



# Bill on implementation of UBO register available

## Consequences for financial institutions in the Netherlands

A bill on the ultimate beneficial owner (UBO) register was published for public consultation in the Netherlands on March 31, 2017 (the "**Bill**"). We will describe the Bill's most important consequences for financial institutions subject to the Dutch Money Laundering and Terrorist Financing (Prevention) Act (in Dutch: "*Wet ter voorkoming van witwassen en financiering van terrorisme*", or "**Wwft**").

### UBO definition

Under the Bill, an ultimate beneficial owner is considered to be *the natural person who is the ultimate owner or has a decisive vote in the respective legal entity or enterprise*. Rules will be laid down through an order in council (in Dutch: "*Algemene Maatregel van Bestuur*") on natural persons who will in any event be considered UBOs for each type of legal entity and enterprise in the Netherlands specifically. Unfortunately, the Dutch government has not yet published this information.

Financial institutions in the Netherlands should be aware that the UBO definition in the Bill is different from the UBO definition in the Wwft, which is broader:

- the UBO definition in the Bill solely relates to enterprises and legal entities registered with the Dutch Trade Register, while the UBO definition in the Wwft also applies to other enterprises and legal entities that do not have to be registered with the Dutch Trade Register; and
- the UBO definition in the Wwft also applies to *the natural person for whose account a transaction will be conducted*. As this part of the definition is not relevant for the UBO register, it is not included in the Bill's UBO definition.

Financial institutions may have quite some difficulty in taking account of the different UBO definitions in their internal administrative accounts and policies.

### Which details of UBOs?

The following details of UBOs will be publicly available in the UBO register:

1. Name;
2. Month and year of birth;
3. Nationality;
4. Country of residence;

5. Type and size of the economic interest (the applicable ranges are 25, 50, 75 and 100%).

Likewise, the following UBO information must be provided (but this will solely be available to the competent government authorities and the Financial Intelligence Unit):

6. Date of birth;
7. Place and country of birth;
8. Residential address;
9. Citizen service number (in Dutch: "*BSN*") or foreign tax identification number;
10. Copies of documents verifying the identity of the UBO; and
11. Copies of documents verifying the type and size of the economic interest of the UBO.

The information mentioned under 1 through 5 above is not sufficient for financial institutions in the Netherlands to comply with the requirements of the Wwft regarding UBOs. So, financial institutions still have to perform their own additional research regarding their clients' UBOs.



### Which entities?

UBOs of all Dutch entities registered with the Dutch Trade Register have to be registered in the UBO register. The exceptions are one-man businesses, legal entities under public law, certain types of historic legal entities, associations of owners (*VVE*) and churches. Furthermore, the UBOs of foreign entities with a head office or a branch in the Netherlands are not subject to registration in the Dutch UBO register. It is not yet clear whether UBOs of a Dutch mutual fund (in Dutch: "*fonds voor gemene rekening*") must be registered in the UBO register.

### Reporting obligation

If a financial institution has reasonable doubts about the correctness of the UBO information registered in the UBO register, such financial institution has the obligation to report the missing or incorrect information to the Dutch Chamber of Commerce. The Bill

does not include a time period within which the financial institution must contact the Dutch Chamber of Commerce to report the missing or incorrect information.

The Bill does not contain an obligation for financial institutions to consult the UBO register. In our opinion though, this does not mean that they will not be subject to the reporting obligation, because:

- the UBO information will be publicly available in the Netherlands; and
- the UBO information will (most probably) be included in the Trade Register extract of the Dutch entity that must be obtained by the financial institutions to fulfil their client due diligence obligations under the *Wwft*.

Failing to comply with this obligation constitutes an economic offense under the Economic Offenses Act. The Economic Enforcement Agency (in Dutch "*Bureau Economische Handhaving*") will be authorized to impose an administrative fine (in Dutch "*bestuurlijke boete*") or an order subject to a penalty for noncompliance (in Dutch "*last onder dwangsom*") or to give an instruction (in Dutch "*aanwijzing geven*").

### Central shareholders' register

Another bill, on a central shareholders' register (the "**CSH register**"), is pending before the House of Representatives (in Dutch "*Tweede Kamer*"). For the avoidance of any doubt, the CSH register is meant for the registration of direct shareholders of Dutch BVs and (non-listed) NVs only (i.e. not for UBOs, unless the UBO is also a direct shareholder of a Dutch BV or (non-listed) NV).

The information to be registered in the CSH register will be provided by the Dutch civil law notary who has executed the notarial deed of transfer of shares in the respective BV or NV.

Besides a limited group of competent government authorities and Dutch civil law notaries, certain designated financial institutions in the Netherlands will also get access to the CSH register for client due diligence purposes.

### Implementation

The Netherlands must implement the UBO register in its national legislation before June 26, 2017.

Although implementation of the UBO register is not the subject of political controversy, we expect that this deadline will not be met. The Minister of Finance has already characterized the implementation period as "decidedly ambitious".

Upon entry into force of the Bill, all Dutch entities within scope are given a term of eighteen months to register the required information of their UBOs in the UBO register.

UBOs are obliged by law to cooperate with this registration.

The reporting obligation will enter into force on a later date than the Bill (no date has been given yet), due to the term of eighteen months for registration of the UBOs. Furthermore, the systems of the Dutch Chamber of Commerce are not yet ready for managing the reporting obligation.



### Sebastiaan van Dugteren

Director | Deloitte Legal  
[SvanDugteren@deloitte.nl](mailto:SvanDugteren@deloitte.nl)  
+31 (0)88 288 4492



### Nienke Roetert Steenbruggen

Manager | Deloitte Legal  
[NRoetertSteenbruggen@deloitte.nl](mailto:NRoetertSteenbruggen@deloitte.nl)  
+31 (0)88 288 3690

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