

Law No.

PROJECT LAW ON AMENDING AND SUPPLEMENTING THE LAW No. 03/L-196 ON THE PREVENTION OF MONEY LAUNDERING AND TERRORIST FINANCING”

The Assembly of the Republic of Kosovo,

Based on the article 65 (1) of the Constitution of the Republic of Kosovo,

Approves:

LAW ON AMENDING AND SUPPLEMENTING THE LAW No. 03/L-196 ON THE PREVENTION OF MONEY LAUNDERING AND TERRORIST FINANCING

Article 1

Article 2 of the original law is amended as follows:

1. Subparagraph 2.1.2 is amended with the following text:

“2.1.2. Beneficial owner – refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement. A natural person will be deemed a beneficial owner if that person directly or indirectly controls 20% or more of a legal person.”

2. Subparagraph 2.1.9 is amended with following text:

2.1.9 Client- a person or entity which conducts a transaction with or uses the services of a bank, financial institution, lawyer, certified accountant, licensed auditor or tax advisor and Casinos and Licensed Object of Games of Chance. The term “client” includes any owner or beneficiary or other person or entity on whose behalf the transaction is conducted or the services are received

3. Subparagraph 2.1.13 is amended by adding at the end of subparagraph the following text:

“2.1.13 FATF – means the “Financial Action Task Force” independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction.

3. Article 1, under subparagraph 2.1.39 is adding new subparagraph 2.1.40 and 2.1.41 with the following text

2.1.40 Criminal activity’ means any kind of criminal involvement in the commission of a criminal offense as defined under the Laws of Kosovo;

2.1.41 politically exposed persons means natural persons who are or have been entrusted with prominent public functions and immediate family members, or persons known to be close associates, of such persons;

Article 2

Article 3 of the original law is deleted.

Article 3

Article 16 of the original law after subparagraph 16.1.8 new subparagraphs 16.1.9, 16.1.10, 16.1.11, 16.1.12, 16.1.13 are added with the following text:

“16.1.9 Non-Governmental Organizations”

“16.1.10 Political parties”

“16.1.11 Registered Candidates”

16.1.12 Dealers in precious metals and dealers in precious stones

16.1.13 Building construction companies

Article 4

Article 17 of the original law is amended as follows:

1. Subparagraph 17.1.2 is amended with the following text:

“17.1.2 identifying, where applicable, the beneficial owner and/or a natural person who directly or indirectly controls 20% or more of a legal person and taking risk-based and adequate measures to verify his or her identity so that the institution or person covered by this law is satisfied that it knows who the beneficial owner is, including, as regards

legal persons, trusts and similar legal arrangements, taking risk-based and adequate measures to understand the ownership and control structure of the customer;

2. Subparagraph 17.2.2.1 is amended with the following text;

17.2.2.1, a transaction in currency in an amount equal to or above (10. 000) Euro, whether conducted as a single transaction or several transactions that appears to be linked. If the amount of the transaction is unknown at the time of the operation, the identification shall be done as soon as the amount becomes known or the threshold is reached, or

Article 5

Article 18 of the original law is amended as follows:

1. Subparagraph 18.1 is deleted and replaced with the following text;

18.1 Banks, credit and financial institutions are prohibit from keeping anonymous accounts or anonymous passbooks. The owners and beneficiaries of existing anonymous accounts or anonymous passbooks be made the subject of customer due diligence measure as soon as possible and in any event before such accounts or passbooks are used in any way.

2. Subparagraph 18.2.2.5 is amended with the following text:

“18.2.2.5 engaging in any single transaction in currency of € ten thousand (10,000) or more. Multiple currency transactions shall be treated as a single transaction if the bank or financial institution has knowledge that the transactions are conducted by or on behalf of one person or entity and total € ten thousand (10,000) or more in a single day.

3. Paragraph 6 reference to “paragraph 1 Article 22 of this law is deleted and replaced with the following text.

“Paragraph 2 Article 22 of this law.

4. Paragraph 7 of Article 18 deleted.

Article 6

Article 19 of the original law is amended as follows:

1. Paragraph 19.1 is amended with the following text:

19.1 Banks and financial institutions whose activities include wire transfers shall obtain and verify the full name, account number, the address, or in absence of address the national identity number or date and place of birth, including when necessary the name of the financial institution, of the originator of such transfers. The information shall be included in the message or payment form accompanying the transfer. If there is no account number, a unique reference number shall accompany the transfer

2. Paragraph 19.4 is amended with the following text;

19.4: Paragraphs 1 and 2 of the Article shall not apply to transfers executed as a result of credit card or debit card transactions, provided that the credit card or debit card number accompanies the transfer resulting from the transaction, nor shall they apply to transfers between banks and/or financial institutions where both the originator and the beneficiary are banks or financial institutions acting on their own behalf.

Article 7

Article 21 of the original law is amended as follows:

1. Paragraph 21.1.1 is amended with the following text

21.1 1. 'the reporting subjects should apply, on a risk sensitive basis, enhanced customer due diligence in situations which by their nature can present higher risk off money laundering or terrorist financing and at least in situations set in paragraph 2,4 and 5 of this Article.'

2. Paragraph 21.6 and 21.7 is amended with the following text

"21.6 Financial intermediaries cannot open or maintain correspondent accounts with a shell bank or a bank which is known to allow use of shell accounts"

21.7 The institutions and persons subject to this law shall pay particular attention to any risk of money laundering or terrorist financing related to products or transactions which promote anonymity and take any measures necessary to prevent its use for the purpose of money laundering or terrorist financing.

3. After paragraph 21.7 new paragraphs 21.8 and 21.9 are added with the following text:

21.8 Dealers in precious metals and dealers in precious stones shall report any suspicious act or transaction to the FIU within (3) working days and prior to taking further action in connection with any such actor o transaction. Reports shall be made in a form and manner prescribed by the FIU.

21.9 Building construction companies shall report any suspicious act or transaction to the FIU within three (3) working days and prior to taking further action in connection with any such actor or transaction. Reports shall be made in a form and manner prescribed by the FIU.

Article 8

Article 22 of the original law is amended as follows:

1. Paragraph 2 reference to “paragraph 1 Article 21 of this law is deleted and replaced with the following text

“paragraph 1 Article 22 of this law.

2. Paragraph 3 reference to “paragraph 1 Article 21 of this law is deleted and replaced with the following text.

“Paragraph 1 Article 22 of this law.

3. Paragraph 6 reference to “paragraph 5 Article 21 of this law is deleted and replaced with the following text.

“paragraph 5 Article 22 of this law”

4. paragraph 1, 2, 5 and 6 after text FIU the following text is added “ and CBK” , the other part of the sentence remains the same.

Article 9

1. In subparagraph 1 of Article 23 the part of the text “Contact person” is deleted, after text appoint is added text” a Compliance Officer” the other part of the sentence remains the same.

2. Paragraph 1, 2,3,2.5 and 3 after text FIU the following text is added “and CBK” , the other part of the sentence remains the same.

Article 10

Article 24 of the original law is amended as follows:

1. Paragraph 5 is amended with the following text;

24.5 Directors, officers, employees and agents of an NGO who make or transmit reports pursuant to the present article shall not provide the report, or communicate any information contained in the report or regarding the report, to any person or entity, including any person or entity involved in the transaction which is the subject of the report, other than the FIU, unless authorized in writing by the FIU, a Prosecutor, or a Court.

Article 11

Article 25 of the original law is amended as follows:

1. After subparagraph 25.8 new subparagraph 25.9 are added with the following text:

25.9 Directors, officers, employees and agents of Political Parties and registered Candidates who make or transmit reports pursuant to the present article shall not provide the report, or communicate any information contained in the report or regarding the report, to any person or entity, including any person or entity involved in the transaction which is the subject of the report, other than the FIU, or Office of registering Political Parties, unless authorized in writing by the FIU, a Prosecutor, or a Court.

Article 12

Article 26 of the original law is amended as follows:

1. Paragraph 12 subparagraph 3 second paragraph reference to “paragraph 3 to 9 Article 24 of this law is deleted and replaced with the following text

“Paragraphs 3 to 9 Article 26 of this law.

2. After subparagraph 26.13 new paragraph 26.14 are added with the following text

26.14 Directors, officers, employees and agents of any “covered professionals” who make or transmit reports pursuant to the present article shall not provide the report, or

communicate any information contained in the report or regarding the report, to any person or entity, including any person or entity involved in the transaction which is the subject of the report, other than the FIU, unless authorized in writing by the FIU, a Prosecutor, or a Court.

Article 13

Article 27 of the original law is amended as follows:

1. Paragraph 1 is amended with the following text;

27.1 When conveyance of immovable property rights involves a transaction or transactions of a monetary amount of € ten thousand (10,000) or more, each transaction shall be made by payment order or bank transfer.

Article 14

Article 28 of the original law is amended as replaced with the following text:

1. Casinos and Licensed Object of Games of Chance as defined in Article 2 are subject to the anti-money laundering and anti-terrorist financing provisions of this Law and are obligated to take specific measures to address the risk of money laundering and the financing of terrorism in providing gambling services.

2. Casinos and Licensed Object of Games of Chance shall verify and record in permanent fashion the identity of a client before entering into a transaction or multiple or linked transactions to sell, purchase, transfer, or exchange gambling chips, tokens, or any other evidence of value in an amount of € two thousand (2,000) or more or the equivalent value in foreign currency. The identity verification and recordation requirement also extends to financial transactions such as the opening of an account (including safekeeping), a wire transfer or a currency exchange in the amount of € two thousand (2,000) or more or the equivalent in foreign currency. If the Casino, Gaming House, or Licensed Object of Games of Chance is not able to verify the identity of a client, it shall not enter into the transaction.

3. Casinos and Licensed Object of Games of Chance shall report to the FIU, in the manner and in the format specified by the FIU:

3.1. all suspicious acts, transactions or attempted transactions within twenty four (24) hours of the time the act, transaction, or attempted transaction was identified as suspicious;

3.2. all single transactions in currency of € ten thousand (10,000) or more. Multiple or linked transaction shall be treated as a single transaction if the Casino, Gaming House and Licensed Object of Games of Chance knows, or reasonably should have known, that the transactions as by or on behalf of one person or entity and total more than € ten thousand (10,000) in a single gaming day

4. Gaming houses shall not engage in any of the following transactions:

4.1. Exchange cash for cash with a client, or with another recipient on behalf of the client, in any transaction in which the amount of the exchange is € two thousand (2,000) or more

4.2. Issue a check or other negotiable instrument to a client, or to another recipient on behalf of the client, in exchange for cash in any transaction in which the amount of the exchange is € two thousand (2,000) or more;

4.3. Transfer funds by electronic or wire transfer or other method to a client, or to another recipient on behalf of the client, in exchange for cash in any transaction in which the amount of the exchange is € two thousand (2,000) or more.

5. These prohibitions do not restrict a gaming house from paying a client's winnings by cheque or other negotiable instrument or by electronic or wire transfer if the cheque, negotiable instrument, or electronic or wire transfer is made payable to the order of the client.

6. Casinos, Gaming Houses and Licensed Object of Games of Chance shall:

6.1. develop and implement internal policies, procedures and controls, including appropriate compliance regimes, and adequate screening procedures to ensure high standards when hiring employees;

6.2. conduct ongoing employee training programs; and

6.3. Implement procedures to test compliance with the Law and related sub-legal acts.

7. Each Casino, Gaming House and Licensed Object of Games of Chance shall in a manner required by the FIU, create, and keep accurate, complete, legible, and permanent original records to ensure compliance with this Law and related sub-legal acts within Kosovo for a minimum period of five years.

8. The FIU shall from time to time, adopt, amend, or repeal sub-legal acts consistent with the policy, objects and purposes of this section of the Law as it may deem necessary or desirable in the public interest in carrying out the policy and provisions of this Law.

Article 14

Article 30, paragraph 1 of the original law is amended as replaced with the following text:

“30.1 For reporting entities as determined in sub-paragraphs 1.1 to 1.11, paragraph 1 of Article 16 of this law an official or officials of the FIU who have been authorized by the Director of the FIU for this purpose (hereafter an “authorized official or officials”), may, at any time during ordinary business hours, enter any premises other than a residence, if there is a reasonable suspicion that it contains records which are maintained pursuant to Articles 16 to 28 of this law or documents relevant to determining whether obligations under Articles 16 to 28 of this law have been complied with. The authorized official or officials may demand and inspect the records or documents; copy or otherwise reproduce any such record or document; and ask questions in order to locate and understand such records or documents. The authorized official or officials shall limit the inspection to that part of the premises in which the relevant records or documents are reasonably likely to be found and they shall only perform actions which are necessary for, and proportionate to, the purpose of inspection of such records.

Article 15

Article 31 of the original law is amended as follows:

1. Paragraph 1 is amended with the following text;

31.1 A determination made by the FIU notifying the obligor of a failure to comply with this law shall constitute a violation of the obligations set under the this Law which shall be subject to an administrative sanction in a form of a fine of € five hundred (500) for each day of non-compliance following the date of notification.

2. In Article 31 a new subparagraph 2. is added with the following text:

“2. The FIU with consultation with Minister of Finance may issue a sub-legal act to define the administrative offence procedure”.

3. Paragraph 2 Article 31 of the original law will be paragraph 3.

Article 16

1. Paragraph 1 Article 32 of the original law is deleted.
2. Paragraph 2 Article 32 reference to ““covert measure conducted pursuant to Chapter XXIX of the Criminal Procedure Code of Kosovo:” are deleted after text criminal activity the following text is added “court authorized covert measure:” the other part of the sentence remains the same.

Article 17

1. Paragraph 1 Article 33 of the original law is deleted.
2. Paragraph 2 Article 33 is amended with the following text; fails to make a report in accordance with paragraph 1 and 2 of Article 22, paragraph 5 of Article 24, paragraph 4 of Article 25, paragraph 3 of Article 26, paragraph 3 of Article 28 or to Articles 29.1 and Article 29.2 of this law.
3. Paragraph 3.1, 3.2 articles 33 of the original law is deleted and replaced with the following text;
 - 3.1 destroys or removes any record which must be maintained pursuant to paragraph 3 of Article 20, paragraph 4 of Article 24, paragraph 3 of Article 25 paragraph 10 of Article 26 or paragraph 3 of Article 27 of this law
 - 3.2 fails to make a report in accordance with paragraph 1 and 2 of Article 22, paragraph 5 of Article 24, paragraph 4 of Article 25, paragraph 3, 7 and 8 of Article 26 or paragraph 3 of Article 28 of this law;
4. Paragraph 10 Article 33 reference to “Article 34” are deleted after text for securing property the following text is added “under this article”, the other part of the sentence remains the same.
5. Paragraph 11 Article 33 reference to “Article 32 of this law” are deleted and 10 the following text is added “article 33 of law”, the other part of the sentence remains the same.

Article 18

Paragraph 3 article 36 of the original law is deleted and replaced with the following text:

36.3. A request under this Article shall be sent through diplomatic channels pursuant to laws and agreements in force, who shall forward it to the Office of International Legal Cooperation or other competent authority.

Article 19

Paragraph 2 article 37 of the original law is deleted and replaced with the following text:

37.2 This Article shall be without prejudice to paragraph 9 of Article 26 and subparagraph 3.2, paragraph 3 of Article 30 of this law.

Article 19A

Compliance inspection by CBK

The Central Bank of the Republic of Kosovo in accordance with their competencies stipulated herein and in other relevant laws, remain responsible to supervise the implementation of the provisions of the this law by the entity under their supervision. In this regard, the CBK after consultation with FIU will issue sub-legal acts and guidelines to assists banks and entity under their supervision in preventing money laundering and terrorist financing, as they represent a common understanding of legal requirements.

Article 19B

Terrorist Financing Offense

1. Whoever, when committed intentionally, participates as an accomplice, organizes or direct others to provide or collect funds, or attempts to do so, by any means, directly or indirectly, with the intention that they should be used or in the knowledge that they are to be used in full or in part:
 - 1.1 to carry out a terrorist act;
 - 1.2 by a terrorist; or
 - 1.3 by a terrorist organization;
 - 1.4 will be deemed to have committed the act of terrorist financing.
2. The offence is committed irrespective of any occurrence of a terrorist act referred to in paragraph 1, or whether the funds have actually been used to commit such act.
3. Terrorist financing shall be punishable by a fine of 500,000 euro or imprisonment from seven to twenty year or either of these penalties.
4. An attempt to commit the offence of financing of terrorism or aiding, abetting, facilitating or counselling the commission of any such offence shall be punished as if the offence had been completed.

Article 19C

Intimidation regarding reporting suspicious activity or transactions¹

Whoever uses force or serious threat, or any other means of compulsion, or a promise of a gift or any other form of benefit to induce another person to refrain from making a report required under Article 13 of this Law or to make a false statement or to otherwise fail to state true information to the FIU, CBK, investigative agencies, a prosecutor or a judge, when such information relates to the reporting obligations of Article 13 of this Law shall be punished by a fine of up to one hundred and twenty-five thousand (125 000) EUR and by imprisonment of two (2) to ten (10) years.

Article 20

This law enters into force 15 days after publication in the Official Gazette of the Republic of Kosovo.

Jakup KRASNIQI

President of the Assembly of the Republic of Kosovo
