

THE NEW FRAMEWORK ON ANTI-MONEY LAUNDERING WAS ADOPTED

Law no. 129/2019 aimed at amending the current legal framework on anti-money laundering ("**AML**") and counter-terrorism financing ("**CTF**") (the "**Law**") was passed by the Romanian Parliament and published on 18 July 2019 in the Romanian Official Gazette. The Law implements Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 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 (the "**4th AML Directive**").

RISK-DRIVEN CUSTOMER DUE DILIGENCE

The 4th AML Directive aims, inter alia, to ensure the compatibility of the European legislation with actions undertaken in the international fora. This is achieved by aligning, where appropriate, the European legislation with the International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation that the Financial Action Task Force (FATF), an international anti-money laundering (AML) and counter-terrorist financing (CFT) standard setter, adopted in 2012.

In line with the FATF's standards, the 4th AML Directive puts the risk-based approach at the core of the European Union's AML/CFT regime.

Although the types of customer due diligence (*i.e.* standard, simplified and enhanced) continue to exist, the entire process will be materially changed further to the transposition of the 4th AML Directive by means of the Law.

For example, the specific situations that under the former legal framework would call for the application of either simplified or enhanced due diligence to be carried out, were replaced by lists of risk factors that will have to be considered in order to determine what type of customer due diligence would need to be applied. The list or risk factors is open, but at a minimum the ones included in the Law must be taken into consideration.

Headlines

- Compliance with the Law is due within 180 days as of the entering into force of the Law;
- Customer due diligence requirements using risk-based approach;
- Setting-up central registries on beneficial owners;
- Reporting threshold for cash transactions reduced to EUR 10,000;
- Record keeping obligation for maximum 5 years, with a possibility to extend it up to 5 more years;
- Data protection obligations for the reporting entities.

According to the new legal framework the standard customer due diligence measures will be the baseline. The decision of a reporting entity to apply simplified or enhanced customer due diligence measures will depend on the analysis by the reporting entity of a series of risk factors related to clients, products, services, transactions and distribution channels or geographical aspects. Although the new legal framework includes lists of such factors, such lists are open. For example, authorities regulating/supervising a specific sector (for example the National Bank of Romania and the Financial Supervision Authority) may issue regulations or instructions in relation to specific risks that should be considered when assessing what type of customer due diligence should be applicable.

The Law also introduces the obligation of the reporting entities to examine the context and purpose of every transaction that has an unusually high value or that does not have an obvious economic, commercial or legal purpose.

The new risk-derived customer due diligence regime shall provide more flexibility to the reporting entities, but, at the same time, the reporting entities have the responsibility to demonstrate to regulators that the applied customer due diligence measures are appropriate from the point of view of the risks of money laundering and terrorism financing that have been identified.

BENEFICIAL OWNERSHIP AND TRUSTS SUBJECT TO MORE SCRUTINY

Legal entities and trusts incorporated in Romania are obliged to obtain and hold adequate, accurate and current information on their beneficial ownership, including details of the beneficial interests held.

The Law provides that the information on beneficial owners in relation to the above entities must be registered with a centralized registry held by (i) the Trade Registry for companies that are obliged to register with the Trade Registry, with the exception of autonomous regies, national companies and national societies, (ii) the Ministry of Justice for associations and foundations, (ii) the National Agency for Fiscal Administration for trustees, and (iii) the Tax Authority for trusts.

Legal entities have the obligation to submit a statement regarding the beneficial ownership, annually, within 15 days from the approval of the annual financial statements. Within 12 months from the entry into force of the Law, legal entities registered before the entry into force of the Law must submit a statement regarding beneficial ownership.

Access to the above registers is subject to compliance with data protection rules and freely permitted to: (i) the Romanian National Office for Prevention and Control of Money Laundering (the "**Office**") and any other competent authorities are being granted with access to these registries in due time, without any restrictions and without alerting the relevant person; (ii) the reporting entities for the purpose of applying customer due diligence; and (iii) any persons or organisations that may prove a legitimate interest.

When fulfilling their customer due diligence requirements, the reporting entities should not rely exclusively on central registers, those requirements being fulfilled by using a risk-based approach.

REPORTING OBLIGATIONS AND DATA PROTECTION

Reporting entities must file a report on suspect activity/transactions with the Office where they know, suspect or have reasonable grounds to suspect that assets are the proceeds of criminal activity or are related to terrorist financing, the person or its representative is not the person who pretends to be, or the information held by the reporting entity may be relevant for investigating a criminal activity or may serve a purpose for the implementation of the Law, or in those situations or in relation to certain elements that may raise suspicion regarding the character, economic purpose or motivation for the transaction, such as anomalies in the client profile, as well as when there are indications that the data held in relation to the client or the beneficial owner is not real or updated and the client refuses to update such data or offers implausible explanations.

In addition to the above situations, reporting entities must send a report on suspect activity to the Office when facts related to a business relation or occasional transaction, correspond, in full or partially, to indicators or typologies of suspect activities publicly presented by the Office.

The Law provides that the reporting entity must consider suspect any business relationship or occasional transaction with a person having certain identification data communicated by the Office.

Reporting suspect activities

Reporting entities should immediately file a report (by electronic means only made available by the Office) with respect to a suspected activity before performing any transaction, regardless of the amount of the operations or the involved assets.

Once the Office confirms the receipt of the report, the reporting entity freezes for 24 hours any transaction of the client for which the report was made. The transaction may be performed if the Office does not decide to suspend the transaction by the end of the 24 hours term. If decided to suspend a transaction, this could be done for 48 hours (which can be extended to another 72 hours with the approval of the Prosecutor's Office attached to the High Court of Cassation and Justice).

However, the Law provides for an exception from immediate reporting, where the transaction needs to be immediately performed, or if the non-performance thereof would frustrate efforts to pursue the beneficiaries of a suspected money laundering or terrorist financing operation, when the reporting entities must inform the Office immediately after carrying out the transaction, but no later than 24 hours thereafter.

Transactions with no ground for suspicion

The threshold for reporting cash transactions was reduced from EUR 15,000 to EUR 10,000. Such reporting obligation is also applicable where cash transactions are split into instalments smaller than the RON equivalent of EUR 10,000 but have common elements such as: the parties to the transactions, including beneficial owners, the nature or the category under which the transactions and the sums fall.

For the activity of money remittance, the above mentioned reporting obligation, applies for transferring funds of minimum EUR 2,000 (in RON equivalent).

Such reports should be filled with the Office within maximum 3 business days from the transaction date.

Record retention

The reporting entities have the obligation to retain (in hard copy or electronically) all records of their clients, as follows:

- in case of client due diligence, all the documents and information which were obtained in order to comply with the client due diligence requirements; and
- supporting evidence and records of transactions, consisting of original documents or copies admissible in judicial proceedings under the applicable national law, which are necessary to identify transactions;

for a period of five years after the end of business relationships with their clients or after the date of an occasional transaction. The competent authorities may extend this period by a maximum of five years. At the end of the retention period, the reporting entities have to delete the personal data, except for legal provisions requiring further retention.

Data protection obligations

All personal data is processed by the reporting entities only for AML or CTF purposes, it being forbidden to use them in other purposes (such as commercial).

The reporting entities have the obligation to appoint one or more persons with responsibilities in applying the Law, and their names will be communicated to the Office and control and supervisory authorities. These persons have immediate and direct access to relevant data and information held by the reporting entities for observing their obligations under the Law.

The reporting entities that are part of a group have to implement group-wide policies and procedures, including data protection policies and policies and procedures for sharing information within the group for AML or CTF purposes which will be implemented effectively at the level of branches and majority-owned subsidiaries. Also, reporting entities must ensure that their employees and representatives who report suspicions of money laundering or terrorist financing internally or to the Office, are protected from being exposed to threats or hostile action, and in particular from adverse or discriminatory employment actions.

SUPERVISION, CONTROL AND SANCTIONS

The National Bank of Romania and the Financial Supervision Authority have been given exclusive competences of supervision and control over entities under their authority regarding the prevention and combating of money laundering.

The maximum fine that can be imposed upon individuals in cases of non-compliance with the provisions regarding reporting duties, performance of transactions, application of KYC procedures, archiving of KYC documents or appointing an AML officer is RON 150.000.

Legal entities may be sanctioned by applying a warning or by imposing the fine provided by the Law for individuals, with the minimum and maximum value being increased by 10% of the total revenues for the fiscal year preceding the date of minutes of the fine.

In the case of financial institutions, others than the ones supervised by the National Bank of Romania, which perform repeated or systematic offences, the maximum value of the fine is increased by RON 5.000.000.

EXTENDED SCOPE

The law clarified and extended the spectrum of authorities that are included in the framework for preventing and combating money laundering, that now includes, among others, prosecution bodies, fiscal authorities, secret services and the Ministries of Defence, Internal Affairs and Justice, various supervision bodies, such as the National Bank of Romania, and the Office.

The Law extended the notion of reporting entity to include the providers of gambling services, financial and business consultants, enforcement bailiffs and agents and distributors of the entities issuing electronic currency.

MILESTONES REGARDING THE NEW FRAMEWORK

The reporting entities should comply with the Law provisions within 180 days as of its entering into force.

Within 120 days as of the Law entering into force, the supervisory authorities, as well as self-regulatory bodies have the obligation to issue sectorial regulations for applying the Law provisions.

CONTACTS



Cosmin Anghel
Counsel

T +40 21 6666 124
E cosmin.anghel@cliffordchance.com



Radu Ropota
Counsel

T +40 21 6666 135
E radu.ropota@cliffordchance.com



Bianca Alecu
Senior Associate

T +40 21 6666 127
E bianca.alecu@cliffordchance.com



Lucian Savin
Lawyer

T +40 21 6666 276
E lucian.savin@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

Clifford Chance Badea SPRL, Excelsior Center, 28-30 Academiei Street, 12th Floor, Sector 1, Bucharest, 010016, Romania

© Clifford Chance 2019

Abu Dhabi • Amsterdam • Barcelona • Beijing • Brussels • Bucharest • Casablanca • Dubai • Düsseldorf • Frankfurt • Hong Kong • Istanbul • London • Luxembourg • Madrid • Milan • Moscow • Munich • New Castle • New York • Paris • Perth • Prague • Rome • São Paulo • Seoul • Shanghai • Singapore • Sydney • Tokyo • Warsaw • Washington, D.C.

Clifford Chance has a co-operation agreement with Abuhimed Alsheikh Alhagbani Law Firm in Riyadh.

Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.