

# Track Changes

## AML IN POLAND

Amendments to the Act on Counteracting  
Money Laundering and Terrorist  
Financing: *what will change?*

# AMENDMENTS TO THE ACT ON COUNTERACTING MONEY LAUNDERING AND TERRORIST FINANCING (AML Act)

## ENTRY INTO FORCE



### Coming soon (Q2 2021)

On 12 January 2021, the Council of Ministers adopted draft amendments to the AML Act. It is anticipated that the legislative works on the draft amendments will be completed at the end of Q2 2021.

## THE MAIN GOAL



Implementation of the provisions of Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU (AML V Directive).



The new changes will increase the transparency of financial flows and, consequently, enhance the ability of the authorities responsible to detect financial resources originating from criminal activities or financing terrorist activities.

**The most important changes include, among others: expansion of the list of obliged institutions covered by the AML Act; changes in the definition of beneficial owner; amendments to reporting obligations to the central register of beneficial owners; and the introduction of a new provision on virtual currencies.**

# OBLIGED INSTITUTIONS ACCORDING TO THE LAW



## EXPANSION OF THE LIST OF OBLIGED INSTITUTIONS

### WHICH INSTITUTIONS MUST COMPLY?

The AML Act directly answers the above question, in Art. 2 Clause 1 by presenting a catalog of obliged entities which are primarily institutions with a financial and insurance profile of activity. Among them are:

**banks, credit institutions and their branches, credit unions (SKOKi), domestic payment institutions, acquirers, investment funds, etc.**

These institutions support the identification of the risk of money laundering and terrorist financing related to business relations or an occasional transaction and assess the level of the identified risk.



## WHO IS AFFECTED BY THE CHANGE?

An addition was made to Art. 2 Section 1 of the AML Act of entrepreneurs who conduct business consisting of:

**trading in or brokerage in works of art, collectors' items and antiques, the storage, trade or brokerage of these goods** - this applies to transactions with a value equal to or exceeding the equivalent of **EUR 10,000** - regardless of whether the transaction is carried out as a single operation or several operations that appear to be linked.

Reports from international organisations dealing with counteracting money laundering and the financing of terrorism show that works of art, antiques and collector's items are now commonly used in money laundering and terrorist financing.



# EXTENDED DEFINITION OF BENEFICIAL OWNER



The draft amendments to the AML Act propose material changes in defining a beneficial owner. In particular, it clearly states that there **may be several beneficial owners i.e. group of people** (not only one person). This means that obliged institutions should not stop at determining only one beneficial owner.



## Beneficial owner does not always mean a client

The draft amendments propose the **removal of all references to the client under the definition of beneficial owner**.

In practical terms, the determination of a beneficial owner will also be possible when the respective entity is not a client of an obliged institution (the phase before establishing a business relationship).



## New categories of beneficial owners

The following categories of persons will also be considered **as beneficial owners**:

- with respect to **trusts** – individuals in whose main interest the trust was created or operates;
- with respect to **legal arrangements comparable to trusts** – individuals holding positions equivalent to those assigned to beneficial owners of trusts.

The proposed amendments do not introduce a legal definition of *legal arrangements*. Instead, a **broad definition of trusts** has been provided. This means that *any legal arrangements* will fall under the definition of trusts.

# AMENDMENTS TO REPORTING OBLIGATIONS TO THE CENTRAL REGISTER OF BENEFICIAL OWNERS



Obligatory reporting to the Central Register of Beneficial Owners will be extended to the following entities:

- **trusts** (provided that the trustee is a resident of Poland, has a registered office in Poland, establishes a business relationship or acquires real estate in Poland, for and on behalf of a trust);
- **professional partnerships**;
- **European Economic Interest Grouping (EEIG)**;
- **European companies**;
- **cooperatives**; and
- **European cooperative societies**.



The new entities subject to obligatory reporting will have **9 months following the date of publication of the amendments to the AML Act in the Journal of Laws** to register in the Central Register of Beneficial Owners.

Obligated institutions should include a **method of recording discrepancies** with an **internal procedure**.



## Recording discrepancies by obliged institutions

Proposed amendments provide for the **obligation to report any discrepancies** between the facts related to the client and available data in the Central Register of Beneficial Owners.

The obliged institutions will be required to:

- i. clarify identified discrepancies; and
- ii. notify confirmed discrepancies to the Minister of Finance along with an explanatory statement.

# DETERMINATION OF BENEFICIAL OWNER BY OBLIGED ENTITIES – WHAT WILL CHANGE?



The draft amendments to AML Act introduce the following key changes in the field of **beneficial owner's assessment**:

- obligation to receive **confirmation of registration of the client in the register of beneficial owner or excerpt from the respective UBO register**, prior to: (i) establishment of a new business relationship with a potential client; or (ii) carrying out of an occasional transactions;
- **documentation requirements** of any difficulties with respect to: **(i) identification of the beneficial owner** (when obliged institution states that an individual who holds a senior management position is a beneficial owner); and **(ii) verification of the beneficial owner's identity**, along with any actions undertaken by the obliged entities in relation to this (in the form of **internal record** of the actions); and
- obligation to **determine the citizenship of the beneficial owner** – applied only when the obliged institution holds such data (otherwise name and surname of the beneficial owner will be sufficient).



## What actions could result in penalties?

- failure to **designate a person responsible for** the implementation of obligations arising from **the AML Act** (pursuant to Article 7);
- disclosure of information on the **intended launch or carrying out of money laundering or terrorist financing analyses**;
- failure to **implement post-inspection recommendations** issued by the General Inspector;
- **lack of approval** for the establishment by the obliged institution of a branch or representative office located in a high-risk third country.



Obliged institutions **cannot rely solely on the data available in the Central Register of Beneficial Owners** or in the respective register maintained in another EU Member State when identifying the beneficial owner.

The lawmakers require obliged institutions to identify beneficial owners with a **risk-based approach**.

# INTRODUCTION OF PROVISIONS REGARDING VIRTUAL CURRENCIES

The draft of amendments to the AML Act introduces a new chapter to the Polish AML Act regarding activity in the field of virtual currencies.



## MAIN GOAL

- Improvement of detection of suspicious transactions performed with the use of virtual currencies.



## ENTRY INTO FORCE

- after 6 months from the date of publication of the amended act



## MAIN PROVISIONS ON VIRTUAL CURRENCIES

- Activity in the field of virtual currencies will be a **regulated** activity
- The introduction of special requirements for entities providing services connected to virtual currencies:
  - No criminal record
  - Knowledge and experience in the field of virtual currencies
- The introduction of a **fine** in the amount of up to **PLN 100,000** (approx. EUR 22,300) for activity in the field of virtual currencies without being registered



**Registry** of the activity in the field of virtual currencies



## FINANCIAL SECURITY MEASURES

- The draft amendment provides that the obliged institutions entities providing the exchange of and operational services for virtual currencies shall apply **financial security measures** when carrying out an **occasional transaction** with a use of a virtual currency amounting to the equivalent of **EUR 1,000 or more**.

# MAIN AMENDMENTS WITH RESPECT TO FINANCIAL SECURITY MEASURES

## EXTENSION OF THE CATALOG OF SITUATIONS IN WHICH FINANCIAL SECURITY MEASURES SHOULD BE APPLIED

- The draft amendments to the AML Act provide that the obliged institutions must also apply financial security measures to **existing clients**, among others, in the event of:
  - the previously established nature or circumstances of the business relationship have changed;
  - change of the client's or beneficial owner's data;
  - the obliged institution was required during a given calendar year under the provisions of the law to contact the client in order to verify the information on beneficial owners.

## EXTENSION OF THE CATALOG OF ENHANCED FINANCIAL SECURITY MEASURES

- The draft amendments to the AML Act introduce into the catalog of enhanced financial security measures for two circumstances:
  1. business relationships or occasional transactions in connection with **crude oil, arms, precious metals, tobacco products, cultural artifacts, ivory, protected species or other items of archaeological, historical, cultural and religious significance or of special scientific value**; and
  2. business relationships or occasional transactions in connection with a client who is a **third-country national** and is **applying for the right of residence or citizenship in a Member State, in return for capital transfers, the purchase of real estate or government bonds or investments in corporate entities** in a given Member State.

## TIGHTENING OF THE RULES ON THE APPLICATION OF FINANCIAL SECURITY MEASURES IN RELATION TO CLIENTS FROM HIGH-RISK THIRD COUNTRIES

- The draft amendments to the AML Act tighten the rules on the application of financial security measures in relations to client's from high-risk third countries, among others, by the introduction of an **obligation to collect additional information**, which includes at least:
  1. the client and its beneficial owner and their source of wealth and the source of assets; and
  2. the intended nature of the business relationship and its reasons and circumstances; and
  3. the acceptance of senior management to establish or continue business relationships.

Additionally, the obliged institutions will have to intensify the monitoring of business relationships and the analysis of the transactions.



# AMENDMENT TO THE AMOUNT LIMITS FOR THE CONDITIONS FOR WITHDRAWING FROM THE APPLICATION OF FINANCIAL SECURITY MEASURES

The draft amendments increase the amount limits from EUR 50 to **EUR 150** for certain conditions for withdrawing from the application of financial security measures.



The draft amendments to the AML Act provide that the obliged institutions will be allowed to withdraw from the application of certain financial security measures in relation to electronic money, among others, on the condition that:

1. the payment instrument is not reloadable or has a maximum monthly payment transactions limit in the equivalent of **EUR 150**, which amount can be used only within the territory of the Republic of Poland; and
2. the maximum amount stored electronically does not exceed the equivalent of **EUR 150**.



The same amount limit conditions will need to be fulfilled in the case of **the anonymous prepaid payment card issued in a third country** for their acceptance by obliged institutions acting as settlement agents within the meaning of the Polish Act on Payment Services.



Additionally, the card organisations will must enable (technologically and organisationally) the verification of (by institutions) whether anonymous prepaid payment cards meet these conditions.

# Contact

If you would like to know more about the topics covered, you can contact our specialists listed below.



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