



Domański Zakrzewski Palinka

## **AML situation**

**in Poland**

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## AML - Regulations

### Anti-Money Laundering Act of 16 November 2000 (AML Act):

- came into force in Poland on June 23rd 2001
- implemented the **Directive 91/308/EEG** of June 10th 1991
- imposed principle of criminal liability for money laundering by every entity irrespective of its relation with committing a source crime and
- established authorities competent in AML matters
- was amended several times
- amendment of 2004 to the AML Act expanded the list of entities indicated in the AML Act as authorities obliged by adding the group of so-called independent legal professionals, i.e. advocates, legal counsels (practicing a profession without being in an employment relationship) **Directive 2001/97/EC**
- Recent significant Amendment to the AML Act of June 25th 2009 implemented the **Directive 2005/60/EC** of October 26th 2005 (so-called 3rd Directive), in force from 22nd October 2009



## 3rd EU Money Laundering Directive

1. The Third EU Anti-Money Laundering Directive was transposed in Poland by the Act of 25 July 2009 amending the AML Act
  - by implementing the EU **Directives 2005/60/CE and 2006/70/CE**
  - the amendment was published on 7 October 2009
2. Majority of countries adopted minimum requirements
3. Only about 7 countries adopted exclusion concerning conducting financial activity to a limited extent and scale
4. **Risk based approach** has been implemented by all countries but it is interpreted in different ways; recommendations concerning this scope are insufficient
5. Majority of countries implemented a broad spectrum of sanctions for failure to apply the AML; this sanctions are considered by entrepreneurs to be inadequate



## What does the money laundering mean?

### ☐ A money laundering consist of three steps:

- transfer of money to financial institution
- split it into small parts in order to cancel the true nature of the assets value
- legalization of the money by its investing in project

### ☐ means any deliberate action such as:

- conversion or transfer of asset values derived from criminal activity or granting assistance to a person who participates in such activities
- concealment of the true nature of asset values or property rights associated with them, of their source, location, disposition
- being aware that these values are derived from criminal activity
- attempt to commit the above-mentioned behaviour
- even if the activities have not being conducted in Poland



## AML –criminal liability

- **Criminal Code Act of 6 June 1997 r. Articles 299 and 165a**
- **Article 299** of the Criminal Code criminalises money laundering, as well as aiding or abetting money launderers. It also contains a tipping-off prohibition and sanctions failure to submit Suspicious Transaction Reports (STR)
- **Art. 299** of the Polish Criminal Code sanctions any person who  
*“receives, transfers or transfers abroad, assists in transfer of title or possession of legal tenders, securities or other foreign currency values, property rights or real or movable property obtained from the profits of offences committed by other persons, or takes other action which can prevent, or make significantly more difficult, determination of their criminal origin or place of deposition, detection or forfeiture”.*
- Liability - **imprisonment from 6 months to 8 years**
- Consequently, any act of revealing information relating to the AML Act’s proceedings may be regarded as a criminal infringement



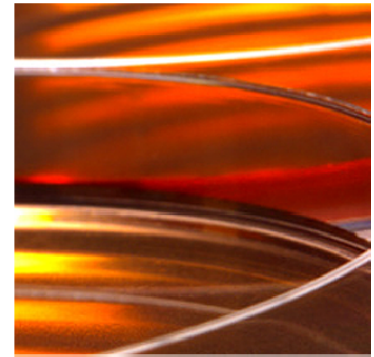
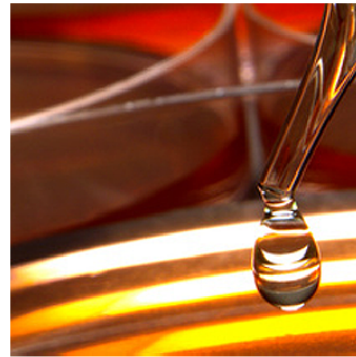
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## **AML –criminal liability**

- **Criminal Code Act of 6 June 1997 r. Articles 299 and 165a**
- Article 165a of the Criminal Code provides for the terrorist financing offence sanctions.
- The Article defines terrorist financing as collecting, transferring or offering money, securities, other financial assets or valuables for the purposes of financing terrorist activities.
- **is liable to imprisonment from 2 months to 12 years**



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**AML structure in Poland**



## AML competent authorities in Poland

The competent authorities responsible for counteracting money laundering and terrorist financing are:

- **Minister of Finance**
- **General Inspector of Financial Information** (the “General Inspector”)
- The General Inspector is bound to report the execution of its duties to the Polish Prime Minister on a yearly basis
- **obligated institution** (e.g. banks, financial institution, insurance companies, investment funds, notaries in so far as notary’s operations concerning trading in asset values, **attorneys performing their profession, legal advisers practicing his profession outside their employment relationship, foreign lawyers providing legal services apart from his employment**, expert auditors, active tax advisers)
- **co-operating units** - any government and local government authorities and other public organizational units



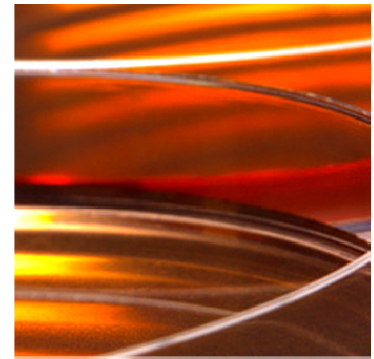
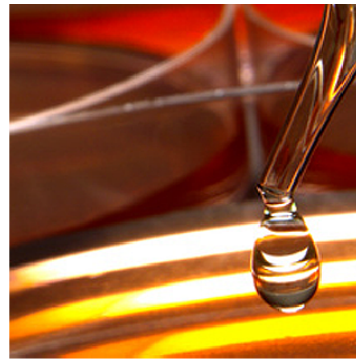
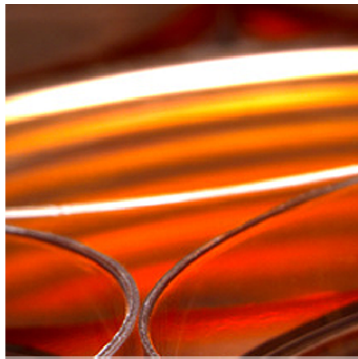


## AML system

- **Information submission:** The General Inspector receives information collected by institutions obliged under the AML Act to counteract money laundering and terrorist financing
- **Verification:** the General Inspector may e.g.
  - investigate the transactions deemed suspicious;
  - undertaking proceedings regarding suspending transactions and blocking bank accounts;
  - submitting documentation supporting a suspicion of committing a criminal offence related to money laundering or terrorist financing to legitimate bodies;
  - monitoring compliance with AML regulations; co-operation with foreign institutions and international organizations
  - imposing penalties in accordance with the AML Act



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**You should know your Client**



## **Anti-money laundering**

### **Obligations under an AML Act concern:**

- entities carrying out a transaction directly and
- entities, which due to agreements have knowledge concerning that transactions

**Carrying out a transaction**, shall imply to the execution of orders or instructions of a client by the obligated institution

**Transaction**- it means performing:

- a) deposits and withdrawals in cash or non-cash, including transfers of funds, commissioned both in Poland, and beyond
- b) buying and selling foreign currency
- c) transfer of the ownership or asset values and transfer of asset values between bank accounts belonging to the same client



## AML - Financial security measures

- **Financial security measures are applied, in particular (client identification and verification):**
  - 1) when concluding a contract with a client
  - 2) when **carrying out transaction with a client** with whom the obligated institution has not previously concluded any agreements of the equivalent of more than 15.000 EURO, regardless of whether the transaction is carried out as a single operation or as several operations if the circumstances indicate that they are linked
  - 3) when there is a suspicion of money laundering or terrorist financing **regardless of the value of such a transaction, its organizational form and the type of a client**
  - 4) when there are doubts raised that the previously received data are authentic and complete



## Obligations of advocates and legal advisers

### Obligation of applying the financial security measures :

#### 1) Client identification and verification its identity **on the basis of documents or information publicly available**

- Identification in case **of natural persons** (ID, the first and last name, nationality and address of the person performing the transaction)
- in case of a **corporation**: current data from the extract of the Court Register -company's name and organizational form, registered office and address, tax identification number
- **the identification shall also apply to transaction parties** which are no clients and it includes determination and recording of their names or the first and last name and address, **to the extent to which these data may be determined with due diligence by the obligated institution**

**Measures aimed at the client identification must be applied to both new clients and existing clients.**



## **AML - Client identification and verification, Customer due diligence (CDD)**

- **The verification is performed before**
  - entering into a contract with a client or
  - prior to the transaction
- In the event the obligated institution **cannot perform its duties /identification, verification/:**
  - it does not carry out the transaction
  - it does not sign the contracts with a client or
  - it terminates the previously concluded contracts, and
  - submits to the General Inspector, taking into account the risk of money laundering and terrorist financing, information about such client, along with the information on the specific transaction



## AML - Client identification and verification CDD

Any obligated institution, taking into account the risk of money laundering or terrorist financing, may waive the application of identification, verification:

- 1) when its client is an entity providing financial services and established in the territory of a EU-Member State or an equivalent country;
- 2) in relation to government bodies, local government authorities and execution bodies

In the above-mentioned cases the obligated institution shall **collect information to determine whether a Client meets the requirements of these regulations**

**□ The nature and scope of CDD is dependent on the assessment of risk involved in undertaking certain financial transactions**



## AML - client identification and verification - increased security measures

- Any obligated institution shall apply - **on the basis of risk analysis** – **increased security measures** against a client in the events which may involve a higher risk of money laundering or terrorist financing e.g.
- **If the client is absent, the obligated institutions - for the purposes of identification** – shall apply at least one of the following measures in order to reduce the risk:
  - 1) **establishment of the identity** of the client on the basis of additional documents or information;
  - 2) **additional verification of the authenticity** of the documents or attestation of their compliance with the original copies by a notary public,
  - 3) ascertainment of the fact that the first transaction was conducted **via the client's account** in the entity providing financial services





## Enhanced due diligence (EDD) measures - politically exposed persons (PEP)

**PEP** - natural persons domiciled outside the territory of Poland (Heads of state or government, Ministers; MP).

In case of lawyers EDD must be applied only when the customer is a **politically exposed person (PEP)**. The lawyer should:

- 1) implement **procedures based on risk assessment to determine whether such client is a PEP**
- 2) apply measures, adequate to the risk determined by this obligated institution, in order to establish the source of asset values introduced to trading;
- 3) conduct ongoing monitoring of conducted transactions
- 4) obtain the approval of the management board in order to carry out the transaction with PEP

The obligated institutions **may collect a written statement on whether a client is a person holding a politically exposed position.**



## AML – beneficial owner identification

Obligation of applying the financial security measures :

- beneficial owner identification and verification applied with due diligence

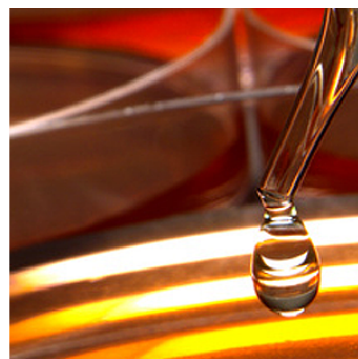
**Beneficial owner** means the natural person or natural persons who are owners of a legal entity or exercise control over a client, who are stakeholders or shareholders or have the voting right at shareholders meetings at the level of above 25% within such a legal entity, who exercises control over at least 25% of the asset values

The verification, consists of verifying and confirming data and is performed before entering into a contract with a client or prior to the transaction ,

may be completed after having established an economic relationship only where there is little risk of money laundering or terrorist financing determined on the basis of relevant analysis performed.



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**Registration of transactions which may be of a money-laundering nature**



## Advocates and Legal advisers obligations

- **Registration of transactions which may be of a money-laundering nature:**
  - the obliged institutions undertaking any transaction exceeding the equivalent of EUR 15,000 are required to register it
  - the requirement to register applies also if the transaction is carried out through multiple financial operations, but the circumstances indicate that these operations are linked and have been divided with the intent to avoid the registration requirement
  - This registration duty **does not apply to:** companies operating within real estate brokerage, electronic money institutions, foreign branches of electronic money institutions, clearing agents, **advocates and legal advisors, including foreign lawyers, expert auditors and tax advisors**



## Advocates and Legal advisers („Lawyers”) obligations

- Lawyers are not subject to the general requirement to report any transaction the value of which exceeds EUR 15,000.
- Lawyers are in principle obliged to **notify the relevant authorities of any suspicious transactions**. Moreover, notaries public are obliged to register all transactions in excess of EUR 15,000
- This reporting obligation is waived /does not apply if lawyers, legal advisors and foreign lawyers, expert auditors and tax advisors **represent their client on the basis of a power of attorney related to proceedings pending or provide advice for the purpose of such proceedings**
- The information on the registered transaction shall be submitted **to the General Inspector immediately after the suspicious transaction is concluded**.
- The information shall be also immediately submitted to the General Inspector upon request.



## Advocates and Legal advisers obligations

- attorneys (advocates, legal advisers and foreign lawyers) are subject to registration requirements when they participate in AML-sensitive transactions for their **Clients planning or carrying out transactions relating to:**
  - buying and selling real estate or business entities
  - management of money, securities or other assets
  - opening and managing bank accounts
  - arranging payments of contributions and additional payments to the initial or share capital; arranging payments of contributions to initiate or to undertake business operations of companies, or to manage their administration
  - setting up or undertaking business activity by entrepreneurs in any other form of business organization, including its management



## Confidentiality and the foreign lawyers

- The confidentiality of the information pertaining to the client's transactions is ensured by the operation of client confidentiality and legal privilege principles.
- The obligation to maintain confidentiality does not apply to the information disclosed pursuant to the provisions on counteracting the introduction of asset values originating from illegal or undisclosed sources into financial trading
- The foreign lawyers are, in principle, subject to Polish laws regarding anti-money laundering measures to the same extent as local lawyers. Foreign lawyers acting within the scope of their employment contract are exempted and, therefore, not subject to the provisions of the AML Act
- Like local lawyers (which includes notaries public, advocates and legal advisers), visiting lawyers are obliged to register every transaction the circumstances of which indicate that money may originate from illegal or undisclosed sources



## Transaction analysis – risk assessment

- The scope of financial security measures to be applied by the obligated institution **shall be determined on the basis of risk assessment**
- The risk assessment analysis shall take into account:
  - **economic** - involving assessment of client's transaction in terms of its business activity
  - **geographic** - involving performance of transactions unwarranted by the nature of business activity, concluded with the operators of the countries where there is a high risk of money laundering and terrorist financing
  - **objective** - involving business activities of high-risk conducted by the client in terms of vulnerability to money laundering and terrorist financing
  - **behavioural** - involving unusual behaviour of the client, in the situation in question

A failure to comply with the financial security measures is subject to penalties.





## The registered information

### 1. The registered information should, in principle, include:

- trade date
- identification data of the transaction parties
- the amount, currency and type of the transaction
- bank account numbers used to conduct the transaction, if applicable
- substantiation, along with the place, date and manner of placing disposition

### 2. The **register** of any such transactions **must be stored for a period of 5 years**, calculated from the first day of the year following the year in which transactions were recorded



## Advocates and Legal advisers obligations

- Legal advisers and advocates **are not obliged**:
  - to implement internal procedure contained, in particular, the determination of how the financial security measures shall be implemented, transactions registered, analyses performed and risk assessed, and
  - to designate persons responsible for fulfilling the obligations specified in the AML Act



## Advocates and Legal advisers obligations

- Legal advisers and advocates are obliged to:
  - **apply financial security measures** involve identification and verification of the client's identity on the basis of documents and/or publicly available information
  - **notify the relevant** authorities of registered transactions bearing a suspicion of money laundering
  - this reporting duty is waived only if lawyers represent their client on the basis of powers of attorney related to the pending court proceedings, or if they provide advice for the purposes of any such proceedings
  - **stored any information on the transactions** and documents for a period of **5 years calculated from the first day** of the year following the year in which the last record in relation to the transaction took place



## Advocates and Legal advisers obligations

- Legal advisers and advocates are obliged to:
  - assure the participation of the employees performing duties related to counteracting money laundering and terrorist financing in **training programs** related to these duties
  - **non disclosure:** any disclosure of information to unauthorized parties (including the parties of the transaction) on the fact that the General Inspector has been informed about the transactions is prohibited
  - undergo the **control regarding complying** with AML Act provisions and performing applications and post-control recommendations on time



## Sanctions

### Penalties for failure to comply with the AML Act obligations

Legal advisers or advocate who fails to:

- 1) register a transaction, submit documentation relating to this transaction to the General Inspector or to store the register of such transactions or documentation relating to this transaction for the required period of time, **shall be subject to the punishment of imprisonment of up to 3 years**
- **Comply with obligations:** pecuniary penalties (penalty shall be imposed by decision of the General Inspector at the amount not higher than 750.000 PLN, and in the event of **failure the obligation to provide the participation of employees in a training program not higher than 100.000 PLN**) and penalty sanctions (punishment of imprisonment from 3 to 5 and 8 years)
- submit information or documents to the General Inspector, submits false data to the General Inspector or hides real data on transactions, accounts or persons, shall be subject to the punishment of **imprisonment from 3 months to 5 years**



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# Questions?



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