

## Appendix 1

### Examples of the subjective indicator for reporting unusual transactions by the institutions referred to in Article 1(1)(a)(11), (12), (13), and (23) of the Wwft.

#### 1. Introduction

In 2003, following the introduction of the Provision of Services (Identification) Act (Wid) and the Disclosure of Unusual Transactions (Financial Services) Act (Wet MOT) for independent professionals, the Ministry of Finance drew up an information brochure: identification and mandatory disclosure for professions<sup>1</sup>. These guidelines follow from Article 8 of the Wet Mot (now Article 15 of the Wwft) and Recommendation 28 of the FATF (Financial Action Task Force on money laundering). In 2003 the Ministry of Justice and the Ministry of Finance and the then Unusual Transactions Disclosure Office also published a brochure on independent professionals and money laundering<sup>2</sup>. In the context of the IMF's review of the FATF obligations, the Financial Supervision Office (BFT) in 2011 decided to update the examples of the subjective indicator as included in the previous information brochures. In response to new developments (e.g. the FATF report on legal professionals) it was decided to update and supplement the examples once again. This current document therefore builds on the 1 April 2011 version.

#### 2. Legal status

The purpose of this updated brochure is to give institutions pointers on how to recognise unusual transactions in practice. This does not alter the fact that there are other ways of applying the subjective indicator.

Practice has shown that the supervisor (the Financial Supervision Office), the disciplinary courts for the notarial and other professions<sup>3</sup> and courts deciding in administrative law cases (Rotterdam District Court<sup>4</sup>) attach considerable importance to the 2003 information brochure of the Ministry of Finance and the Guidelines to which it refers. If several of the examples it contains apply, this could be an important indication of an unusual transaction.

#### 3. Documentation

The legislative history of the Wwft<sup>5</sup> states that the reasons for not reporting must be recorded (in writing) and be transparent to the supervisor. An institution is also expected by virtue of its duty of care and documentation to keep records setting out why it did not report a specific case of doubt. The professional organisations<sup>6</sup> also advise that, in cases of doubt, the reason or reasons should be established.

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<sup>1</sup> Ministry of Finance brochure, Identification and Reporting Obligation of Professions (identification and reporting obligations of independent legal advisers, lawyers, civil-law notaries, tax consultants, public auditors, business economic advisers, real estate agents and intermediaries).

<sup>2</sup> Independent Professionals and the Laundering of Criminal Money, Unusual Transactions Reporting Obligation Unusual Transactions Disclosure Office, in cooperation with the Ministry of Finance and the Ministry of Justice, June 2003.

<sup>3</sup> See for example [www.tuchtrecht.overheid.nl](http://www.tuchtrecht.overheid.nl) ECLI:NL: TNOKSGR:2009:YC0126, ruling of the Disciplinary Board of The Hague, 11 February 2009, legal ground: 8.18 as well as [www.tuchtrecht.overheid.nl](http://www.tuchtrecht.overheid.nl), TNOKSGR:2009:YC 0131 [Ruling of the Disciplinary Board of The Hague 11 February 2009, legal ground 6.2.as well as](http://www.rechtspraak.nl) ECLI:NL:GHAMS:2013:2317 ([www.rechtspraak.nl](http://www.rechtspraak.nl))

<sup>4</sup> ECLI:NL:RBROT:2010:BN4179.

<sup>5</sup> House of Representatives, session year 2011–2012, 33 238, no. 3, p. 7

<sup>6</sup> Wwft Guidelines for lawyers, Chapter 3, Page 8, version March 2013: "*Tip: always keep records of the considerations on whether or not to report in the office's records or case file.*"

KNB, Manual for the application of the Money Laundering Terrorist Financing (Prevention) Act.

Auditors are even obliged to do this according to their rules of professional conduct<sup>7</sup>.

#### **4. Relationship to specific guidance**

The specific guidance includes examples of countries, customers, types of transactions or services with a potentially enhanced risk of money laundering or terrorist financing. Of course, these examples may result in cases where the subjective indicator is met, but this will not necessarily be the case. This does mean, however, that it is necessary to consider whether a report should be filed in the case in question.

This brochure sets out areas of attention and examples for recognising unusual transactions. These are not exhaustive, nor do they form a checklist: they are intended to focus attention. One of these situations arising does not necessarily lead to an obligation to report an unusual transaction.

#### **5. Examples for the subjective indicator**

##### **A Factors relating to countries and territories**

1. Parties, their representatives, the beneficial owners or other stakeholders are born, reside or are established in countries or territories that do not, or do not adequately, comply with the FATF recommendations<sup>8</sup>.

##### **B Factors relating to the customer and his identity<sup>9</sup>**

1. It is problematic to establish the identity of the customer or the BO.
2. The customer (apparently) uses the services of a straw man (A straw man is a person who acts under his own name, but does so as an instrument for another person not acting on his own behalf). If it turns out that there are parties to a are in fact dominated by others and only play a role on paper, the institution must be alert to the use of straw men.
3. The correspondence address differs from the regular address. The absence of a regular address of the customer or of the entities used by him. The customer wishes correspondence at an address other than the usual one.
4. Persons who do not formally hold a position registered in the company register

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Terrorist Financing (Wwft) as of 1 January 2014, Chapter 15, page 11, version May 2009: *"Therefore, even if it is decided not to make a report, it is strongly recommended that the civil-law notary record the steps taken in the investigation and its results, retains this information for a period of five years. In this way it is possible to establish afterwards whether the*

*civil-law notary has correctly fulfilled his duty of care in respect of the duty to report."*

NBA Practical Guide 1124, Guidelines for the Interpretation of the Money Laundering and Terrorist Financing (Prevention) Act (Wwft) for Tax Advisers and Accountants, Chapter 4.3, page 41, version March 2014:

*"If a situation arises that necessitates making a decision on whether to report, it is advisable to record the considerations underlying that decision in a separate file, such in connection with the assessment of the prudence of these considerations by the BFT or by the court. The Wwft does not make it compulsory to record the considerations, but it will be difficult to prove that a situation that reasonably required that a report be made existed if the institution does not have the necessary records."*

<sup>7</sup> Article A100.4 of the Code of Conduct Regulation in conjunction with the First Quality Control Guideline (in particular Article 94), in conjunction with Guideline 11 (for Accountant Administrative Consultants), in particular Chapter 7.

<sup>8</sup> For the countries, see the specific Wwft compliance guideline and the FATF website [www.fatf-gafi.org](http://www.fatf-gafi.org).

<sup>9</sup> Pursuant to Article 5 of the Wwft, an institution is prohibited from entering into a business relationship with or conducting a

transaction for a customer if the customer due diligence (CDD) has not been carried out. Factors relating to the customer and its identification may also be relevant in the context of proposed unusual transactions.

5. The customer uses intermediaries without a plausible explanation. The relationship between the intermediary and the customer is unclear.
6. The customer tries to avoid a personal encounter for no reason. The customer is secretive or evasive about his identity, the BO or the reason for the transaction.
7. The customer is probably using a false name<sup>10</sup>.
8. Attempts are made to disguise the actual party behind the transaction
9. The customer gives unclear or vague descriptions of its business activities.
10. The customer has a criminal record, operates in criminal circles<sup>11</sup>.

### **C Factors concerning the relationship between the institution and the customer**

1. The service required by the customer does not fit into the normal pattern of the institution. The usual reasons for engaging the institution do not seem to be present. The institution has no or insufficient experience or expertise in executing the customer's transaction.
2. The customer is prepared to pay a fee for the services of the institution that is substantially higher than usual.
3. The customer appears to have changed institutions (civil-law notary, lawyer, tax adviser or accountant) several times in a short period of time, while no explanation acceptable to the institution can be given for this
4. behaviour.  
while no explanation acceptable to the institution can be given for this.  
There are gaps in the customer's history, e.g. no information or
5. documentation exists about previous transactions or business activities.
6. The customer is reluctant to provide information, gives incorrect information or even refuses to provide information necessary for the transaction in question.

### **D Transactions relating to the provision of services or assignment after entering into the relationship**

1. The customer is involved in one-off or recurring transactions that are unusual in that they do not form part of the normal course of the customer's professional or business activities and for which no explanation acceptable to the institution can be
2. given. Transactions that are unusual due to their size, nature, frequency or
3. The customer, intermediary or third party is not prepared to provide the requested information (e.g. on the origin of funds) until heavy pressure is
4. exerted.  
or other goods or the keeping of large sums of money on deposit.
5. An item is traded several times in a short period of time.
6. Transactions that are in advance known to result in a loss.
7. Unusually early repayment of assets, in particular coupled with a request to effect payment to third parties who do not appear to have a relationship with the customer.
8. (Cash) purchase of assets, rapidly followed by using these assets as collateral for borrowing funds.
9. Unauthorised mixing between business and private use.
10. The customer requests the institution to cooperate in transactions suspected of being intended to defraud creditors<sup>12</sup>.

<sup>10</sup> ECLI:NL:GHAMS:2014:231 Amsterdam Court of Appeal 4 February 2014 and [www.tuchtrecht.overheid.nl](http://www.tuchtrecht.overheid.nl)  
ECLI:NL:TNOAMS:2013:YC0978, Amsterdam Division for Notarial Matters 28 February 2013.

<sup>11</sup> [www.tuchtrecht.overheid.nl](http://www.tuchtrecht.overheid.nl) ECLI:NL:TADRARN:2014:8, Midden-Nederland Board of Discipline 3 February 2014,

<sup>12</sup> The Hague District Court 21 October 2013, ECLI:NL:RBDHA:2013:13969.

11. Change of instructions to the institution, especially right before the performance of the transaction.
12. Transactions do not fit the social economic profile or age of the natural person or economic profile of the company.
13. The same parties appear several times in different transactions in a short period of time.

## **E Financial transactions**

1. The customer prefers assets that leave no trace, such as cash, bearer instruments, bearer policies.
2. Purchases or sales at prices significantly different from market prices.
3. Payment traffic shows an unusual pattern. The funds at the customer's disposal come from unclear sources or the sources indicated by the customer are unlikely or insufficiently documented.
4. Large overnight payments from abroad; unusual (currency) transactions, e.g., for cash, bearer cheques, bearer instruments or money transfers.
5. The institution receives funds from the customer with the request to pass them on to a third party, while there are no supporting documents that have been verified by the institution which legitimise the onward payment.
6. Payment through an (unknown) third party or funds transfer, if the identity of the account holder, the beneficiary of the account and/or the future investor (to whom the money is transferred) is not the same.
7. Loan for which security is obtained from a foreign legal or natural person, where the relationship with the customer is not clear.
8. Conducting banking activities for the customer without any underlying provision of services.
9. Funding or payment through multiple (foreign) accounts without a plausible explanation.
10. Repayment of (a large part of) the principal of a loan well before the repayment date without explanation.
11. Loan agreements with very short repayment terms;
12. Loan agreements without collateral or at different market conditions for no apparent reason.
13. The absence of written loan agreements.
14. Upon receipt of the funds, the transaction is terminated and the institution is requested to transfer funds to a party other than the one that transferred the funds.

## **F Transactions concerning legal persons and arrangements**

1. The customer makes use, or wishes to make use, of one or more intermediaries, foreign or acquired legal persons or companies without any legitimate fiscal, legal or commercial reasons being, or appearing to be, present. Arrangements are set up in different jurisdictions, while there is no clear link between those jurisdictions on the one hand and the customer or the transaction on the other, nor any legitimate or economic reason to do so.
2. The customer wishes to set up several legal persons or companies for himself or another person in a short period of time, without having or appearing to have any legitimate fiscal, legal or commercial reasons for doing so.
3. The customer wishes to set up or acquire a legal person or company for a questionable (intended) purpose or a purpose that does not appear to have any relationship with its normal professional or business practice or its other activities, or a purpose for which a licence is required, while the customer does not intend to

obtain one, whereas no explanation acceptable to the institution can be given for this intention.

4. The customer uses legal persons or companies whose control structure is not transparent or which are by their nature or setup suitable for concealing the identity of the underlying stakeholder (e.g. foundations, bearer shares, trusts, foreign legal persons), while no explanation acceptable to the institution can be given for this behaviour.
5. Frequent changes of legal structures and/or frequent changes of directors of legal persons or companies. The legal structure is complex, while this does not seem to serve any real purpose.
6. The prolonged formation of legal persons or companies.
7. The use of shell companies (legal persons in which no activities are conducted).

## **G Transactions relating to immovable property and other property subject to registration**

1. Transactions relating to a property subject to registration financed by means of a (mortgage) loan, the amount of which differs significantly (upwards or downwards) from the consideration payable, while no explanation acceptable to the institution can be given for this difference.
2. Goods subject to registration are or have been traded more than once in a short period of time with unusually high profit margins, for which no explanation acceptable to the institution can be given.
3. Transactions relating to a property subject to registration to, by or through residents of or companies established in the countries or states listed below: Andorra, Curaçao, Delaware, United Arab Emirates, Panama, Switzerland, Cayman Islands, Guernsey, Jersey, Tortola (British Virgin Islands), Anguilla, Liechtenstein, Luxembourg and Hong Kong.
4. Transactions without mortgage financing, in particular where the origin of the funds is unclear or no underlying loan agreement is available or where different loan conditions are used (e.g. different interest rates, provision of security).
5. Transactions relating to a registered asset where several mortgages are or will be established on the same collateral for no apparent reason.
6. Shares transactions in real estate companies<sup>13</sup> whose value is difficult to determine.
7. Financing by a non-financial institution that has no (economic) link or business relationship with the buyer.
8. The customer buys several properties in a short period of time for his own occupation<sup>14</sup>.

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<sup>13</sup> Real estate companies are companies whose assets consist wholly or largely of real estate.

<sup>14</sup> ECLI:NL:GHAMS:2009:BJ0677 with reference to the judgment of the Rotterdam Disciplinary Board, legal

ground 6.12.

**In addition to the general guideline provided in the above, an extra guideline for certain institutions is - perhaps superfluously - presented in the below.**

## **H Lawyers, independent legal advisors**

1. There are reasons to doubt the origin of or the legal basis under which funds are made available to companies. The customer or the intermediary is reluctant to provide information on the origin or legal basis of the funds, or only does
2. Receiving or paying out money to third parties without a reason existing for doing so via a lawyer<sup>15</sup>. In these cases, the appearance of legitimacy of transactions is
3. The customer does not live or work in the area of activity of the lawyer in question and
4. In ABC transactions: The AC contract or BC purchase agreement has been concluded
5. In real estate transactions: the lawyer is asked to draw up an acknowledgement of
6. In real estate transactions: a foreign company acts as mortgagee and it is unclear to
7. In share transactions: the purchase price has been paid between the buyer and the
8. A dispute is too easily or too quickly settled amicably, while very little advice has

## **I Civil-law notaries**

1. The customer does not live or work in the area of activity of the civil-law notary in
2. The customer may be a straw man (a person who acts under his own name in the This person does own the purchased property, but in practice does not usually have  
When a straw man is used, no means of redress exists.)
3. Customers always make use of the same valuer, financier, mortgage advisor or building inspector's office.
4. The BC purchase agreement was concluded earlier than the AB agreement.
5. Seller B seems to arrange everything for buyer C.

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<sup>15</sup> Disciplinary Appeals Tribunal No 4551, 3 November 2006, Advocatenblad no. 18 of 21 December 2007 and Amsterdam Board of Discipline  
3 April 2006, Advocatenblad, no. 1 of 18 January 2008.

<sup>16</sup> [www.tuchtrecht.overheid.nl](http://www.tuchtrecht.overheid.nl): ECLI:NL:TADRARN:2014:8. Midden-Nederland Board of Discipline 3 February 2014

6. In ABC transactions: AC agreements.
7. Buyer C is not required to pay a deposit when purchasing a property.
8. The immovable property is sold in the condition in which it will be delivered at a later date, while the rebuilding or renovation has not yet taken place and the purchase agreement does not mention any rebuilding or renovation;
9. The valuation report contains data that does not correspond to the actual state of affairs.
10. The customer buys the registered property from his own resources (without financing) when there is no economic or legitimate reason to do so.
11. The purchase price or deposit is financed by a party other than the customer/mortgage lender without the relationship between the lender and the customer being known.
12. Use of suspected false documents.
13. The purchase price agreed between buyer and seller is to be paid directly between them (i.e., without engaging the services of a civil-law notary) without there being any plausible explanation for this fact.
14. The purchase price remains payable by the buyer in full or in part, with or without the seller acting as mortgagee.
15. There are reasons to doubt the origin of or the legal basis under which funds are made available to companies. The customer or the intermediary is reluctant to provide information on origin or legal basis, or only does so after heavy pressure is exerted.
16. Receiving or paying out money to third parties without a reason existing for doing so via a civil-law notary<sup>17</sup>. In these cases, the appearance of legitimacy of transactions is evoked (as the money comes from an account of a civil-law notary).

**J Tax consultants, external auditors, administrative firms, business economics consultants**

1. A transaction in which a customer is involved leads to a result that is clearly higher or lower than can reasonably be expected, or to an unusually high result compared to comparable companies in the industry in which the customer operates, especially if a significant part of the turnover consists of cash sales.
2. There is an inexplicable discrepancy between money and the flow of goods. A customer earns unusually high revenues and/or profits, and it is not clear to which activities these are related.
3. A transaction in which a customer is involved takes place under clearly conditions that are clearly worse than could reasonably be expected, without an acceptable explanation being provided as to why a better structure has not been opted for.
4. The actual situation as appearing from the financial statements does not correspond to the situation presented in the underlying documents. Unauthorised transactions or incorrectly recorded transactions. Administrative systems which, by design or intent, do not allow for adequate tracking of transactions or provide sufficient evidence.
5. Payments for services rendered that appear to be excessive in relation to the services provided. Commissions, etc., that appear excessive; payments for unspecified services or loans to consultants, related parties, employees or government personnel.
6. The obligation to file the financial statements or with statutory obligation - where relevant - to obtain an auditor's report on the financial statements is not being met.
7. A negative cash balance exists.

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<sup>17</sup> ECLI:NL:GHAMS:2009:BH5743 (RN 2009,47).



8. Suspected false invoices are used; these may also be invoices that meet the invoice requirements but that are not based on an actual counter-performance.
9. There are payments without invoices.
10. Payments are made without a written agreement
11. The cash balance at the beginning of the year and at the end of the year does not match the cash book.
12. Funds are deposited in cash, while a high administrative cash balance already exists.
13. The net private income is low or negative.
14. The origin of the financing of cash expenditure cannot be determined
15. The reported turnover is not proportional to the assets, inventory or purchases used. There are indications that the reported turnover comes from other (criminal) sources.
16. Receiving or paying kickbacks or bribes.
17. The customer has taken out a 2<sup>nd</sup> or 3<sup>rd</sup> mortgage, but does not deduct mortgage interest for tax purposes. This makes it seem as if there are no means of redress.

**Financial Supervision Office, Utrecht, 15 July 2014**