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NEW ANTI-MONEY LAUNDERING LEGISLATION



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On 7 February 2015, the new Law of Ukraine “On Prevention and Counteraction to Legalisation (Laundering) of Proceeds from Crime, Terrorist Financing and Financing of Proliferation of Mass Destruction Weapons” (the “**AML Law**”) came into effect. The declared aim of the AML Law is to harmonise Ukrainian regulations with up-to-date FATF recommendations as well as to comply with international obligations undertaken by the state of Ukraine.

The AML Law restated in its entirety the existing 2002 Law of Ukraine “On Prevention and Counteraction to Legalisation (Laundering) of Proceeds from Crime, Terrorist Financing”. However, it has not changed the key anti-money laundering regulatory mechanism established in 2002, but rather embedded certain innovations thereto.

Among the provisions set out by the AML Law, the following novelties should be flagged:

- 1 *Financial Monitoring Entities.* The AML Law amended the list of Ukrainian resident entities that are obliged to carry out financial monitoring procedures in relation to their clients and clients’ operations (the “**Financial Monitoring Entities**”). In particular, insurance (and reinsurance) brokers and law bureaus and unions were included into the list of Financial Monitoring Entities, while private entrepreneurs carrying out operations for the amounts of UAH 150,000 or more were excluded from that list on the basis that the financial monitoring over such entities is to be conducted by banks servicing their operations.
- 1 *Verification procedures.* In addition to existing identification procedures, verification procedures have been introduced by the AML Law requiring the Financial Monitoring Entities to verify (or reconfirm) the information and data received as a result of identification procedures in the presence of the respective client or its representative. At the same time, terms and expressions in the AML Law do not give a clear understanding of how this procedure will work in practice.
- 1 *Outsourcing of identification/verification procedures.* The AML Law provides for a possibility of Financial Monitoring Entities to outsource its identification and verification functions to third parties. However, in practice, such outsourcing may become available for Financial Monitoring Entities once the implementing regulations are adopted (or amended).
- 1 *National public figures.* In addition to foreign political leaders and governmental officials, the AML Law also covers the national public figures (including the President, members of Parliament and the Cabinet of Ministers of Ukraine, deputy ministers, members of the Board of the National Bank of Ukraine, other top governmental officials, judges of the Constitutional Court of Ukraine, the High Court of Ukraine, members of governing bodies of strategic Ukrainian state-



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owned entities as well as leaders of political parties). The Financial Monitoring Entities are required to assign by default to such persons (both, foreign and local) a high-risk category and carry out additional financial monitoring procedures aimed at in-depth study of such persons' operations.

- 1 *National risk assessment system.* The AML Law introduces the national risk assessment which is to be carried out by the State Financial Monitoring Service of Ukraine, being a specialized Ukrainian governmental body in the sphere of financial monitoring and anti-money laundering. The risk assessment is expected to be carried out at least every three years, however, as of today, no particular criteria, rules and procedures for such assessment has been introduced in Ukrainian regulations.
- 1 *Disclosure of banking and other professional secrecy.* The AML Law expressly states that disclosure by banks, lawyers, auditors, notaries of their professional secrecy for the purposes of performance under the AML Law shall not be regarded as breach of any confidentiality requirements. At the same time, the provisions pertaining to such disclosure are rather vague leaving a number of questions as when such professional secrecy rules set out by law may or may not be disregarded.

There is also a number of other novelties introduced by the AML Law, which amend existing financial monitoring rules and procedures, including changes to the list of operations subject to mandatory financial monitoring, obligations to inform the financial monitoring authorities on attempts to perform such operations etc. The majority of such new provisions, however, lack the necessary regulatory and implementing framework since the existing Ukrainian regulations still remain in line with the previous financial monitoring mechanics and requirements and have not been amended yet to align with the AML Law. Accordingly, many novelties of the AML Law, though already in effect and are expressed to be obligatory in Ukraine, in practice may appear non-operational until and unless the relevant regulations are adjusted to the AML Law.