

RISK-BASED INDUSTRY BASELINE

UBO **identification and verification**
of the UBO's identity



Introduction

AML/CFT laws and regulations, require banks to identify the client's UBO(s) and take reasonable measures to verify the UBO's identity (hereafter: ID&V). The NVB Industry Baseline describes the risk-based Dutch banking practice to implement these requirements for low, neutral and high risk scenarios.

An important principle for the industry baseline is that banks can trust and rely on the accuracy of information provided or confirmed by the client. This basic principle allows banks to eliminate meaningless crosschecks of data which are based on the same source (i.e. the client). The use of UBO related risk and event triggers by banks further supports this principle.

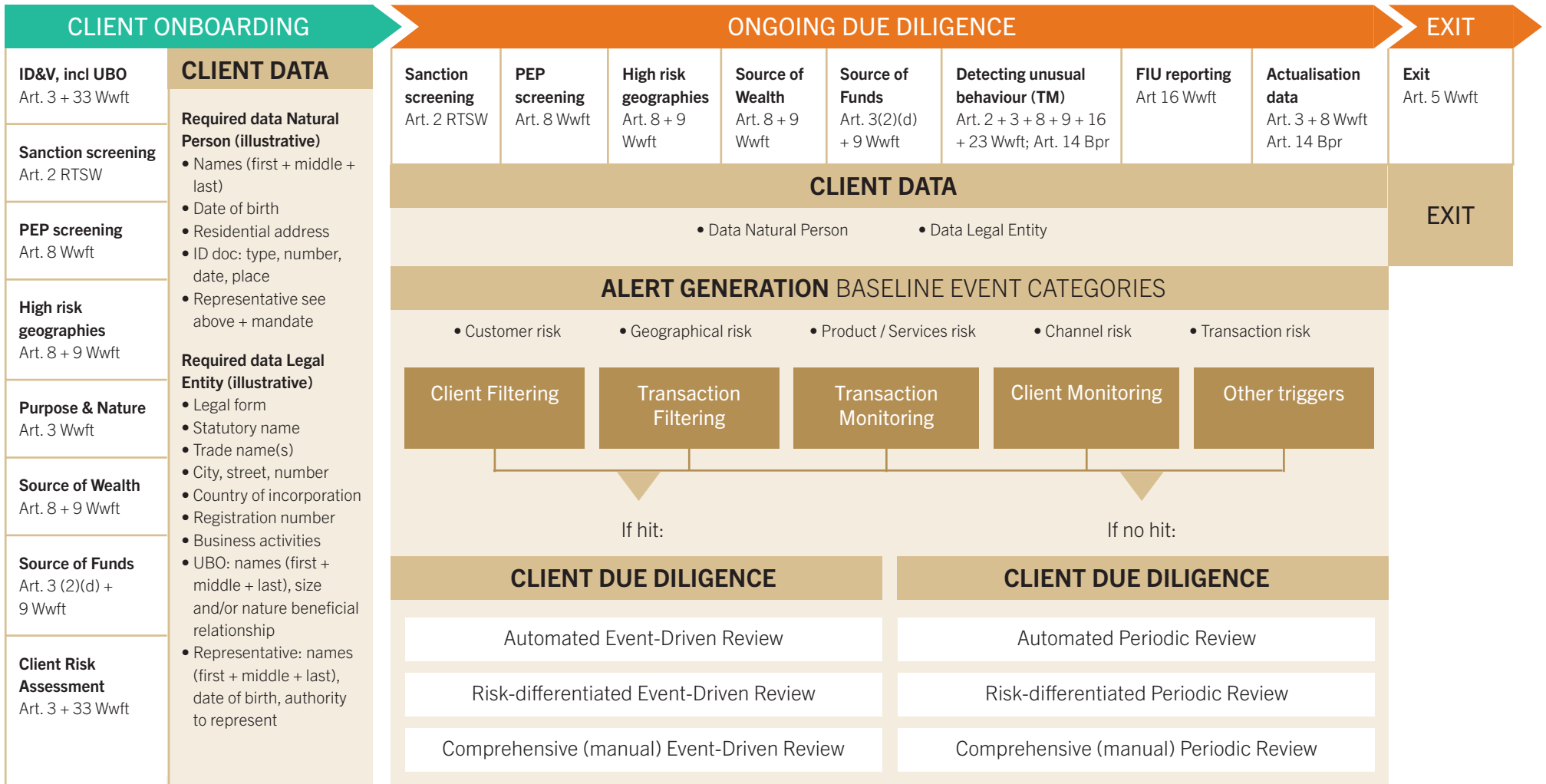
The NVB Industry Baseline describes the risk-based Dutch banking practice to implement the above requirements for low, neutral and high risk scenarios. The indicated risk level of a scenario should be interpreted in the full context of the client, in this case with focus on the specific UBO related risks.

Positioning within the Financial Crime Framework

UBO ID&V are essential mitigating measures and legal requirements for CDD processes, both at onboarding and during various types of reviews. These controls enable banks to ensure transparency of ownership and control for legal entities and establishing the UBO(s). Transparency of beneficial ownership contributes to preventing criminals, corrupt persons and sanctions evaders from hiding their illegal activities and assets.

Adequate, accurate and timely information on the UBO(s) is important to manage ML/TF risks and prevent misuse of legal entities. In addition, enhancing transparency of corporate vehicles is also relevant to effectively address corruption and tax crimes. Information on the UBO is needed to assess and manage the risks associated with the client and implement AML/CFT controls on those risks.

FINANCIAL CRIME FRAMEWORK



- Regulatory requirement
- CDD & TM processes at Bank
- Risk trigger mechanism /Models at Bank

RISK-BASED INDUSTRY BASELINE

1 Industry Baseline

Wwft requirements for UBO ID&V are two-pronged:

- identifying who the client's UBO is;
- taking reasonable measures to verify the identity of the UBO.

These requirements must result in establishing and knowing who the UBO is and allow for a risk-based approach. The extent and depth of the collected UBO information and documentation is determined by the banks' assessment of the risks involved – notably regarding the UBO and structure – and the mitigation thereof.

In line with the EBA Risk Factor Guidelines for SDD, banks can use a UBO-declaration by the client and also accept information obtained from the client rather than an independent source when verifying the UBO's identity. Moreover, the FATF Recommendations highlight that identification may be performed with information from a central register or from the client.

Thus, for low and neutral risk scenarios banks can rely on the information stated in the UBO-declaration provided by the client. In 2022 the Dutch UBO-register was established by the Dutch Chamber of Commerce (hereafter CoC), in accordance with EU laws, where clients are obliged to register complete and accurate information on their UBO(s). Clients are also the source of information in the UBO-

register – with standardised controls and validation performed by the CoC – and banks can alternatively request the client to confirm the information in the UBO-register.

By applying a risk-based approach for the UBO ID&V it is considered adequate in low and neutral risk scenarios to apply the following:

- 1 check the UBO information in the central UBO-register and record a copy of the extract in the client file;
- 2 request the client to confirm the information obtained from the central UBO-register or use the UBO-declaration provided by the client.

Thus effectively accomplishing a multi-pronged approach.

In high risk scenarios, notably when it concerns the UBO or structure, additional information needs to be collected. Banks need to assess based on relevant ML/TF risk indicators and the mitigation thereof whether the situation of a specific client constitutes a low, neutral or high risk scenario. The next paragraphs describe an adequate execution and documentation of UBO ID&V for each of those scenarios in more detail.

1.1 Identifying the UBO(s)

In low and neutral risk scenarios

To identify who the UBO(s) are, the following risk-based measures are adequate.

In case of an obligation to consult the UBO-register or when having access to an UBO-register (e.g. in the Netherlands or another country):

- checking the UBO-register and keeping a copy of the extract; **and**
- requesting the client to confirm the information in the register;

In case of no obligation to consult the UBO-register or no access to an UBO-register (e.g. outside the Netherlands):

- reliance on the UBO-declaration by the client; **or**
- reliance on other reliable sources (e.g. public or regulatory disclosures, government maintained repositories).

In high risk scenarios

In case of an obligation to consult the UBO-register or when having access to an UBO-register (e.g. in the Netherlands or in another country):

- checking the UBO-register and keeping a copy of the extract; **and**
- requesting the client to confirm the information in the register;

In case of no obligation to consult the UBO-register or no access to an UBO-register (e.g. outside of the Netherlands):

- Reliance on the UBO-declaration by the client, **and supported by** further information, for example:
 - register of shareholders;
 - trust deed;
 - third-party UBO-statement (e.g. AML-letter issued by a regulated fund administrator);
 - annual reports (to the extent available).

Clients that are sole proprietors do not have a UBO nor are obliged to register a UBO. Information on the sole proprietor will be in the CoC extract and not in the UBO-register. Therefore instead of the UBO-register, the CoC-register can be used for sole proprietorships.

For all scenarios the conclusion of the assessment and the accompanying evidence and documentation need to be recorded and be readily available in the client's CDD file.

1.2 Verifying the identity of the UBO(s)

For low and neutral risk scenarios

To verify the identity of the UBO, the UBO's personal information in the central UBO-register can be used and request the client to confirm the identity information. Alternatively, banks can request the client or UBO to provide a copy of UBO's identity document.

For high risk scenarios

To verify the identity of the UBO additional information from a reliable source will be used, such as a certified copy of an identification document. When the UBO is seen in person, the identity can be verified at that time by obtaining proof of the identity of the UBO.

2 Impact

For clients the need to provide their UBO information to both the UBO-register and banks is burdensome and unnecessary. By allowing banks to use the information in the UBO-register in low and neutral risk scenarios, client efforts and outreach are more proportionate and risk relevant.

Use of digital solutions by banks, such as a direct link to the relevant information in the CoC, UBO-register and changes thereof improve the efficiency of CDD-processes and result in better throughput times for clients.

3 Use cases

Examples of **low and neutral risk** scenarios:

- simple corporate structures, e.g. up to a maximum of two layers between client and UBO;
- clients with one or two shareholders;
- structures with only Dutch entities;
- clients with no high risk activities or other high risk indicators.

Examples of **high risk scenarios** are when (combinations of) risk indicators apply:

- higher risk industry;
- high risk geography involved, notably when it concerns the resident country of the UBO;
- involvement of bearer shares or nominee shareholder;
- complex product;
- multilayer client structure to obscure ownership or criminal proceeds;
- foreign entities incorporated in high risk geographies in the structure to obscure ownership disguise criminal proceeds.

In general, EDD is applied to clients where high risk indicators are present and often the overall conclusion of the risk assessment will result in a high risk classification, whereas clients without risk indicators and/or mitigated risks will predominantly be classified as low or neutral risk.

Please note that the following use cases are examples to illustrate a practical application of this Industry Baseline and not intended to be exhaustive.

LOW RISK

Example

Dutch BV (a shop for selling clothes) is 100% owned by a Dutch holding company. This holding company is owned by two other Dutch holding companies, each holding 50% of the shares. Both holding companies are owned by a 100% shareholder.

Industry Baseline

- The UBO is identified based on the declaration by the client or confirmation by the client of the information in the UBO-register.
- Verification of the UBO's identity is performed by means of the UBO-register, and confirmation by the client of the identity information, or a copy of an identity document.

NEUTRAL RISK

Example

A holding company holds all shares of three subsidiaries. These subsidiaries provide IT services to local businesses. The holding company and one subsidiary are located in the Netherlands. The other two subsidiaries are located in Poland and the UK. The shares in the Dutch holding company are held by two persons each owning 50% of the shares.

Industry Baseline

- The UBO is identified based on the declaration by the client or confirmation by the client of the information in the UBO-register.
- Verification of the UBO's identity is performed by means of the UBO-register, and confirmation by the client of the identity information, or a copy of an identity document.

NEUTRAL RISK

Example

A Belgium SA/NV has a payment institution license from the National Bank of Belgium. This payment institution has a physical branch in the Netherlands.

Industry baseline

- Identification of the UBO is performed based on information from the client.
- Verification of the UBO's identity is performed based on a copy of an identity document of the UBO.

HIGH RISK

Example

A Dutch BV, active in the telecom business, is 50% owned by a company in the UAE and 50% by a company in South Africa. 50% of the shares of the South African parent company are listed on the Johannesburg Stock Exchange and 50% of the shares are owned by a family trust, with a Jersey trustee. The UAE parent company has three shareholders each holding one-third of the shares: a company in the UAE, one in China and one in Jordan. These three companies are each owned by 100% shareholders residing in the same country as the company of which they are the shareholder.

Industry Baseline

- The UBO is identified based on the declaration by the client or confirmation by the client of the information in the UBO-register and is supported by other information such as shareholder registers and CoC extracts.
- Verification of the UBO's identity is performed by means of information from a reliable source, such as a certified copy of an identification document or the UBO is seen in person at which time the identity is verified.

Regulatory framework

The regulatory context for this topic is described in relevant parts of applicable laws, regulations and guidelines from various authorities, such as: FATF, EBA, Ministry of Finance and DNB. Below an overview of the current regulatory framework with reference to UBO ID&V.

- **FATF Recommendation 10**
“Identifying the beneficial owner, and taking reasonable measures to verify the identity of the beneficial owner, such that the financial institution is satisfied that it knows who the beneficial owner is.”
- **FATF Interpretive note to Recommendation 10**
“The relevant identification data may be obtained from a public register, from the client, or from other reliable sources.”
- **FATF Guidance Beneficial Ownership of Legal Persons (paragraph 58)**
Depending on the countries' specific level of risks, verification measures may comprise the following two components:
 - a verification of identity: appropriate steps should be taken to verify the identity of any natural person(s) recorded as a beneficial owner.
 - b verification of status: appropriate steps should be taken to verify the basis of identification of a person as a beneficial owner.

- **Article 13(1)b Revised 4AMLD**
“Identifying the beneficial owner and taking reasonable measures to verify that person's identity so that the obliged entity is satisfied that it knows who the beneficial owner is.”
- **EBA Risk Factor Guidelines, paragraph 4.12**
“...
 - a firms should ask the client who their beneficial owners are;
 - b firms should document the information obtained;
 - c firms should then take all necessary and reasonable measures to verify the information: to achieve this, firms should consider using beneficial ownership registers where available.
 - d Steps b) and c) should be applied on a risk-sensitive basis.”
- **EBA Risk Factor Guidelines, paragraph 4.41 on SDD measures**
“...accepting information obtained from the client rather than an independent source when verifying the beneficial owner's identity.”
- **EBA Risk Factor Guidelines, paragraph 4.64 on EDD measures**
“Increasing the quantity of information obtained for CDD purposes as follows: Information about the client's or beneficial owner's identity, or the client's ownership and control structure, to be satisfied that the risk associated with the relationship is well understood.”
“Increasing the quality of information obtained for

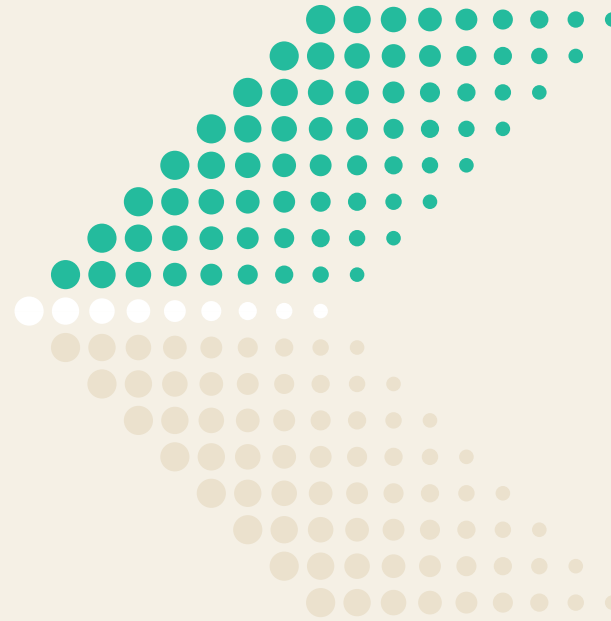
CDD purposes to confirm the client's or beneficial owner's identity...”

- **Wwft Article 3(2)b**
“Identifying the beneficial owner and taking reasonable measures to verify his identity”
- **Wwft Explanatory note**
“An institution must make every effort at all times to verify the identity of a UBO. The intensity can be adjusted to the risk. In principle, it is not sufficient to comply with this obligation by only inquiring about the UBO.”
- **DNB Leidraad paragraph 4.5**
“The requirement to identify the UBOs can usually be fulfilled by instructing the client to declare who the UBO is. The institution then takes “reasonable measures” to verify the declared identity, as the truthfulness of the data provided by the client has not been verified. The verification involves a risk assessment based on independent and reliable sources, such as public sources, an extract from the trade register or confirmation of the party's declaration by an independent third party.
“An institution must always verify the identity of the UBO, regardless of the risk. His/her identity must always be verified, but the method and depth of the verification will be risk-based. This means that more extensive measures are taken in the case of high risk clients than low risk clients. The verification measures enable the institution to obtain sufficient information to convince itself of the identity of the UBO.”

Relationship between 'DNB Good Practices' and 'NVB Industry Baseline'

DNB aims to illustrate its supervisory practices to the benefit of supervised entities by, for example, providing an interpretation of regulatory requirements (Q&As) and examples on how regulatory requirements can be met (Good Practices). It is important to note that neither the DNB Q&As nor Good Practices are legally binding.

The NVB Industry Baseline describes the application and execution of the risk-based approach in more detail. Additionally it provides more practical examples on UBO ID&V for low, neutral and high risk scenarios.



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Dutch Banking Association