

PREVENTION OF MONEY LAUNDERING AND FINANCING OF TERRORISM

CURRENT SITUATION

Near the end of 2019, changes have been made to the Law on the Prevention of Money Laundering and Financing of Terrorism (Off. Gazette of RS No. 91/2019, hereinafter: „New Law“) foremost, in order to enable further implementation of International standards established by EU directive 2018/843 of the European parliament and Council from 30 May 2018 (the “Fifth directive”), but also keeping in mind that in June 2018, Serbia has been removed from the so called FATF “Gray list” of countries, therefore further harmonization with international standards in this area was necessary.

The New Law entered into force on 1 January 2020, however, certain provisions of Article 34 shall apply starting from 1 January 2021, and the provisions of Article 56, from 1 June 2020. The New Law stipulates that bylaws will be adopted within four months from the date of entry into force of the New Law, while obliged entities are required to harmonize internal rules by 1 May 2020, with the obligation to obtain a license for its authorized persons and their deputies from 1 January 2021.

The New Law does not set out too many novelties (at least not compared to the previous Law), but certain changes have been made, of which we draw attention to the following: change in the definition of money laundering (added element of foreignness), changes in definitions (transaction, correspondence, virtual currencies, games of chance, financial group, etc.); a new obliged entity has been added (a person dealing in postal traffic services) as well as extended situations in which public notaries are considered obliged entities; the provisions regarding electronic money transfer have been specified and lower limits for the application of the exception have been prescribed; the identification procedure with an electronic document as well as an electronic signature has been harmonized; it has been specified that the obliged entity is not released from the obligation to determine the beneficial owner if he has established the information on the owner by inspecting the Central Registry of beneficial owners; an obligation has been prescribed for obliged entities to apply actions and measures for prevention and detection of money laundering and funding of terrorism in all business units and subordinate companies of a legal entity, regardless of the place of business; the obligation to have a license for an authorized person and his deputy has been introduced; an obligation for the NBS to start keeping a single register of safes and a single register of users of cash licenses starting 1 June 2020. was prescribed etc.

The supervisory body for auditors has been changed - from now on the supervision will be carried out by the Securities Commission, instead of the Administration, while the NBS will have additional powers to impose measures and/or penalties on the authorized person and his deputy.

In accordance with their obligation to adopt bylaws, state bodies have already adopted certain acts, of which we single out the adoption of a new rulebook on the methodology for performing tasks in accordance with the New Law, a rulebook on the professional exam for issuing licenses, new/ updated guidelines for risk assessment issued by the Securities Commission and the Gaming Authority, guidelines for risk assessment by and legal entities engaged in the provision of accounting services and factoring companies, as well as a decision on the conditions and manner of determining and verification of the identity of a natural person using the means of electronic communication issued by the NBS.

COVID-19

N/A

POSITIVE DEVELOPMENTS

The competent authorities were very active not just regarding the enactment of the New Law but also, the necessary regulations and bylaws, taking into account to some extent the comments made on the earlier draft of the Law by taxpayers and the interested public.

The New Law and the other enacted regulations are almost fully harmonized with the relevant EU directives and international standards and conventions in this field, which is of special relevance to foreign investors.

FIC supports the initiative to continue the promotion of not just the legal framework, but also to keep intensive monitoring on the application of all new regulations and cooperation with all competent state bodies with the hope that these new regulations will bring forth the much needed legal certainty, taking into account the specificities of the Legal framework.

REMAINING ISSUES

Although the New Law was (again) adopted practically without a public debate, FIC emphasizes that it is necessary to achieve good cooperation between all competent state

bodies and investors, companies, professional associations and business organizations, in order for the New Law to be successful.

The application of the New Law, above all, depends on the activities of the Administration and other competent bodies (NBS etc.). Standards and rules established in EU countries are largely accepted and incorporated into the new text of the Law and the next step would be to find mechanisms for their implementation in cooperation with business entities.

The remaining problems are the existence of several supervisory bodies with often different views in terms of application of regulations, imprecision of certain legal provisions, legal solutions that are often stricter than the requirements of relevant foreign and EU regulations but also the regu-

lations of neighbouring countries - such as obligation of licensing of authorized persons and their deputies (which further burdens business entities especially having in mind existence of various licenses depending of the industry of obliged entities) as well as obligation to obtain excerpts from commercial registries for all companies in ownership chain of the client (i.e. impossibility to determine ultimate beneficial owner through other sources), frequent and unclear requests for additional information from the side of supervisory bodies, which consume time and personnel of the obliged entities, and the tendency of the supervisory authorities not to deal with essential issues which are important for the prevention of money laundering and funding of terrorism but with punishing obliged entities for certain formal omissions (which there are potentially more of, given the growing number of regulations and their frequent change).

FIC RECOMMENDATIONS

- Develop a system that would enable better cooperation between the Administration, supervisory bodies and obliged entities, with the aim of better implementation of regulations with emphasis on prevention of money laundering and funding of terrorism and not burdening obliged entities with numerous formalities e.g. establishing a Task Force that would meet regularly to monitor the implementation of regulations with the participation of representatives of the competent authorities. (3)
- Create an analysis of new changes to the regulations in this area and recommend a meeting with the Government of RS in order to further improve the legal framework. (2)
- Accept and adopt initiatives of professional associations to exempt certain business relationships from obligations prescribed by law (e.g. risk insurance). (2)
- Continue organizing adequate seminars and workshops with the purpose of conducting certain training for the persons to whom the New Law with the purpose of increasing the efficiency of its applicability. (1)