

LEGAL UPDATE

New Slovak AML Rules

Changes Effective from 1 November 2020

NEW RULES IN THE AREA OF PROTECTION AGAINST MONEY LAUNDERING

Information on Ultimate Beneficiary Owners will be public and virtual currencies (also known as cryptocurrencies) will no longer be outside the regulation and protection against the money laundering

At the beginning of 2020, the 5th EU directive on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (so-called 5AMLD)¹ entered into force. This directive generally aims at improving access to the register of Ultimate Beneficiary Owners, taking more stringent measures to reduce the risks of money laundering and terrorist financing associated with anonymous virtual currencies and prepaid instruments, and monitoring also unusual transactions conducted through virtual currencies, as well as strengthening cooperation between authorities responsible for this area.

This directive was transposed into Slovak legislation with a delay, only recently in the autumn of this year, while the new rules will apply in Slovakia with effect from 1 November 2020.

Information on Ultimate Beneficiary Owners will be public

According to the current legislation, all legal entities with some exceptions, are obliged to have their Ultimate Beneficiary Owners registered in the relevant registers. Until now, this registered information on the Ultimate Beneficiary Owners was accessible only to designated public authorities and the so-called obliged entities that are specifically subject to obligations under anti-money laundering regulations (e.g. financial institutions, tax advisers, auditors, lawyers). From 1 November 2020, there will be a change and this information will be publicly available to anyone in the following extent: name, surname, date of birth, nationality, address of residence and reason for which the person is considered an Ultimate Beneficiary Owner. The data in question will be available free of charge in the Register of Legal Entities on the website of the Statistical Office of the Slovak Republic.

Thus, if in the past the Ultimate Beneficiary Owners, whether those being real natural persons or those being members of senior management of legal entities, were registered with an assumption or with assurances that their information registered will not be publicly available, this regime will change from 1 November 2020 and it will become public in the above extent.

The amending law also introduces new obligation of obliged entities and designated authorities to report to the respective registries any discrepancies that they identify between the registered information and the information they discover in the course of their activities.

New rules for virtual currencies

Another significant change is including the following types of virtual currency service providers among the so-called obliged entities for the purposes of protection against money laundering and against terrorist financing:

- Virtual currency custodian wallet providers,
- Virtual currency exchange service providers.

¹ DIRECTIVE (EU) 2018/843 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU

Under the new anti-money laundering rules, these providers will be also obliged, similarly to e.g. banks and other financial institutions, to identify their clients and their Ultimate Beneficiary Owners and subsequently verify or monitor this identification, ascertain information on the purpose and nature of the planned business transaction or report unusual business transactions to the Financial Information Unit and elaborate their own anti-money laundering programme (the deadline for fulfilling this obligation is 31 January 2021).

In addition, from 1 November 2020, the above-mentioned activities concerning virtual currencies are becoming regulated trades. In order to obtain permission to conduct them, it will be necessary to meet specific conditions of professional competence. A trade license issued for a trade whose content meets the characteristics of providing virtual currency custodian wallet provider services or virtual currency exchange service providers issued before 31 October 2020 will expire by the operation of law on 28 February 2021, and thus the transitional period for adapting to the new regulation is relatively short.

Desired practical consequences of this new legislation are increasing transparency and eliminating risks arising from anonymity related to virtual currencies. On the other hand, the new rules largely conflict with the very idea of anonymity of virtual currencies which may discourage many users from using them. These new anti-money laundering rules will also bring increased costs and additional administrative burden for virtual currency service providers, especially associated with the obligation to identify the client and its Ultimate Beneficiary Owners and other legal obligations in the area of protection against money laundering and terrorist financing (including obligations to elaborate own anti-money laundering programme and ensure regular training of employees in the anti-money laundering area).

Other changes

Other key changes include decreasing the financial limits for exemptions in relation to the use of anonymous prepaid card payments, including virtual money exchange platforms.

A new obligation was introduced for obliged entities in their branches or subsidiaries located in the territory of a third country, in particular to take measures equivalent to the client care and data storing as valid under domestic rules and in compliance with requirements of anti-money laundering laws of the European Union. If the legislation of the third country does not allow the implementation of these measures, the obliged entity shall inform the Financial Intelligence Unit and adopt additional measures.

This legal summary was prepared in October 2020 exclusively for the purpose of providing general information and should not be viewed as a legal advice. The aforementioned overview is not comprehensive and provides only a brief summary of the relevant legislative changes. If you are interested in more detailed information on the aforementioned legislative amendments, please do not hesitate to contact our partner Simona Haláková (simona.halakova@cechova.sk) or another partner or attorney of our law firm who is your contact person.