

Risk-based Industry Baseline

Pseudo-UBO

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. In case no UBO can be identified based on ownership or control, persons belonging to the senior management of the legal entity qualify as UBO(s). In the Netherlands this concept is called 'pseudo-UBO'. It is only to be used as a fall-back after exhausting of all other possible means to identify the UBO by ownership or factual control ('feitelijke zeggenschap'), and provided that there are no grounds for suspicion of ML/TF. Senior management is currently defined in the Wwft Decree as *all* board members, or, in the case of a partnership, as *all* partners.

In consequence the NVB Industry Baseline describes a three layered approach to identify the UBO. The three layers involve identifying the UBO:

- 1 based on ownership interest;
- 2 based on factual control, or;
- 3 as fall-back option, by designating risk relevant senior managing officials, i.e. the statutory directors.

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.

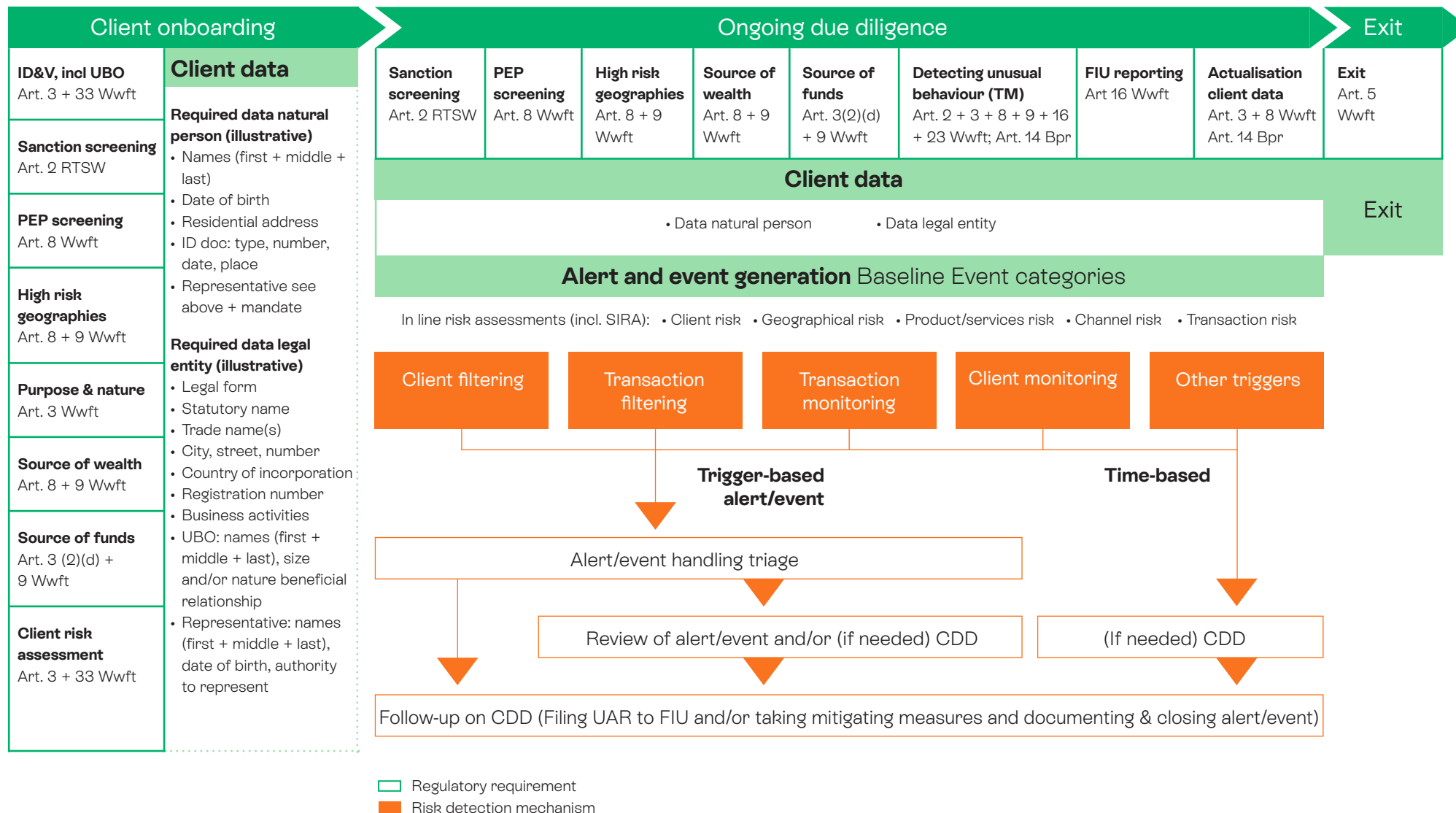
Positioning within the Financial Crime Framework

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

Determining who owns or controls a legal entity and adequate, accurate and timely information on the UBO(s) are important to manage ML/TF risks. Information on the UBO, including his or her reputation and previous activities is needed to assess and manage the ML/TF risks associated with the client and implement AML/CFT controls on those risks.

Financial Crime Framework

Risk-based



Risk-based Industry Baseline

1 Industry Baseline

Transparency of the ownership and control structure of a client allows banks to better assess the ML/TF risks of a business relationship. However, ownership and control can be so dispersed that there are no natural persons, whether acting alone or together, exercising control over the legal entity through ownership or who ultimately have a controlling interest in a legal entity.

In those cases where there is no UBO through ownership or control, the Wwft requires that banks identify all persons belonging to senior management of the legal entity as the pseudo-UBOs. Important to emphasise that identifying a senior managing official as UBO is only to be used as a fall-back option. From a risk-based and proportionality perspective designating all members of senior management as pseudo-UBO does not contribute to risk relevant mitigation of ML/TF risks nor does it contribute to transparency of the ownership and control structure of the client.

Because control measures regarding UBO identification and verification should be risk relevant, banks can apply a risk-based approach regarding the pseudo-UBO. In case of a client where there is no UBO identified by ownership or control, for entities incorporated or registered in the EU, banks can rely on information provided in

the trade register of the Chamber of Commerce (CoC) to identify the risk relevant pseudo-UBOs, i.e. statutory directors or partners. In line with the EBA guidance, the person who bears the ultimate and overall responsibility for the client and makes binding decisions on the client's behalf is designated as the senior managing official. This can be persons responsible for the company's strategic policy, in general this will be the statutory directors or partners.

Since trade registers in the EU have third-party effect (in Dutch: 'derdenwerking'), information on senior managing officials, i.e. statutory directors, included in an EU trade register can be used for identifying the pseudo-UBOs. [\[1\]](#)

For low and neutral risk scenarios obtaining information on the senior managing officials from an EU trade register is sufficient. In high risk scenarios additional confirmation from the client should be obtained. Also, verification of the identity of the senior managing official(s) being UBO – when no indicators of high risk are present – can be performed based on information in the CoC or information provided by the client.

The pseudo-UBO can be established at the level of the client. This is especially relevant where banks provide services to a local legal entity and do not have contacts at the level of the ultimate parent company.

Furthermore, when designating a member of senior management as pseudo-UBO, this refers to an executive member for boards with executive and non-executive directors. A non-executive board member is not considered risk relevant. Also, in line with EBA guidelines, a non-executive member will not have ultimate and overall responsibility for the client nor take binding decisions on the client's behalf.

1.1 Identifying the senior managing official(s) as being UBO(s)

In low and neutral risk scenarios

Designating risk relevant directors, e.g. the statutory directors or partners at client level. This will be the persons who bear the ultimate and overall responsibility for the client and make binding decisions on the client's behalf. To identify the senior managing officials as being the UBO, the following risk-based measures are adequate:

¹ In the Netherlands, third-party effect of the trade register follows from article 25 of the Handelsregisterwet.

In case of an entity incorporated or registered in the EU and when having access to the trade register in the Netherlands or in another EU country:

- Checking the trade register for the information on the statutory directors or partners and keeping a copy of the extract.
- Recording in the client file that: i) senior managing officials are identified as being UBO as a fall-back after exhausting of all other possible means to identify the UBO by ownership or factual control and ii) that there are no grounds for suspicion of ML/TF.

In case of an entity **not** incorporated or registered in the EU or when not having access to the trade register in a country:

- Confirmation by the client on who the statutory directors or partners are; and
- Recording of the statutory directors or partners.
- Recording in the client file that: i) senior managing officials are identified as being UBO as a fall-back after exhausting of all other possible means to identify the UBO by ownership or factual control and ii) that there are no grounds for suspicion of ML/TF.

In high risk scenarios

Designating the statutory directors or partners as senior managing officials being the UBOs at client level.

Adequate measures to identify the pseudo-UBOs encompass:

In case of an entity incorporated or registered in the EU and when having access to the trade register in the Netherlands or in another EU country:

- Checking the trade register for the information on the statutory directors or partners and keeping a copy of the extract, and
- Requesting the client to confirm the information.
- Recording in the client file that: senior managing officials are identified as being UBO as a fall-back after exhausting of all other possible means to identify the UBO by ownership or factual control.

In case of an entity **not** incorporated or registered in the EU or when not having access to the trade register in a country:

- Confirmation by the client on who the statutory directors or partners are; and
- Recording of the statutory directors or partners.
- Recording in the client file that: senior managing officials are identified as being UBO as a fall-back after exhausting of all other possible means to identify the UBO by ownership or factual control.

In all scenarios the conclusion on establishing and assessing the senior managing official(s) being UBO(s) and the accompanying evidence and documentation need to be recorded and readily available in the client's CDD file.

1.2 Verifying the identity of the senior managing official(s) being UBO(s)

Low and neutral risk scenarios

Verification of the identity of the senior managing official(s) being UBO(s) can be performed based on information in the CoC, open sources or information provided by the client. Alternatively, banks can request the pseudo-UBO(s) to provide a copy of their identity document.

High risk scenarios

To verify the identity of the pseudo-UBO(s) information from a reliable source will be used, such as a certified copy of an identification document. In case the pseudo-UBO(s) are seen in person, the identity can be verified at that time by obtaining proof of the identity of the pseudo-UBOs.

1.3 Foundations and associations

Foundations and associations often have large boards. Where factual control can be established through articles of association, there is no need to apply the pseudo-UBO fall-back option. In low and neutral risk scenarios where there is no UBO by ownership or control, the risk-based approach allows to designate the risk relevant directors, i.e. the statutory directors or other persons holding ultimate and overall responsibility for the client.

1.4 Religious organisations (e.g. ‘kerkgemeenschappen’)

For religious organisations the risk-based approach allows to designate the risk relevant statutory directors as senior managing official(s) being UBO(s) – being the appointed persons mentioned in the statute or articles of association of the religious organisation. The client confirms the identities by way of a declaration from the religious organisation. This measure is in addition to identifying and verifying the identity of the person who is acting towards the bank.

2 Impact

For clients the burden of all directors, board members or associates being designated as senior managing official(s) being UBO(s) is unnecessary and not purposeful. Especially for associations and foundations such as sports clubs, home associations and religious organisations. Also considering the fact that these persons generally have been registered in the trade register. Moreover, directors, board members or associates often do not recognize themselves as UBO of the legal entity.

For banks the broad identification and verification of senior management as UBO, causes significant administrative efforts without being risk relevant. Outreach is simplified and more targeted when not all board members but only the statutory directors

need to be identified as pseudo-UBO. The impact is notably not proportional for associations, foundations and religious organisations that usually have large boards. Designating only statutory directors as senior managing official being UBO and relying on the trade register for this information improves risk relevance, efficiency and throughput times of CDD-processes – both at onboarding and during any type of review.

3 Use cases

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

Low risk

Example

A Dutch BV is 100% owned by a Dutch holding company. This holding company is owned by two other Dutch holding companies each owning 50% of the shares. These two holding companies are each owned by four shareholders with each 25% of the shares.

Industry Baseline

- In case there is no UBO by ownership or control, one director, the statutory directors will be identified as pseudo-UBOs at client level. It is recorded in the client file that this is the fall-back after exhausting of all other possible means to identify the UBO by ownership or factual control and that there are no grounds

for suspicion of ML/TF.

- Information in the trade register can be used to determine who the statutory directors are.
- Verification of the identity of the pseudo-UBO by means of information from the trade register, or by a copy of an identity document of the pseudo-UBO.

Low risk

Example

A client is a religious organisation and in its statutes the following is stated: “For the purposes of civil law matters, the church, its regional or joint assembly shall be represented by the presiding officer and the scribe appointed and authorised by the church council by written resolution.”

Industry Baseline

- The church organisation provides the names of the persons appointed and authorised by the church council (established based on factual control) by way of a declaration.
- Verification of the identity of these persons by way of confirmation by the client of the identity information or by a copy of an identity document of the UBOs.

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 of the Dutch holding company are owned by five persons each holding 20% of the shares.

Industry Baseline

- In case there is no UBO by ownership or control, the statutory directors will be identified as pseudo-UBOs at client level. It is recorded in the client file that this is the fall-back after exhausting of all other possible means to identify the UBO by ownership or factual control and that there are no grounds for suspicion of ML/TF.
- Information in the trade register will be used to determine who the statutory directors are.
- Verification of the identity of the pseudo-UBO by means of information from the trade register, and confirmation by the client of the identity information, or by a copy of an identity document of the pseudo-UBO.

Neutral risk

Example

A Dutch entity has two parent companies holding 49% and 51% of the shares. Both parents are listed on a recognized exchange in EU countries.

Industry Baseline

- In case there is no UBO by ownership or control, the statutory directors will be identified as pseudo-UBOs at client level. It is recorded in the client file that this is the fall-back after exhausting of all other possible means to identify the UBO by ownership or factual control and that there are no grounds for suspicion of ML/TF.
- Identification of the pseudo-UBOs by means of information in the trade register.
- Verification of the identity of the pseudo-UBOs by means of information from the trade register, or by a copy of an identity document of the pseudo-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 five persons each owning 10%. 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 companies are each owned by multiple shareholders.

Industry Baseline

- In case there is no UBO by ownership or control identify the statutory directors are identified as pseudo-UBOs at client level. It is recorded in the client file that this is the fall-back after exhausting of all other possible means to identify the UBO by ownership or factual control.
- Identification of the pseudo-UBOs by means of information in the trade register and confirmation by the client.
- Verification of the identity of the pseudo-UBOs 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 and Ministry of Finance. Below an overview of the current regulatory framework with reference to pseudo-UBO.

- **FATF Interpretive Note to Recommendation 10**
“Where no natural person is identified under (i) or (ii) above, financial institutions should identify and take reasonable measures to verify the identity of the relevant natural person who holds the position of senior managing official.”
- **Article 3(6) Revised 4AMLD**
“...if, after having exhausted all possible means and provided there are no grounds for suspicion, no person under point (i) is identified, or if there is any doubt that the person(s) identified are the beneficial owner(s), the natural person(s) who hold the position of senior managing official(s), the obliged entities shall keep records of the actions taken in order to identify the beneficial ownership under point (i) and this point”

- **EBA Risk Factor Guidelines, paragraph 4.21**
“When deciding which senior managing official, or which senior managing officials, to identify as beneficial owner, firms should consider who has ultimate and overall responsibility for the client and takes binding decisions on the client’s behalf.”
- **Article 3(2)b Wwft**
“Identifying the beneficial owner and taking reasonable measures to verify his identity.”
“where the UBO is a member of senior management, banks should take the necessary reasonable measures to verify the identity of the member of senior management, record the measures taken and the difficulties encountered during the verification process.”
- **Article 3 Wwft Decree**
“In case no UBO by ownership or control can be identified, or when there are doubts as to whether the identified UBO is indeed the ultimate beneficial owner or controller, the person(s) that belong to senior management of the entity qualify as UBO(s).”
“Senior management is defined as all directors within the meaning of Article 9 of Book 2 of the Dutch Civil Code, or, in the case of a partnership, any partner, with the exception of a member by way of funding as referred to in Article 19, first paragraph of the Commercial Code.”

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 of how regulatory requirements can (Good Practices). It is important to note that neither the DNB Q&As nor Good Practices are legally binding.

The NVB Industry Baseline stresses that the use of the pseudo-UBO fall-back option should be minimised, while acknowledging that for certain structures no UBO can be identified by ownership or control (e.g. collective investment schemes). Where it is possible, it is preferred to conclude on ownership or effective control, and avoid using the pseudo-UBO fall-back option. The Industry Baseline also describes the application and execution of the risk-based approach in more detail. Additionally it provides more practical use cases on senior management official(s) for low, neutral and high risk scenarios.



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