PREVENTION OF MONEY LAUNDERING AND FINANCING OF TERRORISM

2.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Develop a system to enable better communication between the Administration for the Prevention of Money Laundering and entities subject to the Law, as well as the government, and better co-operation with the Ministry of Foreign Affairs and the courts.	2009		√	
Influence public opinion on the necessity for a more decisive and efficient action against money laundering and the financing of terrorism.	2009		√	
Continue organizing appropriate seminars and workshops to train entities subject to the Law, with a view to increasing the effectiveness of its implementation.	2011		√	

CURRENT SITUATION

The new Law on the Prevention of Money Laundering and Financing of Terrorism (RS Official Gazette No 113/2017; hereinafter: "the Law"), as the previously applicable law in this area, provides definitions of money laundering, the financing of terrorism, and other key terms; establishes the obligation of state authorities, lawyers, and other legal entities to take action; and stipulates measures for the detection and prevention of money laundering and the financing of terrorism.

The Law entered into force on 25 December 2017, and its application started on 1 April 2018. The liable parties have been given a period of one year from the date of entry into force to implement the actions and measures envisaged by this Law to the existing clients as well, which caused a lot of problems in the implementation of these requirements to taxpayers who do not have continuous contact with their old clients with whom they had established a business relationship years earlier.

The new Law (including a large number of by-laws that have been adopted in the meantime) has brought many changes compared to the previous law, with the most significant one concerning different definitions of certain terms or definitions of completely new concepts (such as cash transactions, legal person under foreign law, business relationships, top management). It also introduces terms and obligations in relation to domestic public officials (so far only foreign officials have been defined), new entities subject to the Law, and a more accurate definition of their obligations, (lawyers, public notaries, virtual currency operators). It extends the mandatory risk analysis (risk assessment at several levels – state level, liable party level, client level, business relationship or transaction). In addition, it clarifies the obligation to identify the ultimate beneficial owner and collect data on the origin of assets in cases of high-risk clients, extends the circle of third persons who may be entrusted with the performance of individual actions, the handling of situations when a party is not physically present, and authorized persons (besides the authorized person and deputy, the entity subject to the Law should also appoint a member of the top management responsible for the implementation of the Law).

State authorities were under the obligation to adopt relevant by-laws within four months of the date of entry into force of the Law. In this respect, the line minister has already adopted the Rulebook on the methodology for performing activities in accordance with the Law on the Prevention of Money Laundering and Financing of Terrorism (RS Official Gazette No 19/2018). Other relevant authorities have adopted risk assessment guidelines and indicators to identify suspected money laundering, amendments to the Decision on the establishment of a Standing Coordination Group for the supervision of the implementation of the National Strategy for Countering Money Laundering and Financing of Terrorism, while the drafting of a new National Strategy in the field, with the accompanying implementing Action Plan, is under way.

In addition, amendments have been made to the Law on Restrictions on Disposal of Property with the Aim of Preventing Terrorism (RS Official Gazette Nos 29/2015, 113/2017, 41/2018), which, like the previous law, defines actions and measures to limit the disposal of assets of flagged persons, the authorities of the state bodies to implement these measures, as well as the rights and obligations of natural and legal persons in the implementation of the law. The amendments primarily concern the procedure regarding persons subject to sanctions.

Besides the aforementioned regulations, following a recommendation by the Manival Committee, the Law on the Central Register of Beneficial Owners entered into force on 8 June 2018, introducing the obligation of legal entities and other entities registered in the Republic of Serbia to determine the beneficial owners, provide the required documentation and register the data and documents with the Central Register of Beneficial Owners with the Serbian Business Registers Agency (SBRA), once the Central Register has been formed.

After identifying Serbia as a jurisdiction with a flawed anti-money laundering and terrorist financing system in February 2018, the Financial Action Task Force (FATF) made a decision at a session held on 21 June 2019 to remove Serbia from this list.

Prior to the entry of the White Book into print, the Government of the RS adopted the Proposal of Amendments to the Law on Prevention of Money Laundering and Financing of Terrorism aiming to be harmonized with EU acquis. The new legal solution, if and when adopted, will be analysed in the next edition of the White Book.

POSITIVE DEVELOPMENTS

In 2018 and 2019, the competent authorities intensified the adoption of all necessary regulations, and to some extent they also took into account the comments made by the entities subject to the Law and the interested public on the previous draft law. At the same time, there is also stepped up activity in the field of enforcement (according to information from the Ministry of Internal Affairs, a total of 15 money laundering related judgments were passed between 20 December 2018 and 10 April 2019).

The new Law, as well as other regulations in the field of the prevention of money laundering and financing of terrorism, are almost completely harmonized with the relevant EU directives and international standards and conventions in this area, which is of particular interest to foreign investors.

The Foreign Investors Council supports the initiative to continue not only improving the legal framework, but also thoroughly monitoring the implementation of all adopted regulations and cooperating with all competent state authorities, with the hope that the new statutory provisions will bring the much needed legal certainty, taking into account the specificities of Serbia's legal framework.

REMAINING ISSUES

Although the Law was adopted with practically no public consultations and without a substantive debate in the National Parliament, the Foreign Investors Council emphasizes the need for good cooperation between all competent authorities and investors, companies, professional associations and business organizations, if the Law is to be successful implemented, to increase the level of legal certainty in the implementation of all regulations in this field, and for all entities subject to the Law to be able to plan their activities in a timely manner and especially considering that the new Law introduced significant new obligations to the business sector with regards to the implementation of the Law.

The application of the Law primarily depends on the actions of the Administration for the Prevention of Money Laundering (APML) and other bodies responsible for its implementation. Most of the standards and rules that apply in the European Union (EU) member states have been incorporated into the Law and the next step should be to define mechanisms for their implementation. The APML stepped up its activities and demands toward entities subject to the Law in 2017, but there is still a lack of cooperation.

FIC RECOMMENDATIONS

- Develop a system to enable better communication between the Administration for the Prevention of Money Laundering and entities subject to the Law, as well as the government, and better cooperation with the Ministry of Foreign Affairs and the courts with the aim of improving the implementation of regulations in this field.
- Ensure high-quality public consultations in the adoption of new regulations in the field of combating money laundering and terrorist financing and invest additional efforts to apply existing regulations in this area more effectively.

- Adopt initiatives of professional associations to exclude certain business relationships from the obligations prescribed by the Law (e.g. risk insurance)
- Continue organizing appropriate seminars and workshops to train entities subject to the Law, with a view to increasing the effectiveness of its implementation.

LAW ON THE CENTRAL REGISTER OF BENEFICIAL OWNERS 2.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Significant changes should be made to specify in more detail and streamline the procedures to minimize the possibility that the filing of records, which is a difficult and time-consuming process for complex business entities, will slow down incorporation of new business companies in Serbia and turn away some prospective investors.	2018	√		
The sanctions prescribed by the Law should be reduced.	2018			√

CURRENT SITUATION

The Law on Central Register of Beneficial Owners (hereinafter referred to as: Law) came into force on 8 June 2018, and since then there have been no amendments. Two rulebooks have been adopted: Rulebook on the Content of Central Register of Beneficial Owners for Purpose of Registration of Ultimate Beneficial Owners of Registered Entity and Rulebook on Manner and Conditions for Electronic Exchange of Data between Business Registers Agency (hereinafter referred to as: BRA), other State Authorities and the National Bank of Serbia (NBS) in order to register Beneficial Owners. Both rulebooks began to apply on 15 December 2018.

The Law regulates the establishment, content, basis of recording and the manner of keeping the Central Register of Beneficial Owners of legal entities and other entities registered in Serbia in accordance with the law (hereinafter referred to as: Central Register).

The Law sets forth the obligation of registering all individuals who ultimately own or control a registered legal entity.

The Law applies to the following registered entities: (i) legal entities, other than public joint stock companies; (ii) cooperatives; (iii) branches of foreign companies; (iv) business associations and associations other than political parties, trade unions, sport organizations and associations, churches and religious communities; (v) foundations and endowments; (vi) institutions; (vii) representative offices of foreign companies, associations, foundations and endowments.

The Law does not apply to business entities and institutions in which the Republic of Serbia, autonomous province or a local government unit is the only member, or founder. Also, the Law does not apply to entrepreneurs.

Central Register is a public, unique, electronic and centralised database of natural persons who are beneficial owners of a legal entity or another entity registered in the Republic of Serbia (hereinafter referred to as: registered entity). Central Register was established on 31 December 2018.

The basis for filing these records are: (i) establishment of the registered entity; (ii) change of ownership structure and membership of the registered entities' bodies, as well as other changes on the basis of which compliance with the conditions for acquiring the capacity of beneficial owner can be assessed.

The beneficial owner of a registered entity is: (i) a natural person who directly or indirectly holds 25% or more of inter-

est, shares, voting or other rights, based on which it participates in managing the registered entity and/or has a 25% or more equity interest in the registered entity; (ii) a natural person who has a direct or indirect dominant influence in doing business or making decisions; (iii) a natural person who indirectly has provided or is providing the funds for the registered entity and on that basis has an important influence on decisions made by the registered entity's managing bodies regarding financing and doing business; (iv) a natural person who is a founder, a trustee, a data protection officer, a beneficiary if designated, or a person who has a dominant position in managing the trust and/or in another foreign legal entity; (v) a natural person who is registered to represent cooperatives, associations, foundations, endowments and institutions, if the authorized representative has not registered any other natural person as a beneficial owner. If it is not possible to determine the natural person based on the previously listed criteria, the authorized representative and/or the natural person registered as a governing body member of such an entity will be deemed to be the beneficial owner of the registered entity.

BRA keeps data permanently, while the registered entity has and maintains adequate, accurate and up-to-date data and documents based on which the beneficial owner of the registered entity can be determined, for 10 years from the filing date of the records on the beneficial owner.

At the moment of publishing of this text, the public consultations on the amendments to the Law, which amendments stipulate that the BRA will check if the registered entities have completed the registration of the beneficial owner data in Central Register by January 31, 2020 and file a request for the initiation of misdemeanour proceedings if the registered entity has not fulfilled the obligation of registration within the statutory deadline. However, as these amendments have not yet entered into force, we will be able to comment on them in the next edition of the White Book.

Failure to comply with this Law is a criminal offence punishable by a prison sentence ranging from 3 months to 5 years and a misdemeanour for which the registered legal entity will be punished with a fine ranging from RSD 500,000 to RSD 2,000,000, and the responsible person in the legal entity with a fine ranging from RSD 50,000 to RSD 150,000.

POSITIVE DEVELOPMENTS

Regarding the problems highlighted in White Book 2018, it is important to emphasize that in the meantime the Central Register has been established, as well as that in the meantime rulebooks defining the manner in which the basis of registration is determined have been adopted. Also, the Ministry of Economy issued a Guide for Registration of the Beneficial Owner of a Registered Entity in the Central Register, which explains in more detail what documentation is needed in order to prove the beneficial ownership. Additionally, the BRA has published a Guide for Using Application for Registration of Beneficial Owners in which the registration process is explained to users in a detailed manner.

REMAINING ISSUES

When the basis for registration is the establishment of a registered entity, it is necessary to register the data in the Central Register using the qualified electronic signature certificate (hereinafter referred to as: certificate) of a legal representative of a registered entity, not later than 15 days upon the establishment of a registered entity. This means that in cases when the legal representative is a foreign citizen, who does not have a residency address on the territory of Serbia, his/her visit to Serbia is required, since the takeover of the certificate from an authorized body for issuing qualified electronic signature certificates (hereinafter referred to as: authorized body) has to be performed exclusively by the personal presence of the legal representative, which may represent an additional logistical challenge for potential investors.

So far, the Serbian Chamber of Commerce (CCIS), as one of the authorized bodies for the issuance of the certificates, has allowed singing the application for registration of the respective data to proxies of the legal representatives, using the certificate of the legal representative on the business premises of the CCIS (without the right to take the certificate out of the business premises of the CCIS). Based on the information obtained from the officers of the CCIS, this will be not possible as of 1 July 2019.

In addition, the last remaining issue are the strict sanctions prescribed for failure to comply with the provisions of the Law, which are completely disproportionate to the actions and consequences of the sanctioned action.

FIC RECOMMENDATIONS

- Significant changes should be made to the procedure of registration of the respective data in the Central Register using the certificate.
- The sanctions prescribed by the Law should be reduced.