Publication date
5/27/2015

Proposal for UBO-register adopted by European Parliament

On 20 May 2015 the European Parliament adopted the proposed fourth EU Anti-Money Laundering Directive (**AMLD**). The AMLD inter alia contains an obligation for EU member states to introduce a publicly accessible register in which certain personal information of the ultimate beneficial owners of corporate and other legal entities is to be included (**UBO-register**). This could have far reaching consequences for the privacy of UBOs of EU entities (*inter alia* the owners of family businesses).

UBO-register
Based on the AMLD, EU member states will be required to obtain and hold adequate, accurate and current information on UBOs of corporate entities and other legal entities incorporated within their territory.

The AMLD defines a UBO is any natural person(s) who ultimately owns or controls the customer (i.e. a corporate entity or other legal entity) and/or the natural person(s) on whose behalf a transaction or activity is being conducted. In respect of corporate entities this definition of a UBO is further specified as a natural person who ultimately holds a shareholding, controlling interest or ownership interest of at least 25% plus one share in a corporate entity. If no UBO can be identified, the natural person(s) holding the position of senior managing official are in principle registered as UBO. At least the following information on the UBO would be included in the UBO-register:
- name;
- month and year of birth;
- nationality;
- country of residence; and
- nature and extent of the beneficial interest held.

The UBO-register would be accessible to:
- competent authorities and EU Financial Intelligence Units, without any restriction;
- obliged entities (such as banks, notaries and lawyers conducting their “customer due diligence” duties); and

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- the public.

The public will only have access to the UBO-register if they can demonstrate a “legitimate interest” (i.e. in respect of money laundering, terrorist financing and the associated predicate offences – such as corruption, tax crimes and fraud). EU member states may decide to deny access to obliged entities or the public to part or all of the UBO-information in exceptional circumstances and on a case-by-case basis, e.g. when there is a high risk of fraud, kidnapping, blackmailing, etc.

Trust register

In case of trusts a separate arrangement will apply, whereby the EU member states must provide for a central register for UBOs of trusts governed by their law that will, in principle, only be accessible to competent authorities, EU Financial Intelligence Units and obliged entities that are conducting customer due diligence, but not to the public. EU member states must include UBO-information in this register in respect of trusts and comparable legal arrangements that are governed under the law of this respective EU member state if the trust generates tax consequences. However, the meaning of the term ‘tax consequences’ has not been clarified yet.

The information included in this trust register should include the identity of:
- the settlor;
- trustee(s);
- protector(s) (if any);
- beneficiaries or class of beneficiaries; and
- any other natural person exercising effective control over the trust.

Entry into force

Once the AMLD has been published in the EU’s Official Journal, which is due in June / July 2015, it will enter into force within 20 days. EU member states will have two years to implement the AMLD in their national law. It is expected that national UBO-registers and trust registers will be introduced in the course of 2017.

It is envisaged that in due course both these national UBO-registers and trust registers will be linked at EU level through a central European platform. The European Commission will have to publish reports and where appropriate accompanying legislative proposals in this respect within four years after the entry into force of the AMLD.

We will be pleased to provide an overview of the consequences of the

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UBO-register and, if required, further advise you.

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