

Beneficial owners of persons subject to AML/CTPF Act: new requirements 1/34/21

We have written earlier about amendments to the Anti Money Laundering and Counter Terrorism and Proliferation Financing Act (the "Act"), which, among other things, will make it easier for persons that are subject to the Act ("Subjects") to report suspicious transactions and will set up a common customer due diligence tool. This article explores changes to the requirements affecting the ultimate beneficial owner ("UBO") of a Subject.

The new requirements

Amendments to the Act effective from 1 October 2021 prevent persons that have been punished for committing specified types of crimes from becoming the UBO of a Subject (a legal entity or a legal arrangement) unless their criminal record has been removed or cancelled.

The same requirements will apply to individuals that are subject to the Act. Commonly practitioners of regulated professions (e.g. attorneys at law, statutory auditors, public notaries, and estate agents), these individuals are already governed by certain requirements. However, none of the new requirements contradicts the requirements of special laws governing the professional activities of Subjects, including certification and licensing requirements.

The new requirements have been inserted in the Act according to FATF recommendations, which require the supervisory bodies to adopt measures that bar persons with a criminal record from taking management positions or acquiring a significant stake in the share capital of a Subject and pursuant to the requirements of Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, which imposes similar obligations on each member state's supervisory bodies.

How will compliance with the requirements be enforced?

The Act passed by Parliament provides that ways of assessing UBO compliance with the new requirements will be prescribed by the supervisory bodies using an appropriate procedure.

The Act does not describe what this procedure could be like but only provides that the supervisory bodies will be able to verify the truthfulness of information presented. This wording suggests that Subjects are likely to have to file some additional documents or statements confirming that their UBO meets the requirements. It is important to note that the Act's provision for verifying the truthfulness of information implies that this verification will be made within existing limits.

The supervisory bodies will have the power to verify UBO compliance throughout the operation of the Subject, so this is not merely a one-off obligation.

Interestingly, the early bill imposed tighter obligations on Subjects so that any UBO failing to meet the requirements would face immediate legal consequences. For example, a non-compliant UBO would be barred from directly or indirectly controlling the Subject and exercising their voting power, and any decisions made in this way could be voided. Also, the UBO would not be authorised to put forward, appoint

or remove members of the Subject's council, board of directors, or other bodies authorised to act for the Subject. So the early bill required the Subject to adopt efficient monitoring procedures aimed at ensuring its UBO meets the requirements of the Act.

An identical requirement for a clean slate already applies to the board and to the officer responsible for implementing the Act's requirements. Unlike the UBO case, however, the obligation to verify how the board or the officer in charge meets the requirements is imposed on the Subject, making it liable to put appropriate procedures in place for verifying compliance with the Act's requirements.