

Anti Money Laundering and Counter Terrorism Financing Act amended (3/28/19)

29 June 2019 is the effective date of amendments to the Anti Money Laundering and Counter Terrorism Financing Act supported by Parliament in their third reading on 13 May. The Act has been renamed the Anti Money Laundering and Counter Terrorism and Proliferation¹ Financing Act.

Why the amendments were needed

The Act needed amending to adopt the provisions of Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018. Also, the 2018 Moneyval² report pointed out a number of weaknesses making it possible for Latvia to be put on the grey list, and said Latvia should be doing more to improve its current rules.³

Ilze Znotina, head of the Anti-Money Laundering Unit, and lawyer Dace Vitola have said that making the grey list may cause Latvia to suffer losses of several billions of euros and adversely affect foreign and domestic investment.⁴

Key amendments

In addition to the new title of the Act, the Anti-Money Laundering Unit has been renamed the Financial Intelligence Unit. An annotation to the amendments explains this was necessary to ensure a uniform practice and understanding of the Unit's functions across the EU.

The amendments make more persons subject to the Act, including insolvency administrators, external accountants, tax consultants, certified auditors and their firms, as well as any person that undertakes to provide tax assistance or acts as intermediary in providing such assistance regardless of its frequency and the existence of a consideration. Persons subject to the Act now include anyone involved in trading works of art and antiques, including persons trading at antique shops, auction houses or ports, if the total of a single transaction or multiple apparently related transactions is 10,000 euros or more.⁵

Persons subject to the Act were so far required to report suspicious and unusual transactions. The Moneyval report said persons subject to the Act had trouble distinguishing between suspicious and unusual transactions. The amendments change the way transactions are reported to the Financial Intelligence Unit, discarding the term "unusual transaction" and providing for reporting suspicious transactions only. The annotation explains that people tend to report unusual transactions rather than suspicious transactions. The Financial Action Task Force recommends that member states should primarily ensure that reports on suspicious transactions are filed with the Financial Intelligence Unit. The Act now has a new chapter that provides for giving information on threshold declarations to the Financial Intelligence Unit.⁶ The annotation explains that a threshold declaration means declaring a transaction the value of which meets statutory limits. These limits as well as the content of a threshold declaration and filing procedures will be prescribed by the Cabinet of Ministers' regulations. The new chapter will come into force on 17 December 2019.

To carry out their statutory obligations, persons subject to the Act as well as supervisory and monitoring institutions will be authorised to seek and receive free of charge from registers maintained by the

Enterprise Registry any online articles and news about shareholders and ultimate beneficial owners (UBOs), and to store and otherwise process that information.

The amendments provide that foreign companies' branches to be entered on the Commercial Register maintained by the Enterprise Registry and establishments to be entered on the Register of Taxpayers maintained by the State Revenue Service (SRS) will also be required to disclose their UBOs effective from 1 July 2020. An entity registering its UBOs may be asked by the Enterprise Registry to file a document forming the basis for their existing control, and a document supporting compliance of the information identifying UBOs. If a request for registering a company or making changes to a company's share register or board states that it is not possible to identify the UBO, then a reason should be given.

When suspending its business relationship with customers, a credit institution or financial institution is no longer permitted to pay in cash all of the customer's funds held in their account. Cash payment is now capped at 7,200 euros. A credit institution or financial institution should suspend its business relationship with a customer where it sees any unmanageable risks of money laundering and terrorism financing or where the law expressly provides for this.

The Act now has a new section, No. 83, which provides for protecting persons who have reported their suspicions of money laundering or terrorism or proliferation financing. In other words, a person cannot be punished or otherwise made to suffer adverse consequences for having reported statutory offences to the monitoring body. The annotation emphasises the protection of employees who report their suspicions.

We have covered here only some of these wide-ranging amendments. However, considering the Anti Money Laundering and Counter Terrorism Financing Action Plan for the period up to 31 December 2019, approved by the Cabinet of Ministers on 11 October 2018 to strengthen Latvia's ability to fight money laundering, terrorism financing and proliferation of mass destruction weapons and to mitigate the risks of money laundering and terrorism, as well as considering the amendments described above, we find that the standards for handling statutory offences are becoming increasingly tighter.

¹ Proliferation is the manufacturing, storage, transfer, use or distribution of weapons of mass destruction.

² Moneyval is a committee of AML/CTF experts assessing compliance with international standards to fight money laundering and terrorism financing.

³ The annotation to the amendments to the Anti Money Laundering and Counter Terrorism Financing Act [viewed on 27 June 2019]

⁴ Ilze Znotina, Dace Vitola. Substantial changes proposed to the Anti Money Laundering and Counter Terrorism Financing Act. *Jurista Vards*, 2019, No. 10, pages 5-7.

⁵ The amendments to the Anti Money Laundering and Counter Terrorism Financing Act were passed on 13 June 2019.

⁶ The Anti Money Laundering and Counter Terrorism and Proliferation Financing Act was passed on 17 July 2008, came into effect on 29 June 2019.