

AMENDMENTS TO THE ACT ON COUNTERACTING MONEY LAUNDERING AND THE FINANCING OF TERRORISM – THE EIGHT KEY CHANGES

New amendments to the Act of 1 March 2018 on Counteracting Money Laundering and the Financing of Terrorism, which transpose the provisions of the so-called 5th AML Directive (Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018) into Polish law, will be coming into effect.

The eight key changes to the Act of 1 March 2018 on Counteracting Money Laundering and the Financing of Terrorism (the “Act”) are:

1. Expanding and clarifying the list of obliged entities

Entrepreneurs dealing in works of art, collectors’ items and antiques have been added to the catalogue of obliged entities, in respect of transactions worth 10 000 Euro or more. Additionally, entrepreneurs providing advice on tax matters, but who are not tax advisors, will now also be obliged entities.

2. Clarification of certain definitions, including that of beneficial owner among others

According to the amended text of the Act, a beneficial owner is understood as “each natural person” who fulfills the criteria set out in Art. 2 para. 2 pt. 1 of the Act, which means that when establishing the identity of the beneficial owners one should include all persons who could potentially satisfy any of the conditions stipulated in the Act.

3. More detailed rules on the application of financial security measures by obliged entities

Within ongoing business relationships, obliged entities will be under a duty to apply financial security measures also in cases where the client’s, or their beneficial owners’, information has changed or where the obliged entity is required by law to contact the client in order to verify the information on its beneficial owners during a given year. Additionally, when establishing new business relationships, obliged entities will be required to obtain proof of a potential client’s registration in the appropriate register of beneficial owners or an extract from such a register.

Further, where a person holding a senior management office is identified as a beneficial owner, obliged entities will be under a duty to document the actions performed to verify the identity of the beneficial owners, including in particular documenting any difficulties encountered in the verification process.

Significantly, when applying financial security measures in respect of their clients, obliged entities are not entitled to do so solely on the basis of the information entered in the Central Register of Beneficial Owners (*Centralny Rejestr Beneficjentów Rzeczywistych*), or the appropriate register maintained in another EU Member State. The contents of such entries are supporting in nature, and obliged entities will remain under a duty to act proactively in order to identify the beneficial owners.

4. Partial definition of enhanced financial security measures

The Act formerly only included a list of possible circumstances which could indicate a heightened risk of money laundering and terrorism financing, which if fulfilled would require that a given entity apply so-called enhanced financial security measures. However, obliged entities were free to tailor such measures themselves, as the Act did not even include an list of enhanced financial security measures by way of example. The Act as amended now partially defined such measures by introducing a minimum catalogue of actions which obliged entities must take when applying enhanced financial security measures.

5. Increased threshold for the application of financial security measures in respect of electronic money

The former wording of the Act allowed one to waive the application of financial security measures in respect of electronic money, so long as the amount stored electronically did not exceed 50 Euro. The new threshold set in the amended version of the Act is 150 Euro, which is a change long suggested by payment service providers.

6. Extended retention period for documents and information obtained by obliged entities as a result of their applying financial security measures

Under the new provisions, the five year retention period for documents and information obtained as a result of applying financial security measures is counted beginning on the date on which the business relationship with the client ends or the date on which an occasional transaction is completed (and so not from the first day of the year following that in which the business relationship with the client ended or the occasional transaction was completed, as was the case formerly).

7. EU Member States are under a duty to publish and update a list of public functions and positions which, according to their national law, qualify as prominent public functions

According to the 5th AML Directive, each Member State should prepare and publish a list of so-called "Domestic PEPs." In Poland, the list of public functions and positions which are considered prominent public functions will be specified by way of a Regulation issued by the Minister competent for public finances.

8. Changes to the functioning of the Central Register of Beneficial Owners (CRBO) and the verification of data contained in it

The amendments expand the catalogue of entities which are required to file information on their beneficial owners by adding:

- > trusts, the trustees (or persons holding equivalent positions) of which are resident in the territory of the Republic of Poland,
- > trusts, the trustees (or persons holding equivalent positions) of which enter into business relationships or acquire real estate within the territory of the Republic of Poland for and on behalf of the trust,
- > limited liability partnerships (*spółka partnerska*),
- > European economic interest groupings,
- > European companies (*Societas Europaea* or SE),
- > cooperatives,
- > European Cooperative Societies (*societas cooperativa Europaea* or SCE),
- > associations subject to registration in the National Court Register (*Krajowy Rejestr Sądowy*),

> foundations.

It is important to note that **the amendments impose a duty on obliged entities to make note of any and all discrepancies between the factual state of affairs in respect of their client, as established by the obliged entity, and the data available in the CRBO.** Simultaneously, obliged entities will be required to take the appropriate steps to explain such discrepancies, and if they are proven true, provide that information to the Minister competent for public finances together with the reasons for the discrepancies notes and documents pertaining to them. The obliged entity's internal policies should provide for the manner in which discrepancies are noted.

Moreover, **the amendments provide for the potential imposition of fines** on beneficial owners who fail to perform their duty to provide the entities subject to registration in the CRBO with the appropriate information required to make an entry in the CRBO (up to PLN 50 000), as well as the potential imposition of fines on entities disclosed in the CRBO if they have submitted information to the CRBO which does not match the factual state of affairs (up to PLN 1 000 000).

The amendments described in point 1 above will enter into force 3 months after the amending act is published, i.e. on 31 July 2021.

The amendments described in point 2 above will enter into force 14 days after the amending act is published, i.e. on 15 May 2021.

The amendments described in points 3 to 8 above will enter into force 6 months after the amending act is published, i.e. on 31 October 2021.

As a result of the Act's amendment, the internal procedures of obliged entities will need to be brought up to date (in principle, this should be done by 31 October 2021).

We invite you to contact the lawyers of our company law and corporate governance team, and capital markets team:



Anna Wojciechowska
attorney-at-law, partner
mail:
anna.wojciechowska@wkb.pl



Agata Szczepańczyk-Piwek
attorney-at-law, counsel
mail:
agata.szczepanczyk-piwek@wkb.pl



Anna Fennig
advocate
mail:
anna.fennig@wkb.pl



Monika Obiegło
advocate
mail:
monika.obieglo@wkb.pl

Legal basis:

Act of 30 April 2021 on the amendment of the act on counteracting money laundering and the financing of terrorism and certain other acts (Official Journal 2021, item 815).