

## The role of the registered auditor in the fight against money laundering

Many professions (notaries, real estate agents, certified accountants, insurance brokers, banks...) are subject to the law of September 18, 2017 on the prevention of money laundering and terrorist financing and on the restriction of the use of cash. Registered auditors are also subject to it.

### 1. The registered auditor being subject to the anti-money laundering law

The fight against money laundering and terrorist financing is subject to international coordination, entrusted to the Financial Action Task Force ("FATF"). In addition, the European Union ensures that the FATF's recommendations are properly implemented through the adoption of directives that are subsequently transposed into national law.

In Belgium, this transposition has been carried out in two parts:

- a preventive mechanism, regulated by the law of 18 September 2017 ("anti-money laundering law"); and

- a repressive mechanism, which criminalizes the offences defined in Article 505, 2° to 4° of the Criminal Code ("general offence of money laundering").

Registered auditors are subject to the preventive mechanism and therefore to the anti-money laundering law, which means that they play an active role in the fight against money laundering and terrorist financing. This also means that they are subject to several obligations enabling them to detect operations or transactions that could be related to money laundering or terrorist financing.

In addition, registered auditors are subject to public oversight by the Belgian Audit Oversight College ("BAOC"). The BAOC is therefore competent to monitor the registered auditors' compliance with the provisions of the anti-money laundering law.

In the event of a breach, the BAOC can take measures ranging from a simple injunction to comply with the provisions of the anti-money laundering law to disciplinary proceedings, which may result in the withdrawal of the status of statutory auditor and the removal from the public register.

### 2. The obligation to identify

#### a. Identification of the client, the agent and the beneficial owners

In principle, before accepting an engagement, the registered auditor is required to identify and verify the identity of various persons related to the potential client.

The persons to be identified are the clients (both in the context of a business relationship and in the context of an occasional transaction), the client's agents as well as the beneficial owners of the client and the agent. The beneficial owner is the natural person who ultimately owns or controls the client and/or the natural person(s) for whom a transaction is carried out or a business relationship is entered into.

Once these different persons have been identified, the registered auditor must proceed with the verification of their identity. To this end, the registered auditor must compare the data of which he is aware with one or more supportive documents (identity card, passport, etc.), in order to obtain a sufficient degree of certainty as to the identity of the persons concerned.

The law expressly states that an extract from the register of beneficial owners (UBO register) is not sufficient to verify the identity of the persons concerned.

Once the identity of the client, the agent (if any) and the beneficial owners has been verified, the registered auditor must classify the client according to his degree of risk. To do so, the law provides for different criteria (for example, a politically exposed person must be classified as high risk). The registered auditor's obligations depend on the level of risk assigned to the client.

In any event, the registered auditor must exercise ongoing due diligence with regard to the operations carried out in the context of the business relationship and update, periodically, among others, to reassess the level of risk in the business relationship. If necessary, it is requested to obtain additional information (for example to justify a change in the level of risk).

The auditor shall keep the documents and information transmitted in the context of the above-mentioned obligations for a period of 10 years after the end of the business relationship with the client or following the occasional transaction<sup>1</sup>. At the end of this period, it is the responsibility of the auditor to delete the personal data, unless another legal provision applies.

#### b. Identification of atypical transactions

In the extension of his duty to perform ongoing due diligence towards the clients and the transactions, the registered auditor may be confronted with atypical transactions, i.e. transactions which, having regard to the profile of the client and the scope and nature of the business relationship, seem to be out of the ordinary.

The registered auditor shall forward the information to the firm's AMLCO<sup>2</sup>, who shall conduct a thorough analysis, documented in a written report, of these transactions in order to determine whether they may be suspected of being related to money laundering or terrorist financing.

The registered auditor is required to keep the documents and information transmitted within the framework of the above-mentioned obligations for a period of 10 years from the date of the atypical transaction report.

### 3. The obligation to report to CTIF-CFI

If the AMLCO knows, suspects or has reasonable grounds to suspect that an atypical operation is related to money laundering or terrorist financing, he is required to report it to the Financial Intelligence Processing Unit (CTIF-CFI). CTIF-CFI's powers include the ability to investigate, to block suspicious transactions and to report them to the Public Prosecutor.

The registered auditor is prohibited from informing his client or third parties that information or intelligence is, will be or has been transmitted to CTIF-CFI or that an analysis for money laundering or terrorist financing is being or is likely to be carried out.

*For more information on the obligations relating to the anti-money laundering law, do not hesitate to contact your registered auditor.*

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<sup>1</sup> REGULATION (EU) 2016/679 ("General Data Protection Regulation") applies to the processing of personal data in the context of the anti-money laundering law.

<sup>2</sup> Anti-money laundering compliance officer: this is the person within the audit firm charged with ensuring the implementation of the policies, procedures and internal control measures, ensuring the analysis of atypical transactions and the preparation of relevant written reports.