

Conduct rules for combating money laundering

By Carmen Lupsan, Rechtsanwältin (Attorney at Law DE)

For the purpose of implementing the European Directive on combating money laundering and terror financing, this matter was again regulated also in Romania (Law 129/2019); one can notice an increasing focus in this regard.

The Romanian Supervisory Authority for Preventing and Combating Money Laundering („ONPCSB”, the „**Supervisory Authority**”) has adopted guidelines regarding criteria and rules for identifying situations with high or low risk in this field. This refers mainly to certain committed parties, but can support all companies in identifying the risk of money laundering.

The following aspects of the guidelines that must be observed by the abovementioned committed parties are explained below.

Internal regulations

An important tool for the assessment of situations implying a money laundering risk is, according to the guidelines, the efficient application of internal regulations implemented and applied by companies. These mainly include internal regulations and procedures on:

- reporting obligations (including to the Supervisory Authority), information transfer at the request of the Supervisory Authority,
- Know-Your-Customer-measures,
- handling identified risks,
- internal control measures,
- the internal reporting of breaches,
- the protection and training of the employees who shall implement these regulations.

Applying the Know Your Customer (KYC) provisions

Equally important is the application of KYC measures, according to the risk identified. At least the following risk factors must be verified:

- client-related risk factors (for ex. extraordinary circumstances of the business relationship, intensive activity with cash, unusual shareholder structure),
- risk factors regarding products, services, transactions or distribution channels (for instance payments from third parties, transactions with oil, weapons, precious metals, tobacco products, cultural objects),

- Geographical risk factors (for ex. countries with a high level of corruption or crime, countries supporting terroristic activities).

Depending on the risk identified (high, standard or low), additional or simplified measures which have to be established in the risk assessment may be taken.

Risk Assessment

The risk assessment must be documented accordingly. The guidelines recommend further steps after the identification of a risk, i.e.:

- Transactions with high risk are to be carefully monitored,
- the analyzed transactions are assessed based on the business activity and other information regarding the client,
- Potential discrepancies between the declared and the true purpose of the transactions have to be analyzed,
- all documents that can clarify a complex or an unusual financial flow have to be submitted and verified etc.

Miscellaneous

According to the guidelines, the responsible persons have to make sure that the internal regulations comply with the newest technologies and circumstances of the market (depending on the object of activity) and, therefore, that they are adapted accordingly.

Moreover, a constant follow-up regarding the transactions and the clients is needed. Even if a client is initially classified with a low risk, this might change or in certain cases, individual transactions can be allocated a high risk.

A significant part of the guidelines refers to the analysis of suspicious elements, depending on the area of activity of the company.

Committed parties

The abovementioned measures are expressly mandatory, among others, for (i) finance companies (*institutii financiare nebancale*), (ii) service providers in the field of gambling, (iii) providers of legal services, tax consultants, auditors, accountants, experts etc., (iv) real estate agents and developers, (v) providers of exchange platforms for cryptocurrencies or e-wallet services, (vi) art traders etc. For such enterprises, the guidelines provide specific, activity related examples for risk elements.

Conclusion

The guidelines can be in fact useful for all companies when implementing the legislation on money laundering. Each and every company is advised to know and use these guidelines; this applies

both for assessing the extent to which the mandatory legal regulations have to be observed and the KYC measures to be taken.

Contact and further information:



STALFORT Legal. Tax. Audit.

Bucharest – Bistrița – Sibiu

Office Bucharest:

T.: +40 – 21 – 301 03 53

F: +40 – 21 – 315 78 36

M: bukarest@stalfort.ro

www.stalfort.ro