



# UBO-registration in the Netherlands

The ultimate deadline is approaching

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On 27 September 2020 the act registration ultimate beneficial owners of companies and other legal entities (*implementatiewet registratie uiteindelijk belanghebbenden van vennootschappen en andere juridische entiteiten*) (the “Act”) came into effect. As a result, the UBO-register has now been operational for a year. This also means that the ultimate deadline for the UBO registration of existing Dutch (legal) entities is approaching. We have noticed that in practice there are still many questions about the Dutch UBO-register. Therefore, we would like to briefly outline the main aspects of the UBO-register in the Netherlands.

### What is the deadline to register the UBO(s)?

All Dutch (legal) entities which are obliged to register their UBO(s) must register their UBO(s) before **27 March 2022**. Newly established entities must submit their relevant UBO-information immediately upon their registration with the Chamber of Commerce.

### Which entities are subject to registration?

The following entities that are incorporated or established under the laws of the Netherlands must register their UBO-information in the UBO-register:

- private companies with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*, i.e. B.V.) and public companies (*naamloze vennootschap*, i.e. N.V.) excluding those with a stock exchange listing which are subjected to certain publication requirements and their 100% direct and indirect subsidiaries;
- European public companies (SE) and European cooperative companies (SCE), having their registered office in the Netherlands;
- foundations (*stichtingen*), associations (*verenigingen*), cooperatives (*coöperaties*) and mutual insurance associations (*onderlinge waarborgmaatschappijen*);
- and
- partnerships (*maatschappen*), commercial partnerships (*vennootschappen onder firma*, i.e. V.O.F.), limited partnerships (*commanditaire vennootschappen*, i.e. C.V.), European economic interest groupings (EESV) and shipping companies (*rederij*).

Mutual funds (*fondsen voor gemene rekening*) are excluded from this UBO-register, however a legislative proposal (introducing a UBO-register dedicated for trusts) has been published on 23 April 2021. Mutual funds fall within the scope of that register.

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### Who qualifies as UBO?

The UBO is the natural person who ultimately owns or controls the entity. There can be more than one UBO. At least the following natural persons are considered to be a UBO:

- in case of a private company with limited liability (B.V.) or a public limited liability company (N.V.):

natural persons who own or control the entity (i) through holding directly or indirectly more than 25% of the shares, voting rights or ownership interest in the entity, or (ii) by other means, such as the right to appoint the majority of the members of the entity's management board or being able to de facto control the entity;

- in case of a foundation, association, cooperative or mutual insurance association:

natural persons who own or control the entity (i) through holding directly or indirectly more than 25% of the ownership interest in the entity, (ii) being able to cast directly or indirectly more than 25% of the votes required to adopt a resolution to amend the articles of association of the entity or (iii) being able to *de facto* control the entity;

- in case of a partnership, commercial partnership (V.O.F.), limited partnership (C.V.) or shipping company:

natural persons who own or control the entity (i) through holding directly or indirectly more than 25% of the ownership interest in the entity, (ii) being able to cast directly or indirectly more than 25% of the votes required to amend the agreement that governs the entity, or in the matter of implementation of that agreement other than by acts of administration, in so far in the agreement prescribes adopting resolutions by a majority of votes cast or (iii) being able to de facto control the entity.

This enumeration is purely exemplary and not exhaustive. If resources to determine the UBO have been exhausted to no avail or if there is any doubt whether a person is actually a UBO, entities must register all their directors as UBO and partnerships must register all their general partners as UBO (in case of a limited partnership the limited partner is excluded in this respect). This is known as a "pseudo-UBO".

Note: amendments in UBO information must be filed with the Dutch UBO-register within 7 days after the amendments have entered into effect.

### What information needs to be registered?

The following information regarding an UBO shall be publicly available in the UBO-register:

- name;
- month and year of birth;
- country of residence;
- nationality;
- and
- nature and extent of the UBO's economic interest.

In relation to the extent of the UBO's economic interest, only a range (>25% through 50% (exclusive), 50% through 75% (exclusive), or 75% through 100% (inclusive)) needs to be registered. In other words, no absolute numbers are registered.

Further, the Dutch Financial Intelligence Unit (*FIU Nederland*) and other competent authorities (which are all subject to an obligation of confidentiality) shall in addition have access to the following information:

- day, place, and country of birth;
- residential address;
- if issued: the citizen service number (*burgerservicenummer, BSN*) and foreign tax identification number (*fiscaal identiteitsnummer, TIN*);
- copies of the documents which are used to verify the UBO's identity;
- and
- copies of the documents substantiating why the UBO qualifies as such showing the nature and extent of the UBO's economic interest.

### How should the UBO's information be filed in the UBO-register?

The aforementioned information about the UBO(s) needs to be registered with the UBO-register, which register is managed by the Dutch Chamber of Commerce. The managing director(s) or in case of partnerships the day-to-day management is/are authorized to register the UBO-information with the UBO register of the Dutch Chamber of Commerce. The UBO-information could be filed electronically or by providing hard copies of the required information and documents. Further, Dutch civil law notaries are authorized to register or amend UBO-information.

### What are the penalties in case of non-compliance?

Not meeting certain obligations with respect to the implementation act registration ultimate beneficial owners of companies and other legal entities (*implementatiewet registratie uiteindelijk belanghebbenden van*

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*vennootschappen en andere juridische entiteiten*) (the “Act”), such as the requirements of registering the information in the UBO-register, collecting and keeping up to date information by companies and other (legal) entities, or the UBO’s obligation to provide the relevant companies and other (legal) entities with the UBO’s information, can be sanctioned with both administrative and criminal penalties. The Dutch Chamber of Commerce provides the Economic Enforcement Department of the Dutch Tax Authorities (“BEH”) with all necessary information from the entities whose UBOs are not timely registered in the trade register of the Dutch Chamber of Commerce. BEH can then send another reminder. If there is no response, BEH can carry out investigations and, if necessary, proceed with enforcement. On the basis of the dual sanction system, BEH can draw up official reports (which are passed on to the Public Prosecutor for the purpose of criminal enforcement) and impose orders for a fine and/or an order subject to a penalty for non-compliance (for administrative enforcement).

BUREN can assist you with any questions regarding the obligations imposed by the Act. Among others, we can assist you with the UBO identification process, with filing UBO-information (or amending

registered UBO-information) and also requesting restricted access to the UBO-information due to security/privacy reasons.

The information contained in this article is provided for informational purposes only, and should not be construed as legal advice on any subject matter.

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