

COUNTRY

Republic of Poland

CENTRAL AUTHORITY FOR REPORTING
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General Inspectorate of Financial Information

ANTI-MONEY LAUNDERING REGULATOR(S)

The law of 16 November 2000 on Counteracting the Introduction of Property Values Originating from Illegal or Undisclosed Sources to Financial Transactions and on Counteracting the Financing of Terrorism, lists the following regulators:

- Ministry of Finance,
- General Inspector of Financial Information, and the following co-operating institutions:
- governmental and self-governmental authorities,
- other state entities,
- National Bank of Poland,
- Polish Financial Supervision Authority,
- Supreme Chamber of Control.

Moreover, it mentions the following obligated institutions:

- National Bank of Poland,
- banks and co-operative savings and credit unions (SKOK),
- electronic money institutions,
- investment funds and unit trusts,
- brokers and trade brokers,
- National Depository for Securities,
- insurance companies and financial funds,
- notaries public, attorneys at law, counsellors at law, tax advisers, auditors,
- Currency exchange bureaus and auction houses.

HAS THE THIRD EU MONEY LAUNDERING DIRECTIVE BEEN IMPLEMENTED? IF NOT, WHEN IS IT EXPECTED TO BE IMPLEMENTED?

The Directives 2005/60/EC and 2006/70/EC have not yet been implemented into the Polish legal system, although the deadline for their adoption expired on **15 December 2007**.

The law of 16 November 2000 on Counteracting the Introduction of Property Values Originating from Illegal or Undisclosed Sources to Financial Transactions and on Counteracting the Financing of Terrorism is still based on the previous Directive 91/308/EEC. According to the European Union press release of 5 June 2008 (Ref.: IP/08/860), the European Commission (EC) is pursuing infringement actions against 15 member states (including Poland) for failing to adopt and implement the Third EU Money Laundering Directive into national law.

The Ministry of Finance announced on 2 September 2008 that a bill amending the Polish law, would be submitted for examination by the Permanent Committee of the Council of Ministers after it is adopted by the European Committee of the Council of Ministers. Following its adoption by the Council of Ministers, it would be submitted to the Parliament by the end of the year.

LIST OF ANTI-MONEY LAUNDERING LAWS, INDICATING WHICH LAWS ARE APPLICABLE TO LAWYERS

- The law of 16 November 2000 on Counteracting the Introduction of Property Values Originating from Illegal or Undisclosed Sources to Financial Transactions and on Counteracting the Financing of Terrorism (Journal of Laws of 2003, no. 153 item 1505) ;
- The regulation of the Minister of Finance of 21 September 2001 concerning the determination of the transaction register form, the manner of keeping the register and the mode of providing the General Inspector of Financial Information with data from the register (Journal of Laws of 2001, no. 113 item 1210);
- The Criminal Code of 6 June 1997 (Journal of Laws of 1997 no. 88, item 553) – Article 299;
- The Criminal Fiscal Code of 10 September 1999 (Journal of Laws of 1999 no. 111, item 765) – Chapter 8.

ARE VISITING LAWYERS SUBJECT TO LOCAL ANTI-MONEY LAUNDERING LAWS, AND, IF SO, TO WHAT EXTENT?

As with local lawyers (which includes notaries public, attorneys at law, counsellors at law and tax advisers), visiting lawyers are obliged to register every transaction where circumstances indicate that the **money may originate from illegal or undisclosed sources**. Moreover, notaries public are obliged to register all transactions in excess of **EUR 15,000**.

LIST OF MONEY LAUNDERING GUIDELINES FOR LAWYERS (FOR EXAMPLE, LAW SOCIETY OR BAR ASSOCIATION GUIDELINES) CURRENTLY IN PLACE

In accordance with the ruling of the Constitutional Tribunal of 2 July 2007 (file ref. K 41/05), the aforementioned rules of transaction registration comply with the Polish Constitution except in a few situations. These include where the obligated institutions register confidential information and provide it to the authorities in the course of rendering legal assistance, determining the legal situation of a client or undertaking procedural actions before a court of law.

No official guidelines have yet been issued by any lawyers' supervisory authority that refers to or otherwise explains the applicable law. The process of notifying suspicious transactions is regulated by the Minister of Finance (see: the Polish law section).

IS THE LAW SOCIETY/BAR ASSOCIATION INVOLVED IN SUPERVISING OR ENFORCING COMPLIANCE WITH ANTI-MONEY LAUNDERING REGULATIONS?

The Polish Bar Association has a vested interest in ensuring that its members comply with statutory obligations. It may take disciplinary action against its members in various instances. The Polish Bar Association may also submit any information on suspicious transactions received from its members to the General Inspector of Financial Information, in accordance with an internally adopted resolution.

DESCRIBE CLIENT DUE DILIGENCE REQUIREMENTS, INCLUDING WHEN IT MUST BE UNDERTAKEN BY LAWYERS

The measures aimed at client identification must be applied both with respect to the new clients and the existing ones. If the circumstances of the transaction indicate that the client is acting on behalf of a third party, the obligated institution must attempt to ascertain the identity of the principal.

The identification of the client and the beneficiary shall comprise:

- in case of individuals – name, surname, citizenship, address, ID card or passport data,
- in case of companies – business name, organisational form, seat, address based on information from court or other adequate register; name, surname, citizenship, address, ID card or passport data of the representative of the entity in question.

DOES YOUR COUNTRY FOLLOW A RISK-BASED APPROACH TO CLIENT DUE DILIGENCE BY LAWYERS?

The existing law does not require due diligence analysis of a client. However, the due diligence requirements are going to be introduced in a bill amending the existing Polish law. Due diligence will be required in the following cases:

- concluding an agreement with the client,
- carrying out occasional transactions to the amount of EUR 15,000 or more,
- when money laundering or terrorist financing is suspected (regardless of the transaction value),
- when there are doubts with regard to the validity or completeness of the previously obtained data.

ARE THERE ENHANCED DUE DILIGENCE MEASURES FOR CERTAIN TYPES OF CLIENTS, FOR EXAMPLE, POLITICALLY EXPOSED PERSONS?

The existing law does not require enhanced due diligence analysis of certain types of transactions. However; the relevant new requirements are going to be introduced in the bill amending the Polish law. The obligated institutions will be obliged to apply, on a risk-sensitive basis, enhanced client due diligence measures in situations that may present a higher risk of money laundering or terrorism financing, i.e.:

- when the client is not physically present for identification purposes,
- in case of cross-border correspondent banking relations.

The bill also provides the definition of the politically exposed persons, comprising:

- heads of state or government,
- ministers and vice-ministers,
- heads of central authorities,
- members of parliament,
- judges of supreme courts and constitutional tribunals,
- members of management or supervisory boards of central banks,
- ambassadors,
- members of administrative authorities,
- members of management or supervisory boards of state-owned or state-controlled companies,
- family members of the above-mentioned.

With regard to the transactions where politics are potentially involved, the obligated institution will be obliged to:

- check if the client is a politically exposed person,
- establish the source of property values introduced into circulation,
- conduct ongoing monitoring of the transaction being carried out,
- obtain approval from the person responsible for the institution's operations to carry out the transaction with the client.

ARE THERE SIMPLIFIED DUE DILIGENCE MEASURES FOR CERTAIN TYPES OF CLIENTS, FOR EXAMPLE, LISTED COMPANIES?

The bill is going to eliminate the registration obligation with regard to the following transactions:

- transfers of money from the account to a temporary investment or the other way round, if the holder is one and the same, within the same obligated institution,
- incoming transfers,
- transactions pertaining to the obligated institution's own business,
- transactions concluded in the internal banking market,
- when the client is an entity providing financial services that is subject to the legal rules on counteracting money-laundering and financing of terrorism and has its seat within the European Union Member State territory or equivalent state.

ARE LAWYERS PERMITTED TO RELY ON THIRD PARTY DUE DILIGENCE? IF YES, PLEASE DESCRIBE.

The bill stipulates the possibility for obligated institutions to rely on "due diligence" prepared by a third party. Nevertheless, the obligated institutions are liable for the fulfillment of statutory obligations.

WHEN IS A LAWYER UNDER AN OBLIGATION TO REPORT SUSPICIOUS TRANSACTIONS?

Lawyers are obliged to register every single transaction the circumstances of which indicate that the **money may originate from illegal or undisclosed sources**. Moreover, notaries public are obliged to register all transactions in excess of **EUR 15,000**.

The register shall include the following information concerning suspicious transactions:

- date and place of the transaction,
- name, surname, citizenship, address, ID card or passport number of the client,
- amount, currency and type of the transaction,
- account number used for the transaction and the account holder details,
- data of the individual or the company for whom the transaction was concluded,
- name and surname or the business name of the company, and address of the beneficiary (the business name of the beneficiary's bank in case the beneficiary's identity cannot be ascertained),
- grounds for the transaction.

The information on the registered transaction shall be submitted to the General Inspector of Financial Information immediately after the suspicious transaction is concluded. The aforementioned information shall also be immediately submitted to the General Inspector of Financial Information upon request.

DOES ATTORNEY/CLIENT PRIVILEGE AND/OR OBLIGATIONS OF CONFIDENTIALITY PROVIDE A DEFENCE OR PARTIAL/TOTAL EXCEPTION TO THE REQUIREMENT TO REPORT SUSPICIOUS TRANSACTIONS?

The confidentiality of the information pertaining to the client's transactions is ensured by the operation of the "counsellor's confidentiality" (or attorney's confidentiality), in so far as the lawyer represents his client before the court under a power of attorney or renders legal assistance in a court case.

DOES LOCAL LAW PROVIDE ANY CRIMINAL AND/OR CIVIL INDEMNITY TO A LAWYER WHO HAS REPORTED A SUSPICIOUS TRANSACTION?

The statutory law does not stipulate any special criminal or civil liability for disclosure of

information obtained by a lawyer from his client under the "counsellor's confidentiality". Nevertheless, the client may claim damages in accordance with the general rules of civil liability if he feels that he has incurred a loss. Moreover, a counsellor or attorney at law may face disciplinary proceedings.

ONCE A SUSPICIOUS TRANSACTION REPORT HAS BEEN FILED, IS A LAWYER ALLOWED TO PROCEED WITH THE LEGAL ADVICE/TRANSACTION, AND, IF SO, MUST CONSENT FROM AUTHORITIES BE OBTAINED FIRST?

If the transaction is suspected to be illegal (Article 299 of the Criminal Code), the General Inspector of Financial Information, based on the notification from the obligated institution or the information in his possession, may suspend the transaction (for 24 hours) or freeze the bank account (for 48 hours). In such circumstances, he shall inform the prosecutor about the suspected crime. If the prosecutor does not uphold the decision of the General Inspector of Financial Information, the transaction can continue.

IS THERE A TIPPING-OFF PROHIBITION? IF YES, PLEASE DESCRIBE

Under the bill amending the law, persons performing activities for the General Inspectorate of Financial Information or working for the prosecutor's office shall maintain confidentiality of any information acquired in the course of their activities. Additionally, tipping-off as a method of notifying a client about pending preparatory proceedings constitutes a crime under Article 241 of the Criminal Code, i.e. disclosure of information from investigation prior to commencement of court proceedings.

DESCRIBE ANY RESTRICTIONS ON ACCEPTING A NEW CLIENT

Polish law does not set out any restrictions with regard to accepting new clients. However; identification of individuals and entities participating in the transaction is required.

The identification of the client and the beneficiary shall comprise:

- in the case of individuals – name, surname, citizenship, address, ID card or passport data,
- in the case of companies – business name, organisational documents, seat, address based on information from court or other adequate register and name, surname, citizenship, address, ID card or passport data of the representative of the entity in question.

ARE THERE ONGOING MONITORING REQUIREMENTS FOR EXISTING CLIENTS? IF YES, PLEASE DESCRIBE.

Existing clients are treated in the same way as the new ones. Hence, their identification must be carried out under the same terms as mentioned above and their identification data is required to be kept up-to-date.

DESCRIBE ANY OTHER WAYS IN WHICH LAWYERS ARE AFFECTED BY ANTI-MONEY LAUNDERING LEGISLATION.

Lawyers, as any other obligated institutions, are obliged to register suspicious transactions, notify them to the General Inspector of Financial Information and follow his decisions concerning suspending of the transaction or freezing of the bank account. Furthermore, they are obliged to notify the General Inspector of Financial Information about keeping accounts for persons or entities suspected of terrorism.

Naturally, they are also obliged to comply with the provisions of the law on Counteracting the Introduction of Property Values Originating from Illegal or Undisclosed Sources to Financial Transactions, the law on Counteracting the Financing of Terrorism, the provisions of the Criminal Code and are required to refrain from committing the crimes of money laundering or funding of terrorism.

HAVE LAWYERS IN YOUR JURISDICTION BEEN IMPLICATED IN MONEY LAUNDERING, INCLUDING ANY TYPE OF COMPLAINT, ARREST OR PROSECUTION?

No information available.

HAS THE FINANCIAL ACTION TASK FORCE (FATF) CONDUCTED A MUTUAL EVALUATION OF THIS COUNTRY, AND, IF SO, WHAT WERE THE FINDINGS CONCERNING LAWYERS COMPLIANCE WITH THE FATF 40+9 RECOMMENDATIONS?

Poland participates in the operations of the Financial Action Task Force (FATF) indirectly through its membership in the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL). Moreover, Poland participates in the works of the following organisations:

- Egmont Group Financial Intelligence Units;
- Contact Committee for Countering Money Laundering;
- Special Task Force of MONEYVAL;
- Eurasian Group (Observatory Statute);
- Task Force on Organised Crime in the Baltic Sea Region (BALTCOM).

MONEYVAL conducted the last evaluation of Poland in 2007.

Statistics presented in the progress report of 23 July 2008 clearly indicate that only notaries public submitted notifications about suspicious transactions to the General Inspector of Financial Information (e.g. 86 transactions were reported in 2007).

In 2007, the General Inspector of Financial Information demanded:

- suspending 1 transaction to the amount of EUR 65,000,
- freezing 97 accounts linked to suspicious financial transactions to the amount of approximately EUR 10,000,000.