Fewer group companies excluded from AML/CTPF Act 2/37/21

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Companies often provide various intragroup services for optimisation purposes. Whether such companies are governed by the Anti Money Laundering and Counter Terrorism and Proliferation Financing Act (the "Act") is a question that has always come under a great deal of scrutiny. Effective from 12 July 2021, section 3 of the Act contains subsection 6, which prescribes exclusions and answers questions that group companies tend to ask when assessing whether they are governed by the Act. This article explores how intragroup services qualify for statutory exclusions.

Exclusions prescribed by the Act

It is important to note that group companies can avoid being governed by the Act only if they provide financial services (loans, finance leases, guarantees and other similar instruments assuming an obligation to be liable to the creditor for a third-party debt) and if those services are supplied within the group or for the group's liabilities. So companies that regularly provide other group companies with loans to ensure their business or for a stated purpose are likely to qualify for this statutory exclusion.

However, the type of services and the range of customers are not the only conditions that group companies need to consider. The extra conditions set out below must all be met for exclusion purposes:

- The group comprises only persons entered on the Latvian Enterprise Register, branches or establishments resident in an EU member state whose core business activity is not associated with a high-risk third country;
- Any intragroup beneficial owners and their directors are resident in a member state;
- The group contains no shell companies; and
- These financial services are rendered under a written agreement, with payments made through a payment service provider registered in a member state.

Before the Act was amended, companies that, for instance, made intragroup loans found it difficult to determine whether they fit the definition of a person subject to the Act. If a group company was to make this determination, it had to assess a number of factors, such as the regularity and purpose of loans and their commercial and economic substance. It was often the regularity of loans that raised questions because companies were confused as to whether making three irregular loans a year creates the obligation to register as a person subject to the Act, or whether regular loans made twice a year create that obligation etc. The exclusion is a welcome amendment, as companies often provide financial intragroup services defined by the Act to stabilise the group's newly formed companies and to ensure that obligations are secured and carried out.

As you may know, any person governed by the Act has to meet a number of requirements, including the obligation to set up an internal control system, assess your own risk, customer risk and sanctions risk, appoint an officer in charge with appropriate AML/CTPF competence and expertise, and carry out other activities aimed at mitigating the risk of being exploited or becoming one of the links in money laundering

or terrorism or proliferation financing.

A practical assessment

To practically assess the amendments to the Act discussed in this article, let us imagine a case where group company A, being a person entered on the Latvian Enterprise Register, makes regular loans to company B within the same group.

Those loans can be treated as lending services, so company A should assess whether the lending stays within the group (to company B). If loans are made to group company B, then company A should also assess whether the other characteristics specified by the Act are present (the group includes only persons resident in a member state and their core business activity is not associated with high-risk third countries, the beneficial owners and directors are resident in a member state etc). If all the requirements are met, company A is covered by the statutory exclusion.

If loans are made to companies B and C, which is not a group company, then company A no longer qualifies for the statutory exclusion.

It is important to note that while each case should be assessed on its merits, these amendments are likely to help a group company understand whether it fits the definition of a person subject to the Act.