

FINNIUS

Consultation Implementation decree registration beneficial owners of trusts and similar legal arrangements – 3% threshold UBO definition

29 June 2021

🕒 2 MINUTES

On June 28 2021, the Minister of Finance submitted the Implementation decree on registration of beneficial owners of trusts and similar legal arrangements (the '**Implementation Decree**') for [consultation](#). The Implementation Decree elaborates on a number of issues regarding the implementation of the obligation to maintain and centrally register information about the ultimate beneficial owner (**UBO**) of trusts and similar legal arrangements (the '**Trust Register**'), including:

- The definition of UBO;
- The classes in which the size of the UBO's economic interest can be expressed in the Trust Register;
- The retention periods of the information contained in the Trust Register;
- The grounds on which a UBO may request that all (or part) of his/her information may be shielded; and
- The competent authorities that have access to the Trust Register.

In our previous [news release](#), we highlighted the most important consequences for investment funds structured as fund for joint account (*fonds voor gemene rekening*, ('**FGR**')). In particular, the scope of the UBO definition plays an important role in this respect. The Implementation Decree introduces some nuance with regard to the UBO definition. We will explain this in more detail below.

1. **UBOs of an FGR?**

On the basis of Article 3(1)(e) of the Wwft Implementation Decree 2018, the following categories of natural persons currently qualify, in any case, as a UBO of an FGR:

1. The founder or founders of an FGR;
2. The beneficiaries (i.e. the unitholders), or where the individuals who are the beneficiaries of an FGR cannot be determined, the group of individuals in whose interests an FGR is primarily established or operated; and
3. Any other natural person who, directly or indirectly, through ownership or otherwise, exercises ultimate control over an FGR.

Given the definition described above, in principle all unit-holders in an AIF or UCITS structured as an FGR will qualify as UBO. This would mean that fund managers who use an FGR will have to register all their participants in the Trust Register, even if it concerns an FGR with many relatively small participants. In addition, all changes in the UBO information must be reported to the Chamber of Commerce.

2. 3% threshold

With a view to the practicability of the registration obligation, the Implementation Decree makes a nuance with regard to participants. The Implementation Decree changes the UBO definition in such a way that only participants with an economic interest of at least 3% are considered UBOs. This means that participants with an economic interest below the 3% threshold will not be registered in the Trust Register. This 3% threshold aligns with the notifying obligations of major holdings in issuing institutions.

In cases where none of the unitholders has an economic interest of at least 3% in an FGR, the registration may be limited to a description of the group on whose behalf the FGR is primarily established or operates. This could, for example, be 'unitholders in an AIF'.

3. Impact

In sum: the legislator has made use of the possibility to limit the categories of persons who must be designated as UBOs. We had hoped for a higher threshold of, say, 5% or 10%. Nevertheless, this nuance should make the Trust Register more workable for investment funds structured as an FGR.

A key focus for fund managers will be to put processes in place that flag an exceedance or undercutting of the relevant thresholds in a timely manner, so that the changes can be reflected in the Trust Register.

4. Consultation

Market participants have until 9 August 2021 to respond.

Specialists



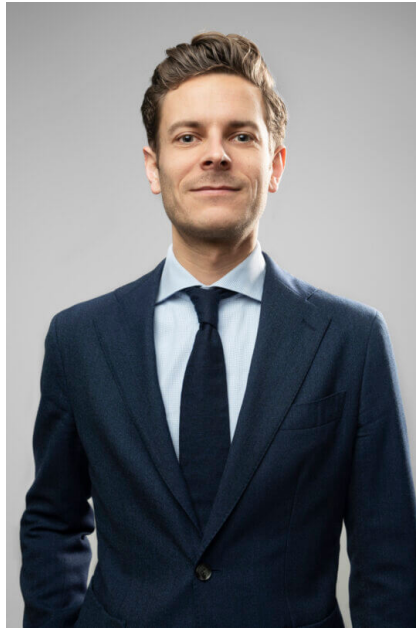
Rosemarijn Labeur

T +31 (0)20 767 01 80

T +31 (0)20 767 01 86 (direct)

M +31 (0)6 31 67 03 94

rosemarijn.labeur@finnius.com



Tim de Wit

T +31 (0)20 767 01 80

T +31 (0)20 820 80 32 (direct)

M +31 (0)6 11 00 45 26

Tim.de.Wit@finnius.com



Pim Smith

T +31 (0)20 767 01 80

T +31 (0)20 820 80 30 (direct)

M +31 (0)6 27 42 18 74

pim.smith@finnius.com