



Legal Flash – Law 129/2019

Law no. 129/2019 on the prevention and combating of money laundering and terrorist financing came into force on 21 July 2019.

Among other things, Law no. 129/2019 provides for communication with the National Office for the Prevention and Control of Money Laundering (hereafter "the Office") exclusively by electronic means, as well as a new obligation on companies, associations and foundations to identify and declare the real beneficiary.

1. Designation of responsible persons

Certain legal entities are required to appoint internally and to register with the Office, by no later than 17 January 2020, one or more persons with responsibility for implementing Law no. 129/2019. According to the Office, the appointment and registration of a responsible person is to be performed electronically by accessing the "Designation of Persons and Online Reporting" section of the institution's website and completing the steps required to create an account with the Electronic Data Transmission System (EDTS).

The following legal entities, referred to as reporting entities, are required to designate a responsible person:

- a) Romanian credit institutions and Romanian branches of foreign credit institutions
- b) Romanian financial institutions and Romanian branches of foreign financial institutions
- c) managers of private pension funds, in their own name and the private pension funds they manage, with the exception of professional occupational pension houses
- d) gambling service providers
- e) auditors, chartered accountants and authorised accountants, censors and persons providing tax, financial, business or accounting consultancy
- f) public notaries, lawyers, bailiffs and other persons practicing legal liberal professions, where they assist in the preparation or execution of operations on behalf of their clients with respect to the purchase or sale of immovable property, shares, or goodwill items, the administration of financial instruments, securities or other assets belonging to their clients, operations or transactions involving sums of money or the transfer of property, the setting up or managing of bank accounts, savings and financial instruments, the organising of the process of underwriting the contributions required for incorporation, the operating or administration of a company, the establishment, administration or management of such companies, collective investment undertakings in securities or other similar structures, as well as where they participate on behalf of or for their clients in any operation that is financial in nature or concerns immovable property
- g) providers of services to companies or trusts other than those specified under letters e) and f) above
- h) real estate agents.



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Service providers for companies and other legal entities or legal arrangements shall mean any natural or legal person providing any of the following professional services for third parties:

1. the incorporation of companies or other legal persons
2. the performance of the duties of a director or manager of a company, or an associate in a partnership or joint venture, or similar roles in relation to the other legal persons, or the arranging for another person to exercise these functions or capacities
3. the provision of a registered office, a chosen domicile or any other service relating to a company or any other legal person or similar legal structure
4. the exercising of the capacity of trustee in a trust or a similar structure, or the arranging for another person to exercise said capacity
5. the acting or arranging for another person to act as a shareholder for a legal person other than a company whose shares are traded on a regulated market subject to advertising requirements in accordance with European Union law or international standards.

According to the Office, it is not necessary to go through the formalities of designating a responsible person if these formalities were already performed under the previous legislation and the reporting entities retain proof of the submission of the documents in question prior to the entry into force of Law no. 129/2019. For this category of entities, it is however still recommended to create a user account on the platform provided by the Office in order to be able to submit future reports in electronic format.

2. Internal policies and norms, internal control mechanisms and procedures for managing risk

Reporting entities are also required, again by 17 January 2020, to adopt and/or update and implement internal policies and rules, internal control mechanisms and procedures for risk management, in line with the nature and volume of activity carried out. These should include at the least:

- enforceable customer knowledge measures
- enforceable measures for reporting, the keeping of records and all documents required under the Law, and the prompt submission of data upon request from the competent authorities
- enforceable internal control, risk assessment and management, and compliance and communication management measures
- enforceable measures regarding the protection of an entity's own staff engaged in the process of applying these policies from threats or hostile or discriminatory acts
- training and periodic evaluation of employees.



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3. Identifying and declaring the real beneficiary

Law no. 129/2019 introduced the obligation on private law legal persons to identify their ultimate beneficiary and to submit them for registration in the central register kept by the National Trade Register Office of legal persons registered with the trade register or the central register kept at the level of the Ministry of Justice for associations and foundations.

The ultimate beneficiary is entered into the register on the basis of the statement of the company's legal representative, issued at his/her own risk, signed in front of a public notary or in front of Trade Register Office representatives. The deadline for submission of the first statement on the real beneficiary is 21 July 2020. Thereafter, the statement will be submitted annually, within 15 days of the date of approval of the annual financial statements, as well as at any time during the year, within 15 days of any changes to the information about the ultimate beneficiary.

For companies incorporated under Law no. 31/1990 (the "Company Law"), the ultimate beneficiary is:

- (i) "the natural person or persons who ultimately own or control a legal person by exercising the right of ownership, directly or indirectly, over a number of shares or voting rights sufficiently large to ensure their control or by participating in the legal person's own capital or by exercising control by other means, with the legal person owned or controlled not being a legal person registered with the trade register whose shares are traded on a regulated market and which is subject to advertising requirements in accordance with those regulated by European Union law or with internationally agreed standards. This criterion is considered to have been fulfilled where at least 25% plus one share is held or the participation in the equity of the legal person exceeds 25%
- (ii) the natural person or persons who ensure the management of the legal person, if, after exhausting all possible means and provided there are no grounds for suspicion, no natural person is identified in accordance with point 1, or if there is any doubt that the identified person is the ultimate beneficiary, in which case the reporting entity is obliged to retain and record the measures applied in order to identify the real beneficiary in accordance with point 1 and this point".

The rules for the implementation of Law no. 129/2019 are to be published in the following weeks and are expected to provide the information required to fulfil the obligations established by law and for the registers of ultimate beneficiaries to become operational.

Source: Law no. 129/2019 on the prevention and combating of money laundering and terrorist financing, amending and supplementing various normative acts; the information published on the official website of the Office under the "Frequently Asked Questions" section.

This newsletter is a service of TPA.

Kind regards
Your TPA Team



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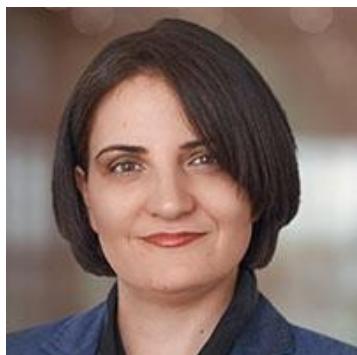
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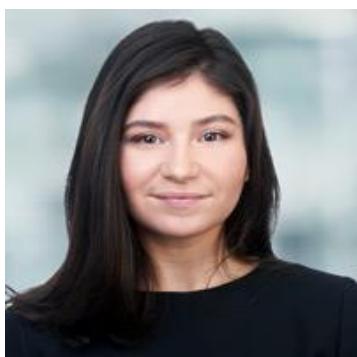
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