

FURTHER AMENDMENTS TO THE ACT ON COUNTERACTING MONEY LAUNDERING AND TERRORISM FINANSING

According to information published on the Government Legislation Centre's website, the Ministry of Finance has prepared a draft bill of an Act to amend the Act of 1 March 2018 on Counteracting Money Laundering and Terrorist Financing (the "Act"). The proposed amendments are primarily aimed at implementing the provisions of Directive 2018/843 of the European Parliament and of the Council (EU) of 30 May 2018 (the so-called 5th AML Directive).

The scope of the proposed amendments to the Act includes, among others:

- > **extension and clarification of the list of obliged entities** - by the addition of entrepreneurs whose activity is connected with art works, collectors' items and antiques, for transactions of at least €10,000. It is worth noting that auction houses and antique stores were already classified as obliged entities under the previous Act of 16 November 2000 on Counteracting Money Laundering and Financing of Terrorism. Additionally, entrepreneurs providing tax advice but not being tax advisors will also become obliged entities;
- > **clarification of some definitions, including "beneficial owner"** - According to the proposed amendments, "*any natural person*" who fulfils the criteria indicated in Art. 2 s. 2 pt. 1 of the Act shall be considered a beneficial owner, meaning that all persons who may potentially fulfil any of the conditions specified in the Act should always be taken into account in the process of determining the beneficial owner;
- > **specification of the rules concerning the application of financial security measures by obliged entities** - within existing business relationships, obliged entities should also apply security measures when there has been a change in the customer's or beneficial owner's data. Additionally, when establishing new business relations, obliged entities should obtain confirmation of the potential customer's registration in the appropriate register of beneficial owners, or an extract from such a register.

The obligation for obliged entities to establish the number and series of identity document each time is to be lifted, unless the obliged entity is already in possession of such information.

Furthermore, if a person holding a senior management position is identified as the beneficial owner, obliged entities are now required to document the actions taken in order to verify the identity of the beneficial owner, including, in particular, to document any difficulties encountered during the verification process.

Importantly, obliged entities, when applying financial security measures to their clients, will not be able to rely solely on the information contained in the Central Register of Beneficial Owners (CRBR), or an equivalent register maintained by another Member State. Thus, the content of such an entry will only be considered informative in nature, and so obliged entities should continue to be proactive identifying the beneficial owner.

- > **partial definition of enhanced financial security measures** - The current Act only contains a list of examples of circumstances which may indicate a higher risk of money laundering and terrorist financing, which, if found, impose an obligation for a given entity to apply, so-called, enhanced financial security measures. Obligated entities are free to

choose which measures they apply, as the Act does not even contain a catalogue of examples of enhanced security measures. According to the draft amendments, these measures have been partially defined by introducing a minimal catalogue of actions which obliged entities will be required to take.

- > **increasing the threshold to waive financial security measures for electronic money**
- The Act, as it currently stands, allows for financial security measures to be waived for electronic money so long as the amount stored electronically does not exceed the equivalent of EUR 50. The draft foresees that this threshold would be increased to EUR 150, a change long requested by payment service providers.
- > **clarification of the rules for keeping documents and information obtained as a result of obliged entities applying financial security measures** - The General Inspector of Financial Information will only be permitted to request that an obliged entity continue to keep information it has already obtained if such continued storage is necessary to ensure the accuracy of proceedings regarding money laundering or terrorist financing, or criminal proceedings;
- > **obligation for EU Member States to publish and update a list of public functions which qualify as being politically exposed ("PEP") under national law** - According to the 5th AML Directive, each member state should develop and publish lists of so-called "national PEPs." In the case of Poland, the list of public functions which are politically exposed will be determined in the form of a regulation of the minister responsible for public finances;
- > **changes in the functioning of and verification of data contained in the Central Register of Beneficial Owners (CRBR)** - The draft amendments extend the catalogue of entities obliged to report information on beneficial owners by adding:
 - trusts, whose trustees, or persons holding equivalent positions, have their residence in the territory of the Republic of Poland;
 - trusts, whose trustees, or persons holding equivalent positions, establish business relations or purchase real estate in the territory of the Republic of Poland for or on behalf of the trust;
 - limited liability partnerships;
 - European Economic Interest Groupings (EEIG);
 - European companies (societates Europaeae);
 - cooperatives;
 - European Cooperative Societies (societas cooperativa Europaeae);
 - associations subject to registration in the National Court Register;
 - foundations.

Significantly, the draft amendments to the Act require obliged entities to record any discrepancies between the information on the customer as determined by the obliged entity and the data available in the CRBR. At the same time, obliged entities should take the appropriate steps to explain any discrepancies they have identified and, if confirmed, provide this information to the minister responsible for public finances with their justification.

Determining the manner in which to record such discrepancies should also be taken into account in the obliged entity's internal procedures.

Moreover, the amendments provide for the possibility of imposing financial penalties on beneficial owners who have failed to provide an obliged entity with the relevant information required to make an entry in the CRBR.

The expected date of the draft's adoption by the Council of Ministers was set for the second quarter of 2020.

If you have any questions about the issues presented above, please contact our lawyers from the corporate law and corporate governance team and the capital markets team:



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Legal basis:

Draft bill of an Act to amend the Act of 1 March 2018 on Counteracting Money Laundering and Terrorist Financing prepared by the Ministry of Finance

Act of 1 March 2018 on Counteracting Money Laundering and Terrorist Financing (consolidated text of 16 May 2019, Journal Laws of 2019, item 1115)

Directive 2018/843 of the European Parliament and of the Council (EU) of 30 May 2018