

## UBO register update

Draft legislation on the UBO register was published for consultation on 31 March 2017. The register will record the ultimate beneficial owners (UBOs) of legal entities and enterprises. This update explains how this will affect you.

### What is the reason for the UBO register?

The introduction of the UBO register is a European requirement. The aim is to prevent the financial system from being used for money laundering, financing terrorism or other crimes such as fraud, corruption, etc. The UBO register is designed to identify the UBOs of companies and enterprises in Europe. It is envisaged that greater transparency will prevent abuse of the financial system.

### Who is a UBO?

The ultimate beneficial owner is a natural person who is the ultimate owner or who has control of an enterprise or legal entity. The proposed Dutch legislation does not yet quantify the ownership percentage but currently **an interest of more than 25% is expected.**

### Which legal entities and enterprises have to register their UBO?

Public and private limited liability companies, foundations, associations registered with the Chamber of Commerce, shipping companies, general and limited partnerships, co-operatives, mutual insurance societies, European Economic Interest Groupings, European companies and European co-operative societies.

### Which legal entities and enterprises do not have to register their UBO?

Sole traders, public-law entities, residential owners' associations, certain historical entities (alms houses, agricultural markets, guilds) and religious communities. The fund for joint account (in Dutch: 'Fonds voor gemene rekening' (FGR)) is currently exempt from registration but this is being examined further. For the time being, the

Netherlands is not introducing a UBO register for trusts and similar entities. Non-resident legal entities and enterprises, including those in the Dutch Caribbean (Bonaire, St. Eustatius, Saba), will not be part of the Dutch UBO register.



### When must the UBO be registered by?

The reference date for registering a UBO is **26 June 2017**. The legislation will take effect and the information in the register on the UBO must be maintained from that date. The UBO information must have been provided to the Trade Register of the Chamber of Commerce by Christmas 2018. The Chamber of Commerce expects that the UBO information will be available online a year later.

### Who has to make the registration on behalf of the legal entity or enterprise?

Each of the **directors or owners of a legal entity or enterprise** is responsible for such registration and the UBO must co-operate. Institutions covered by the Money Laundering and Anti-Terrorism Financing Act (Wwft), such as banks, insurance companies, civil-law notaries, real estate agents, tax advisers, etc., and competent authorities and the Financial Intelligence Unit ('FIU') are required to notify the Chamber of Commerce if they doubt the accuracy of UBO information.

### Penalties?

Full or partial failure to register the UBO, or late registration, is an economic crime subject to a fine of up to €20,500 or a prison sentence of up to two years.



### What is in the UBO register and who can inspect it?

The UBO's name, month and year of birth, nationality and country of residence and the nature and extent of the interest held by the UBO (in bands from 25% to 50%, from 50% to 75% and from 75% to 100%) will be public. **Anyone will be able to search on the name of a legal entity or enterprise.**

Only authorised government bodies and the FIU will be able to search on the name of a UBO and have access to additional information such as the date, place and country of birth, address, citizen service number or foreign tax identification number and underlying documentation.

### Privacy safeguards

A request to protect UBO information may be submitted to the Chamber of Commerce in respect of UBOs who are minors, incapability on other grounds or where there is a risk of fraud, kidnapping, blackmail, violence or intimidation. Searchers will be recorded, there will be an inspection fee and, as noted above, only the government and FIU will have access to the full information and the ability to search on the name of the UBO.

### Is privacy adequately protected?

The percentages of the interests that people hold in legal entities and enterprises will be public in the UBO register. By referring to annual reports and accounts that are publicly available at the Chamber of Commerce, it will be possible to ascertain the wealth of a UBO. **Not every UBO will be pleased that anyone can discover his wealth.** There is also the question of whether the above safeguards adequately protect the privacy of UBOs. The risk of kidnapping has proved to be real in the past (John de Mol, Freddy Heineken, etc.).

### How can we help?

Many owners and/or directors of legal entities or enterprises in the Netherlands will have to register. This is unavoidable (unless the legal entity or enterprise is converted into a non-European equivalent) **but there are ways to limit the public information of a UBO.** We can also arrange the registration in the UBO register. The reference date is 26 June 2017, so please contact us as quickly as possible to examine your options.

**Wealth & Family Business Team HVK Stevens**

**Contact | [www.hvkstevens.com](http://www.hvkstevens.com) | +31 (0)20 76 30 900 | [info@hvkstevens.com](mailto:info@hvkstevens.com)**