

Three major amendments to the Anti-Money Laundering Act

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Legislation amending one of the key compliance regulations in Poland – the Act on Counteracting Money Laundering and Terrorist Financing of 1 March 2018 (**the AML Act**) – came into force on 14 May 2021, introducing a range of major changes. Given the scope and importance of the amendments, the legislator provided an additional *vacatio legis* for them.

We look at three of the AML Act amendments that are of particular importance for entrepreneurs.

1. New categories of obligated institutions

Entry into force: 31 July 2021

Two entirely new classes of entities are now being added to the category of obligated institutions facing a range of requirements under the AML Act, including the duty to analyze clients and the business relationships with them, implement in-house procedures, appoint persons responsible for efforts to counteract money laundering, etc.

These new entities are:

- entities which are not other obligated institutions (such as tax advisors or entities maintaining books of account) and whose **core business is services relating to drawing up of returns, maintaining tax records, as well as providing advice, opinions and clarifications concerning tax or customs laws**;
- undertakings:
 - **trading or intermediating in trade in art, antiques or collectible items** (such as through art galleries, auction houses or so-called free ports) and involved in transactions worth the equivalent of €10,000 or more;
 - **storing works of art, antiques or collectible items** using the so-called free ports and involved in transactions worth the equivalent of €10,000 or more.

A major change was made to one category of obligated institutions – **intermediaries in real estate trading (real estate agencies)**. Those of their number acting **exclusively** as intermediaries in **lease or tenancy** contracts for real properties or parts thereof providing for monthly rent of **less than the equivalent of €10,000** shall no longer be subject to the AML Act.

Recall that by real estate agency is meant the provision of **paid** services leading to **other persons** concluding: (i) contracts for the sale or purchase of real estate/ownership title to premises in cooperative housing projects; (ii) tenancy or lease contacts for real properties or parts thereof; (iii) other contracts relating to rights to real properties or their parts.

What needs to be done

You should check whether your organization qualifies for any of the new classes of obligated institutions, whether in actual fact or formally (such as in light of information recorded in public registers). While actual liability for inclusion in a given class is key, formal disclosures may generate controversy or doubt in the minds of competent authorities, and so if there is any discrepancy between your organization's actual business and that disclosed in the registers, you may need to update the register entries accordingly.

If your organization falls into any of the old or new categories of obligated institutions, please contact us and we will tell you what your obligations are and what you need to do to comply with them.

2. New kinds of regulated operations

Entry into force: 31 October 2021

The amended AML Act imposes certain obligations on and requires registration of:

- **undertakings engaged in what is known as “activity for the benefit of companies and trusts”** which involves:
 - the establishment of legal entities or organizational units lacking legal entity status;
 - holding a seat on a management board or enabling other persons to sit on a management board or occupy similar positions in a legal entity or organizational unit lacking legal entity status;
 - making available a registered office, business address or correspondence address, or providing other services of a similar nature to legal entities or organizational units lacking legal entity status;
 - acting or enabling other persons to act as trustee of trusts established by way of an act-in-law;
 - acting or enabling other persons to act as persons exercising rights attaching to shares for the benefit of entities other than companies listed on a regulated market subject to information disclosure requirements in compliance with EU law or equivalent international standards;
- **undertakings engaged in what is referred to as “activity relating to virtual currencies”** which involves:
 - exchange between virtual currencies and other means of payment;
 - exchange between virtual currencies;
 - intermediation in the exchange transactions referred to above;
 - operating accounts which allow entitled persons to use and exchange virtual currencies.

The requirement to register operations conducted for the benefit of companies and trusts **does not apply to attorneys-at-law (*radcy prawni*), advocates or the legal partnership/companies** referred to in Article 8 of the Act on Attorneys-at-Law and Article 4a of the Law on the Advocates' Profession.

The amended AML Act requires persons engaged in activity for the benefit of companies and trusts and in activity relating to virtual currencies:

- **to have no record** of intentional criminal offences: (i) against state or local government institutions, (ii) against the law enforcement system, (iii) impacting the credibility of documents, (iv) against property, (v) against trade and

financial interests in civil law transactions, (vi) against trade in currencies and securities, (vii) involving the financing of terrorist crimes, (viii) committed for the purpose of financial or personal gain, and (ix) constituting intentional fiscal offence;

- **to have and document knowledge or experience** relevant to the regulated activity they are engaged in (with it being enough for a person to complete a suitable training course or have a track record of at least one year of activity for the benefit of companies and trusts).

The above requirements apply to natural persons engaged in the regulated operations, members of management bodies, persons in charge of activities related to the regulated operations, beneficial owners of legal persons or organizational units engaged in the regulated operations as well as those shareholders of the said entities who are responsible for handling the affairs of a company or are authorized to represent a company.

Entities failing to register their regulated operations will face **a fine of up to PLN 100,000**.

The currently applicable fine of PLN 10,000 for failing to provide a no criminal record certificate is dropped in the amended AML Act. Instead, undertakings registering their engagement in regulated operations will be required to **represent that they do not have a criminal record and have the requisite knowledge/experience, under pain of criminal liability for perjury**.

What needs to be done

You want to check whether your organization falls into any of the new categories of regulated operations, whether in actual fact or formally (such as in light of information recorded in public registers). While actual consistency in this regard is key, formal disclosures may generate controversy or doubt in the minds of competent authorities, and so if there is any discrepancy between your organization's actual business and that disclosed in the registers, you may need to update the register entries accordingly.

Bear in mind, also, that the extent to which letting small office spaces for the purpose of a registered office, business address or correspondence address (such as to companies with capital links to your organization) constitutes "activity for the benefit of companies and trusts" and is a controversial issue. It would appear, judging by the purposes the AML Act is intended to serve, that as long as the office thus provided is an actual rather than a "virtual" office, the service should not be included in the category of activity for the benefit of companies and trusts. That said, the AML Act is not unequivocal in this regard and the authorities may have a different view on the matter, so the risk exists.

If you think your organization is among the entities newly subjected to the AML Act, please contact us and we will be glad to help you review the situation and prepare your regulated operations for compliance with the new requirements.

3. (R)evolution in the Central Register of Beneficial Owners (CRBO)

Entry into force: 31 October 2021

Major changes are being introduced with the amended AML Act relating to the CRBO. Most importantly, more entities will now be required to provide information to and update data entered in the CRBO, including:

- trusts whose trustees or persons with analogous status

- have their place of residence or registered office in Poland or
- enter into business relationships or acquire real property in Poland in the name or on behalf of a trust;
- partnerships;
- European Economic Interest Groupings;
- European companies;
- cooperatives;
- European cooperatives;
- associations subject to registration with the National Court Register (KRS);
- foundations.

As regards the information to be provided to the CRBO,

- particulars of all the entity's representatives will no longer be required — just the particulars of the representative making the registration on behalf of the given entity will be stored; attorneys-in-fact will still not be allowed to submit data entry applications, since the amended AML Act explicitly requires such applications to be filed exclusively by persons authorized to represent an entity under statutory law;
- **all citizenships** held by the beneficial owners will now have to be disclosed rather than just one of multiple citizenships, as required today.

It is important to note that beneficial owners will have to provide the entities required to register in the CRBO with **all the information and documents essential to record the particulars of the beneficial owner in the CRBO and update them in a timely manner**. Failure to do this, resulting in the entity concerned failing to deliver the required information on time or delivering untrue information, **will expose the beneficial owner to a fine of PLN 50,000**.

The key change provided for in the amended AML Act is the **implementation of a mechanism to verify the accuracy and truthfulness of the information provided for recording in the CRBO**. Every obligated institution (such as banks, notaries, real estate agents) analyzing their clients will now have to review the data in the CRBO. If the obligated entity finds any discrepancies between this data and the information it discovers about the client's beneficial owner, the obligated entity will have to clarify the reasons for these discrepancies. Where the discrepancies are indeed confirmed to exist, the obligated entity will be required to inform the competent authority thereof using an IT system, stating the reasons for the discrepancies and attaching the relevant documentation. Other entities that will now also be able to notify discrepancies of this kind to the authority responsible for maintaining the CRBO include the so-called cooperating entities — state administration and local government bodies, other state organizational units, the Financial Supervision Authority (KNF), the Supreme Audit Office (NIK) and the National Bank of Poland (NBK) — and the authority will then investigate the discrepancies. The authority will also be able to institute proceedings to confirm the accuracy and currency of the data recorded in the CRBO, posting information about the proceeding's commencement and completion in the register. The authority will also have the power to issue decisions to correct the data recorded in the CRBO.

No penalties are provided for in the amended AML Act for failures by obligated institutions to comply with the requirement to verify and notify discrepancies in the CRBO. This appears to be an oversight on the part of the legislator. Nevertheless, noncomplying players in heavily supervised sectors of the economy (such as the banking, financial and insurance sectors) may end up viewed unfavorably by the regulator even though they will not be subject

to any sanctions for their omissions in this regard under the AML Act. What the amended Act does do, however, is provide an **additional penalty for entities required to be registered in the CRBO: a fine of up to PLN 1,000,000 for providing untrue information**. This is an important development, for right now these entities are liable for timely registration alone, but not for the accuracy of the information provided. Potential liability in this regard (criminal liability for misrepresentation and civil liability for damages, if any) is faced by the notifying persons.

One much awaited amendment is that of setting a maximum period for data storage in the CRBO. Under the AML Act currently in force, data may be stored pretty much indefinitely, even if the entity concerned is stricken from the National Court Register (KRS). Once the amendment comes into effect, **data will continue to be stored in the CRBO for ten years following the deletion of the entity from the KRS or for ten years following the expiry of the notification obligation (for trusts)**.

What needs to be done

To begin with, check whether your organization qualifies as one of the new entities required to notify data to the CRBO. Next, try to harmonize the information disclosed in the CRBO with the data provided to the obligated institutions as part of the client investigation process. Any discrepancies here may lead to problems.

If your organization has already been registering information in the CRBO, make sure to keep updating them as required in the amended AML Act, remembering, among other things, to disclose all the citizenships held by beneficial owners.

If your organization is an obligated institution, update your in-house AML procedure to include in it the process of verifying the accuracy and truthfulness of data recorded in the CRBO and a mechanism for reporting data discrepancies.

If you have any questions or are unclear as to whether your organization had notified the beneficial owners in the required manner or as to what the amendments of the AML Act may mean for you or your organization, do not hesitate to contact us for assistance.

Your Key Contacts



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