MANAGEMENT

# Intax Expo Russia 2019

INTAX EXPO RUSSIA

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# Speaker


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# Agenda

1. Compliance
2. Recent Developments
3. Changes
4. Future developments
5. Luxembourg
6. Enforcement in The Netherlands

CIS MANAGEMENT

# Compliance in The Netherlands: History



The first compliance function in the Netherlands after insider trading has been sanctioned by law;

After the Supervision of Securities Trade Act 1995 came into force, more laws to safeguard the integrity of the financial system enacted;

Financial Supervision ACT, in force as per 1 January 2007, and its regulations, first legislation which gives a description of the compliance function.

## AMLD1 (1991)[1]

Mainly Re ML by drug crimes

Obligations only for the financial sector

## AMLD2 (2001)[2]

40 recommendations of the Financial Action Task Force (FATF)

Extension Re crimes and professions/sectors subject to the AMLD

## AMLD3 (2006)[3]

2003 FATF revised anti-money laundering and counter terrorist financing standards to include financing of terrorism

Enhanced rules Re identification and verification of clients

Simple or enhanced Customer Due Diligence (CDD)

## AMLD4 (2015)[4]

Replaces AMLD3

2012 FATF Recommendations [5]

Two core obligations: **1.** Performance of CDD; **2.** Report unusual transactions to FIU

High-risk third countries:[6]

- which have provided a written high-level political commitment to address the identified deficiencies and have developed an action plan with FATF: **Afghanistan, Bosnia and Herzegovina, Guyana, Iraq, Lao PDR, Syria, Uganda, Vanuatu, Yemen, Ethiopia, Sri Lanka, Trinidad and Tobago, Tunisia, Pakistan**
- which have provided a high-level political commitment to address the identified deficiencies, and have decided to seek technical assistance in the implementation of the FATF Action Plan, which are identified by FATF Public Statement: **Iran**
- which present ongoing and substantial money-laundering and terrorist-financing risks, having repeatedly failed to address the identified deficiencies and which are identified by FATF Public Statement: **Democratic People's Republic of Korea (DPRK)**

## AMLD5 (2018)[7]

Amends AMLD4

Further works out the UBO register

AMLD3 and AMLD4 in line with FATF Recommendations: ML/TF takes place mostly cross-border, therefore an international level playing field is sought

Dutch AML/CFT Act[8]

Amended as per 25 July 2018

Implementation of AMLD4 (2015)

[1] Council Directive 91/308/EEC, 10 June 1991
[2] Directive 2001/97/EC, 4 December 2001
[3] Commission Directive 2006/70/EC, 1 August 2006
[4] Directive (EU) 2015/849, 20 May 2015
[5] Financial Action Task Force, International standards on combating money laundering and the financing of terrorism & proliferation (February 2012)
[6] Commission Delegated Regulation (EU) 2016/1675, as of 2/10/2018
[7] Directive (EU) 2018/843, 30 May 2018
[8] Wet ter voorkoming van witwassen en financieren van terrorisme

# Compliance in The Netherlands: Recent Developments

Recent developments

## RISK ANALYSIS AND RISK POLICY

**Most important changes:**

Make inventory on and assess ML/FT risks, take measures tailored to characteristics and size of business

Now expressly in law

Risk policy must be based on risk-analysis

Record and keep up to date

Risk policy must cover a.o. the following topics:

- risk-management, due diligence, obligation to report, the keeping of documentary evidence and training of personnel

## MORE EMPHASIS ON INTERNAL PROCEDURES

A branch or subsidiary outside the EU must in principle comply with the Dutch AML/CFT Act, exemptions do apply

Establish compliance and audit function, tailored to characteristics and size of practice

One person of daily management to be appointed as responsible for compliance with Dutch AML/CFT Act

Independent and effective compliance function, can be outsourced

## CDD PROCEDURES FOR CLIENT ACCEPTANCE

- Identify customer + verify
- Identify UBO of customer + take reasonable measures to verify
- Identify representative of customer + verify
- Assessment of purpose + nature of business relationship
- Continuous monitoring of business relationship and transactions, including where necessary the source of funds used for the business relationship/transaction

**Simplified CDD**[9]

For a simplified CDD it is required that a low risk on ML/FT is established, minimally based on factors mentioned in Annex II to AMLD4

**Enhanced CDD**[10]

Assessment for enhanced CDD, minimally based on factors mentioned in Annex III to AMLD4, which include countries subject to sanctions, embargo's or similar measures

[9] Art. 15 AMLD4/Art. 6 Wwft
[10] Art. 18 AMLD4/Art. 8 Wwft

# Recent developments

## ULTIMATE BENEFICIAL OWNER (UBO)

There is always a UBO. In case of < 25%, the natural person(s) forming the senior management are designated as UBO(s)

In case no UBO can be identified or in case of doubt if identified UBO has control and there are indications of ML/TF, not allowed to service and report to FIU

Definition different for different legal entities

**Not yet in force in the Netherlands**, UBO register to be established in 2019/2020 together with implementation of AMLD5

## POLITICALLY EXPOSED PERSONS (PEP)

Risk management systems, including risk-based procedures, to determine whether the UBO of the customer qualifies as a PEP, approval of senior management for establishing/continuing business relationship

Establish source of wealth/funds involved in business relationships or transactions continuous and enhanced monitoring of business relationship

No difference between national and foreign PEPs, now also Dutch PEPs (who reside in the Netherlands) are subject to an enhanced due diligence

Definition is extended with Deputy Minister, member of the board of a political party, etc.[11]

The Dutch Tax Authorities have published a list of positions considered to be Dutch PEPs[12]

## UNUSUAL TRANSACTIONS

Monitoring of transactions to detect unusual transactions

Objective

Reporting of unusual transactions to FIU

Transactions of or for the benefit of a client residing or established in a high risk third country, also in the case there are no indications of a higher risk

## ENFORCEMENT

### FINES

The maximum of the fines has increased **from € 2M to € 4M or twice the amount** of the benefit of the offence

### THE DUTCH AUTHORITIES ARE ENFORCING THE LAWS

**August 2017: Volksbank**, instruction form DNB to intensify transaction monitoring, fine € 500k for not reporting 7 suspicious transactions

**September 2018: ING Bank**, landmark fine of € 775M. ING Bank was found to be negligent on indications of ML and having performed ML transactions

**February 2019: Rabobank**, fine of € 1M, client files not complete

**March 2019: Triodos Bank**, instruction form the supervising authority (the Dutch National Bank) to get its AML/FT controls in order before the year end (KYC, transaction monitoring) No specific breaches were found, but systems were found to be weak

**August 2019:** The Supervising Authority – the Dutch National Bank has instructed that **ABN Amro Bank** must perform CDD on all their 5 million consumer-clients

[11] Uitvoeringsbesluit Wwft 2018, https://wetten.overheid.nl/BWBR0041193/2018-07-25)

[12] https://download.belastingdienst.nl/belastingdienst/docs/prom-pub-funct-def-politiek-prom-pers-tz0181z1fd.pdf

# Future Developments: UBO register in The Netherlands



## NETHERLANDS UBO-REGISTER

Implementation of AMLD4 and AMLD5

Reaction on terrorist attacks, Panama Papers (hiding of income and assets)

Must be in place ultimately on 10 January 2020

- Compliance within 18 months
- Entities incorporated in the Netherlands
- Private address
- Fines: € 20,750

After the Act enters into force, entities will have 18 months to submit relevant UBO information to the Dutch Chamber of Commerce

Stage of legislative process: currently in Parliament

Obligation for legal entities to gather and keep up-to-date information on the UBO's

Obligation for UBO's to provide information to legal entity[13]

Legal entities are obliged to share information with obliged entities (as defined in Article 2 AMLD4) in the context of their CDD and with competent authorities and FIU

Establishment of central register, where UBO information is held

Obliged entities (as defined in Article 2 AMLD4) and competent authorities must report deficiencies in central register[14]

Access to the central register:

- Competent authorities and FIU
- Obliged entities (as defined in Article 2 AMLD4) in the context of their CDD
- Any other person[15,16]

Access to the central register for obliged entities and any other person can be limited in exceptional cases, like fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation

Information will be available between 5-10 years after de-registration of the legal entity

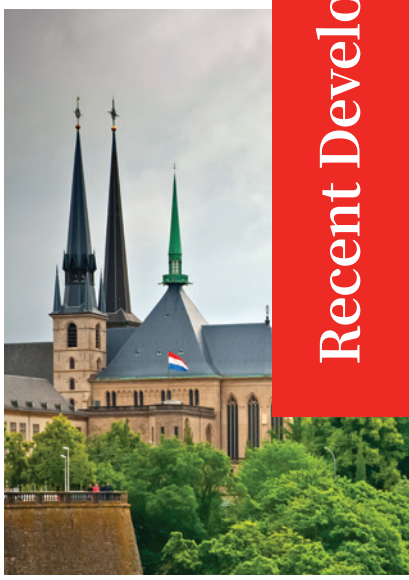
Information to be registered in central register: name, the month and year of birth and the country of residence and nationality of the beneficial owner as well as the nature and extent of the beneficial interest[17] held + at least date of birth and contact details

In the proposed Dutch legislation this is extended with: day, place, and country of birth, address, social security number and foreign TIN, copy of verification of identity, copy of document substantiating why a person is designated as a UBO and well as the nature and extent of the beneficial interest held.

[13] New under AMLD5
[14] New under AMLD4
[15] In AMLD4 this was limited to any person or organization that can demonstrate a legitimate interest
[16] This category has access to at least at least the name, the month and year of birth and the country of residence and nationality of the beneficial owner as well as the nature and extent of the beneficial interest held
[17] This will be done with thresholds of 25-50%/50-75%/75-100%

Recent Developments

# Experience of Pioneers: UBO register in Luxembourg



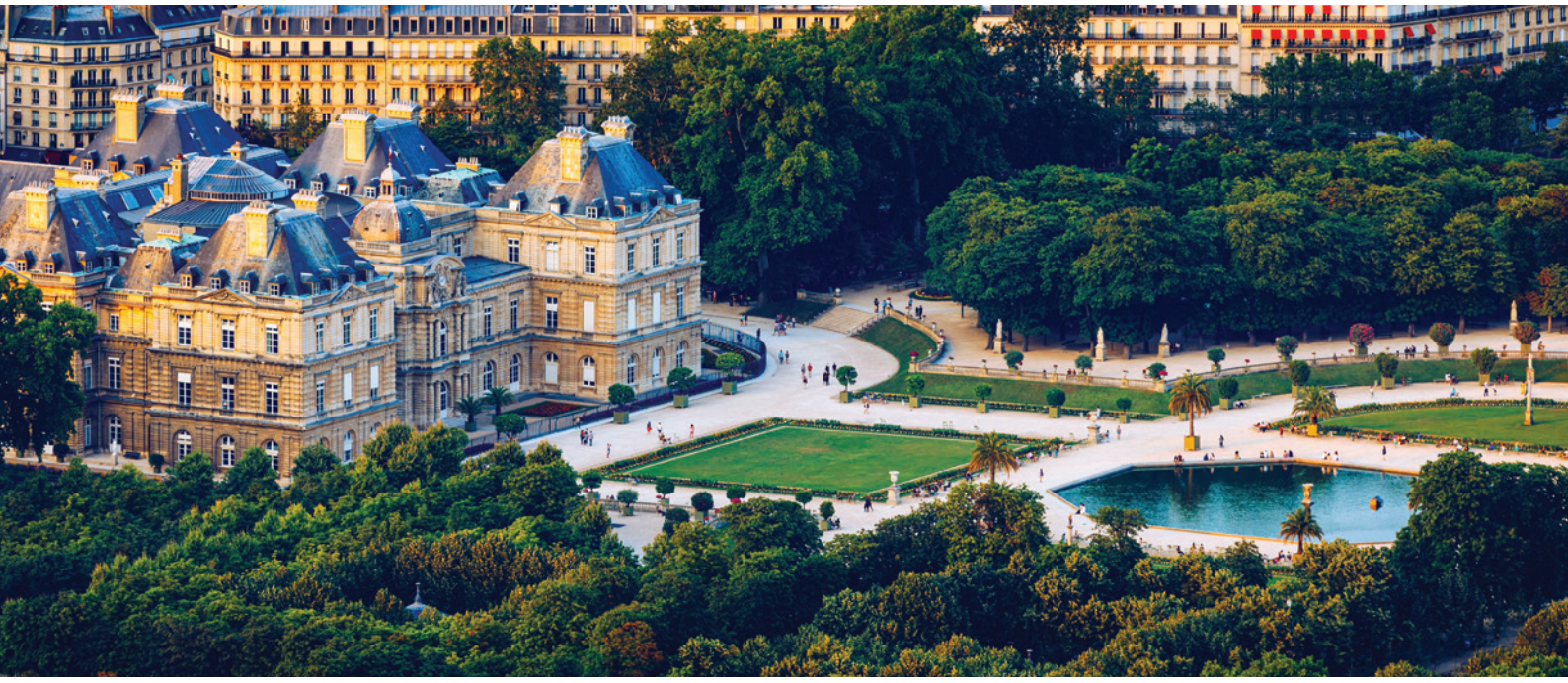
## LUXEMBOURG UBO-REGISTER:

Implemented by law dd 13 January 2019

Effect as from March 2019

- Compliance within 6 months
- Entities registered with Trade Register
- Private or professional address
- Fines: € 1,250-1,250,000

Information registered: full name, date and place of birth, nationality/ies, country of residence, private or professional address, national (Luxembourg or foreign) identification number (as applicable), details of the nature of and the extent of the beneficial interest held in the relevant entity.



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