

Most recent anti-money laundering and terrorism financing provisions in Romania and their impact on companies

by Costina Constantin

Legislation on anti-money laundering measures first came into force in Romania in 2002 and was updated in 2012, to transpose certain provisions of the EU legislation¹ for the first time.

In July 2019 the law no. 129/2019 (“**the Law**”) was adopted and published by the Romanian Parliament. For certain companies, it brings significant obligations; in practice, however, all companies should be concerned.

Content of the regulations

According to this law, there are certain persons (‘Reporting Entities’) that have clear obligations to **identify and collect data about the identity of their clients and their real beneficiaries**, and to report any suspicious transactions to the National Money Laundering Office (‘**the Office**’).

Reporting entities

According to the law, reporting entities are:

- Romanian credit and financial institutions, and Romanian subsidiaries of foreign credit institutions and financial institutions;
- the administrators of private pension funds, auditors, certified chartered accountants, consultants, lawyers, notaries, bailiffs and all other independent legal professions;
- realtors (estate agents);
- companies and natural persons which sell goods or services for cash above the equivalent of a €10,000 threshold.

Each reporting entity mentioned above has the obligation to appoint a contact person to liaise with the Office and to formally notify the Office regarding its identity.

Know your customer measures for the reporting entities

Each company or individual that falls into the categories listed as reporting entities must organise and put in place an internal procedure which sets out the rules for documenting the

¹ Directive 2005/60/EC of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing and from the Commission Directive 2006/70/EC laying down implementing measures for Directive 2005/60 of the European Parliament and of the Council as regards the definition of "politically exposed person" and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis.

understanding of their clients and their beneficiary owners. The most common documents requested by such reporting entities from their clients are companies' bylaws and a fiscal registration certificate, excerpts from the Commercial Register of their client's legal entity (to identify the shareholding structure) and further relevant excerpts of the Commercial Register where the client's shareholders are registered, up until the owners (natural persons).

The Law defines the real beneficiary owner as **any** natural person which ultimately owns or controls the client, or the natural person on whose behalf a transaction is carried out; the owning criteria being met with 25% plus one of the shares. If no real beneficiary can be identified (i.e. all final natural persons own directly or indirectly less than 25% of the share capital), the real beneficiary is the person in charge of the management of the company.

No reporting entity shall enter into a business relationship with a client unless the client's identity and the identity of the client's beneficial owner is verified and documented by the representative of the reporting company.

The Law allows the reporting entities to use information provided by third parties for the client identification procedure (know-your-customer), in which case the reporting entities must understand the procedures applied by the third parties and must ensure that such procedures are compliant with the requirements of the Law related to the identification of the real beneficiary.

How companies are affected by the Law

In practice we have seen reporting entities (especially banks) asking their clients for a document from the client's auditor or lawyer which identifies the real beneficiary, or else the company's bank accounts will be blocked. The bank request, although may sound a bit extreme, is actually triggered by the provisions of the Law.

Companies should expect to be asked for documentation to identify its beneficial owner by a company or a natural person defined by the Law as a reporting entity, not only on signing a new contract but in respect of the current business relationship. Also, if a reporting entity has knowledge or suspicions about an unlawful transaction carried out by its client, such entity must report it to the Office without informing the client.

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