

A stack of several thick, white books with dark spines, positioned on the right side of the page. The books are slightly out of focus, creating a sense of depth.

The Dutch UBO-register

On April 4, 2019, the Dutch Finance Minister has published a legislative proposal in connection with the Dutch implementation of the 4th Anti-Money Laundering Directive (the "**Directive**"). Pursuant to the Directive, each EU member state should establish a register in which the details of so-called 'ultimate beneficial owners' ("**UBO's**") of certain legal entities are registered. Important to note is that each member state may use a different UBO-definition.

The Directive states for example that a shareholding or an ownership interest of more than 25% qualifies as an indication of ownership or control, but that member states may decide that a lower percentage is applicable. Each member state may also – although on a very limited basis – decide on the details of the information registered and the accessibility of this information. As each member state may implement the UBO-register in a different way, each UBO-register will be different. Below we provide an overview of the characteristics of the 'UBO-register' in the Netherlands.

The UBO-register

The UBO-register entails – in short – that Dutch legal entities, including but not limited to Dutch B.V.'s, N.V.'s, cooperatives and limited partnerships should register certain information of their UBO('s) with the trade register of the Dutch Chamber of Commerce in a publicly accessible register. Pursuant to Dutch law, a UBO is a natural person who (i) has more than 25% of the shares or voting rights, (ii) holds more than 25% of the economic interest, or (iii) has effective control over an entity. Important to note is that an entity can have more than one UBO. Entities that are obliged to register a UBO should always register a UBO, even if it is not possible to identify a UBO based on aforementioned criteria. In such case, one or more natural persons of the board of directors of the entity should be appointed as so-called 'pseudo-UBO('s)'.

The following information of the UBO('s) shall be publicly accessible:

- the name;
- the month and year of birth;
- the state of residence;
- the nationality; and
- the nature and size of the interest of the UBO in the respective entity.

In addition, the UBO-register shall contain certain non-publicly accessible information, such as the address, and the national fiscal identification number (BSN) or a foreign fiscal identification number of the UBO. The competent authorities and the Dutch Financial Intelligence Unit shall have access to such non-public accessible information.

Exceptions

Some exceptions apply to the registration of (pseudo-)UBO information with the trade register of the Dutch Chamber of Commerce. First of all, Dutch B.V.'s and Dutch N.V.'s are exempted from registering their UBO('s) in case they are subjected to the Transparency Directive (2004/109/EC, and amended by 2013/50/EU), i.e. listed entities, or if these entities are subject to comparable international standards. According to Dutch legal literature, the United States of America, Australia, Canada, Japan and Singapore can be considered to have comparable international standards. Another exception applies to one hundred percent subsidiaries of aforementioned listed companies as the UBO of such subsidiary is the same as

the UBO of its parent company. If also a subsidiary of a one hundred percent subsidiary of an exempted listed company – i.e. an indirect subsidiary of a listed entity – may use this exception is currently unclear (see hereafter).

Examples

Holding entity for listed shares

Although listed companies are in principle exempted from registering their UBO('s), this exception does not apply to shareholders of such listed entity. This means that a holding company that holds an interest in a(n) (exempted) listed company should still register information of its UBO('s) with the trade register of the Dutch Chamber of Commerce. As most families/founders hold their shares in listed companies through a holding company, they will be required to register themselves as UBO's of such holding company.

Indirect subsidiaries of listed companies

As described above, one hundred percent subsidiaries of exempted listed companies are not obliged to register their UBO('s) with the trade register of the Dutch Chamber of Commerce. It remains to be seen if this exception also applies to wholly owned subsidiaries of subsidiaries of (exempted) listed companies (or other indirectly wholly owned subsidiaries of the (exempted) listed companies). One could argue that in view of the rationale of aforementioned exception (i.e. enough transparency is already provided in view of the requirements of the Transparency Directive), the exception should also apply to indirectly wholly owned subsidiaries of listed entities.

Searching for UBO's

The Dutch UBO-register will not make it possible to search for a name of a person and to receive an overview of all the entities for which that person is registered as a UBO. It is however expected that privately managed registers will provide for such option, and as consequence thereof it will be possible to – relatively easy – receive an overview of a UBO and the nature and size of that UBO's interests in Dutch legal entities.

Privacy

As the UBO-register shall make certain personal details of UBO's publicly accessible, it affects the privacy of the individuals registered as a UBO in the UBO-register. Therefore, the Dutch Chamber of Commerce can be requested to block data registered in the UBO-register. Such request may be approved if:

- the UBO is exposed to a disproportionate risk;
- a risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation exists; or
- the UBO is a minor or the UBO is otherwise legally incapacitated.

Timeline and actions

Ultimately on January 10, 2020 the legislative proposal should enter into force. As of the date of the entry into force, entities shall have a period of 18 months to register their UBO('s) with the Dutch Chamber of Commerce. It is however likely that the Dutch Chamber of Commerce will request entities to register their UBO('s) prior to this deadline of 18 months.

The legislation concerning the implementation of the UBO-register has been revised multiple times, and as a consequence thereof, it is recommended to solely rely on the most recent legal literature and the UBO-legislation itself.

Should you have any questions with regard to impact of the new UBO-legislation for your organization, we are of course willing to discuss your questions during a call.

Contact:

Caspar van der Winden
Lawyer | Corporate M&A
T: +31 6 21252422
E: caspar.van.der.winden@hvglaw.nl

Contact:

Nick van Dijk
Candidate Civil Law Notary |
Corporate M&A
T: +31 6 21252451
E: nick.van.dijk@hvglaw.nl

HVG Law

About HVG Law

HVG Law LLP (HVG Law) ranks amongst the top Dutch law firms and is characterized by an entrepreneurial, innovative and solution-driven approach. With more than 150 dedicated and pragmatic lawyers, including (Candidate) Civil Law Notaries, HVG Law offers high-quality, legal services in a broad and multidisciplinary context. Our lawyers are active in all legal areas and sectors relevant to business, directors, shareholders and government authorities and have knowledge of your business and your market.

At our offices in Amsterdam, Rotterdam, Utrecht, Den Haag, Eindhoven, New York, Chicago and San Jose (i.e., Donahue & Partners LLP in the USA), we are able to offer our legal services to national and international clients. HVG Law is part of the global EY Law network and we have a strategic alliance in the Netherlands with Ernst & Young Belastingadviseurs LLP.

hvglaw.nl

© 2019 HVG Law LLP