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UPDATE UBO-REGISTER

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INTRODUCTION

On the basis of the 4th anti-money laundering directive (the “Directive”), companies and legal entities will be obliged to register their direct and indirect owners in a new public register, the so-called UBO-register (Ultimate Beneficial Owner). The preparation of the Directive has been motivated by the general desire to combat tax evasion and terrorist financing. All natural persons with a (direct and/ or indirect) participation of 25% or more in a legal entity will be registered in the UBO-register.

Amendments

On December 19th, 2016, the Council of Europe has proposed some amendments to the text of the Directive. This concerned in particular textual amendments instead of significant content-related amendments.

In the meantime, also a European Directive has been adopted which obliges Member States to ensure that its tax authorities will be granted access to certain information about the UBOs as mentioned in the UBO-register. Furthermore, the tax authorities must be granted access to information, which is gathered by obliged entities in the context of their client screening.

Legislative process

On March 31st, 2017, a draft bill regarding the Directive with respect to the UBO-register has been presented for consultation. It is in fact a proposal to amend the Trade Register Act 2007 (HrW), the Money Laundering and Terrorism Financing (Prevention) Act (WWFT) and the Economic Offences Act (WED).

The draft bill

The proposed amendments may in general be summarised as follows:

1) **No separate UBO-register** – There will be no separate UBO-registers. The UBO-register will be imported in the HrW, the WWFT and the WED. A central register will be

implemented at the Dutch Chamber of Commerce.

2) **Application** – The UBO-register is applicable to legal entities and companies, which are incorporated under the laws of the Netherlands. Legal entities and companies which are incorporated under the laws of and established in any other country than the Netherlands and which have their registered office outside the Netherlands, do not have an UBO in the context of the HrW. Legal entities and companies which are obliged to register the UBO-information are: BVs, (non-listed) NVs, foundations,

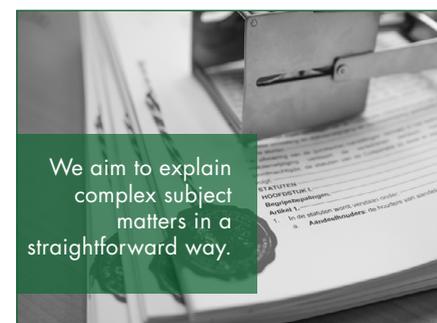
associations which are registered in the Trade Register, partnerships and cooperatives. Public benefit organizations (ANBIs) are not exempted.

3) **No application** – Mutual funds, religious communities, public entities, certain historical legal entities and associations of owners will not have an UBO in the context of the HrW. The possible UBO-registration of mutual funds is still being examined according to the explanatory memorandum.

4) **BES** – The Directive only covers the European part of the Netherlands and therefore no implementation is required in Dutch Caribbean territory (BES).

5) **Second UBO-register** – Dutch law does not recognise trusts and according to the legislator also not any legal arrangements comparable to the trust. Therefore, a second register shall not be implemented in the Trade Register.

6) **Term “UBO”** – An UBO is a natural person who is the ultimate beneficial owner of or has the ultimate control (25% or more) over a company or a legal entity.



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7) **Information to be registered** – What information of the UBO will be made visible for the public? According to the Directive it will be the minimum information, being:

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

Furthermore, certain information about the UBO needs to be provided, which information is only accessible for WWFT servants (such as banks, notaries and attorneys), who therefore will automatically have the role of gate keeper. This concerns:

- date 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.

8) **Safeguards** – The proposal suggests the following safeguards

for the protection of the privacy of the UBO:

- registration of the customers;
- payment of a fee for the access to the register;
- only the minimum information (section 7) is accessible to the public;
- there cannot be searched by personal name, only by name of the legal entity or the company;
- 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.

9) **Registration requirement** – The person who owns the company or each of the board members is obliged to register the UBO-information. In case there is no board member, this obligation rests with the daily management of the company. The registration requirement must be met at the first registration of new legal entities and companies.

10) **Obligation to report** – WWFT servants will be obligated to report,

which makes them a gatekeeper automatically. If they fail to comply with this obligation, it is considered to be an economic offence (also for the owners of a company or each of the board members). It could lead to the imposition of an administrative fine or an incremental penalty. This will be monitored strictly. Moreover, approximately 1,5 million legal entities and companies possibly have one or more UBOs. The original self-reporting system was considered to be soft.

11) **Execution** – The existing 1,5 million legal entities and companies, which are obliged to



register their UBOs, will be given a period of 18 months after the entry into force of the legislation to submit their UBO-information; thus until December 2018. The Dutch Chamber of Commerce moreover reserves 2,5 year for this (ICT) operation.

The consultation time of the draft bill is relatively short; until April 28th, 2017. Therefore it seems that the legislator intends to meet the implementation date of January, 2018.

Central register of shareholders

On January 17th, 2017, a draft bill has been submitted which focuses on the creation of a so-called central register of shareholders. The intention is that this register will be used to gather information about the shares and the holders of the shares in the capital of private limited liability companies (BVs) and public limited liability companies (NVs) (listed companies are exempted).

The purpose of the Central register of shareholders is contributing to the legal certainty and preventing and combatting financial and economic crime.

The Central register of shareholders has the following characteristics:

- The Central register of shareholders only covers BVs and (non-listed) NVs. The scope of is thus more limited than the UBO-register, which also includes information about the UBOs of foundations, associations and partnerships.
- Information about registered share, usufructuaries, shareholders, and pledgees will be included in the Central register of shareholders. Bearer shares, share certificates and certificate holders do not fall within the scope of the register.
- Contrary to the UBO-register, in which merely interests of 25% or more will be registered, the Central register of shareholders covers all interests (which means also minority interests and interests of legal entities). However, solely direct shareholdings participations will be registered in the Central register of shareholders (therefore a Stichting Administratiekantoor which holds the shares in an entity must be registered, but

not the certificate holders). The UBO-register also covers indirect participations.

- The Central register of shareholders will be a closed register. Access will be granted only to the tax authorities, certain designated public institutions, notaries, WWFT-institutions, shareholders, usufructuaries and pledgees as far as it concerns them.
- Notaries will become responsible for the registration in the Central register of shareholders. Notarial deeds shall serve as a basis for the registration. It is not yet clear which information exactly must be submitted. In any case, it is clear that any information that contributes to achieving the goal of the register needs to be submitted.
- The Central register of shareholders shall be placed within the domain of the Dutch Royal Notarial Association.
- The abovementioned bill has been submitted at the beginning of 2017.



HVK Stevens closely monitors the UBO-legislation process in the Netherlands and in other EU Member States. In case you have any questions, feel free to contact the HVK Stevens Wealth & Family Business Team.

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