

Stibbe | Corporate Update | July 2020



Recent developments: Dutch corporate law

This is our biannual newsletter about the main developments in Dutch corporate law. In this Corporate Update we provide an overview of the implementation of the Dutch UBO Register and we discuss current developments regarding gender diversity at the top and the protection of Dutch companies.

Implementation of the Dutch UBO register

On 7 July 2020, the Act to implement the Dutch Ultimate Beneficial Owner ("UBO") register (the "UBO register") was published in the Dutch Bulletin of Acts and Decrees, together with the implementation decree. The act took effect (in part) from 8 July 2020. It concerns the obligation for legal persons to collect and keep information about their UBOs and the obligation for foundations to keep records of payments of 25% or less. The obligation for legal persons to register the UBO information in the UBO register and the related obligations will enter into force on 27 September 2020.

UBO or pseudo-UBO

A UBO is a natural person who ultimately owns or controls the corporate or legal entity. There can be more than one UBO for a single entity. A **Governmental Decree** (*Uitvoeringsbesluit Wwft 2018*) defines which individuals must automatically be considered a UBO in various scenarios.

When (i) the UBO cannot be determined under these rules and there are no anti money laundering suspicions, or (ii) there is doubt regarding the identity of the UBO, the senior management will be considered UBOs (this is known as a "pseudo-UBO"). Under Dutch law the natural person(s) who are managing director(s) will be regarded as senior management.

Public UBO register

The Dutch UBO register will be public. The public will have access to the name, month and year of birth, nationality, country of residence, and nature and extent of the beneficial interest held by the UBO. Competent authorities and the Financial Intelligence Unit will have access to a larger collection of information, such as address and citizen service number.

Timing

Existing legal entities will be given 18 months to

register their UBOs in the UBO register. However, new legal entities to be established must already register their UBO(s) when they first register their business with the trade register.

What happens if the UBO information is not provided?

Not complying with these rules may result in an administrative or criminal sanction for either (or both) the legal entity and the UBO.

For more information, please see our **Newsletter of 23 June 2020**.

Gender diversity at the top

In the spring of 2020, a **consultation** was held on a preliminary bill that, in addition to the modernisation of Dutch law applicable to public limited companies, aims to balance the ratio of men and women at senior levels of certain Dutch companies. On 3 July 2020, the cabinet approved the bill for greater balance between the number of men and women at the top of certain Dutch companies, and agreed to send the bill to the Council of State for advice. The text of the bill and the advice of the Council of State will become public when the bill is submitted to the House of Representatives.

The preliminary draft contains the following measures regarding diversity:

- For a Dutch company listed on Euronext Amsterdam an establishment of a statutory diversity quota of at least 30% male/female in the supervisory board (SB) is introduced. This means that if the SB of such a company does not consist of at least 30% men and at least 30% women, an appointment that does not make the distribution more balanced is null and void. The same goes for the Management Boards (MB), if a company has a one-tier board.
- Furthermore, a company that qualifies as a 'large company'^[1] must annually set appropriate and ambitious gender diversity targets for the MB, SB and senior management. It must draw up a plan to achieve the set diversity goals, and report on this

^[1] A company qualifies as a large company if the annual accounts meet at least two of the following characteristics for two consecutive years: a balance sheet total of more than EUR 20 million, or a net turnover of more than EUR 40 million, or more than 250 employees.

in the management report. In addition, a large company is obliged to report annually, within ten months after the end of the financial year, to the Dutch Social and Economic Council (SER) on the number of male and female members of the MB, SB and certain other management positions, as well as on gender diversity targets and, if these have not been met, the reasons for this.

The proposed regulation replaces the Dutch statutory target scheme that was abolished on 1 January 2020.

Developments protection of Dutch companies

There have been various developments in the field of the protection of Dutch companies.

Foreign Direct Investments – Guidance European Commission

The [Regulation](#) establishing a framework for the screening of foreign direct investments into the Union is applicable as of 11 October 2020. The FDI Regulation includes the creation of a cooperation mechanism between Member States and the European Commission to facilitate the exchange of certain information about acquisitions or investments from third countries that form a risk to the public order of a Member State. Furthermore, the FDI Regulation confirms that Member States ultimately decide if a particular acquisition or investment is allowed in their territory. On 22 June 2020, the Dutch Bill that establishes the necessary legal measures to implement the FDI Regulation was published.

On 25 March 2020, the European Commission published [Guidance](#) for Member States on foreign direct investments and free movement of capital from third countries and the protection of Europe's strategic assets, ahead of the application of the FDI Regulation. This Guidance was prepared in response to the corona crisis. For more information about this guidance, we refer to our [short read](#) of 4 June 2020.

Investment test on risk of takeovers and investments for national security – Reference date

A Dutch Bill is being prepared which will regulate a Dutch investment assessment of the risks of takeovers and investments for national security.

The legal assessment framework applies to takeovers and investments in relation to providers of vital processes and infrastructure, and companies that are active in the field of high-quality sensitive technology. These acquisitions and investments will only be tested if the protection of national security gives cause for such testing.

On 2 June 2020, a Letter to the House of Representatives was published, announcing that a reference date will be included in this Bill, which means that part of the legal framework for the investment test system will be introduced with retroactive effect as of 2 June 2020.

The bill is currently under preparation and is expected in the fourth quarter of 2020.

Telecommunications Sector Undesirable Control Act published

On 12 June 2020, the Telecommunications Sector Undesirable Control Act was published in the Dutch Bulletin of Acts and Decrees. The purpose of this act is to prevent parts of the vital Dutch telecom sector ending up in the hands of unwanted foreign parties. To this end, an obligation to notify the Dutch Minister of Economic Affairs and Climate has been introduced for parties wishing to take over a Dutch telecommunications company and who could exercise relevant influence in the telecommunications sector after the takeover.

It is still unclear when the law will enter into force.

Amendment of Book 2 of the Dutch Civil Code in connection with the invocation of a reflection period by the board of a listed company

The Bill submitted to the House of Representatives on 23 December 2019, to amend Book 2 of the Dutch Civil Code in connection with the invocation of a reflection period by the board of a listed company, is still being examined by the House of Representatives.

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