

## Law no. 129/2019 for preventing and combating money laundering and terrorist financing, as well as for amending and supplementing certain normative acts

### Context

Law no. 129/2019 for preventing and combating money laundering and terrorist financing, as well as for amending and supplementing certain normative acts (the “**Law**”) was published in Romania’s Official Gazette on 18 July 2019, coming into force in the general 3-day period as of its publication. This Law transposes 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 (“**Directive 2015/849**”), as well as Council Directive (EU) 2016/2258 of 6 December 2016 amending Directive 2011/16/EU as regards access to anti-money-laundering information by tax authorities.

Directive 2015/849 is meant to consolidate the UE defense mechanisms against the offences of money laundering and terrorist financing, with a particular focus on deal risk assessment.

The primary anti-money-laundering normative acts in Romania were repealed upon entry into force of the Law, i.e. Law no. 656/2002 (“**Law 656**”), Government Decision no. 594/2008 and Decision of ONPCSB (*National Office for Prevention and Combating of Money Laundering*) Plenum no. 496/2006. The entry into force of the Law changes the way in which the reporting entities meet the “know your client” (KYC) obligations to

a considerable extent, and for this reason we recommend you to acknowledge the main changes following the entry into force of the Law.

Please find below a brief presentation of the main changes implemented by the Law.

### Publicly exposed persons

The change regarding the category of publicly exposed persons (politically exposed persons according to Law 656) is legislatively new, meaning that this concept no longer includes the presidential advisors and counselors of state, including however the members of the leading bodies of political parties. In addition, the concept of family members of publicly exposed persons also includes the persons having similar relationships to spouses.

- ◆ **Recommendation:** As part of the KYC measures, we recommend you to verify the offices of the persons under review, by verifying the public databases (i.e. parties’ registry) and requesting an affidavit.

### Beneficial owners in case of trusts or associations/foundations

As a new element, the Law includes provisions on trusts. Thus, the concept of Beneficial Owners also includes the settlors, the trustees, the protector, the beneficiaries of the trust, the persons for whose main interest the trust agreement was concluded, as well as any other individual controlling the trust in the end.

Furthermore, the members of the managing boards of associations, and the founders and members of the managing board of foundations, as well as the persons having executive offices and the persons in whose interest such associations/foundations were established, also fall under the category of Beneficial Owners.



## Central registries for information on the beneficial owners

The obligation to set up central registries for recording information on the beneficial owners is established for the National Trade Registry Office for companies, for the Ministry of Justice for associations and foundations, as well as for the National Agency for Tax Administration for trusts, *within 120 days as of the entry into force of the Law*.

The supervisory authorities provided under the Law, the reporting entities, as well as any person or organization that may prove a legitimate interest shall have access to these registries.

## Declaration regarding the Beneficial Owner

Within *12 months as of the entry into force of the Law*, the companies registered with the trade registry, as well as the associations and foundations, have the obligation to submit an *authentic* declaration regarding the identification data of the beneficial owners. The company's director may otherwise be sanctioned for infringement, and the entities in default may be dissolved.

This declaration shall be submitted each year or whenever required by a change in the identification date of the beneficial owner.

! **Important:** The failure to observe the obligation to submit the declaration regarding the identification data of the beneficial owner is an infringement and is sanctioned with *a fine ranging from RON 5,000 to RON 10,000*. In case the representative of the legal entity fails to submit the declaration regarding the identification data of the beneficial owner within 30 days as of the date when the sanction for the infringement is imposed, the court may order *the company's dissolution* at the request of the National Office of Trade Registry. The ground for dissolution may be eliminated before submitting the conclusions on the merits of the case. The National Agency for Tax Administration or the National Office for Prevention and Combating of Money Laundering (the "**Office**") shall ascertain the infringements and apply the sanctions.

## Bearer shares

The law provides for a legal interdiction for the issuance of new bearer shares, a legal interdiction for operations involving the already existing bearer shares, as well as a legal obligation to convert into registered shares all previously issued bearer shares. The non-fulfillment of the obligation to convert the shares, in the above-mentioned period, is sanctioned with the company's dissolution.

The holders of bearer shares have the obligation to submit them at the headquarters of the issuing company within 18 months as of the date of entry into force of the Law. In case of the failure to submit the shares, such

shall be lawfully annulled after the expiry of the 18-month period, resulting in the reduction of the share capital. The company's dissolution may be requested by any person concerned, as well as by the National Office of Trade Registry.

## Reporting entities

The category of reporting entities was also extended, including all gambling providers (only casinos were subject to the former law). The accounting experts/certified accountants, as well as any persons providing business advice have become reporting entities.

In addition, for notaries public, attorneys-at-law and other persons exercising liberal legal professions, the cases when such persons are reporting entities are extended substantially (i.e. the attorneys-at-law are reporting entities each time they participate in the name and on behalf of their clients in any financial or immovable operations).

The phrase "*any financial or immovable operations*" may include a large number of legal services. For instance, the legal services related to immovable assets are: assistance in the establishment of an immovable mortgage, drafting and negotiation of sale agreements for immovable assets, court representation in cases regarding real rights or immovable assets. The attorneys-at-law (and their clients) shall call into question the extent that the obligations of the reporting entities are applicable in such cases.

A partial answer is provided by a much welcomed new provision under the Law: according to art. 33 paragraph (5) of the Law, the attorneys-at-law shall fulfill the provisions of the Law with the observance of the legal provisions on keeping the professional secret. An optimistic interpretation of this provision of the Law would be that the attorney-client professional secret became opposable to the Office (Law 656 expressly stipulated that the professional secret is not opposable to the Office).

Unfortunately, the opposability of the professional secret does not completely eliminate the uncertainty.

## Risk assessment

According to the Law, the cases and criteria underlying the classification of a deal as suspicious, and implicitly the obligation of the reporting entities to report only to the Office are also extended.

It is worth mentioning that there is a new obligation established, i.e. the obligation of the reporting entities to deem suspicious and to report any business relation or occasional deal concluded with a person whose identification data were communicated by the Office for that particular case.

In case of reporting, such deal shall not be concluded for a period of 24 hours from the time when the Office confirms in writing the registration of the suspicious deal

report. In such 24-hour period, the Office has the possibility to extend the period of suspension, but this provision was also laid down in the former law.

Furthermore, the reporting entities shall report to the Office any deal which *does not* present any suspicion indicators, but which is made in cash, in RON or foreign currency, and amounts to more than EUR 15,000 (or its RON equivalent). For the money remittance activities, the reporting entities shall deliver reports to the Office for the transfer of funds above EUR 2,000 (or its RON equivalent).

## Know your client measures

According to the Law, these measures are classified into standard measures, simplified measures and supplementary measures, depending on the risk degree of a client. The reporting entities are obliged to apply standard “know your client” measures in case of entities from which they receive funds amounting to more than EUR 1,000 in RON equivalent.

The obligation of the reporting entities to have *proper risk management systems* was established, and we hope that this concept will be clarified after the norms implementing the Law are adopted.

In addition, the reporting entities are obliged to verify the validity of the power of attorney of the person claiming to act in the name of the client, as well as the identify of such person.

! **Important:** The reporting entities have the obligation to prove to the authorities that the applied “know your client” measures *are proper in terms of the identified risks concerning money laundering and terrorist financing*. This means that the reporting entities also have to perform and keep a thorough documentation regarding the manner of determining the related risk, its classification, the applied measures and the manner in which such measures are proper for that case.

! **Important:** In case of the companies having nominee shareholders or bearer shares, as well as in case that a company’s shareholding is unusual or very complex, given the nature of its activity, it is deemed that an increased risk exposure is involved and supplementary “know your client” measures will be required.

The law does not include criteria for establishing if a company’s shareholding is unusual or complex, given the nature of its activity. Furthermore, the law does not indicate how thorough the assessment should be for determining whether the shareholding is or not unusual/very complex: it is sufficient to consult an excerpt for information issued by the registry or is it necessary to also analyze a copy of the articles of incorporation? Does the complex nature of the shareholding reside only in the number of shareholders and in their rights/obligations, provided for in the articles of incorporation?

## Internal procedures

The reporting entities have the obligation to also set out internal rules, internal control mechanisms and procedures for managing the risks regarding money laundering and terrorist financing, and additionally, depending on the size and nature of the activity (which we hope to be also clarified in the methodological norms for implementation of the Law), the reporting entities have the obligation to ensure an independent audit function for testing the above-mentioned policies, internal rules, mechanisms and procedures.

## Sanctions

The law provides more severe sanctions for infringements, and in case of legal entities the applicable fines may amount to 10% of the total income for the financial period ending before the date when the minutes for ascertaining and sanctioning the infringement are concluded.

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Given the substantial legislative changes, we recommend all clients to revise the internal procedures for risk identification, and to apply “know your client” measures, in order to comply with the additional obligations which will be established pursuant to this Law.

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