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New act on the prevention and combating of money laundering and terrorist financing

The need for action of international level against money laundering was recognised by economically developed countries in the 80's. First of all, in order to establish a uniform requirement system against the recycling of funds originating from drug trade and organised crime into the legal economy, the Financial Action Task Force (FATF) was set up in 1989. As a key player in the fight against money laundering, this international organisation worked out recommendations and created standards that influence the legislation, the financial and economic sphere and the operation of the executive bodies in a given country, considering the fact that the objective of the recommendations is to unify the system of institutions against money laundering.

ACTION AGAINST MONEY LAUNDERING

Action against money laundering has two aspects. The criminal aspect of money laundering refers to sanctions against the committer of the crime of money laundering. Money laundering means the use of funds or property originating from the commitment of a crime in an economic activity, or the performance of a financial operation related to the funds or property, with the purpose of concealing the origin of the funds or property. The other side of the fight against money laundering is the non-criminal institution system that identifies uniform rules for service providers involved in activities that are particularly exposed to money laundering. The objective of these rules is to prevent and hinder the entry or imbedding of "dirty money" into the infrastructure operated by the service provider. This study wishes to describe this latter aspect of the fight against money laundering (and terrorist financing), by examining the latest Hungarian legislation.

The third directive of the European Union against money laundering and terrorist financing[1] (directive) was published on 25 November 2005 in the Official Journal of the European Union, and came into force on 15 December 2005. Member States were obliged to enact the legal, edictal and administrative provisions that are required for the satisfaction of the directive (and its enforcement provisions[2]) by 15 December 2007.

The aim of the directive is to prevent and hinder that money or assets measurable in cash and originating from the commitment of crimes are cleaned through activities that are exposed to money laundering, and to prevent that terrorism is supported with money or assets measurable in cash.

This directive has replaced the money laundering directives of the EU that were in effect before, and its primary objective is to make sure

that the 40 recommendations identified and modified in connection with the fight of FATF against money laundering, as well as a number of elements of the 9 new special recommendations accepted for the fight against terrorist financing are incorporated into community law.[3]

The incorporation of the directive (and its enforcement provisions) into Hungarian law has been completed by creating a new legal regulation on the prevention of money laundering and terrorist financing, and by modifying the related legal regulations as required.

The majority of the provisions of *Act CXXXVI of 2007 on the Prevention and Combatting of Money Laundering and Terrorist Financing* (new Money Laundering Act) came into effect on 15 December 2007, and replaced the former act on money laundering (old Money Laundering Act).[4] This study describes the *key provisions of the new Money Laundering Act,* highlighting the key modifications included in the new act compared to the provisions of the former act.

THE SCOPE OF THE NEW MONEY LAUNDERING ACT

First of all, it has to be pointed out that the prohibition of money laundering and terrorist financing is ensured by Act IV of 1978 on the Criminal Code.[5] For the efficient realisation of this prohibition, it is the new Money Laundering Act that contains the necessary provisions *to prevent and hinder money laundering and terrorist financing.*

The provisions of the old Money Laundering Act ensured the prevention and combating of money laundering, so an essential change is that the material scope of the new act will cover the fight against terrorist financing, too, not only money laundering.

The *personal scope* of the new act covers those players of the economy, who – in their activities – are exposed to the fact that their services may be used to legalise property originating from money laundering or to support terrorism with money or assets measurable in cash.

The scope of the new Money Laundering Act covers persons and organisations involved in the following activities:

- Financial service, supplementary financial service activity, investment service activity, service supplementing investment service activity;
- Insurance, insurance brokering and employer pension service activity (in case of activities not belonging to the life insurance branch);
- Commodity exchange services;
- Post office funds turnover mediating activity, post office funds transfers, receipt and delivery of domestic and international post office transfer orders;
- Activities related to real estate business;
- Auditing activities;
- Book-keeping, tax consulting, certified tax consulting or tax advisory activities, either on commission or as an entrepreneur;
- Operation of casino or electronic casino;
- Trade in precious metals or articles made of them;
- Acceptance of cash payment over 3.6 million HUF in the trade of goods;
- Operation as a voluntary mutual insurance fund;
- Acting as an attorney or notary public.[6]

Therefore, the scope of the new act covers service providers that are involved in trade, and that accept cash payment of 3.6 million HUF or over. Service providers involved in the trade of goods may not accept cash payments of 3.6 million HUF or over, except when they send their internal regulations to the supervisory body (the commercial authority, i.e. the Hungarian Commercial Authorisation Office), and agree to meet the obligations identified in the new act. (The commercial authority

approves the internal regulations and registers the service provider. In this respect, the new act defines a temporary provision, too: any service provider not included in this register may accept cash payment of 3.6 million HUF or over until 15 March 2008 at the latest.)[7]

The National Bank of Hungary (MNB) is *not under the scope* of the new Money Laundering Act, except for the provisions regarding customer data accompanying funds transfers, and the supervision extended by it (in the money processing activity). In addition, the following parties are not under the scope of the new act:

- Agents of type "b", as defined by Act CXII of 1996 on Credit Institutions and Financial Institutions, and by Act CXXXVIII of 2007 on Investment Companies and Commodity Exchange Service Providers, and on the rules of the activities that can be performed by these parties;
- Dependant insurance brokers defined by Act LX of 2003 on Insurance Companies and Insurance Activities;
- Independent insurance brokers defined in the act on insurance companies, in their activities related to non-life insurances;
- Insurance companies, if they are licensed to non-life insurance only; and
- Service providers licensed for both non-life insurance and life insurance activities (composite insurance company), for the non-life insurance activities. (So the new act covers the life insurance activity only.)[8]

The new Money Laundering Act defines the provisions required for the execution of Regulation No. 1781/2006/EC (1781/2006/EC) on Information on the Payer Accompanying Transfers of Funds, too (so that the obligations identified by the new act could be clear and transparent for those applying the law in the fight against money laundering and terrorist financing).[9]

In other words, compared to the scope of the old Money Laundering Act[10], the key change is the coverage of service providers who are involved in trade, and who accept cash payments of 3.6 million HUF or more. Another important change is the inclusion of parties operating electronic casinos, as well as service providers involved in employer pension funds. However, based on the consideration of the risks of money laundering and terrorist financing, it was not justified to keep service providers involved in investment fund management under the scope of the law any longer. Similarly to the system of the old act, the scope of the new act was also defined on the basis of activities (considering the fact that this is the only way to realise the efficient application of the new act and its harmony with other domestic legal regulations).

CUSTOMER DUE DILIGENCE OBLIGATION

The new Money Laundering Act determines detailed rules for the customer due diligence obligation. Service providers are obliged to perform customer due diligence in the following *cases:*

- On the establishment of the business relation;
- On performing a deal of 3.6 million HUF or over (in the case of several related orders, too, if their total value reaches 3.6 million HUF);
- On the occurence of data, fact or circumstance implying money laundering or terrorist financing, if the due diligence has not been completed yet, and
- When there are doubts about the authenticity or adequacy of previously obtained client identification data.[11]

In the above defined cases, the service provider is obliged to carry out the following *customer due diligence actions:*

- Identify the client and verify his identity;
- Identify the beneficial owner and verify his identity;

- Record data about the business relation and the deal; and
- Continuously monitor the business relation (monitoring).

The service provider is entitled to determine the scope of these customer due diligence measures *on the basis of risk sensitivity:* the new Money Laundering Act defines minimum and maximum data scope, and during the completion of the customer due diligence, the service provider may define the number of data to be recorded on the basis of the nature and the amount of the business relation or the deal, and on the basis of the circumstances of the client (considering the cases defined in the internal regulations), weighing the risks of money laundering and terrorist financing.

It can be seen that compared to the system of the old Money Laundering Act, the new act contains more detailed provisions about the customer due diligence obligation and measures, and it introduces the risk-based approach as a completely new institution. Based on the new Money Laundering Act, the service provider shall carry out the customer due diligence in the following cases, too (in addition to the three cases already mentioned in the old act): when doubts occur about the authenticity or adequacy of previously obtained client identification data. Another important change for business deals is the increase of the limit of 2 million HUF to 3.6 million HUF. Among the customer due diligence measures, the new act contains the following obligations as new elements: taking risk-based and proper steps to verify the identity of the beneficial owner, and the continuous monitoring of the business relation (monitoring).

Client identification and verification of client identity[12]

Based on the new Money Laundering Act, in the mandatory cases of client due diligence, the service provider shall identify the client, the client's agents, the authorised signatories and the representatives, and shall verify their identities. For the sake of *identification,* the service provider shall record at least the minimum scope of data in writing.[13] In addition, the service provider may decide to record additional data on the basis of risk sensitivity, and the data that can be collected (maximum scope of data) is precisely defined by the new Money Laundering Act.[14] For the *verification of the identity,* the service provider shall demand the presentation of documents defined in the new act, and shall check the validity of the document presented to verify the identity.

Considering the fact that the scope of identification data to be recorded according to the old Money Laundering Act is identical with the maximum data scope defined by the new act, service providers have the maximum scope of data about already existing clients on the coming into effect of this new act. In the case of existing clients, the management of this data scope is not against the legal regulations, and as to the deletion of certain data from the records, the new act wishes to leave this decision to service providers. Hovewer, in the case of new clients, the provisions of the new Money Laudering Act have to be followed (client identification on risk sensitivity basis). The scope of documents that can be requested to verify the identity are basically identical with the scope of documents used under the old act (personal identity card, passport, driving licence of card format and address card etc.).[15]

Identification of beneficial owner and verification of his identity[16]

For the *identification* of the beneficial owner, the new Money Laundering Act stipulates the production of a written statement and the scope of data to be recorded. The client shall

make a written declaration to the service provider about the fact whether he acts on his own behalf or on behalf of the beneficial owner, and if yes, the declaration should contain the minimum scope of data on the beneficial owner.[17] In addition, based on risk sensitivity, the service provider may decide to record further data, and the scope of data that can be requested is precisely regulated by the new act (maximum scope of data).[18] Should there be any doubt about the *personal identity* of the beneficial owner, the service provider shall take measures to check the data related to the identity of the beneficial owner in the relevant records or publicly available records, according to the relevant regulations.

As to the obligation of producing a written declaration about the beneficial owner, the new Money Laundering Act maintains the system of the previous act. However, the old act stipulated the recording of two pieces of data only in the written declaration (name, address/registered office)[19], so the scope of data to be recorded on the beneficial owner has been extended. On the other hand, the stipulation of verifying the identitity of the beneficial owner is a completely new element in the new act. Another new element is the more precise and more detailed definition of the term of beneficial owner (among the definitions).

Data recording about the business relation and the deal[20]

Based on the new Money Laundering Act, the service provider is obliged to record at least a minimum scope of data about the business relation and the deal in writing.[21] In addition, the service provider may decide to record further data, based on risk sensitivity (maximum data scope).[22]

The rules of the old Money Laundering Act called for the recording of data about the business relation and the deal only, as well as the related key data, without a precise definition of the data scope[23], so the new act contains much more specific provisions in this respect.

Continuous monitoring of business relation (monitoring)[24]

The new Money Laundering Act stipulates the continuous monitoring of the business relation (in order to identify whether the given deal is in line with the client data available to the service provider according to the legal regulations), and stipulates the obligation of keeping the information about the business relation up-to-date (as to any changes in the data provided in the customer due diligence and about the person of the beneficial owner, the client shall inform the service provider within five working days of learning the change; if no order is performed to the debit or credit of the account for a period of two calendar years, the service provider shall invite the client to submit the changes in the data in writing or in the next balance statement).

As part of the customer due diligence actions, monitoring is a new institution compared to the regulations of the old Money Laundering Act, but in the respect of the obligation to keep the information on the business relation up-to-date, the new act wishes to maintain the system of the old act.[25]

The time of performing the customer due diligence actions[26]

Based on the new Money Laundering Act, in basic cases, the service provider shall perform the verification of the identitity of the client and the beneficial owner *before the establishment of the business relation or before the performance of the deal.* The new act also stipulates

that if the service provider is unable to carry out the customer due diligence, he shall deny the completion of operations on the bank account, the establishment of a business relation and the completion of a deal on the client's order, or shall terminate the business relation with the client. With regard to the time of performing the customer due diligence measures, the new act provides *some exceptions.*[27]

In the case of *casinos and electronic casinos,* the new act stipulates a special client due diligence procedure. The service provider shall carry out the client due diligence on the client's entry to the area of the casino. (In the definitions, the new act determines that in the case of the clients of casinos and electronic casinos, the establishment of the business relation is the client's first entry into the area of the casino or electronic casino. Therefore the service-provider performs the client due diligence actions on the client's first entry.)[28]

In the new Money Laundering Act, the basic case of performing the client due diligence (before the establishment of the business relation or the performance of the deal), as well as the customer due diligence procedure related to casinos and electronic casinos are determined in the same way as in the old act.[29] However, certain exceptions allowed by the new act are introduced as new elements.

The new Money Laundering Act stipulates that *as of 1 January 2009,* the service provider shall *deny the completion of the business order,* if the results of customer due diligence determined in the new act are not fully available about the client. (The denial of the completion of the deal is mandatory in the case of the satisfaction of all of the following conditions at the same time: the service-provider established a business relation with the client before the new Money Laundering Act came into effect; the client did not show up at the service provider for customer due diligence either personally, or through a representative; the results of customer due diligence determined in the new act are not fully available about the client.) This means that the new act gives a temporary period of one year for the clients to extend their data with the service providers.[30] (Naturally, for new clients, due diligence takes place according to the new act.)

The old Money Laundering Act also included provisions about the obligation of re-identification of already existing clients.[31] However, it is an important change that the new act (unlike the stipulations of the old act) does not require the mandatory written notification of the client. (It is assumed that the majority of clients visit the service provider personally within one year anyway, and then the missing data can be added. Should this not be the case, the service provider is free to decide how and when he would contact the client.)

SIMPLIFIED CLIENT DUE DILIGENCE

The new Money Laundering Act (in line with the risk-based approach) stipulates the application of a simplified client due diligence for certain clients and deals that mean low risk from the aspect of money laundering and terrorist financing. In the case of the simplified client due diligence, the client due diligence measures need to be taken only if any fact, data or circumstance implying money laundering or terrorist financing occurs (so it is not mandatory on the establishment of a business relation etc.), but the continuous monitoring of the business relation is still mandatory. The new Money Laundering Act stipulates the application of a simplified due diligence for the following clients:

- Financial service provider[32], if it acts in the area of the European Union or if it was registered in a third country that is subject to requirements equal to the stipulations of the new act, and if it is under state supervi-

sion in the respect of its meeting the requirements;
- Listed company (with certain conditions);
- Supervisory organisation defined in the new Money Laundering Act;
- Central state administrational body or local government;
- Institution of the European Union, the European Economic and Social Council, the Comittee of the Regions, the European Central Bank and the European Investment Bank.

The new Money Laundering Act stipulates the application of the simplified due diligence in the case of the following *products or deals:* insurances of life insurance nature, if the annual insurance fee is not over 260,000 HUF, or if the one-off insurance fee is not over 650,000 HUF; pension insurances, where the insurance contract cannot be purchased back, and the amount due to the person entitled to the insurance service cannot be accepted as the collateral of a loan.

The new Money Laundering Act authorises the minister responsible for the regulation of the money, capital and insurance markets (minister of finance) to publish a decree including the list of third countries where the legal regulations include requirements equal to the new Money Laundering Act.[33]

The new Money Laundering Act introduces the simplified due diligence as a completely new institution (by making it clear that the performance of the due diligence measures is mandatory only if the suspicion of money laundering or terrorist financing is raised). The old act defined the exceptions when the requirements of identification were not mandatory or were not to be used [certain insurance deals; the client is the Hungarian Financial Supervisory Authority, or the client is a credit institution or financial service provider registered in a country where the legal regulations satisfy the provisions of the EU directive on money laundering in effect before].[34] Therefore the application of the simplified due diligence for listed companies, supervisory bodies, central state administration bodies and local governments, the institutions of the European Union, the European Economic and Social Council, the Committee of the Regions, the European Central Bank and the European Investment Bank is a new element in the new Money Laundering Act.

ENHANCED CLIENT DUE DILIGENCE

For certain clients and deals that represent high risks in the respect of money laundering or terrorist financing, the new Money Laundering Act (in line with the risk-based approach) stipulates the application of enhanced client due diligence. When using enhanced client due diligence, it is mandatory to carry out all the client due diligence measures defined in the new Money Laundering Act, and in addition to these, additional steps are taken, too. The new act defines the obligation of performing enhanced client due diligence and the related measures in four cases.[35]

If *the client did not show up personally* for identification and for the verification of his identity, the service provider shall record the maximum scope of data allowed in client identification. For the verfication of the identity, the client shall submit the authentic copy of the document stipulated for client identification. (These provisions of the new Money Laundering Act are to be applied for all clients who did not show up, independently of the fact whether they are within the country or abroad.) A service provider pursuing financial services or supplementary financial services, before establishing a *correspondence bank relation with a service provider having its registered office in a third country,* in addition to the completion of the client due diligence measures,

shall satisfy the additional obligations defined in detail in the new Money Laundering Act.[36] The new act prohibits the establishment and maintenance of correspondence bank relation with a shell bank. For the identification of *foreign politically exposed persons,* all clients having their residences abroad shall make a written declaration to the service provider about the fact whether or not they are considered as politically exposed persons according to the law of their own countries, and if yes, in what quality. The service provider (if the authenticity of the declaration is questioned) shall take steps to check this declaration in records available for this purpose, or in records accessible to the public. In the case of foreign politically exposed persons, the establishment of the business relation and the completion of the deal are possible after the approval of the service provider's manager defined in the organisational and operational regulations. (The enhanced client due diligence for foreign politically exposed persons was introduced with the purpose of fighting corruption, and the new Money Laundering Act defines the politically exposed person category under the definitions.[37]) In the case of a busines relation created during the performance of *money exchange activity,* already in the case of exchanging 500,000 HUF or more, the service provider shall identify the client with the maximum data scope defined for client identification, and he shall verify the client's identity, shall perform the identification and verification of the beneficial owner, and shall record the data related to the deal. The deal documents should contain the data specifically determined in the new Money Laundering Act.[38]

The new Money Laundering Act introduces the enhanced customer due diligence as a completely new institution. The old act called for a stricter identification obligation for the money exchange offices only: service providers involved in money exchange (instead of the limit of 2 million HUF) were obliged to identify the client for exchange transactions of 300,000 HUF or more.[39] Therefore it is a completely new element in the new Money Laundering Act that enhanced client due diligence is applied for clients who do not show up personally, who have correspondence bank relations with service providers in third countries, and for foreign politically exposed persons. (The old act did not determine the category of politically exposed persons, so the introduction of this category is another important change.) Another new provision is the raising of the limit to 500,000 HUF in the case of money exchanging activities, and the extension of the scope of data to be displayed on the deal document.

CUSTOMER DUE DILIGENCE CARRIED OUT BY ANOTHER SERVICE PROVIDER

The new Money Laundering Act (in order to avoid repeated customer due diligence procedures that lead to business delays and loss of efficiency) allows for the acceptance of the results of customer due diligence carried out by another service provider. All service providers are entitled to accept the results of customer due diligence carried out by *financial service providers* (except for service providers involved in cash transfer and money exchange activities) (this is valid to customer due diligence carried out by financial service providers acting in the territory of the Republic of Hungary, in another member state of the European Union, or in a third country that satisfies certain conditions). Based on the new Money Laundering Act, *auditors, book-kepers, tax experts, tax advisors, lawyers and notary publics* are entitled to accept the results of customer due diligence carried out by a service provider involved in the same activity (again, this is valid for customer due diligence carried out by service providers acting in

the territory of the Republic of Hungary, in another member state of the European Union or in a third country that satisfies certain conditons). If the customer due diligence was carried out by a service provider who pursues his activities in a third country, then this service provider shall meet the following conditions: he is included in mandatory professional records; he applies customer due diligence and registration requirements defined in the new Money Laundering Act or requirements equal to that act, it is supervised in the way defined in the new Money Laundering Act or according to the same requirements, or its registered office is in a third country that stipulates the same requirements as the new Money Laundering Act.

Based on the new Money Laundering Act, the results of the customer due diligence performed by another service provider may be accepted *with the approval of the client:* in cases defined in the new Money Laundering Act, the service provider is entitled to forward the data required for customer due diligence (and a copy of the documentation, based on a written request) to another service provider with the approval of the affected client. As to the completion of the customer due diligence, the responsibility is on the service provider accepting the results of due diligence carried out by another service provider.

The old Money Laundering Act did not allow for the acceptance of the results of a due diligence carried out by another service provider, so this possibility introduced by the new act is an extremely important step ahead and an innovation for the completion of due diligence.

CUSTOMER DATA ACCOMPANYING FUNDS TRANSFERS

The new Money Laundering Act defines the provisions required for the satisfaction of directive No. 1781/2006/EC[40]. Owing to the directive format, there is no need to separately incorporate directive 1781/2006/ECt into the Hungarian legal regulations.

Directive No. 1781/2006/EC[41] transfers certain executive roles to the member states, so that the directive could be applied in the member states. The new Money Laundering Act appoints the authorities responsible for the fight against money laundering and terrorist financing in Hungary: the authority operating as a financial information unit (FIU[42]) and the Hungarian Financial Supervisory Authority. It also appoints the responsible authorities for the efficient checking of the meeting of the regulations and for imposing (supervisory bodies, in line with the new Money Laundering Act), which is also FIU for the National Bank of Hungary, and the Hungarian Financial Supervisory Authority for other service providers that belong to the scope of directive No. 1781/2006/EC. The new Money Laundering Act determines the rules of procedures. The responsible authorities shall efficiently check whether the provisions of directive No. 1781/2006/EC are met, and the sanctions should be efficient, proportionate, and of deterring force.[43]

In the proportion of the weight of the offence, the Hungarian Financial Supervisory Authority may take the steps determined in the new Money Laundering Act, and in the case of violating the directive or not satisfying it fully, the Authority may order the service provider to observe the provisions of directive No. 1781/2006/EC, or may forbid the completion of funds transfers during the existence of the illegal status.[44]

As to the sanctions, the FIU may not impose a fine on the National Bank, unlike on other service providers under its competence, so that the institutional independence of the central bank is not violated. Also, in connection with the National Bank, the FIU will not exercise its right to forbid the performance of funds trans-

fers during the existence of the illegal status. The reason for this is that the funds transfer activity of the central bank cannot be separated from other tasks of the central bank stipulated in the Act on the National Bank.[45]

When calculating the euro value of the amount defined by directive No. 1781/2006/EC, the official rate published by the National Bank on the day of receiving the funds transfer order is to be applied, and in the case of currencies not included in the official rate page of the National Bank, the rates included in the National Bank statement on the euro rates of these currencies, valid on the day of receiving the transfer order are to be used.[46]

In order to make the use of the new Money Laundering Act easier within the country, the new act defines that the term of "national identification number" in Hungary will mean the type and the number of the identification document for natural persons, and for legal entities and organisations without legal entity, it is the company registration number, other registration number or the number of the resolution about the creation of the legal entity.[47]

In the case of certain articles, directive No. 1781/2006/EC allows the member states to use provisions other than the basic rules, waiving provisions or stipulations making the use of the act easier, and these cases are also defined in the new act. In Hungary, service providers do not use directive No. 1781/2006/EC for funds transfers within a given member state when the transfer goes to an account of the beneficiary allowing for the payment for goods or services in the following cases:

a the payment service provider of the beneficiary belongs to the scope of the obligations defined in directive No. 3 of EU on money laundering and terrorist financing;

b the payment service provider of the beneficiary is able to follow the funds transfer with a unique reference number – through the beneficiary – from the legal or natural entity who or which entered into an agreement with the beneficiary for the supply of goods and services; and

c the transferred amount does not exceed EUR 1,000. Among others, this provision allows for the easier management of the post office cash transfer activities, or deposits made at the cash desks of banks, to be credited to an account managed by the bank or to be sent to another bank, in the supply of goods and services.

THE REPORTING OBLIGATION

One of the key elements of the regulations of the prevention of money laundering and financing terrorism is the *reporting obligation* for service providers. From the aspect of the service provider, a report means a sensation detected on the basis of an internal controlling and information system operated by themselves. This sensation means data, a fact or a circumstance that refers to money laundering or the financing of terrorism from the aspect of the client, which are indicated to FIU.[48]

Pursuant to the new Money Laundering Act, the service provider shall immediately report to the FIU any *data, facts or circumstances that refer to money laundering or the financing of terrorism.* The report made by the service provider must contain the data recorded in the course of the due diligence performed on the client, as well as the data, fact or circumstance that refers to money laundering or the financing of terrorism.[49]

As regards the *method* of reporting, the new Money Laundering Act allows the service provider to report in the form of a protected electronic message, besides doing so by fax, or postal delivery by using the extra service of return receipt.[50] Furthermore, as part of their closing provisions, the organisation renders reporting in the form of a protected electronic message exclusive with effect from December

15, 2008, thus also accelerating the process of reporting, as well as supporting FIU's work related to the recording of, and investigation into these reports.[51]

If the service provider operates in an organisational form, the report that it files will reach the FIU through a *person appointed* by the service provider to forward the report. Besides removing the appointed person from the service provider's organisation, the protection of the administrator who detects the reported order is also taken care of by the provision according to which the reporting person will not be held liable for the report even if the latter turns out to be unsubstantiated and if this person has filed the report in good faith. Exemption from liability refers to both the administrator who detects the reported order and the appointed person.[52]

In the new Money Laundering Act, different rules for the lawyers and notaries public are defined with regard to the case of reporting.[53]

In the case of the occurrence of any data, fact or circumstance that refers to money laundering or the financing of terrorism, the new Money Laundering *Act prohibits the performance of the order until the report is forwarded by the service provider* (the appointed person) to the FIU.[54] The purpose of this *inhibition* is to prevent the performance of the order related to which data, a fact or a circumstance referring to money laundering or the financing of terrorism occurs, and thus, potentially prevents the movement of the funds as well. Two cases are an exemption to this prohibition: if the performance of the transaction cannot be prevented by filing the report prior to the performance of the transaction, or if reporting prior to the performance of the transaction would jeopardize the monitoring of the actual owner.[55]

The new Money Laundering Act prescribes a general *feedback obligation* to the FIU in order to ensure that the service providers are notified of the successful utilisation of the report filed to FIU. This information, which appears on the FIU's internet webpage every six months also contains FIU's proposals on increasing the efficiency of the report.[56]

We have identified two differences between the old and the new Money Laundering Act as to the content of the report. On the one hand, under the new Money Laundering Act the report already contains the data extended in accordance with the provisions on client due diligence, on the other hand, the report made by the service provider also extends to the financing of terrorism. The method of reporting was defined differently by the old Money Laundering Act as compared to the new Money Laundering Act. Under the old Money Laundering Act, the report by the service provider could be made in person, by using a form, by fax or by postal delivery.[57] Furthermore, it is to be emphasized that the old Money Laundering Act contained no provisions as to the inhibition of the performance of the transaction order, or the feedback obligation.

The provisions described above primarily referred to the service provider. The new Money Laundering Act, under the subtitle "reporting obligation", as a way of releasing the secrecy provisions defined in other laws, regulates *FIU's activities related to data forwarding:* the application for supplementary information, the enquiries at other authorities and data transmission to a foreign FIU.[58]

Enquiries for supplementary information mean data supply at the request of FIU. The FIU may request data from the service provider, and the service provider is obliged to provide FIU with the information that contains bank, securities, insurance, fund-, or employer's pension secrets related to the client, or in the case of postal services, information that contains business secrets. Enquiries for supplementary information may occur in two different cases. On the one hand, such *an enquiry may emerge when, in the course of an*

investigation conducted in its own competence, the FIU asks the service provider that files the report for the accurate details of the reported data, fact or circumstance, or if the FIU requests information from another service provider mentioned in the report.[59] On the other hand, such an enquiry may take place when the request for supplementary information becomes necessary *in the course of the operation of a foreign FIU and the foreign FIU* sends a written enquiry. The condition to both scenarios is that data, a fact or a circumstance that refers to money laundering or the financing of terrorism should occur, i.e. that in the course of the investigations conducted on the basis of the reports in the FIU's own competence or in the competence of a foreign FIU, a need for a further piece of data should emerge.[60] In order to ensure a more complete release of the secrecy provisions, the specific laws referring to the individual categories of service providers and the types of secrets have been amended by the new Money Laundering Act.[61]

With regard to the fact that the new Money Laundering Act, similarly to the institution of enquiries for supplementary information, first of all represents the approach of information security, as regards the enquiries to other authorities, only the *enquiries to the tax authority and the customs authority* are regulated. Under the new Money Laundering Act, the FIU is entitled to explore the tax or customs secret related to the client, to use this in its investigation and forward it in line with the rules provided by the new Money Laundering Act. In line with these provisions, the specific laws have also been amended.[62]

The new Money Laundering Act regulates *communication between the FIU and the foreign FIU's* both directly and indirectly. The FIU may request supplementary information from the service provider in the course of an investigation conducted by a foreign FIU when any data, facts or circumstances referring to money laundering or the financing of terrorism occur. The service provider may not refuse the provision of data and information. The new Money Laundering Act provides in a similar structure for the enquiries at authorities as well. Furthermore, the new Money Laundering Act also provides on the aspect of data transmission when the FIU provides information to a foreign FIU. Although the data supply to a foreign FIU is not regulated expressis verbis, two fundamental scenarios are to be distinguished: as a result of the enquiry made by the foreign FIU, we are talking about the transmission of data contained by the database that collects the reports in the first case, while in the second case, the FIU forwards the result of the enquiry for supplementary data, or the enquiry made to another authority. The new Money Laundering Act directly stipulates that any data or information can only be supplied to a foreign FIU if the latter is able to guarantee appropriate legal protection, which is at least equivalent to the Hungarian regulation with regard to the management of data and information that have been supplied to it.[63] The specific laws that regulate the individual categories of service providers and types of secrets will only provide exemption from the obligation of keeping bank, securities, insurance, fund or employer's pension secrets, as well as business secrets in the case of postal services if the FIU's enquiry for supplementary information is supplied with a secrecy clause signed by the foreign entity that files the data request (foreign FIU). A similar amendment was effected for the forwarding of tax and customs secrets to a foreign FIU.[64]

The request for supplementary information was provided for in the old Money Laundering Act as well.[65] However, no provisions were made in the old Money Laundering Act as to the enquiries made to tax and customs authorities. Furthermore, it can be concluded that in the old Money Laundering Act, the enquiry for supplementary information and the forwarding

of the results of enquiries to tax or customs authorities to a foreign FIU are not tied to the condition that the data should have appropriate protection, which is at least equivalent to the protection provided by the Hungarian legal regulations, in the country of the FIU that receives the information.[66]

It is prescribed for the service provider by the new Money Laundering *Act that the transaction order should be suspended when the FIU thinks that immediate action should be taken to control the data, fact or circumstance that refers to a detected act of money laundering or the financing of terrorism.* After the suspension, the service provider should immediately report to the FIU in order for the latter to be able to investigate how well-founded the report is. The FIU examines the level of substantiality of the report in one working day in the case of a domestic transaction order, while in two work days in the case of cross-border transaction orders. The FIU, on the basis of this investigation, will notify the service provider in a written form, on having taken measures in line with the Criminal Procedure Act on the basis of which the transaction order cannot be performed, or will notify the service provider on that it has taken no action in compliance with the Criminal Procedure Act. In the latter case, as well as in the case when the deadline available for the FIU (one or two work days) has elapsed without any notifications, the service provider will be obliged to perform the transaction order. The deadline available for the FIU to investigate into the substantiality of the report was defined by taking the laws on cashflow into account. Reports after the suspension of the transaction can be made in the form of a protected electronic message or a fax, or preliminarily on the phone.[67]

With regard to the suspension of the transaction order, the new Money Laundering Act starts out from the provisions of the old Money Laundering Act, but it also goes beyond them, as this obligation exclusively referred to the financial service providers under the old Money Laundering Act. It is a further difference that the duration of suspending the transaction order was defined by the old Money Laundering Act in a shorter period, i.e. in 24 hours.

Under the new Money Laundering Act, if the *organisation that performs official supervision becomes aware of data, a fact or a circumstance that serves as the basis for a report,* then the FIU should immediately be informed. This provision includes independent notification (quasi report) by the organisation conducting supervision and the information to be provided by FIU as a response to the enquiry from the organisation performing supervision (quasi enquiry for supplementary information).[68]

Under the new Money Laundering Act, *the FIU may exclusively use the information that it has become aware of* on the basis of the report forwarded by the service provider or the enquiry requested by the service provider, and subsequently performed for combating money laundering and the financing of terrorism, as well as missing the performance of reporting obligations related to terrorist acts, unauthorised financial activities, money laundering, or the exploration of the crimes of tax evasion, embezzlement, fraud and misappropriation, or this information may be forwarded for these very purposes to another investigation authority, the prosecutor, the national security services or the foreign FIU. The FIU is obliged to keep so-called data transmission records of the information thus forwarded, with the data content specified in the new Money Laundering Act, and these records should be preserved for five years from the forwarding of the information.[69]

The use of reports by the FIU was defined by the old Money Laundering Act in a narrower scope than the one specified by the provisions of the new Money Laundering Act, since ORFK (the National Police Headquarters) can exclusively use the information received from

the service provider under the old Money Laundering Act for the purposes of combating money laundering and performing the tasks arising from this goal. The ORFK's obligation to preserve data was defined by the old Money Laundering Act in ten years.[70]

THE PROHIBITION OF DISCLOSURE

The regulation on the prohibition of disclosure has been significantly amended by the new Money Laundering Act. Pursuant to the new Money Laundering Act, *the scope of the prohibition* includes reporting, as well as the disclosure of data supplied as a response to the enquiry by the FIU, the contents of these two, the suspension of the execution of the transaction order, the reporting person, as well as the fact that a criminal procedure has been launched against the client. *The subject of the prohibition* includes the service provider filing the report and the FIU. The observance of the prohibition means confidentiality (the refusal to provide information), as well as ensuring that the scope of prohibition remains a secret. The prohibition of disclosure has been significantly extended by the provisions of the new Money Laundering Act but the number of *exceptions from the prohibition of disclosure* has also increased. Thus, the prohibition of disclosure does not refer to providing information to the organisation that performs supervision, or to the investigation authorities that conduct the criminal procedure. This exception primarily refers to the service provider but it also means an obvious exception for the FIU.[71]

The further exceptions from the prohibition of disclosure refer to special cases. Thus, the prohibition of disclosure does not refer to the financial conglomerates, the special network of the individual non-financial service providers, or to such cases when information which refers to the same client and same transaction order is disclosed to service providers within the same profession.[72]

Taking it into account that the observance of the prohibition of disclosure is also stipulated by the new Money Laundering Act for the FIU's, further exceptions arise, to which the prohibition of disclosure is not applicable, although they are not explicitly listed as exceptions to this prohibition. Such a case is represented by supplementing information when the FIU requests supplementary information from a service provider which is affected by the report but it was not this very service provider that filed the report.

The prohibition of disclosure was defined by the old Money Laundering Act exclusively as an obligation for the service provider. Thus, the service provider (if it is an organisation, the manager, employee or helping family member of the service provider and the appointed person) shall not disclose any information on the performance of the report, the content thereof and the identity of the appointed person to the client, a third party or an organisation. The exceptions from the prohibition of disclosure were defined more simply by the old Money Laundering Act. Thus, the limitation of the prohibition of disclosure obviously did not refer to ORFK (National Police Headquarters), which received the report. Furthermore, in the case of financial service providers, this limitation did not refer to HFSA (the Hungarian Financial Supervisory Authority), or in the case of running a casino, to the state tax authority, assuming that this information supply obligation belonged to the responsibilities of HFSA and the state tax authority as organisations that perform supervision.[73]

RECORD-KEEPING, STATISTICS

The new Money Laundering Act requires the service provider to keep records of the information disclosed as a result of the client's due

diligence, for the purpose of utilisation by the FIU or the organisation that performs supervision. Pursuant to the new Money Laundering Act, the service provider shall preserve, in the records that it keeps, all data and deeds that it has come to possess in the course of client due diligence measures, and the copies thereof, as well as all deeds that certify the data supply on the basis of reporting or enquiries to the FIU, as well as documents that certify the suspension of the transaction, and the copies thereof, for eight years from the time of data capturing, reporting or suspension. This deadline is to be calculated from the termination of the business relationship and the execution of the transaction order.[74]

A further obligation was defined for the financial service providers that fall within the scope of the new Money Laundering Act, as well as for the lawyers and notaries public, namely that their records shall also contain those transaction orders which were executed in cash (Hungarian Forints or foreign currency) reaching or exceeding 3.6 million HUF.[75]

The new Money Laundering Act is based on the system of the old Money Laundering Act with regard to meeting the data capturing and record-keeping obligations. In the old Money Laundering Act, data capturing and record-keeping obligations were prescribed with regard to the data and deeds recorded in the course of meeting the identification obligation, or the currency conversion transaction, and the copies thereof, as well as the deeds certifying the filing of the report and the copies thereof[76]. However, the deadline for the preservation of the data and documents was reduced from 10 to 8 years. Under the old Money Laundering Act, the financial service provider was obliged to record the client's identification data for transaction orders which were executed in cash reaching or exceeding 2 million HUF.[77] The relevant provision of the new Money Laundering Act will be modified as consequence of increasing the limit, and will be extended to other service providers as well, including the voluntary mutual funds, lawyers and notaries public in the case of those transaction orders which were executed in cash reaching or exceeding 3.6 million HUF.

The keeping of comprehensive statistical records has a key role in combatting money laundering and the financing of terrorism, the aim of which is to enable the competent authorities to control the efficiency of their relevant systems and procedures.

The keeping of statistical records is assigned to the FIU by the new Money Laundering Act, as the majority of data that shall be collected under the law is available to the FIU and the investigation authorities.[78]

As regards the data[79] not available to the FIU or the investigation authorities, the Chief Prosecutor's Office and the court making final decisions are obliged by law to forward the predefined data to the FIU on an annual basis. The law stipulates the accurate contents of the statistical records[80] and FIU annually discloses these statistics on its internet homepage.

It was exclusively the service provider's data capturing and preservation obligations that were regulated by the old Money Laundering Act. The provision on the development and keeping of comprehensive statistical records is a substantial change in the new Money Laundering Act.

MEASURES TO BE TAKEN IN CASE OF BRANCH OFFICES AND SUBSIDIARIES IN THIRD COUNTRIES

Under the new Act on Money Laundering financial service providers ensure that their branch offices and subsidiaries in third countries apply customer due diligence and measures and keep records equivalent to those prescribed in Act on Money Laundering, and pro-

vide information on their internal control and information systems and the content of the internal regulations. Where the legislation of the affected third country does not permit this, the financial service provider informs the competent supervisory body thereof, which sends on such information to the Minister of Finance with immediate effect. The Minister of Finance then informs the Commission and the Member States about these cases[81]. Where the legislation of the third country does not permit the application of such equivalent measures regarding customer due diligence and record keeping, the service provider takes additional measures and prepares an in-depth analysis about the branch or subsidiary in the third country.[82] These provisions aim at the application of uniform international and European Union standards in fighting money laundering and terrorist financing, if applicable.

The application of uniform measures, if applicable, for branches and subsidiaries is a new element in the Money Laundering Act in order to establish a uniform process. The old Money Laundering Act did not include such provisions.

INTERNAL CONTROL AND INFORMATION SYSTEM, SPECIAL TRAINING PROGRAMME

The new Money Laundering Act extended the requirement of operating an *internal control and information system* prescribed by the old Money Laundering Act to all service providers falling within the scope of this Act.[83]

When there is at least one employee (employed under a contract of employment), the new Money Laundering Act stipulates that an internal control and information system should be operated, in case the employee is effectively involved in the provision of the activities described by the Act. The internal control and information system provides for customer due diligence, reporting and record keeping in order to prevent business relations or transactions enabling or implementing money laundering or terrorist financing.

Under the old Money Laundering Act this obligation affected only service providers employing at least ten persons (as employees).[84] The old Money Laundering Act required that providers with more than 10 employees should operate an internal and information system capable of identifying customers in order to prevent business relations or transactions enabling or implementing money laundering or terrorist financing. The new Money Laundering Act modifies this provision, extends the scope of service providers with regard to the application of this provision, and stipulates that all providers involved in such activities or employing persons participating in the provision of activities described by the Act are required to operate an internal and information system. Instead of client identification, the new Money Laundering Act focuses on customer due diligence and record keeping in connection with the operation of this system.

The new Money Laundering Act regulates the *training of employees* in more detail. The objective of such training is to make the affected employees of the institution aware of the regulations developed in order to prevent and hinder money laundering or terrorist financing. For this reason, the Act provides for the participation of the employees in special training programmes, where participants will understand suspicious cases (typologies) and procedures to be followed in order to recognise such cases. The institution shall ensure that the employee understands the legal provisions regarding money laundering or terrorist financing, recognises business relations or transactions enabling or implementing money laundering or terrorist financing, and acts in accordance with the provision of this Act when any

suspicious data, fact, circumstance occurs indicating money laundering or terrorist financing. Having regard to the close link between the new Money Laundering Act and the separate act prescribed by the European Union on the implementation of restrictive financial and asset-related measures[85], the provisions of this act should also be scrutinised. Such special training programmes may be conducted within the organisational structure of the institution or externally (when training is provided by an external company).

Under the old Money Laundering Act, the service provider ensured that the employers understood the legal provisions regarding the prevention of money laundering or terrorist financing, understood suspicious transactions, cases and situations of money laundering, business relations or transactions enabling money laundering and understood the procedures to be implemented in cases listed therein.[86] In addition to the procedure in line with the new provisions, the typology of the terrorist financing, and information supporting the prevention of money laundering or terrorist financing, the new Money Laundering Act, as a significant new element, stipulates that the affected persons should be aware of the procedure described in a separate act prescribed by the European Union on the implementation of restrictive financial and asset-related measures. Furthermore, the training should also cover knowledge based on which one can distinguish the suspicion of terrorist financing (e.g. persons listed by the United Nation) and the related procedure and the procedure described in a separate act prescribed by the European Union on the implementation of restrictive financial and asset-related measures. The service provider is also required to organise special training programmes for its employees carrying out activities described by the Act. However, the Act does not provide for the conditions and the details of such training programmes.

INTERNAL REGULATIONS

The new Money Laundering Act keeps the requirement of establishing regulations.[87] Under the new Money Laundering Act a *Decree of the Ministry of Finance* stipulates the mandatory layout of the internal regulations (regulations)[88]. If the regulations include all contents prescribed by the act and the implementing decree, and they do not violate legal regulations, the supervisory body shall approve the regulations. The supervisory body may examine only the existence of the mandatory content stipulated by the decree of the Ministry of Finance. The supervisory body issues sample regulations as a non-mandatory recommendation for drawing up the regulations. The sample regulations are prepared by the supervisory body in co-operation with the FIU with the consent of the Minister.[89]

Unlike the obligation of preparing sample regulations concerning attorneys and notaries, the supervisory bodies[90] prepare such sample regulations with the consent of the Minister of Finance as a non-obligatory recommendation.

The new Money Laundering Act prescribes a different procedure for independent attorneys, one-person legal offices and law firms operating with more attorneys or employed attorneys.[91]

Due to the peculiarities of the profession, the new Money Laundering Act prescribes a different obligation for notaries regarding the preparation of regulations.[92]

The new Money Laundering Act prescribes transitional measures for the review and preparation of the service providers' regulations.[93]

The old Money Laundering Act regulated the obligation of preparing regulations and the content requirements on the level of acts, furthermore it stipulated that a body exercising government or professional control of the service providers issues guidelines, sample regulations for the preparation of the regulations

in co-operation of the National Police Headquarters (ORFK) with the consent of the Minister of Finance.[94] As a significant change to the old Money Laundering Act, the new Money Laundering Act prescribes sample regulations as a non-obligatory recommendation and in the case of notaries, it prescribes guidelines. Another significant element in the new Money Laundering Act: the Minister of Finance is authorised by the Act to define the mandatory contents of the regulations. The old Money Laundering Act prescribed that the Minister of Finance developed guidelines for service providers with no government or professional supervision[95] in co-operation with the ORFK for the preparation of the regulations, which were to be published in the Financial Gazette [Pénzügyi Közlöny].[96] By extending the coverage of the new Money Laundering Act, a special requirement for the preparation of regulations for traders in goods emerges. (When submitting the regulations, the traders in goods declare that they are ready to satisfy the obligations set forth in the new Money Laundering Act and accept cash payments of over 3.6 million HUF.)[97]

SUPERVISION, MEASURES

The new Money Laundering Act has laid down detailed rules regarding the provision of supervisory activities in order to fight money laundering and terrorist financing. Each type of service providers are supervised by the respective supervisory body in accordance with their activities. *The supervisory body is required to review and ensure the observance of the provisions of the new Money Laundering Act.* Financial service providers (with the exception of service providers engaged in money processing) are supervised by the Hungarian Financial Supervisory Authority, service providers engaged in money processing by the National Bank of Hungary, providers operating casinos by the state tax authority, auditors, attorneys and notaries by the competent association.[98] In case of traders in goods and service providers trading in precious metals or articles made of precious metals and/or stones (precious metal traders) the conformity with the provisions of the new Money Laundering Act is ensured by the commercial authority. Unlike those listed above, providers involved in property-related activities, book-keeping (accounting) activities, tax consulting, certified tax consulting, tax advisory activities do not fall under the scope of state or professional supervision, therefore, in order to ensure the observance of the provisions of the new Money Laundering Act, these service providers are supervised by the FIU.[99]

As a main rule, *the procedural rules for providing supervision* – with the exceptions laid down in the new Money Laundering Act – are specified by the provisions of Act CXL of 2004 on the General Rules of Administrative Proceedings and Services regarding administrative proceedings, and the provisions of Act CXL of 2004 on the General Rules of Administrative Proceedings and Services and Act CXXXV of 2007 on Government Control of Financial Institutions regarding the Hungarian Financial Supervisory Authority. The Chamber of Hungarian Auditors[100], and the territorial chambers in case of lawyers and notaries, may act exclusively in accordance with the provisions of the specific acts.[101]

In the event that the provisions of the new Money Laundering Act are violated or the obligations set forth in the new Money Laundering Act are not fully met, the Hungarian Financial Supervisory Authority, the National Bank of Hungary and the state tax authority, the commercial authority and the FIU may implement *the measures*[102] laid down in the new Money Laundering Act. Imposing fines is the most serious of the *measures* the supervisory body may take. Fines may be imposed as a sole mea-

sure or may be accompanied by other measures. The minimum and maximum amount of the fine are defined taking the type of the service provider into account. The Hungarian Financial Supervisory Authority may impose fines in the amount of 200 thousand HUF to 5 million HUF, while all other supervisory bodies – with the exception of the associations – may impose fines of 100 thousand HUF to 1 million HUF.[103] The new Money Laundering Act specifies the purposes the revenues from fines imposed by the state tax authority, the commercial authority and the FIU may be spent on.[104] These purposes support the combat against money laundering and terrorist financing.

When comparing the provisions of the new Money Laundering Act with the old act, you will see that the designation of the supervisory bodies has slightly changed. Firstly, traders in goods were not covered by the old Money Laundering Act. Secondly, in the case of traders in goods, as well as service providers engaged in the trade of precious metals, the subject of the transaction is an asset of high value; therefore it is not justified to appoint different supervisory bodies for these two types of service providers. In line with the above, under the new Money Laundering Act, service providers engaged in the trade of precious metals are also supervised by the trade supervisory body. Thirdly, supervisory activities earlier carried out by the ORFK – with the exception of service providers involved in trading precious metals – were transferred to the FIU operating within the Hungarian Customs and Finance Guard. The old Money Laundering Act went into details concerning the supervisory activities only in the case of the ORFK, and even in this case used the term of "inspection".[105] In the course of inspecting the activities of those service providers not falling under the scope of state or professional supervision, the could act in accordance with the provisions of the Act on State Administration procedures with the exceptions laid down in the old Money Laundering Act.[106]

Bringing the new Money Laundering Act into force, transposing the international standards into the Hungarian law and implementing these by the authorities and the law enforcement entities will create compliance with internationally approved criteria, procedures, and as a consequence Hungary could effectively fight money laundering and terrorism.

Notes

[1] Directive No. 2005/60/EC (26 October 2005) of the European Parliament and Council on the prevention of the use of financial systems for the purposes of money laundering and terrorist financing. European Union Official Journal, No. L 309, 25. 11. 2005

[2] Directive No. 2006/70/EC (1 August 2006) of the Committee on the term of "politically exposed persons", and on the technical requirements of simplified customer due diligence procedures and on exemptions provided on the basis of occasional or very limited financial activity, on the definition of executive measures regarding the European Parliament and Council directive No. 2005/60/EC. European Union Official Journal, No. L 214, 4. 8. 2006

[3] The scope of the directive covers certain persons, institutions and activities not covered before, and pays special attention to cash payments that involve high risks from the aspect of money laundering and terrorist financing (all merchants accepting cash payment over EUR 15,000 will be covered.). Among others, the directive clarifies the definition of beneficial owner, the customer due diligence and reporting obligation for suspicious cases (in addition to the suspicion of money laundering, suspected terrorist financing is covered, too). The directive defines the conditions of accepting a client identification carried out by a third person, and helps the checking of the efficiency of the rules with data collection provisions of statistical purpose, and – as a new element at community regulation level – introduces the supervi-

sion/audit obligation for member states. The majority of the directive is based on risk-based approach.

4 Act XV of 2003 on the prevention of money laundering

5 Criminal Code, Article 261, 303–303/A

6 New Money Laundering Act, Article 1, Section (1)

7 New Money Laundering Act, Article 1, Section (3), Article 33, Section (4), Article 45, Section (6)

8 New Money Laundering Act, Article 1, Sections (4)–(5)

9 New Money Laundering Act, Article 2, Article 22 (Decree No. 1781/2006/EC was executed in Act No. CIII of 2007 on the modification of Act No. XV of 2003 on the prevention and combating of money laundering, and this act lost effect when the new act came into force.)

10 Old Money Laundering Act, Article 1

11 New Money Laundering Act, Article 6

12 New Money Laundering Act, Article 7

13 In case of natural persons, it is the name, address, nationality, the type and number of identification document, and in the case of foreign natural persons, the place of residence in Hungary; for legal entities or organisations without legal entity, it is the name and the short name, the address of the regsitered office, and for organisations based abroad, the address of their plant in Hungary, company registry number or other registration number.

14 In case of natural persons, the place and date of birth, mother's name; for legal entities or organisations without legal entity, it is the main scope of activity, the names and positions of the persons authorised to represent the organisation, and the data for the identification of the delivery representative.

15 Old Money Laundering Act, Article 4, Article 5, Section (1)

16 New Money Laundering Act, Article 8

17 Name, address, nationality

18 Type and number of identification document, place of residence in Hungary for foreign natural persons, place and date of birth, mother's name

19 Old Money Laundering Act, Article 6

20 New Money Laundering Act, Article 9

21 In case of business relation, the type, subject and term of the contract; in case of deals, the subject and the amount of the order.

22 Circumstances of performance (place, time, mode)

23 Old Money Laundering Act, Article 5, Section (1)

24 New Money Laundering Act, Article 10

25 Old Money Laundering Act, Article 5, Sections (2)–(5)

26 New Money Laundering Act, Article 11

27 The service provider may carry out the verification of the identity of the client and the beneficial owner during the establishment of the business relation, too (before the completion of the first deal), if that is required to avoid an interruption in the normal business activity, and if the probability of money laundering or terrorist financing is low. In case of insurances belonging to the life insurance branch, the insurance company may carry out the verification of the identity for the beneficiary and for all the parties who are entitled to the services of the insurance company according to the insurance contract and whose identity is not known at the time of signing the contract, at the time of signing the contract, even after the establishment of the business relation (until the payment, at the latest). The service provider entitled to open bank accounts (and the Voluntary Mutual Insurance Fund entitled to open individual accounts) is entitled to open the acocunt, if they make sure that until the completion of the verification of the identity of the client and the beneficial owner, the client, his agents, the authorised signatories and the representatives may not perform any transactions (the client and the beneficiary may not get the service).

28 New Money Laundering Act, Article 3, point *v)*, subpoint *vc)*

29 Old Money Laundering Act, Article 3, Sections (1) and (5)

30 New Money Laundering Act, Article 42

31 Old Money Laundering Act, Article 16, Section (9)

32 Involved in financial services, supplementary financial services, investment service activity, supplemen-

tary service to investment service activity; insurance, insurance brokering and employer pension service activity (in case of non-life insurances); commodity exchange services; post office funds turnover mediating activity, post office cash transfers, receipt and delivery of domestic and international post office transfer orders; acting as voluntary mutual insurance fund.

33 New Money Laundering Act, Articles 12–13, Article 43, Section (1)

34 Old Money Laundering Act, Article 3, Sections (6) and (12), Article 3/A, Section (3)

35 New Money Laundering Act, Article 14–17

36 The service provider shall make an analysis (in order to assess and evaluate the tools applied against money laundering and terrorist financing); he shall make sure that the service provider with a registered office in a third country has verified the identity of the client having a direct access to the correspondent account, and shall continuously monitor this business relation; he shall make sure that the service provider with a registered office in a third country is able to provide the client due diligence data on request; he shall obtain the approval of the manager appointed in the organisational and oparational regulations for the establishment of the correspondence bank relation.

37 A natural person with residence address abroad, who performs an important public task or preformed an important public task within one year before the completion of the client due diligence, and the close relative of such person, or someone he has close relation with. (The requirements of the individual elements of these terms are defined in detail in the new Money Laundering Act, Article 4.)

38 In case of natural persons, the type and the number of the identification document containing the name and address (for foreign natural persons, the place of residence in Hungary); for legal entities and organisations without legal entity, the name, registered office and company register number, or other registration number.

39 Money Laundering Act, Article 5, Section (7)

40 European Parliament and Council directive No. 1781/2006/EC (15 November 2006) on customer data accompanying money transfers. The European Union Official Journal, No. L 345, 08. 12. 2006

41 The primary objective of directive No. 1781/2006/EC is that the person sending the money transfer could be traced back, therefore payment service providers under its scope are obliged to indicate precise and proper data about the customer on the money transfers and in the related forwarded messages, and this data should move together with the money transfer all the time, in the payment system. The scope of decree No. 1781/2006/EC covers credit institutions and other institutions involved in money transfers, too, such as companies involved in cash transfer services and the post office. The term of money transfer has been defined in a wide sense, so it covers the traditional bank transfers, deposits made at the bank cash desks – and credited to an account managed by the bank, or sent to another bank -, post office and other money transfers, and the money transfers realised through the mobile service providers. Directive No. 1781/2006/EC defines different rules for data to be recorded, checked and forwarded about transfers initiated from accounts, and transfers not initiated from accounts (including transfers below and over EUR 1000, too), and for transfers within the European Union and outside the territory of the European Union. The first case means forwarding at least one piece of data, the latter case means forwarding 3 pieces of data related to the given transaction. In order to make sure that data can be traced back, the payment service provider shall keep all the data for 5 years. The data may be used only for the prevention, examination or investigation of money laundering or terrorist financing. Directive No. 1781/2006/EC contains some stipulations about the addition of incomplete or missing data.

42 The term “pénzügyi információs egységként működő hatóság” comes from the English term “financial intelligence unit” (or FIU). The FATF recommendations laying down the requirements of money laundering and terrorist financing, and the directive also stipulates that each country shall set up a central FIU with national competence, i.e. a “financial intelligence unit”.

43 New Money Laundering Act, Article 22

44 New Money Laundering Act, Article 22, Sections (5)–(6), Article 31, Section (1)

45 New Money Laundering Act, Article 22, Section (7)

46 New Money Laundering Act, Article 22, Section (8) (The direct scope of directive No. 1781/2006/EC does not allow for the definition of HUF amounts

in the new Money Laundering Act for the limit values of the regulations.)

47 New Money Laundering Act, Article 22, Section (9)

48 The National Police Headquarters (ORFK) were appointed, among others, by the old Money Laundering Act as the organisation responsible for receiving reports. However, a name that defines a new set of responsibilities is applied by the new Money Laundering Act. Pursuant to the old Money Laundering Act, a unit established within ORFK's organisation performed these tasks, then, simultaneously to the new Money Laundering Act's taking effect, this group of responsibilities was transferred to the Customs and Excise Guard. Under the new Money Laundering Act, the authority operating as a financial information unit is a separate organisational unit of the customs office performing the tasks of the financial information unit, defined in a separate law. This specific law is government decree No. 314/2006. (XII. 23.) on the organisation of the Customs and Excise Guard, as well as the appointment of the individual bodies, based on Note e), Section 7 of which it is the Central Prosecution Commandership of the Customs and Excise Guard whose scope and responsibility include the performance of tasks that belong to the authority operating as the financial information unit defined in the Act on the Prevention and Combating of Money Laundering and the Financing of Terrorism.

49 New Money Laundering Act, Article 23, Section (1)

50 Considering that the time elapsing between the making of a report by fax or postal delivery and the reception of the report by the FIU may jeopardize the efficiency of the processing of the report, the new Money Laundering Act maintains the institution of preliminary reporting on the phone during the one-year transitional period. The necessity of preliminary reporting on the phone is decided by the service provider. [Section (3), Article 23 of the new Money Laundering Act]

51 New Money Laundering Act, Article 44, Section (1)

52 New Money Laundering Act, Article 23, Section (9)

53 The report shall be made by the lawyer or the notary public at the district chamber, and it shall immediately be forwarded to the FIU by the person appointed by the chairman of the district chamber. These differing provisions were specified with regard to the highly confidential nature of the activities carried out by the lawyers and the notaries public.

54 The inhibition of the transaction order differs from the institution of suspending the transaction order (Article 24 of the new Money Laundering Act, Article 9 of the old Money Laundering Act) in that, while in the first case the transaction order is not performed by the service provider until the report is made, the performance of the transaction order is suspended until a statutorily defined date after reporting in the latter case.

55 New Money Laundering Act, Article 23, Sections (4)–(5)

56 New Money Laundering Act, Article 23, Section (10)

57 Old Money Laundering Act, Article 8, Section (7)

58 When taking account of the responsibilities of the authority operating as a financial information unit (FIU) defined under the new Money Laundering Act, it can be concluded that the new Money Laundering Act, similarly to the old Money Laundering Act, does not explicitly provide on FIU's responsibilities but only defines the scope of its tasks, which are first of all approached from an information security aspect. Both the ORFK (the National Police Headquarters) and the FIU perform their activities aimed at combating money laundering in their crime prevention authority. For ORFK, this background law is Act XXXIV of 1994 on the Police, while the same function was fulfilled by Act XIX of 2004 on the Customs and Excise Guard for the FIU. The authority acting in its scope of crime prevention is entitled to apply at economic associations and other authorities, the performance of which requests the economic association or other authority in question may not refuse unless they have a secrecy obligation provided for by a specific law. The information security approach represented by both the old and the new Money Laundering Act starts out from these fundamentals, and thus, focuses on exemption from keeping economic secrets, tax and customs secrets.

59 An example for requesting supplementary information from a service provider other than the one which makes the report is contacting the credit institution that keeps the target account in the case of reporting a bank transfer.

60 New Money Laundering Act, Article 23, Section (6)

[61] New Money Laundering Act, Articles 46, 47 and 54

[62] Act XCII of 2003 on the Rules of Taxation, as well as Act CXXVI of 2003 on the Execution of the Community Customs Law were amended by the new Money Laundering Act. We witness one-way data movement here, as the information provided by the FIU in the course of the enquiry cannot be used by either the tax authority or the customs guard in the state administration procedure.

[63] New Money Laundering Act, Article 23, Section (8)

[64] New Money Laundering Act, Articles 46, 47, 49, 50 and 54

[65] Old Money Laundering Act, Article 8/A

[66] Old Money Laundering Act, Article 8/A, Section (2)

[67] New Money Laundering Act, Article 24

[68] New Money Laundering Act, Article 25

[69] New Money Laundering Act, Article 26

[70] Old Money Laundering Act, Article 10, Sections (2)–(3)

[71] New Money Laundering Act, Article 27, Sections (1)–(2)

[72] The prohibition of disclosure does not apply to data transfer carried out under supervision on a consolidated basis and supplementary supervision in the case of conglomerates, disclosure between businesses in third countries, disclosure between businesses in Member States or third countries, where requirements equivalent to those specified in the new Money Laundering Act are applied for businesses and these businesses are supervised in their compliance with those requirements. The prohibition of disclosure does not apply to the disclosure of data between service providers engaged in book-keeping (accounting) activities, tax consultancy, certified tax consultancy, tax advisory activities and service providers involved in legal, notary services in Member States and third countries, where requirements equivalent to those specified in the new Money Laundering Act are in place, if the affected persons perform their professional activities within the same legal entity or a network. Primarily international audit companies and law networks of law firms are exempted from the prohibition of disclosure. The last exception to the prohibition of disclosure applies to financial service providers, service providers engaged in book-keeping (accounting) activities, tax consultancy, certified tax consultancy, tax advisory activities and service providers involved in legal, notary services. This exception may be applied only when
(1) information is related to the same customer and the same transaction,
(2) at least one of the two or more affected service providers carry out activities covered by the new Money Laundering Act and the other service providers are established in a third country, where requirements equivalent to those specified in the new Money Laundering Act are imposed,
(3) the service providers belong to the same profession, and
(4) and service providers are subject to obligations equivalent to those applied in Hungary as regards professional secrecy and personal data protection.
The affected service provider is required to inform the supervisory body about third countries, where the requirements related to the rules for exceptions are implemented. The supervisory body notifies the Minister of Finance in order to inform the other Member States and the Commission.

[73] Old Money Laundering Act, Article 8, Section (4)

[74] New Money Laundering Act, Article 28, Section (1)

[75] New Money Laundering Act, Article 28, Section (2) (This provision does not mean that the identification is to be carried out repeatedly in the case of existing business relations, but service providers need to keep records of all cash transactions of 3,6 million HUF or more.)

[76] Old Money Laundering Act, Article 10

[77] Old Money Laundering Act, Article 10, Section (4)

[78] New Money Laundering Act, Article 29

[79] Number of formal accusations, accused persons, number of attachments, value of attached property, number of sentences and number of persons convicted, how much property has been frozen, seized or confiscated, value of confiscated asset, property, value of seized property.

[80] Statistical data include the number of reports and data supply requested by FIU, the number of suspended transactions, the number of attachments initiated in accordance with a separate act prescribed by the European Union on the implementation of restrictive financial and property-related measures

and the number of attachments ordered by the court, the value of cash or economic resources frozen on the order of the court expressed in Forints, and the number of reports resulting in measures taken by the FIU or criminal procedure. The above data should be recorded by profession. In addition to the above, the number of criminal procedures initiated based on the suspicion of money laundering and terrorist financing, the number of suspects in criminal procedures, number of judgments and convicted persons, number of attachments, value of attached property, number of seizures and confiscations, the value of frozen, seized or confiscated property.

[81] The provisions of this Act regarding the special measures to be taken in case of branches and subsidiaries in third countries ensure that the Commission is aware of non-equivalent countries.

[82] New Money Laundering Act, Article 30

[83] New Money Laundering Act, Article 31

[84] New Money Laundering Act, Article 11, Section (1)

[85] With regard to the procedure described in Article 10 of Act CLXXX of 2007, the reporting obligation towards the authority responsible for implementation (Hungarian Customs and Finance Guard, Central Law Enforcement Directorate) and the procedure to be followed after reporting

[86] New Money Laundering Act, Article 11, Section (2)

[87] New Money Laundering Act, Article 33, Section (1)

[88] New Money Laundering Act, Article 43, Section (2), [35/2007. (XII. 29.) Decree of the Ministry of Finance on the content requirements of the internal regulations to be prepared in accordance with Act CXXXVI of 2007 on the Prevention and Combating of Money Laundering and Terrorist Financing]

[89] New Money Laundering Act, Article 33, Sections (2)–(3)

[90] Supervision, commercial authority, Chamber of Hungarian Auditors, state tax authority, FIU, MNB

[91] For independent attorneys and one-person legal offices, the Hungarian Bar Association prepares uniform regulations to be adopted as internal regulations concerning independent attorneys and one-person legal offices. Such uniform regulations are approved by the minister in charge of the judicial system. This provision therefore exempts independent attorneys and one-person legal offices from the obligation of preparing internal regulations. However, law firms are required to act similarly to the most of the service providers falling within the scope of the new Money Laundering Act as far as the regulations are concerned. Law firms are required to prepare regulations to be approved by the supervisory body, i.e. the regional bar association. The Hungarian Bar Association issues sample regulations for the preparation of the regulations. In case of law firms, the sample regulations issued by the Hungarian Bar Association are approved by the minister in charge of the judicial system.

[92] For notaries the Hungarian Association of Notaries Public prepares guidelines, which are recognized as functioning as internal regulations for notaries public.

[93] The new Money Laundering Act prescribes that the supervisory body issues the sample regulations within 45 days of the date when the new Money Laundering Act comes into force. Existing institutions are required to review their regulations within 90 days of the effective date. These will be reviewed by the designated supervisory bodies in the course of the supervisory and audit activities. Financial service providers, providers running casinos or electronic casinos and voluntary mutual insurance funds, the activities and operations of which are subject to licensing and were established after this act took effect, shall submit their regulations (together with their application) to the designated supervisory body for approval. Service providers involved in property-related activities, book-keeping (accounting) activities, tax consultancy, certified tax consultancy, tax advisory activities on a mandatory or entrepreneurial basis, and service providers involved in legal, notary services, service providers involved in trading precious metals or goods made of precious metals, which start their operation after this act takes effect, are required to submit their regulations to the relevant supervisory bodies within 90 days of the start of their operation. For independent attorneys and one-person legal offices the Hungarian Bar Association, while for notaries the Hungarian Association of Notaries Public prepares regulations, guidelines within 90 days of the effective date of this act.

[94] New Money Laundering Act, Article 11, Section (3)–(5)

[95] Under the old Money Laundering Act, service providers without government or professional

supervision are providers involved in property-related activities, book-keeping (accounting) activities, tax consulting, certified tax consulting, tax advisory activities on a mandatory or entrepreneurial basis, and service providers involved in legal, notary services, service providers involved in trading in precious metals, precious stones or articles, ornaments and jewelry made of precious metals and/or stones, cultural assets and works of art, or selling the above-specified assets at auctions or on consignment.

96 Old Money Laundering Act, Article 12

97 Under the old Money Laundering Act, the Hungarian Bar Association and the Hungarian Association of Notaries Public were responsible for preparing regulations or guidelines for the regulations. It is a significant change to the old Money Laundering Act that independent attorneys and one-person legal offices are exempted from the extra burden of preparing regulations for themselves. In accordance with the provisions of the new Money Laundering Act, the Hungarian Bar Association prepares regulations, which will be construed as internal regulations. Therefore, the Hungarian Bar Association is responsible for preparing regulations; and in case of law firms it is also tasked to develop sample regulations. As far as the regulations are concerned, the Hungarian Bar Association does not have to approve these since supervision is provided by the regional associations under the new Money Laundering Act.
The provisions for the preparation of regulations for notaries have not changed. It was not justified to change these provisions or make them more stringent.

98 Auditors are supervised by the Hungarian Chamber of Auditors, service providers engaged in legal and notary activities are controlled by the chamber the lawyer of notary is a member of (regional association). [New Money Laundering Act, Article 5]

99 New Money Laundering Act, Article 2, Section (2)

100 The Chamber of Hungarian Auditors performs supervisory activities in the course of its quality assurance proceedings.

101 In the course of carrying out supervisory activities, the Chamber of Hungarian Auditors acts in accordance with the provisions of Act LXXV of 2007 on the Hungarian Association of Auditors, Auditing Activities and the supervision of auditors, while the regional associations act in accordance with the provisions of Act XI of 1998 on Attorneys and Act XLI of 1991 on Notaries Public in the case of attorneys and notaries, respectively. [New Money Laundering Act, Article 34, Sections (3)–(4), Article 51 and 52]

102 The supervisory body may call on the service provider to take the necessary measures to comply with the provisions of the said Act, eliminate the revealed deficiencies; may recommend that the service provider should take part in special training programmes or recruit employees (managers) with suitable professional knowledge, adapt the internal regulations before a prescribed deadline according to specific criteria; may warn the service provider; may call on the service provider to terminate the infringement; and may impose fines. [New Money Laundering Act, Article 35, Section (1)]

103 New Money Laundering Act, Article 35, Section (1)

104 The revenues from fines imposed by the state tax authority, the commercial authority and the FIU may be spent exclusively on the following purposes: training professionals; supporting the preparation and publication of studies related to supervisory activities; informing the clients of the service providers; training FIU Staff members.

105 New Money Laundering Act, Article 13, Section (2)

106 In line with the provisions of the old Money Laundering Act, the inspection carried out by the ORFK includes the on-site inspection of documents concerning the identification obligation and the reporting obligation of service providers, as well as documents pertaining to the education and training requirement. Inspections in the first instance shall be carried out by the Criminal Division of the ORFK and by the national police commissioner in the second instance. If the findings of said inspections revealed any violation of regulations or any discrepancy, the ORFK could order the service provider to restore lawful operations and eliminate the discrepancies, and to adopt internal rules and regulations, or to adapt and apply these regulations according to specific criteria. The ORFK was entitled to impose fines of 10 thousand HUF to 100 thousand HUF for non-compliance with the provisions of the old Money Laundering Act, and for partial or late compliance with the said provisions. [New Money Laundering Act, Article 13]