

INTRODUCTION OF THE UBO REGISTER IN THE NETHERLANDS

Introduction

On 27 September 2020, the implementation act for the introduction of the UBO register (the **Act**) entered into force. Under the Act, it is compulsory for all Dutch entities subject to the applicable registration requirements to register information on their ultimate beneficial owners (**UBOs**) in the UBO register. Until 27 March 2022, only newly formed entities are obliged to register information on their UBOs. As from 27 March 2022, however, all Dutch entities are required to do so as the transitional period of 18 months will lapse on that date.

The UBO register is maintained by the Dutch Chamber of Commerce, which is also responsible for maintaining the trade register in the Netherlands.

Which entities are required to register UBO information?

The Dutch entities that are subject to the mandatory UBO registration requirements are:

- private limited liability companies (BVs) and public limited companies (NVs);
- foundations, associations, cooperatives and mutual societies;
- partnerships (*maatschappen*), limited partnerships (CVs), general partnerships (VOFs) and shipping companies;
- European Economic Interest Groupings (EEIGs);
- European Public Limited Liability Companies (SEs) and European Cooperative Societies (SCEs) having their registered office in the Netherlands; and
- churches.

Companies whose shares are listed on a regulated stock exchange located within the EU/EEA or in certain other countries (including the US, Canada, Japan, Singapore and Australia), as well as directly and indirectly wholly-owned subsidiaries of such listed companies, do not have to register any UBO information. Other Dutch entities that are not required to register UBO information include legal entities governed by public law and certain types of association.

Entities formed under the law of another country do not have to register UBO information, even if they have a branch in the Netherlands.

Who qualifies as a UBO?

The Wwft 2018 Implementation Decree indicates for various categories of entities which persons will in any case be considered as UBOs. The following persons are identified as UBOs:

- For **NV and BV**: natural persons who (directly or indirectly) hold more than 25% of the shares, the voting rights or the ownership interest in the company, or who ultimately control the company by other means.
- For **foundations, associations, cooperatives and mutual societies**: natural persons who (directly or indirectly) hold more than 25% of the ownership interest, who can (directly or indirectly) exercise more than 25% of the voting rights that may be cast in respect of proposed amendments to the articles of association, or who ultimately control the company by other means.
- For **partnerships, limited partnerships and general partnerships**: natural persons who (directly or indirectly) hold more than 25% of the ownership interest, who can (directly or indirectly) exercise more than 25% of the voting rights that may be cast in respect of proposed amendments to the partnership agreement or regarding the implementation of the partnership agreement, other than through acts of management, or who ultimately control the company by other means.

Who are Pseudo UBOs?

If there is no individual who qualifies as the UBO, or if it is doubtful whether the person who has been identified as the UBO is indeed the UBO, the persons who comprise the senior management of the relevant entity must be registered instead, as "Pseudo UBOs". In the case of a BV, NV or other entity with legal personality, all members of the management board are registered as Pseudo UBOs. In the case of a partnership or a general partnership, the partners will be the Pseudo UBOs and in the case of a limited partnership, the managing partners will be Pseudo UBOs. If an entity with legal personality is part of senior management, the members of senior management of that legal entity must be registered as Pseudo UBOs. If the person registered as a UBO is in fact a Pseudo UBO, this is shown in the UBO register.

What information must be registered in the UBO register?

The following information concerning a UBO the must be registered in the UBO register:

1. name;
2. month of birth, year of birth, state of residence and nationality;
3. the nature and size of the economic interest held by the UBO (in bandwidths of 25%);
4. date of birth, place of birth, country of birth and home address;
5. citizen service number (BSN) or foreign tax identification number;
6. copies of documents on the basis of which the personal details concerning the UBO have been verified, such as a copy of the passport and a utility bill;
7. copies of documents showing the nature and scope of the economic interest held by the UBO, specifically the shareholders register, the articles of association or by-laws, the register of depository receipt holders, the deed of incorporation, other notarial deeds, the members register,

the partnership agreement, an extract from the entity's registration in the trade register, a group structure chart, and any other documents concerning the nature and size of the economic interest held or documents on the basis of which the *de facto* control can be exercised.

The information mentioned under 1 through 3 above is publicly accessible. The non-publicly accessible information and documentation mentioned under 4 through 7 can be inspected only by the Financial Intelligence Unit (FIU) and certain competent authorities such as the police, the Public Prosecutor's Office, the Tax Authority, the Dutch Central Bank (DNB) and the Netherlands Authority for the Financial Markets (AFM).

Although certain registered information is publicly accessible, inspection of the UBO register is not anonymous: the Chamber of Commerce will register the identity of each person who requests access to the UBO register. A UBO has no insight into who has viewed his UBO details, but he or she can see how often his or her UBO details have been inspected.

In special circumstances, UBOs may request that the publicly accessible information that is registered for them in the UBO register is blocked for the general public, except for the nature and size of such UBO's ownership interest. This possibility exists only for minors, persons placed under guardianship and persons under police protection.

It is noted that all institutions subject to the Dutch Anti-money laundering and anti-terrorist financing act (the AML Institutions), including banks, law firms, accounting firms, tax advisory firms, consulting firms and trust companies, are required to inform the Chamber of Commerce of any discrepancy between the information registered in the UBO register and the information that they have on file or otherwise at their disposal.

How are the UBO register obligations enforced?

According to the Act, the entities themselves are responsible for registering their UBOs and for keeping the registration up-to-date. It is mandatory for UBOs to cooperate with their registration in the UBO register. The statutory obligations concerning the UBO register applicable to the relevant entities and the AML Institutions, can be enforced under both administrative law and criminal law. Minor offences, such as late filing of the required information, will typically be subject to administrative sanction. Major offences, such as the deliberate violation of the statutory filing obligations, are regarded as criminal acts and are punishable by a penalty in the maximum amount of EUR 21,750 and imprisonment for up to 2 years. If a UBO fails to comply with his/her statutory obligation to cooperate, only criminal sanctions can be imposed.

By when should the UBO information be provided?

All relevant Dutch entities existing on 27 March 2022 must have registered the required information on their UBOs in the UBO register by that date. All newly formed Dutch entities will need to register the required UBO information within 8 days of their formation.

On the following pages you will find several **examples** of how in different structures the UBO or UBOs is/are determined.

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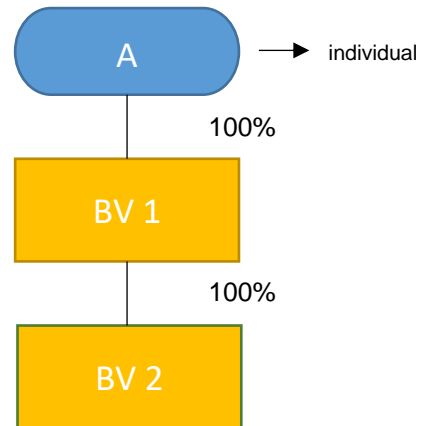
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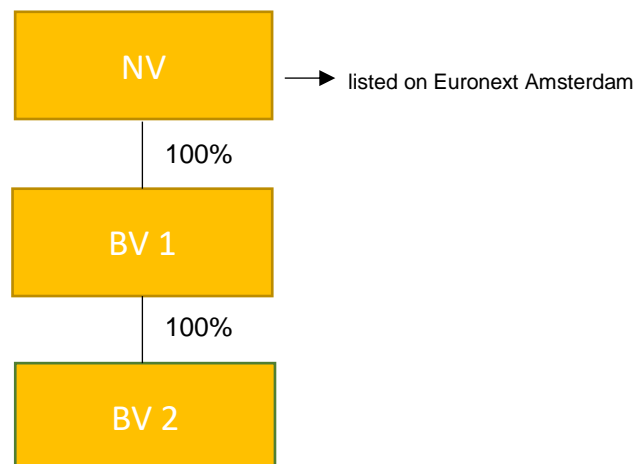
EXAMPLES

Example 1



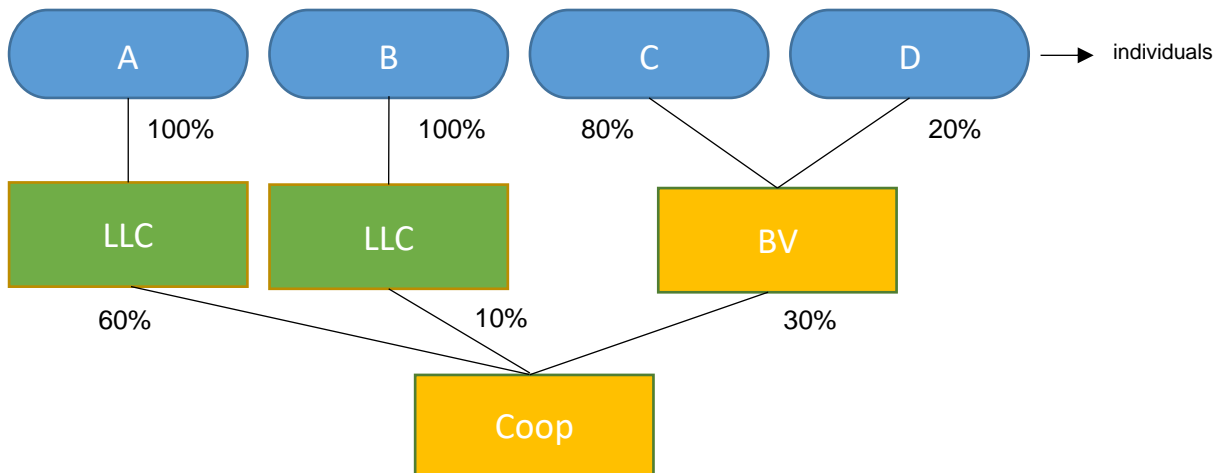
- A is the qualifying UBO of both BV 1 and BV 2

Example 2



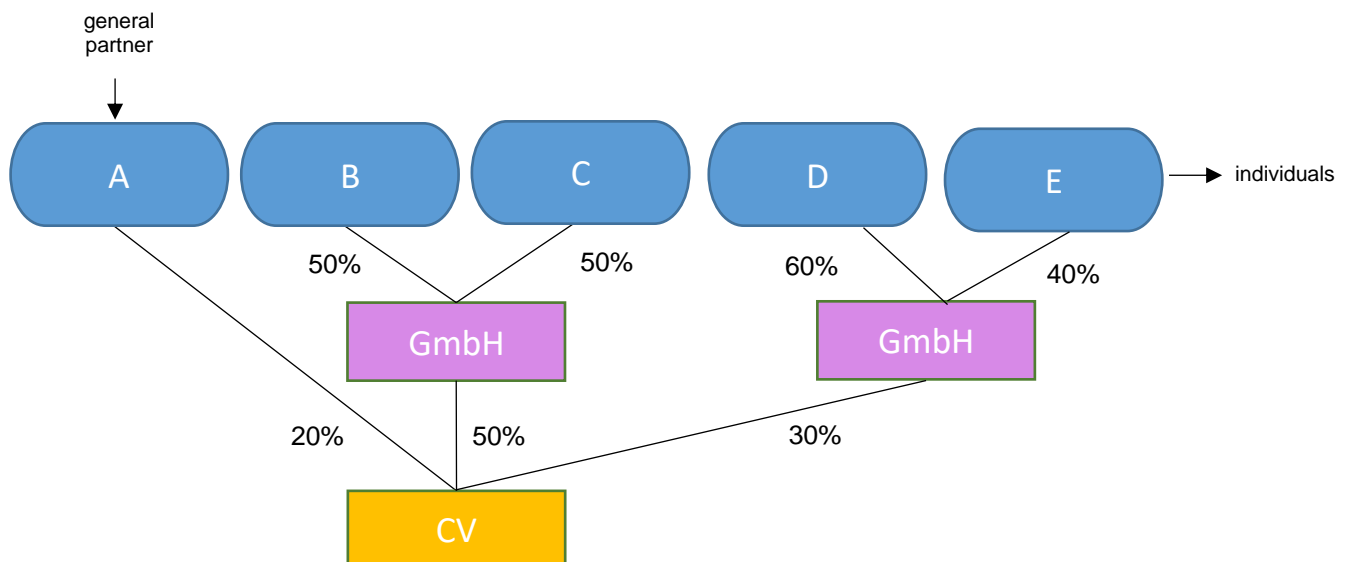
- BV 1 and BV 2 are exempt from the obligation to register their UBOs as BV 1 and BV 2 are 100% subsidiaries (directly and indirectly, respectively) of a company listed on a qualifying stock exchange

Example 3



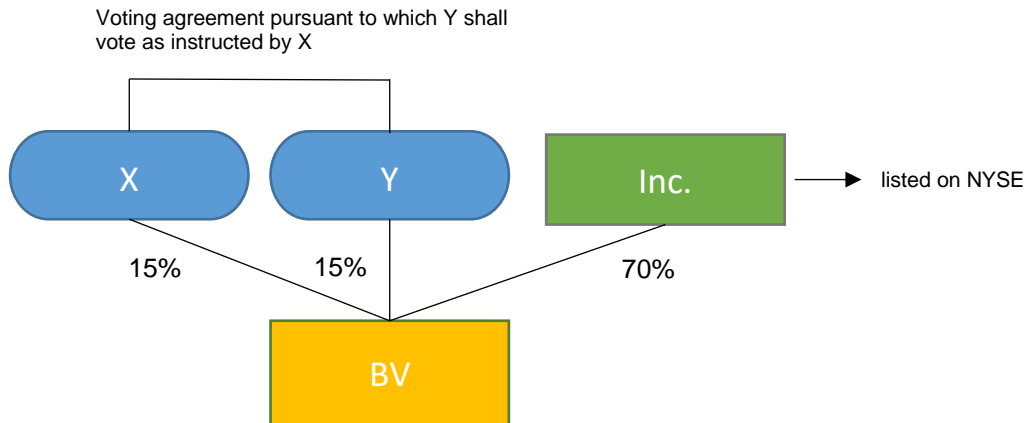
- A is the qualifying UBO of the Coop (not C, as C's ownership interest is less than 25%)
- C is the qualifying UBO of the BV

Example 4



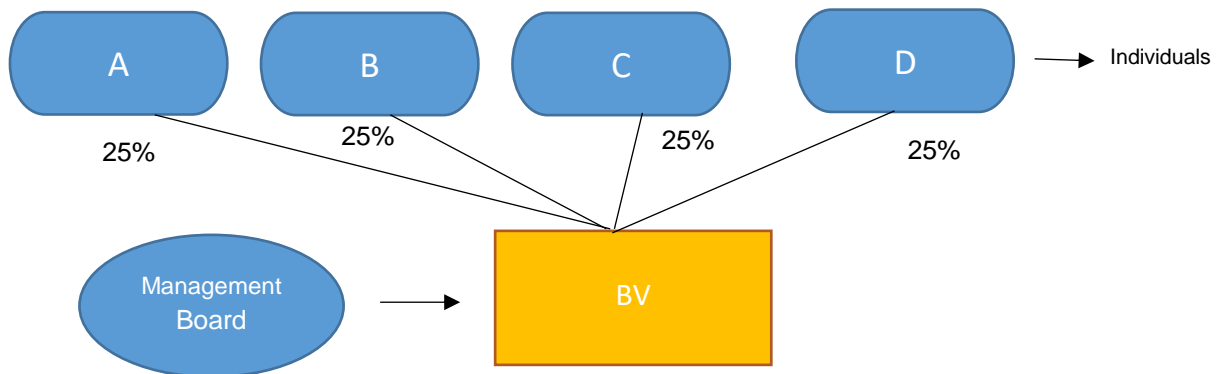
- There is no qualifying UBO for the CV as no individual directly or indirectly holds an ownership interest of more than 25%
- A being the general partner is the Pseudo UBO for the CV

Example 5



- X is the qualifying UBO for the BV as the number of Y's votes must be added to the number of X's votes.

Example 6



- There is no qualifying UBO for the BV as no individual directly or indirectly holds an ownership interest of more than 25%
- All members of the management board are Pseudo UBOs