COUNTRY UPDATE-Serbia: AML

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Member of the Financial Action Task Force? No (observer at EAG, member of MONEYVAL).

On FATF black list? No.

Member of Egmont? Yes.

Legislative framework

The legislative framework in this area is set under the Law for the Prevention of Money Laundering and Terrorism Financing (Official Gazette of RS, no. 113/2017, 91/2019 and 153/2020) (hereinafter "AML/CFT Law" or "Law") In addition to the above the legislative framework of combating money laundering and financing of terrorism in the Republic of Serbia consists of other laws and by-laws pertaining to other fields and encompassing issues on money laundering and financing of terrorism

The said laws and regulations refer to definitions of money laundering and terrorism financing; designate reporting entities (the obligors) and explain their obligations; adopt risk based approach requirements for the obligors; describe the procedures and the measures that obligors need to take for customer due diligence (CDD); set out limitations for carrying on business with a customer; describes the conditions under which a reporting agency can conduct simplified or enhanced CDD which are now tailored to a specific situation; define the politically exposed persons and the CDD measures that need to be conducted for these persons; and describe the obligor's obligation to have in place internal controls of the implementation of obligations and report suspicious transactions and to keep data. Further the money laundering is defined so as to refer to activities such as conversion or transfer of property acquired through the commission of a criminal offense, concealing or misrepresenting the true nature, origin, location, disposition, ownership or right in connection with property acquired through the commission of a criminal offense, acquisition, possession or use of property acquired through the commission of a criminal offense, which may be carried out in the Republic of Serbia and outside its territory.

Amendments to the AML/CFT Law that became applicable on June 30, 2021, extend the scope of application of the law to digital assets ("crypto currencies") and entities providing transactional services that involve digital assets.

The legal framework is considered compliant with standards prescribed by the Directive (EU) 2015/849 (4 AMLD), Directive (EU) 2018/843 (5 AMLD) and Regulation 2015/847 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006.

The legal framework is accompanied with the Law on freezing of the assets with the aim of preventing terrorism and proliferation of weapons of mass destruction (Official Gazette of RS, no. 29/2015, 113/2017 and 41/2018) enabling implementation of the UN Security Council resolutions as well as the enactments of other organisations of which the Republic of Serbia is a member.

Additional authorities apart from Administration for the prevention of money laundering (the "Administration") in the area include the National Bank of Serbia (for banks, insurance companies and voluntary pension funds), the Securities Commission (for banks, broker-dealer companies, and investment funds), the Tax Administration, the Ministry of Trade, Tourism and Telecommunications (for legal persons for intermediation in trade in real estates) and the Bar Association (for lawyers). In the Ministry of Interior, there is also a Section for Suppressing Money Laundering, in the Department for Suppressing Organised Financial Crime. It conducts crime investigations in cases of suspected money laundering criminal offences.

The actions of the relevant institutions are coordinated through a Coordination Body for the Prevention of Money Laundering and Terrorist Financing, which gathers 30 members representing state institutions, bodies and bodies, from the professional level and the level of policy making in this area. The president of the Coordination Body is the Minister of Finance, which on December, 28, 2022, rendered recommendations for reporting of suspicious transaction to the Administration.

In terms of international cooperation, the Administration cooperates with the Council of Europe Moneyval and Egmont Group and takes part in the activities of the Eurasian Group on the Prevention of Money Laundering and Terrorist Financing, in which it has observer status. Serbia has also adopted the necessary regulations enabling application FATCA (Foreign Account Tax Compliance Act and cooperation with IRS of the United States.

Customer due diligence

CDD measures

The customer identification obligation is set out in the AML/CFT Law under Article 7, which are now applicable to wire transfer and legal arrangements to full extent and require that obligors must:

- identify and verify the identity of the customer/client or its representative (including the representative of legal person), power of attorney holder or empowered representative and entrepreneur (through inspecting a personal identity document with mandatory presence of the identified person and obtaining a copy of the personal document of such person; or on the basis of qualified electronic certificate of the client issued by a certification body in the country or based on foreign electronic certificate which is equivalent to the domestic ones for physical persons; and by inspecting the original or certified copy of documentation from a register maintained by the competent body of the country where the legal entity has its registered seat);
- verify their identities based on documents, data, information obtained from reliable and credible sources, or by means of electronic identification in accordance with the law;
- identify the beneficial owner and verify the identity in the cases, (the obligation to verify the identity of beneficial is not anymore linked to an assessment of risk);
- obtain information on the intended nature and purpose of a business relationship or transaction, origin of property and other data;
- implement a risk based approach and regularly monitor business transactions of customers and check the consistency of those activities with the nature of the business relationship and usual scope and type of the customer's business transactions.

The AML/CFT law requires the obliged entities to apply CDD measures (actions and measures, including CDD and risk-based approach) to customers, with whom business relationship was established before the effective date of the law, within one year and these measures and actions shall be taken in a risk-based manner.

Particular obligations and enhanced due diligence

AML/CFT Law provides general provisions according to which obliged entities shall apply enhanced CDD when establishing a business relationship or carrying out a transaction with a customer from a country which has strategic deficiencies in the system for the prevention of money laundering and terrorism financing. The Rulebook on the Methodology to comply with the Requirements of the AML/CFT Law (Official Gazette of RS, no. 80/2020) indicates the list of countries with strategic deficiencies based on FATF Public Statements and mutual evaluation reports by the FATF and FSRBs, such as MONEYVAL.

In addition the enhanced CDD is required when:

- Establishing a loro-correspondent relationship with foreign bank or similar institution;
- The customer has not been physically present for identification purposes.

On application of the new technological achievement, in accordance with the risk assessment:

- When establishing a relationship with a customer where there is and off shore entity in ownership structure;
- The customer is a politically exposed person.

Reliance on third parties

The regulations expressly permit a firm to rely on any customer due diligence measures carried out by certain third parties, providing that the third party is a regulated entity falling within one of the categories listed in the regulations and that they have given consent to such reliance. A third party should not be relied upon if they have carried out only simplified due diligence or are "passing on" verification carried out for it by another firm.

It is important to remember that under the regulations, a firm remains liable for any failure to comply with the customer due diligence requirements even though it has relied on a third party; the responsibility cannot be delegated. The third parties cannot be relied upon when a customer is an offshore or anonymous company.

Internal policies and procedures

Firms are required to establish and maintain appropriate and risk-sensitive internal policies and procedures. AML/CFT Law provides that obliged entities which are part of an international group shall apply programmes and procedures relevant for the whole group, including the procedures for the exchange of information for the purpose of customer due diligence actions, mitigation and elimination of the risk, as well as other actions and measures with the aim of preventing money laundering and financing of terrorism.

Recordkeeping

Companies must keep copies of, or the references to, evidence of a customer's identity obtained during customer due diligence and ongoing monitoring for a period of five years after the end of the business relationship. Firms must also retain the supporting records in respect of a business relationship or occasional transaction which is the subject of customer due diligence or ongoing monitoring for a period of five years. Recordkeeping requirements apply equally to all reporting entities, except for lawyers and notaries for which there are specific record keeping provisions, which seem to largely cover FATF standards.

Training

Firms must ensure that all relevant employees are trained on the law relating to money laundering and terrorist financing and are regularly given training in how to recognise and deal with transactions and other activities which may be related to money laundering or terrorist financing.

Suspicious activity reporting

Firms must appoint a nominated money laundering reporting officer to receive internal reports relating to suspicious activity and must have adequate and risk-sensitive internal reporting procedures. Under AML/CFT Law, employees of firms are required to make a report to the APML (Administration for prevention of money laundry).

If they know or suspect, or have reasonable grounds for knowing or suspecting, that any person is engaged in money laundering (which broadly includes acquisition, possession, use or transfer of, or becoming involved in arrangements which deal with, criminal property) or terrorist financing. Consent must be sought from APML before a firm engages in activity which would otherwise constitute a money laundering offence under AML/CFT Law. Care should be taken not to breach prohibitions on "tipping off" or prejudicing an investigation.

In this sense, the Law explicitly introduces a prohibition on "tipping off" that applies to attorneys, notaries and their employees, who are now expressly prohibited from disclosing to their client or third parties that the person is subject to measures provided by the Law relating to the determination of the existence of money laundering.

Penalties

Breach of the regulations may result in commercial offences, criminal sentences, civil penalties and fines. Breach of the reporting obligations under carries a maximum fine of 3,000,000 dinars (RSD). Committing a money laundering offence exposes a person to up to 12 years' imprisonment and/or a fine.

Under the arts 245 and 393 of the Criminal Code (Official Gazette of RS, no. 85/2005, 88/2005 - correction., 107/2005 – correction,72/09, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019) the money laundering and financing of terrorism have been prescribed as the criminal acts.

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Complaints Procedure