

FINNIUS

Legislative proposal regarding UBO register for trusts and FGRs – impact on funds

29 April 2021

 4 MINUTES

On 23 April 2021, the Minister of Finance submitted a legislative proposal ([link](#)) with respect to the UBO register for trusts and similar legal arrangements (the '**Proposal**'). The Proposal regulates 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**'). This obligation stems from the Fourth (and Fifth) Anti-Money Laundering Directive ('**AML4**' and '**AML5**'). In the Netherlands, a fund for joint account (*fonds voor gemene rekening*, ('**FGR**')) is regarded as a 'similar legal arrangement'. This means that the Proposal has a major impact on the Dutch fund practice. In this news item we highlight the most important consequences for investment funds structured as an FGR.

1. Relevance to the practice of funds

In the Netherlands many investment funds are structured as an FGR, because an FGR often offers favourable tax treatment and flexibility in fund structuring. An FGR does not have legal personality, but is an agreement between the manager, the foundation and each of the participants in the FGR. Many alternative investment funds ('**AIFs**') and undertakings for collective investment in transferable securities ('**UCITS**') are structured as an FGR in the Netherlands. These AIFs and UCITS often have a large number of participants.

For the purposes of the Trust Register, the legislator has decided to regard (both open and closed) FGRs as 'similar legal arrangements'. This means that for the identification and reporting requirements of its UBOs, the FGR receives the same treatment as a trust, a figure that is common in the Anglo-Saxon world, but rarely or never occurs in the Netherlands.

2. Who qualifies as UBO of an FGR?

In any case, the following categories of natural persons, among others, must be qualified as a UBO of an FGR:

- The founder(s) of an FGR

- The beneficiaries of an FGR, 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 (i.e. the unitholders); and
- any other natural person who, directly or indirectly, through ownership or otherwise, exercises ultimate control over an FGR.

The aforementioned natural persons will have to be registered in the Trust Register.

In the Explanatory Memorandum to the Proposal the legislator notes, not entirely unimportant, that 'with a view to the practicability of the registration obligation, the legislator will consider whether the categories of persons who must be designated as UBOs should be limited when, in addition to adequate legal supervision, there is an exceptionally large number of UBOs'.

3. Impact of the Trust Register on the fund practice

Given the definition described above, in principle all unit-holders in an AIF or UCITS structured as an FGR will qualify as UBO. Unlike the UBO register for corporations and other legal entities (such as the BV, NV, Cooperation or CV), no threshold has been set for the size of the economic interest of the unitholders in the FGR (as is the case with the aforementioned entities, namely 25%). 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, something that will be a major challenge from an administrative point of view for open-end FGR funds with frequent, possible daily, changes in its UBOs.

However, as indicated above, the legislator has the possibility of limiting the categories of persons who must be designated as UBOs when, in addition to adequate legal supervision, there is an exceptionally large number of UBOs (as could be the case with many AIFs and UCITS). It is not clear from the Explanatory Memorandum whether the legislator will make use of this exception, what this exception will mean in concrete terms (e.g. what kind of threshold will be implemented with regard to economic interests?) and what the legislator means by 'adequate legal supervision'. Does the latter only apply to supervised funds, for example? Can the so-called light managers also

make use of this escape? In short: there is still much uncertainty for AIFs and UCITS that are structured as an FGR, while the market – partly in view of the various consultation responses – needed clarity. Hopefully, the legislator will provide further clarification on these points well before the Proposal enters into force, especially in view of the intended timing and the transitional regime (see below). Perhaps these points will be included in the yet to be adopted general administrative order, or in a new version of the Implementation Decree Wwft 2018.

4. Who must report?

Pursuant to the Proposal, the obligation to register the UBOs rests with the trustee of a trust. This means that the trustee is obliged to submit the relevant information to the Chamber of Commerce after the entry into force of the Proposal. It is currently not entirely clear where the obligation to register falls to in the relationship between a fund manager and an investor, but we can imagine that the obligation to register will rest with the fund manager.

5. When does the reporting obligation enter into force?

The legislator has opted for a relatively short transitional period of three months. Fund managers will have three months from the entry into force of the Proposal to collect the relevant information and submit it to the Chamber of Commerce.

The implementation of the Trust Register should have been completed by 10 March 2020. Against this background, we expect that the Proposal will be handled swiftly by parliament. Fund managers that manage an FGR should follow the developments closely. Within a relatively short period of time, they, potentially, will have to make drastic changes to their administration and IT environment in order to comply with the reporting obligation.

Specialists



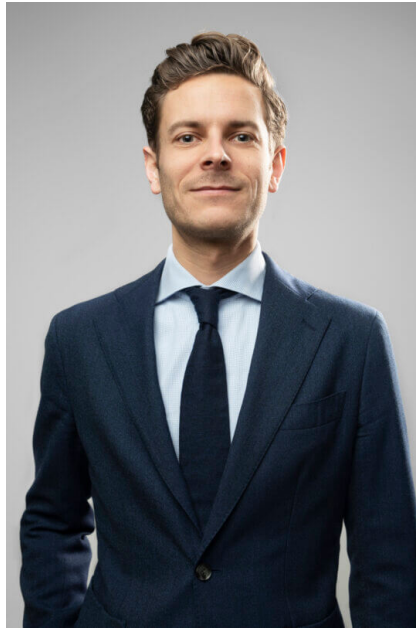
Rosemarijn Labeur

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