or each of the board members. If no board members exist, the daily management of the company is responsible for the obligation to register the UBO. The UBO registration requirement must be met at the first registration of new legal entities and companies.

Just like the owner of the company or the board members, an obligation to report rests with e.g. notaries, attorneys and banks. Non-compliance in this respect is considered an economic offence and as such could lead to the imposition of an administrative fine or an incremental penalty. The information reported by e.g. notaries, attorneys and banks must in principle be accessible by the tax authorities.

According to the Directive, the UBO-information accessible to the public will be limited to:

- full name;
- date and year of birth;
- nationality;
- country of residence; and
- nature and scale of the economic interest (25%-50%, 50%-75% or 75%-100%).

In addition to the above the following additional information about the UBO needs to be provided, which is only accessible to e.g. notaries, attorneys and banks:

- day of birth, place of birth and country of birth;
- full address;
- Citizen Service Number (BSN) or tax identification number;
- copy passport and proof of address; and
- justification for the scale of the economic interest.

The information listed above will have to be filed with the UBO-register within 18 months following the entry into force of the Bill by UBO Entities existing at that time. The UBO-register will be digital as it is meant to meet the modern-day needs and aims to ensure more transparency, greater data reliability and cost efficiency. To ensure data reliability, the register will solely contain information registered by civil law notaries and originating from or relating to notarial deeds.

SAFEGUARDS PROVIDED FOR THE UBO

Suggestions included in the proposal meant to safeguard the privacy and safety of the UBOs are:

- registration of the customers;
- payment of a fee for the access to the register;
- only the minimum information is accessible to the public;
- there cannot be searched by personal name, only by name of the legal entity or the company; and
- protection of information, except the nature and scale of the interest, upon request to the Dutch Chamber of Commerce: in case of a minority, legal incapacity, risk of fraud, kidnapping, blackmailing, violence or intimidation.

PROPOSED DUTCH CENTRAL SHAREHOLDERS' REGISTER

On January 19, 2017 the bill concerning the Dutch central shareholders' register ("CSR") was presented to the Dutch Lower House. The CSR can be considered complementary to the UBO-register.

The CSR will be a system for centralizing and gathering information about shares, shareholders, usufructuaries and pledgees of BVs and non-listed NVs. This register will be solely accessible by the Dutch tax authorities, other designated authorities and notaries, and is intended to help the authorities address certain forms of financial and economic violations. Please note that the CSR is in no way meant to replace a company's own register of shareholders that is maintained for a company's own internal purposes.

Contrary to the UBO-register - in which merely interests of 25% or more will be registered - the CSR covers all interests. However, solely direct shareholdings participations will be registered in the CSR. Unlike the CSR, the UBO-register also covers indirect participations.

Finally, the UBO-register and CSR are different in terms of how they are provided with information. UBOs are required to provide information themselves, while the CSR relies on the notarial deeds provided by the responsible notaries. Any information that contributes to achieving the goal of the CSR must be submitted. The CRS shall be placed within the domain of the Dutch Royal Notarial Association.

TIMING AND FUTURE DEVELOPMENTS

Based on the directive, all EU Member States must have implemented an UBO-register by June 26, 2017. Although the Dutch government indicates it wants to implement the UBO-register in the Netherlands as soon as possible, no outline of a specific time schedule is provided in the proposal. The Dutch Chamber of Commerce has indicated to reserve 2,5 years for the implementation of the new register.

Finally, please note that the European Commission has proposed additional requirements based on which e.g. (i) for passive non-financial entities, the minimum required shareholding percentage would be set to 10% (instead of 25%) and (ii) the amount of information accessible to the public would be increased. Although the Dutch government has indicated not to be in favor of the proposed additional requirements, further developments in this regard can be expected. The current Dutch UBO-register proposal does not include any of the additional requirements proposed by the European Commission.

CONTACT

If you have any questions regarding the UBO-register, or if you would like to make an appointment for a free and nonobligatory consultation, please contact Harm Kolen (tel: +31 (6) 51467251, e-mail: kolen@govers.nl) or your Govers Accountants/Advisors consultant.

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