

# Ban on opening accounts for shell companies (3/41/18)

The events surrounding ABLV Bank and its subsequent liquidation have torn open a wound in the Latvian banking sector. The harsh ban on opening accounts for shell companies spares no one. @WeAreNotShell is a slogan posted on Telegram, Twitter and Facebook as well as other social networks since April 2018 by non-residents suffering at the hands of Latvian banks and complaining how they are having to prove the existence of their business and how endless enquiries and requests from Latvian banks are becoming absurd.

Why have the Latvian banks become so demanding?

On 25 April 2018, the Latvian parliament urgently adopted proposals for amending the Anti-Money Laundering and Counter-Terrorism Financing (AMLCTF) Act to ban shell companies. The ban covers companies and payment institutions, investment brokers and other arrangements.

Why were shell companies blacklisted by the Latvian banks?

This happened because of their unusual characteristics. Such a company is registered in a jurisdiction that does not require financial reporting, and the company typically does not have a business address and does no real business. A shell company makes it easy to carry out illegal transactions, money laundering, and other unlawful activities. The banks are no longer willing to damage their reputation or pay penalties, so they choose to get rid of shady companies fast.

The Financial and Capital Market Commission (FCMC) is confident that all of these problems resulted from the banks' weak internal control systems, which increased the risk of money laundering, in particular with foreign customers and their asset management. An uncontrolled flow of foreign assets creates a medium risk of money laundering, which in turn creates a high risk that the Latvian banks will be used for this purpose. But Latvia is now eager to shed its image as the big money laundry, and so the FCMC has set a high-risk customer threshold of 5%.

The @WeAreNotShell website has posted many stories of banks having sent letters to their customers, simply advising them that their account has been blocked and the customer labelled a shell company. Such activities of the banks is not unlawful since the AMLCTF Act permits a bank to give 45 days' notice of terminating business with a customer that is assessed as a high risk.

This raises the question of whether banks are really permitted to close accounts without distinction on a massive scale. How do they benefit from this if they are losing both the customer and the money? Customers have been complaining of having to present more and more documents that not only reveal the company's transactions but confirm that the beneficial owner indeed has experience in running a company in the particular industry or lives at the stated address.

Maximum transparency

Most of the customers are shaken as they open just another letter from their bank and start guessing what

they will have to prove this time around. Peters Putnins, who chairs the FCMC, explains that by 30 June 2018 all banks wishing to continue doing business with non-residents were required to present a new business plan that describes their vision of doing business with non-residents in accordance with the AMLCTF Act and the principle of transparency. In early 2019 the FCMC plans to incorporate those business plans in its supervisory documents prescribing general requirements for the banks and non-residents.

Documents to be filed by the founder of a non-resident company to open an account with a Latvian bank

According to recent amendments to the regulatory requirements for proper customer checks, a bank should obtain and evaluate the following information:

- Documents that sufficiently explain the customer's business model;
- The annual report and accounts prepared by an independent external auditor giving a sufficient understanding of the company's transactions and explaining how its profits match its business and turnover;
- Documentary evidence of sales of goods and services performed by the company in the course of business, or if the company does not deal in goods or services, then information and documentary evidence describing its operations according to the purpose it was set up for;
- Documentary evidence of business activities of the company's main business partners;
- Documentary evidence that the company makes tax payments where this is required by law;
- Documentary evidence that the company has contracted other persons (e.g. employees or independent contractors) who actually organise and carry out tasks related to its business, showing how their responsibilities fit the company's line of business and turnover.

Yet these are not the only factors the banks can rely on when it comes to deciding about doing business with a particular customer. The banks should also consider the customer's line of business, legal status (e.g. a charitable foundation), details of the holding structure of beneficial owners, national and geographical risks, and risks associated with goods and services.

The bank can request all these details step by step to delay the process of opening an account. The banks appreciate due diligence procedures completed by an independent international auditor firm, which help them carry out a comprehensive customer check and provides at least a minimum understanding of the customer since the auditor is an independent expert.

You might be wondering why you should open an account with a bank that imposes such tight requirements. In fact, having an account with a bank like this is likely to facilitate your future dealings with foreign correspondent banks since your reputational risk will be lowered significantly.

But remember that each case is different, and there is no exhaustive list of requirements to ensure an account will be opened immediately if you meet them.