

## Belgian Audit Oversight Board AML Recommendation of 5 October 2023

### Time of the identification and verification of the identity of the client and of the client's beneficial owners and agents

#### Scope:

Natural persons or legal entities that carry on activities in Belgium and that are registered or enrolled in the public register kept by the Institute of Registered Auditors (Instituut van de Bedrijfsrevisoren/Institut des réviseurs d'entreprises).

#### Summary/Objective:

This recommendation specifies and clarifies at what point an auditor must proceed to identify and verify the identity of the client and of the client's beneficial owners and agents, as required under the Anti-Money Laundering Law<sup>1</sup>.

- Belgian Audit Oversight Board (BAOB) as supervisor of compliance with AML obligations

Article 85, § 1, 6° of the AML Law designates the BAOB as supervisor of compliance with the AML Law by auditors and trainee auditors. In this capacity, the BAOB may, pursuant to Article 86, § 2, first paragraph, 1° of the AML Law, draw up recommendations to clarify the scope of their AML obligations.

- **The beginning of the business relationship**

Article 30, first paragraph of the AML Law states that the identification and verification of the identity of a customer and of the customer's beneficial owners must be carried out before entering into a business relationship.

**In the case of an audit mandate, the BAOB considers the appointment by the general meeting as the point when the business relationship is entered into.** For it is when the appointment takes effect that the auditor has been formally engaged. From that point onwards, the mandate can only be terminated for reasons that are exhaustively listed in the Code on Companies and Associations. The identification and verification of the identity of the client and its beneficial owners must therefore take place **before the appointment of the auditor by the general meeting.**

---

<sup>1</sup> Law of 18 September 2017 on the prevention of money laundering and terrorist financing and on the restriction of the use of cash.

In the same vein, where **another statutory task is carried out**, the identification and verification of the identity must also be carried **out before the engagement of the auditor by the competent governing body**. The same applies to **other types of tasks**, such as bookkeeping, which the auditor may carry out on the basis of his or her registration in the public register and for which he or she is thus subject to the AML Law.

If an auditor is asked to carry out a statutory task for the company for which he or she is the auditor, the statutory task is carried out within the same business relationship and therefore no new identification or verification of the company's identity is required.

- The identification and verification of the identity of an agent

The identification of **an agent**, the verification of his or her identity and authorization to act in the name of the client must be carried out before the agent proceeds to take any actions that bind the client<sup>2</sup>. In practice, for audit mandates this will for the most part coincide with the point in time when the letter of engagement is signed by the client's agent.

- Exception to the point when the identity is to be verified

The AML Law allows<sup>3</sup> that in very exceptional cases, the **verification of the identity** (not the identification itself) of the client and of the client's beneficial owners may take place **in the course** of the business relationship.

For this exception to be invoked, the following cumulative conditions must be met:

- **special circumstances as listed exhaustively** in the internal procedures of the auditor must be present;
- it must be necessary for the mandate not to be interrupted by carrying out the verification;
- the individual risk assessment must indicate that the business relationship presents **a low ML/FT<sup>4</sup> risk**.

In the exceptional case that all these conditions are met, the verification must nevertheless be carried out **as soon as possible** after the first contact with the client.

An auditor who wishes to invoke this exception must, moreover, practice **increased vigilance** with regard to all transactions, including the verification of identity<sup>5</sup>. This may lead to a mandatory written report if the identity cannot be verified sufficiently quickly.

---

<sup>2</sup> Art. 30 juncto Art. 22 of the AML Law.

<sup>3</sup> Art. 31, first paragraph, of the AML Law.

<sup>4</sup> Money laundering, terrorist financing.

<sup>5</sup> Art. 37, § 1 of the AML Law.

- Point when the individual risk assessment must be carried out

The identification of the client and of the client's beneficial owners and agents is among the measures of vigilance that an auditor adopts vis-à-vis the client<sup>6</sup>. These measures and the appropriate level of vigilance follow from the individual risk assessment and the risk level determined by that assessment<sup>7</sup>.

It thus follows logically that **the individual risk assessment of the client must take place before the auditor proceeds to identify the client**, in order that he or she may apply the appropriate level of vigilance.

\* \* \*

---

<sup>6</sup> Art. 19, §1 of the AML Law.

<sup>7</sup> Art. 19, §2 of the AML Law.