

LAW

No. _____, dated ____/____/ 2012

**“ON SOME AMENDMENTS AND ADDITIONS TO LAW NO. 9917 DATED
19.05.2008 “ON PREVENTION OF MONEY LAUNDERING AND FINANCING
OF TERRORISM”, AS AMENDED**

Pursuant to articles 78 and 83, point 1 of the Constitution, upon the proposal of the Council of Ministers,

**THE ASSEMBLY
OF THE REPUBLIC OF ALBANIA**

DECIDED:

The following amendments and additions are made to the Law No. 9917 dated 19.05.2008 “On prevention of money laundering and financing of terrorism”, as amended:

Article 1

Article 2 is subject to the following additions:

Point 23 is added after point 22 as follows:

“23. “Payable-through account” refers to a correspondent account that is used directly by third parties to transact business on their own behalf.”

Article 2

Article 3 is subject to the following amendments:

In letter “gj”, “authorized independent chartered accountants, approved independent accountants, financial consulting offices and” shall be added after the words “lawyers, notaries public, other legal representatives”.

Letter “i” is repealed.

Article 3

Article 4 is amended as follows:

Article 4

Cases when due diligence is required

The subjects shall undertake customer due diligence measures:

- a) before they establish a business relationship;
- b) when the customer, in cases other than those specified in letter “a” of this paragraph, carries out or intends to carry out:
 - i.* a transfer within the country or abroad or a transaction at an equal amount or exceeding 100 000 (one hundred thousand) Lek or its counter-value in foreign currencies, for the subjects specified in letters “a”, “b”, “c” and “g” of article 3 of this law, and other subjects which carry out transfer, foreign exchange or gambling services;
 - ii.* a transaction at an equal amount of not less than 1 000 000 (one million) Lek or its counter-value in other foreign currencies, executed in a single transaction or in several linked transactions. If the amount of transactions is not known at the time of operation, the identification shall be made once the amount is known and the above threshold is reached;
- c) if there are doubts about the veracity of the previously obtained identification data;
- ç) in all cases, when there are adequate data or doubts about money laundering or financing of terrorism.

Article 4

Article 4/1 is added after article 4 to read as follows:

Article 4/1

Due diligence measures

In the framework of the exercise of due diligence, the subjects shall:

1. Identify the customer (permanent or occasional, natural person, legal entity or trust) and verify his identity through documents, data or information received from reliable and independent sources.

2. For the customers who are legal entities or trusts:
 - a) verify if any person acting on behalf of the customer is so authorized and to identify and verify his identity and
 - b) verify their legal status through the documents of incorporation, registration or similar evidence of their existence and provide information about the name of the customer, the name of trustees (for the trusts), legal form, address, managers (for legal entities) and provisions regulating legal relationships;
3. Identify the beneficial owner and adopt reasonable measures to verify his/her identity through information or data provided from reliable sources on the basis of which the subject establishes his/her identity.
4. Verify for all customers, before establishing business relationships or during the process of monitoring of such relationship, if they are acting on behalf of another person and take reasonable measures to obtain adequate data for the identification of that person.
5. Understand the ownership and control structure for the customers who are legal entities or trusts;
6. Determine who are the individuals owning or controlling the customer, including those persons who exercise the last effective control over the legal entity or trust.
7. Obtain information about the purpose and nature of the business relationship;
8. Conduct continuous monitoring of the business relationship with the customer, including the analysis of transactions executed in the course of duration of this relationship, to ensure that they are consistent with the knowledge of the subject about the customer, nature of his/her business, risk profile and funding sources.
9. Ensure, through the examination of customers' files, that documents, data and information obtained during the process of due diligence are kept up-to-date, relevant and appropriate, especially for the customers or business relationships classified with high risk.

10. Verify the identity of the customer and beneficial owner, before or in the course of establishing of a business relationship or conducting a transaction for the occasional customers.
11. Define the risk management procedures in cases when they may enter into a business relationship with the customer, before or during his/her identification. These procedures shall *inter alia* include measures such as the limitation of number, type and/or amount of transactions that may be executed, as well as the monitoring of large and complex transactions carried out outside of the scope of expected profile of the characteristics of that relationship.

The verification of identity of the customer and beneficial owner may be carried out after the establishment of business relationship, provided that:

- it occurs as soon as practically possible;
 - does not interrupt the normal conduct of the business activity;
 - money laundering risks are effectively managed by the subject.
12. Comply with the aforementioned obligations for the existing customers based on evidence, facts and risk of exposure to money laundering and financing of terrorism.
 13. When the subjects are unable to comply with the customer due diligence obligations according to articles 4, 4/1 and 5 of this law, they:
 - a) should not open accounts, perform transactions or commence a business relationship;
 - b) should interrupt the business relationship if it has commenced;
 - c) shall send a suspicious activity report to the “Responsible Authority”.
 14. Not open or keep anonymous accounts, accounts with fictitious names or identified only with a number or code. If there are such accounts, their customers shall be identified and verified in accordance with the provisions of this article. If this is not possible, the account should be closed and a suspicious activity report should be sent to the “Responsible Authority”.

Article 5

Article 6 is amended as follows:

Article 6

Technological developments and third parties

1. The subjects shall implement policies or undertake proper measures, as the case may be, to prevent the misuse of products and new technological developments for money laundering or financing of terrorism.

2. The subjects shall apply specific procedures, take proper and effective measures to prevent the risk related transactions or business relationships, carried out without the presence of the customer.
3. Due diligence measures shall be applied by the subjects of this law and the reliance on third parties is prohibited.

Article 6

In article 7, point 1 is amended as follows:

“1. Enhanced due diligence shall include additional measures in addition to those foreseen for the due diligence concerning business relationships, high risk customers or transactions. In order to mitigate the risk of money laundering, other than the categories stipulated in this law and its bylaws issued in its application, the subjects shall identify other categories of business relationships, customers and transactions to which enhanced due diligence measures shall apply.”

Article 7

Article 8 is amended as follows:

Article 8

Categories of customers to which enhanced due diligence applies

1. For the politically exposed persons, the subjects shall:
 - a) draft and implement effective risk management systems to determine if an existing or potential customer or beneficiary owner is a politically exposed person;
 - b) obtain senior management approval for the establishment of business relationships with the politically exposed persons;
 - c) request and obtain senior management approval to continue the business relationship in cases when the business relationship with the customer is established and the subject finds that the customer or the beneficiary owner has become or has subsequently become a politically exposed person;
 - ç) adopt reasonable measures to establish the source of wealth and funds of the customers and beneficial owners, identified as politically exposed persons.
2. In cases when the subjects are in a business relationship with the politically exposed persons, they should monitor such relationship with enhanced due diligence.
3. For the customers which are non-profit organizations, the subjects shall:
 - a) obtain adequate information about them in order to fully establish the financing

sources, nature of activity and their manner of administration and management;
b) establish their reputation through public information or other means;
c) obtain the consent from higher instances of administration/management before establishing such a business relationship with them;
ç) conduct enhanced and continuous monitoring of the business relationship.

4. The subjects shall exercise enhanced due diligence to business relationships and transactions with non-resident customers.

5. The subjects shall verify and exercise enhanced due diligence to business relationships and transactions with the customers residing or carrying out their activity in countries which do not apply or partially apply the relevant international standards, for the prevention and fight against money laundering and financing of terrorism. The subjects should examine the reasons and purpose of execution of such transactions and should maintain records about the findings which shall be made available to the “Responsible Authority” and auditors.

6. The subjects shall exercise enhanced due diligence to business relationship and transactions with customers such as trusts and companies with nominee shareholders.

Article 8

Article 9 is amended as follows:

Article 9

Categories of transactions and business relations to which extended due diligence is implemented

1. Subjects should pay particular attention to all complex transactions, with large and unusual values, which have no apparent economic or legal purpose. Subjects should examine the reasons and purpose of performing such transactions and maintain records for the conclusions, which must be kept for a period of five years and must be made available to the “Responsible Authority” and auditors.

2. Banks subject to this law, with regard to cross-border corresponding bank services that they offer, prior to establishing a business relation should:

a) collect adequate information about the respondent institution to fully understand the nature of its business;

b) determine through public information, the reputation of the respondent institution and the quality of its supervision;

- c) assess the adequacy and effectiveness of the respondent institution's internal control procedures against money laundering and financing of terrorism;
 - ç) receive the approval of higher instances of administration/management and document respectively for each institution the responsibilities for prevention of money laundering and financing of terrorism;
 - d) draft special procedures for the ongoing monitoring of direct electronic transactions.
3. Subjects are prohibited from establishing or continuing corresponding bank relations with shell banks.
4. Subjects should undertake the necessary measures to satisfy themselves that the corresponding foreign banks do not allow the use of their accounts by shell banks. Subjects should interrupt the business relations and report to the "Responsible Authority" when they consider that the corresponding bank accounts are used by shell banks.
5. When the corresponding relation includes the maintenance of payable through accounts, the subjects should ensure that the corresponding bank:
- a) has undertaken appropriate due diligence measures for customers that have direct access to these accounts;
 - b) is able, if required, to provide customer's identification documents;
6. When the subjects are unable to fulfill the enhanced due diligence obligations toward the customer, in accordance with articles 7, 8 and 9 of this law, they should send a suspicious activity report to the "Responsible Authority".

Article 9

Article 10 is amended as follows:

In item 3, the phrase "or by the beneficiary" is removed.

Article 10

Article 11 is amended as follows:

In item 1, letter "b", the phrase "and a deputy chief" is removed.

Item 2 is abrogated.

Article 11

Article 12 is amended as follows:

Article 12

Reporting to responsible authority

1. Subjects submit a report to the “Responsible Authority”, in which they present suspicions for the cases when they know or suspect that laundering of the proceeds of crime or terrorism financing is being committed, was committed or attempted to be committed or funds involved derive from criminal activity. The reporting is done immediately and not later than the period specified in bylaws in application of this law.
2. When the subject upon being asked by the customer to carry out a transaction, suspects that the transaction may be related to money laundering or terrorism financing, it should immediately report the case to the “Responsible Authority” and ask for instructions as to whether it should execute the transaction or not. The “Responsible Authority” is obliged to respond within 48 hours.
3. The entities are required to report to the “Responsible Authority” within the time limits set forth in the secondary legislation pursuant to this law, all cash transactions, at an amount equal to or greater than 1 000 000 (one million) Lek or its equivalent in other currencies, performed as a single transaction or transactions related with each other within 24 hours.

Article12

Article 13 is amended as follows:

Article 13

Protection of the reporting subject identity

For the suspicious activity reports received pursuant to this law the “Responsible Authority” is obliged to preserve the identity of reporting subjects and of their staff that have reported.

Article 13

Article 15 is amended as follows:

Article 15

Requirements for non-declaration

Directors, officials and employees of the subject temporary or permanent are prohibited from informing the customer or any other person about the verification and reporting procedures of the suspicious activity as well as any information that is requested by the “Responsible Authority”.

Article 14

Article 15/1 is abrogated.

Article 15

Article 22, is amended as follows:

Letter “ç” is amended as follows:

“ç) supervises the activity of the reporting subjects regarding compliance with the requirements of laws and bylaws on prevention of money laundering and financing of terrorism, including inspections, alone or in cooperation with the supervising authorities,”

Letter “è” is amended as follows:

“è) it is informed about registered criminal proceedings for money laundering and financing of terrorism and the manner of their conclusion;”

After letter “k”, it is added letter “l” with this content:

“l) orders, when there are reasonable grounds for money laundering and financing of terrorism, the monitoring, during a certain period of time, of bank transactions that are being made through one or more specified accounts.

Article 16

After article 22, it is added article 22/1 with this content:

Article 22/1 Use of data

Any information or data disseminated to law enforcement bodies by the “Responsible Authority” should be used only for intelligence purpose and under no circumstances as evidence or for judicial purpose.

Article 17

Article 27 is amended as follows:

Article 27

Administrative contraventions

1. When they do not constitute criminal offences, the violations committed by subjects are classified as administrative contraventions whereupon the subjects are fined.

2. In cases when they do not meet the obligations provided for in articles 4; 4/1; 5; 6; 11; and bylaws issued in application of this law, the subjects are fined:
 - a) natural persons: from 100 000 Lek to 1 000 000 Lek;
 - b) legal persons: from 300 000 Lek to 3 000 000 Lek;
3. In cases when they do not meet the obligations provided for in articles 7,8, 9 and 10 and bylaws issued in application of this law the subjects are fined:
 - a) natural persons: from 200 000 Lek to 2 000 000 Lek;
 - b) legal persons: from 400 000 Lek to 4 000 000 Lek.
4. In cases when they do not meet the requirements for reporting of transactions over the threshold or reporting of the suspicious activity, provided for in articles 4/1, 9 and 12, and bylaws in application of this law, the subjects are fined:
 - a) natural persons from 300 000 Lek to 3 000 000 Lek;
 - b) legal persons from 500 000 Lek to 5 000 000 Lek;
5. In cases when they do not meet the obligations provided for in articles 15 and 16 of this law, the subjects are fined:
 - a) natural persons from 200 000 Lek to 1 500 000 Lek;
 - b) legal persons from 1 000 000 Lek to 4 000 000 Lek;
6. In cases when they do not enforce the order of the “Responsible Authority” issued pursuant to article 22, letter “g”, the subjects are fined:
 - a) natural persons from 300 000 Lek to 2 000 000 Lek;
 - b) legal persons from 2 000 000 Lek to 5 000 000 Lek.
7. Except as provided for in items 2, 3, 4, 5, 6, of this article, when the subject is a legal person and the administrative contravention is committed:
 - a) by an employee or non-administrator of the subject, the person who has committed the violation, is fined from 20 000 Lek to 200 000 Lek;
 - b) by an administrator or manager of the subject, the person who has committed the violation is fined from 50 000 Lek to 500 000 Lek;
8. Fines are specified and determined by the “Responsible Authority”.
9. The “Responsible Authority” informs the licensing and/or supervising authorities

- about the sanctions imposed.
10. The “Responsible Authority” is entitled to 20 per cent of the income derived from the collection of fines and 80 per cent is paid to the State Budget. The “Responsible Authority” uses 50 per cent of the income from fines for investments, process computerization and improvement of working conditions and may use 50 percent for remuneration of employees.
 11. The procedures for the verification, examination, proposal and adoption of administrative measures by the “Responsible Authority” are defined by a decree of the Council of Ministers. Appeal procedures and the execution of fines, set forth in the decision of the “Responsible Authority”, are performed in accordance with the Law “On administrative contraventions”.
 12. The right to examination of administrative contraventions provided for in this article may not be exercised when 2 years have elapsed from the time the administrative contravention was committed.
 13. The procedures for the execution of administrative measures are implemented in accordance with article 510 to 526/a of the Civil Procedure Code.

Article 18 Transitory provisions

Until this law enters into force, the provisions of law no. 9917 dated 19.05.2008 “On prevention of money laundering and financing of terrorism” as amended, shall apply.

All bylaws issued in application of law no. 9917 dated 19.05.2008 “On prevention of money laundering and financing of terrorism” as amended, are applied insofar as they are not in contradiction with this law, until their substitution by other bylaws that are to be issued in application of this law.

Article 19 Entry into force

This law enters into force 15 days following its publication in the Official Gazette