

Client screening and obligation to report

in the notarial profession

Under the Civil-Law Notaries Act (*Wet op het notarisambt*), the civil-law notary is obliged to establish the identity of his client. In addition, the civil-law notary is legally obliged to do a client screening and to report unusual transactions to a national government reporting point (FIU-Nederland). This is required under the Money Laundering and Terrorist Financing (Prevention) Act (*Wet ter voorkoming van witwassen en financieren van terrorisme (Wwft)*). Many of the civil-law notary's services are subject to the Wwft. Services in the area of real estate and corporate law are generally subject to the Wwft. The Wwft can also apply in the area of the law of persons and family law, for example if the civil-law notary gives tax advice as well.

Client screening

The civil-law notary's screening intensity depends on the risks of money laundering or terrorist financing. Examples of circumstances that influence these risks are:

- whether the client is active in a sector known to be sensitive to money laundering, or finances with funds related to such a sector;
- whether the client, the transaction or the funds used relate to a country known to have a higher risk of money laundering or terrorist financing;
- whether the client appears in the media with reports that increase the risk of money laundering or terrorist financing;
- whether the service requested from the civil-law notary benefits the client;
- whether the client has or has had an important political function and, as such, presents a risk of corruption.

The screening by the civil-law notary therefore differs from case to case. There may be circumstances in which the civil-law notary must continue to ask questions.

The elements that the civil-law notary has to screen are stipulated in the Wwft. The following is concerned:

- the client's identity (and that of the representative, if any);
- the purpose and background of the requested services;
- whether representatives are authorised to represent;
- whether the client is really acting on his own behalf, or actually on behalf of someone else;
- in the case of financial transactions: the origin of the funds (or other financial resources) used in the transaction (in order to avoid the use of illegal funds);
- in the case of legal entities and companies: how the structure (ownership and control) is put together and who the ultimate beneficial owners (UBOs) are;
- whether the client or the UBO is a politically exposed person.

The civil-law notary is not allowed to render services for a client if the client screening cannot be completed. If a relationship with the client already exists, it must be terminated in that case. If there are also indications of money laundering or terrorist financing, the civil-law notary must report this to FIU-Nederland.

Obligation to report

In respect of services that are subject to the Wwft, the civil-law notary is obliged to report unusual transactions to a national government reporting point (FIU-Nederland). A transaction (or intended transaction) is unusual if it could be connected with money laundering or terrorist financing. The civil-law notary has a duty of confidentiality, but it is breached by the obligation to report. The civil-law notary is not allowed to tell the client anything about a report (whether the civil-law notary intends to report or has already done so).

The civil-law notary has no obligation to report if an unusual transaction (or intended unusual transaction) is discussed during an exploratory meeting. Clients are then free to discuss everything with the civil-law notary. The statutory obligation to report applies from the moment the civil-law notary actually takes up the case and it is clear that the requested transaction is subject to the Wwft.

Cash

Under their professional rules, civil-law notaries are not allowed to accept or pay out cash amounts exceeding € 2,500. Under the Wwft, civil-law notaries are obliged to report cash payments of € 10,000 or more to FIU-Nederland. The obligation to report also applies if the client deposits the cash into the civil-law notary's account. Cash payments intended by the client to the civil-law notary or desired payments of € 10,000 or more that are not carried out must also be reported.

Identity of clients being natural persons

Nationals of the EU/EEA countries and Switzerland may have their identities verified by means of a valid national passport, a diplomatic or service passport, a valid Dutch identity card with passport photo, or a valid driving license with passport photo of which the holder lives in the Netherlands. Other persons may have their identities verified by means of a valid travel document or a valid alien's document if they reside longer than three months in the Netherlands. In consultation with the civil-law notary, the identification may also take place by another professional. If a notarial deed is drawn up, the civil-law notary must check the authenticity of the identity document with a special scanner (WID scanner).

Identity and UBOs of clients being legal entities

The identity of a client being a legal entity such as a *bv* (private limited company), *nv* (public limited company) or foundation may be established by means of a commercial register extract. This can either be a physical extract or an electronic extract applied for by the civil-law notary himself. Also any person who ultimately owns or controls a legal entity being a client must be known to the civil-law notary, and have his identity verified if necessary. These persons are also referred to as UBOs: *ultimate beneficial owners*. Each legal entity has at least one UBO, but may have more than one UBO. A UBO is always a natural person. If there is no "real" UBO or if there is any doubt that the identified person is the UBO, all natural persons belonging to the client's senior executive staff will be considered pseudo-UBOs (i.e. all directors under the articles of association of a *bv*). Similar rules apply to clients being other legal entities, such as a *maatschap* (partnership) or a *cv* (limited partnership).

UBO register

If the client is a legal entity, the civil-law notary must consult the UBO register to determine whether the UBOs of the client are recorded. The UBO register is a register in which almost all Dutch legal entities have to register their UBOs. The UBO register is part of the commercial register of the Chamber of Commerce. Part of the data in the UBO register is public.

If there is a difference between the UBO information recorded in the UBO register and the UBO information held by the civil-law notary, the civil-law notary has to report this difference to the Chamber of Commerce. This is called a feedback obligation. As in the case of reporting an unusual transaction to FIU-Nederland, the feedback obligation breaches the civil-law notary's statutory obligation of confidentiality.

Origin of the funds

The civil-law notary must screen the origin of the funds used in a financial transaction. This also applies if the funds originate from a Dutch bank account. The civil-law notary has his own obligation to screen in addition to that of the bank. This obligation to screen also applies to funds that are not paid into the civil-law notary's clients' account (i.e. also in the case of a payment between the parties). In addition, this obligation to screen also applies if the transaction is financed by financial resources other than money (for example setoff or shares).

The civil-law notary must not assist in a financial transaction if it is not plausible that the funds used in the transaction originate from a legal source. The depth of the civil-law notary's screening depends on the risks of money laundering or terrorist financing. If the screening cannot be completed to the civil-law notary's satisfaction, the civil-law notary will refuse the services and may have to report to FIU-Nederland.

Please submit your questions directly to a civil-law notary or candidate civil-law notary by calling the Notary Helpline. The Notary Helpline is available on working days from 9:00 to 13:00, telephone number 0900 - 346 93 93 (at a rate of € 0.80 per minute).

Please visit www.notaris.nl for actual rates and other public information.

Issue March 2022
By Koninklijke Notariële Beroepsorganisatie
 Postbus 16020, 2500 BA Den Haag



Koninklijke Notariële
Beroepsorganisatie