

Procedure used by auditors to prevent legalisation of criminal proceeds (“*Money Laundering*”) and terrorist financing

Guideline issued by the Chamber of Auditors of the Czech Republic

1. Purpose of the document

The purpose of this document is to provide auditors with recommendations for how to meet in practice the obligations imposed on them by Act No. 253/2008 on Certain Measures against Legalisation of Criminal Proceeds and Terrorist Financing (hereinafter referred to as “the Act”), amending the earlier legislation (Act No. 61/1996 on Certain Measures against Legalisation of Criminal Proceeds). The object of the legislation, i.e.,

to prevent the abuse of the financial system for the legalisation of criminal proceeds and for terrorist financing and to provide conditions for the detection of such conduct,

must be borne in mind when carrying out the provisions of the Act.

This document by no means seeks to provide detailed interpretation of all provisions of the Act, and does not represent binding professional rules.

A form focusing on these issues is attached as Appendix 1 to these guidelines.

The following information sources were used during the preparation of this document:

- text of Act No. 253/2008 on Certain Measures against Legalisation of Criminal Proceeds and Terrorist Financing (quotations from the text of the Act are printed in *italics*), and Decree No. 281/2008 on Selected Requirements Regarding the System of Internal Principles, Procedures and Control Measures against the Legalisation of Criminal Proceeds and Terrorist Financing;
- Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing;
- Commission Directive 2006/70/EC of 1 August 2006, laying down the implementing measures to Directive 2005/60/EC of the European Parliament and of the Council, as regards the definition of ‘politically exposed person’ and the technical criteria for simplified customer due-diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis;
- Regulation 1889/2005/EC of the European Parliament and of the Council of 26 October 2005 on controls on cash entering or leaving the Community;
- Regulation 1781/2006/EC of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds; and
- IFAC’ anti-money laundering documents.

Where the term ‘Ministry’ is used herein, it shall mean the Ministry of Finance.

2. Obligated persons

In its Section 2, the Act defines the persons obliged to meet the duties set out by the Act. **Auditors** are referred to among such persons in Section 2(1)(e).

3. Definition of terms

3.1 Basic terms

The basic terms are defined in Section 3 of the Act as follows:

(1) For the purposes of this Act, **legalisation of the criminal proceeds** (hereinafter referred to as “legalisation of proceeds”) shall be understood to mean any action seeking to conceal or disguise the illicit origin of any economic advantage for the purpose of creating the appearance that the property resulting from such an advantage was gained in compliance with law. Such conduct consists, for example:

- a) in the conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising its origin or of helping any person who is involved in the commission of crime to evade the legal consequence of his or her action;
- b) in the concealment or disguise of the true origin, source, location or movement of property or the disposal thereof, or of a change in the rights with respect to property, knowing that such property is the proceeds of crime;
- c) in the acquisition, holding or disposal of property, knowing that such property is the proceeds of crime; or
- d) in the criminal conspiracy or any other form of concerted action for the purpose of an action referred to under clauses a), b) or c).

(2) Terrorist financing is

- a) collection or provision of funds or other property in the knowledge that they are to be used, in full or in part, to carry out an offence of terror¹, terrorist attack² or an offence to facilitate the commission of such an offence³ or to support a person or a group of persons preparing for the commission of such an offence, or
- b) action leading to the provision of compensation or damages to a criminal offender who committed an offence of terror, terrorist attack or an offence to facilitate the commission of such an offence, or to a person close to the offender within the meaning of the Criminal Code⁴, or the collection of funds for such compensation or damages.

(3) It is not relevant for the purposes of this Act whether a criminal offence referred to in Paragraph 1 or 2 above has been, or is to be, committed, in full or in part, on the territory of the Czech Republic or abroad.

3.2 Other terms

Other terms are defined in Section 4 of the Act:

(1) For the purposes of this Act, **transaction** shall be understood to mean any interaction between an obliged person and any other person, if such negotiation leads to the handling of the other person’s property or to the provision of a service to such other person.

¹ Section 93 of the Criminal Code

² Section 95 of the Criminal Code

³ Articles 1 to 4 of Council Framework Decision of 13 June 2002 on combating terrorism (2002/475/JHA).

⁴ Section 89(8) of the Criminal Code

(2) For the purposes of this Act, **transaction relationship** shall be understood to mean a contractual relationship between the obliged person and another person wherein such other person's property is to be handled or a service is to be provided to such other person, provided that, taking into account all circumstances, it is obvious that the trade relationship will involve repeated supply.

(3) For the purposes of this Act, **client's order** shall be understood to mean any action done by the client on whose basis the obliged person is to handle the client's property.

(4) For the purposes of this Act, the **true owner** shall be understood to mean

a) for businesses:

1. an individual who in fact or in law, directly or indirectly, exercises dominant influence on the management or operation of a business. Indirectly exercised influence means influence exerted through another person or other persons;
2. an individual who him/herself, on the basis of agreement with another member or other members holds more than 25% of the voting rights in the business. To hold voting rights means the ability to exercise voting rights at one's own discretion regardless of whether, or on what basis, such rights are exercised, or the ability to influence the exercise of voting rights by another person;
3. individuals acting in concert and holding more than 25% of the voting rights in the business; or
4. an individual who is a beneficiary of the proceeds from the activities of the business on any other basis;

b) for foundations or endowment funds:

1. an individual who is to be the beneficiary of at least 25% of the funds to be distributed; or
2. where it has not been decided who is to be the beneficiary of the foundation's or endowment fund's proceeds: the individual or circle of individuals in whose interest an entity was established or in whose interest it operates;

c) for associations based on another legal regulation⁵, for public service societies or any other such entities, and in the case of a trust relationship or any other such relationship based on foreign laws – an individual:

1. who holds more than 25% of voting rights or assets in such an entity;
2. who is to be the beneficiary of at least 25% of the funds to be distributed; or
3. in whose interest such an entity was established or (where it has not been decided who is to be the beneficiary of the proceeds) in whose interest it operates.

(5) For the purposes of this Act, a **politically exposed person** shall be understood to mean

a) an individual who is entrusted with a prominent public office at the national level such as, for example, head of state, prime minister, minister, deputy or assistant minister, member of Parliament, member of the Supreme Court, Constitutional Court or any other superior court

⁵ Section 20f *et seq.* of the Civil Code. Act No. 83/1990 on Citizens' Associations, as amended.

body against whose rulings there is generally no appeal (save for exceptions), member of the Court of Auditors, member of the supreme body of the central bank, a high-ranking officer in the armed forces or corps, member of a governing, management or supervisory body of a state-owned enterprise, ambassador or chargé d'affaires, or an individual exercising such offices in the bodies of the European Union or other international organisations, such an individual being considered politically exposed during his or her term of office and for another year afterwards and

- 1. having his or her domicile outside the Czech Republic or*
- 2. being or having been entrusted with such a public office outside the Czech Republic;*

b) an individual who:

- 1. is an immediate family member in relation to a person referred to under Clause (a) above as a spouse or similar partner, or as a parent;*
- 2. is a family member in relation to a person referred to under Clause (a) above as a son or daughter, or is a family member in relation to the son or daughter of a person referred to under Clause (a) as a spouse (sons- and daughters-in-law) or as a similar partner;*
- 3. is a co-owner or sole owner of the same legal entity, or trust or another similar legal arrangement governed by foreign law, as the person referred to under Clause (a) above, or is known to the obliged person to be in any other close business relationship to the person referred to under Clause (a) above; or*
- 4. is the true owner of the legal entity, or trust or another similar legal arrangement governed by foreign law, known to have been established for the benefit of the person referred to under Clause (a) above.*

*(6) For the purposes of this Act, an **identity document** shall be understood to mean a document issued by a public authority. Information presented in it shall include the first name and surname, a portrait photo and (possibly) other information allowing to identify the person submitting the document as the legal holder thereof.*

*(7) For the purposes of this Act, **Correspondent bank relationship** shall be understood to mean a contractual relationship between a credit institution, or a foreign credit institution acting through its branch in the Czech Republic, and a similar institution operating outside the Czech Republic, which relationship allows the credit institution, or a foreign credit institution acting through its branch in the Czech Republic, and a credit institution or similar institution outside the Czech Republic to carry out payments abroad or accept payments from abroad through the other party to the contractual relationship.*

3.3 Identification data

As set out in Section 5 of the Act, **identification data** shall be understood to mean the following for the purposes of this Act:

- 1. for an individual: all names and the surname, birth registration number (date of birth, in the absence of a birth registration number), the place of birth, gender, permanent or other residence and state citizenship. If the individual is an entrepreneur, the identification data shall also include the trade name, a distinguishing remark or other designation, the place of business and the business identification number;*
- 2. for a legal entity: the name or trade name, including the distinguishing remark or other designation, registered office, business identification number of any other similar number allocated abroad; for persons that are the statutory body of the legal*

entity, or members of such a statutory body: information referred to under Clause (a) above.

3.4 Suspicious transactions

Suspicious transactions are defined in Section 6 of the Act:

*(1) For the purposes of this Act, a **suspicious transaction** shall be understood to mean a transaction carried out in circumstances arousing suspicion of effort to legalise criminal proceeds or suspicion that the funds used in the transaction are intended for terrorist financing, or any other fact that may support such a suspicion, for example, when*

- a) a client draws cash from an account or transfers cash to other accounts immediately after making cash deposits;*
- b) significantly more financial transactions are made by the client during one day or on successive days than the client usually makes;*
- c) the number of accounts opened by a client is utterly disproportionate to the line of his or her business or his or her means;*
- d) the client transfers funds evidently without economic grounds;*
- e) the funds handled by the client are evidently beyond what corresponds to the nature or extent of his or her business or his or her means;*
- f) the account is used in a manner that conflicts with the purpose for which it was opened;*
- g) the client performs activities that may help to disguise his or her identity or the true owner's identity;*
- h) the client or true owner is a person from a state which is reluctant to apply, or does not apply at all, measures against the legalisation of criminal proceeds or terrorist financing, or*
- i) the obliged person had doubts about the truth of the client's identity data.*

*(2) A **transaction shall always be considered as suspect**, if*

- a) the client or true owner is a person against whom the Czech Republic applies international sanctions under the legislation on international sanctions⁶;*
- b) the object of the transaction includes, or is to include, goods or services to which the Czech Republic applies sanctions under the legislation on international sanctions⁶, or*
- c) the client is not willing to undergo inspection or is not willing to disclose the data on the person on behalf of whom he or she acts.*

4. Auditors' obligations

Audit of financial statements is not primarily focused on revealing the legalisation of criminal proceeds. During the audit procedures, an auditor focuses only on fraud (deception deliberately practiced in order to secure unfair or unlawful gain) that leads to significant

⁶ Section 2 of Act No. 69/2006 – International Sanctions Implementation Act.

distortion of the financial statements (see International Standard ISA 240 The Auditor's Responsibility to Consider Fraud in an Audit of Financial Statements). The issues of legalisation of criminal proceeds are addressed by auditors mainly during the analysis of the risks related to the engagement. This analysis as a rule precedes the signature of a contract. Should the auditor become suspicious of legalisation of criminal proceeds ("learns about a fact that might testify to a suspicious transaction"), he or she is obliged to notify it in accordance with Section 18 of the Act, but must always proceed in compliance with Section 26(3) of the Act).

Note: Obligations specified in the Act apply only to the activities that belong to the line of business concerned or to the services provided by auditors.

4.1 The Identification obligation

The identification obligation is specified in Section 7(1) of the Act:

(1) If the obliged person is a party to a transaction worth more than EUR 1,000, the obliged person shall always identify the client before the transaction, unless otherwise specified in this Act.

However, regardless of the EUR 1,000 limit, the obliged person must always identify the other party to the transaction in the case of **suspicious transaction** and in other specific cases referred to in Section 7(2) of the Act.

4.1.1 Performing the identification

The method of performing identification is specified in Section 8 of the Act:

(1) The first identification of a client who is an individual and the first identification of any individual acting on behalf of a client shall be performed by the obliged person in the physical presence of the person being identified, unless otherwise specified in this Act.

(2) During the identification of a client who is

a) an individual: the obliged person shall note the identification data and check these data on the basis of the identity document, as far as such data are contained in such a document, and shall also note the type and number of the identification document, the state in which it was issued (and possibly also the authority by which it was issued), and the period of its validity. The obliged person must at the same time check the likeness of the person with the photo in the document;

b) a legal entity: the obliged person shall note and check the identification data from the document proving the existence of the legal entity and shall perform – to the extent specified under Clause (a) above – the identification of the individual acting on behalf of the legal entity in the transaction concerned; if the legal entity's governing body, a member of its governing body or its true owner is another legal entity, the obliged person shall also note the identification data of such other legal entity.

(3) If the client is represented on the basis of a power of attorney, the holder of the power of attorney shall be identified in accordance with Paragraph 2 above and by the submission of the power of attorney. Submission of the power of attorney is not required where an individual (who is not otherwise authorised to dispose of the funds in the account) deposits cash in an account and at the same time delivers to the obliged person documents

that have already been filled out and signed by an authorised person, or only delivers the documents on whose basis the disposition of the funds in the account is to be carried out.

(4) If a client is represented by a statutory representative, the statutory representative shall be identified as specified in Paragraph 2 above. The statutory representative shall furnish the data necessary for the identification of the represented person/entity.

(5) In further transactions with a client who has already been identified in accordance with Paragraph 2 above, the obliged person shall check, in an appropriate manner, the identity of the acting person concerned. This check may be done without the physical presence of the client, if the client is an individual, or without the physical presence of the individual acting on behalf of the client, if the client is a legal entity.

(6) During the period of the business relationship or during further transactions, the obliged person shall check the validity and completeness of the client's identification data and the information gained during the inspection of the client (Section 9) or the justification of any exemption from the inspection of the client (Section 13), and shall register any changes thereto.

(7) Should the obliged person suspect, when concluding a transaction, that the client does not act on his own behalf or that the client disguises acting on behalf of a third party, the obliged person shall request the client to submit a power of attorney based on paragraph 3 above. Any such person shall comply with such a request, unless otherwise set out in another legal regulation. An attorney-at-law or a notary public may also fulfil this obligation in relation to the obliged person by handing over copies of the relevant parts of the documents from which the identification data were taken.

(8) The client shall provide the obliged person with any information as may be necessary for identification, including submission of the relevant documents. For the purposes hereof the obliged person may make copies or extracts of the submitted documents and may process the obtained information so as to carry out the purpose of this Act.

4.1.2 Inspecting the Client

The method of inspecting the client is specified in Section 9 of the Act:

(1) Prior to carrying out any individual transaction worth EUR 15,000 or more, any transaction to which the identification obligation under Section 7(2)(a–d) applies, any transaction with a politically exposed person, as well as during the validity of the business relationship, the obliged person must also inspect of the client. The client shall provide the obliged person with any information necessary for the inspection, including the submission of relevant documents. For the purposes hereof the obliged person may make copies or extracts of the submitted documents and may process the obtained information so as to carry out the purpose of this Act.

(2) Inspection of the client shall comprise the following checks:

- a) gain information about the purpose and intended nature of the transaction or business relationship;*
- b) trace the true owner, if the client is a legal entity;*
- c) gain the information necessary for continuous monitoring of the business relationship, including the reviewing of transactions carried out under the business relationship to see if the transactions correspond to what the obliged person knows about the client and about the client's business and risk profile;*
- d) review the sources of funds.*

(3) The obliged person shall inspect the client as indicated in Paragraph 2 above and shall do so to the extent necessary to assess the possible risk of legalisation of criminal proceeds and terrorist financing, depending on the type of client, business relationship, product, or transaction. For the persons authorised to carry out the inspections to check compliance with obligations under this Act (Section 35), the obliged person shall provide justification as to the adequacy of the extent of client inspection and the adequacy of the verification of existence of conditions for exemption from client identification and inspection under Section 13 with respect to the above risks.

Note: Client inspection under Paragraph 3 above shall only be carried out when a risk factor occurs in a specific transaction or business relationship.

4.1.3 Taking over and identification

Client identification by the obliged person is not required if the identification steps were made by another person [see Section 11(1)(a) and (b) of the Act] and if it can rely on such other person to provide it with the client's identity information, including copies of the relevant documents concerning the identification of the client. Such information shall not be taken over if there is any doubt as to the validity and completeness of this information.

4.1.4 Exemptions from the client identification and inspection obligation

Exemptions from the client identification and inspection obligation are indicated in Section 13 of the Act:

- (1) The obliged person is **not required to identify and inspect the client** if the client is:*
- a) a credit or financial institution;*
 - b) a foreign credit or financial institution operating in a state where the obligations imposed on such institutions in the area of combating the legalisation of criminal proceeds and terrorist financing are as strong as the requirements of European Community legislation⁷ and where such institutions are subject to inspection of compliance with these obligations;*
 - c) a company whose securities have been accepted for trading in a regulated market, where the disclosure requirements imposed on such companies are as strong as the requirements of European Community legislation;*
 - d) the true owner of the funds deposited in the escrow accounts of a notary public, attorney-at-law, court executor or court;*
 - e) a central body of public administration of the Czech Republic, the Czech National Bank or a regional authority (regional municipality);*
 - f) a client*
 - 1. entrusted with prominent public offices under EC and EU regulations;*

⁷ Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing. Commission Directive 2006/70/EC of 1 August 2006, laying down the implementing measures to Directive 2005/60/EC of the European Parliament and of the Council, as regards the definition of 'politically exposed person' and the technical criteria for simplified customer due-diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis.

2. *whose identification data are publicly available and there is no reason to question its correctness;*
3. *whose activities are transparent;*
4. *whose financial accounts give a true and fair view of the object of accounting and financial position;*
5. *that is responsible vis-à-vis a body of the European Union or of an EU member state or of the European Economic Area or involves other effective controls for the supervision of its activities.*

Note: In each of the points under Clause (f) above, the conditions are stated cumulatively, i.e., all these points must be met if the exemption is to be applied.

4.1.5 Non-performance of a transaction

The conditions under which a transaction shall not be carried out are specified in Section 15 of the Act:

*(1) The obliged person shall **refuse to carry out a transaction or conclude a business relationship** in the event that the identification obligation is applicable under Section 7(1) or (2) and the **client refuses to submit to the identification procedure** or refuses to present a power of attorney under Section 8(3), or fails to provide the necessary assistance in the inspection under Section 9, or there is any other reason why the client cannot be identified or inspected, or the person performing the identification or inspection becomes suspicious about the truth of the information provided by the client or about the authenticity of the documents submitted.*

*(2) The obliged person **shall not carry out a transaction with a politically exposed person unless the origin of the assets used in the transaction is known to the obliged person.***

*(3) An **employee** of the obliged person shall not carry out a transaction with a politically exposed person **without the consent of his or her immediate superior** or the obliged person's governing body.*

4.2 Obligation to maintain information

The obliged person's obligation to maintain information is specified in Section 16 of the Act as follows:

*(1) The identification data obtained under Section 8(1) and (2) or under a directly applicable provision of European Community legislation laying down the obligation to ensure that the transfers of funds are accompanied by information about the payer⁸; copies (if any) of the documents submitted for identification; information concerning who and when carried out the first identification of the client; documents justifying exemption from client identification and inspection under Section 13; and (in the case of proxy) the original or an authenticated copy of the power of proxy, **shall all be maintained by the obliged person for 10 years after the end of the business relationship with the client.***

(2) The data and documents regarding the transactions to which the identification obligation applies shall be maintained by the obliged person for at least 10 years after the transaction or after the end of the business relationship.

⁸ Regulation 1781/2006/EC of the European Parliament and of the Council of 15 November 2006

(3) The obliged person referred to in Section 2(1)(j) and (k) shall file the data and documents for at least 10 years after the transaction or after the end of the business relationship, provided that the transaction was worth EUR 10,000 or more; in the remaining cases for 5 years after the end of the transaction.

(4) The period referred to in Paragraphs 1 to 3 above shall commence on the first day of the calendar year following after the year in which the last transaction step known to the obliged person took place.

In the event that more than one obliged persons take part in a specific transaction with one client, it shall be admissible to maintain the data referred to in Section 16 of the Act with only one of such obliged persons, provided that the remaining obliged persons involved can rely on such one obliged person to provide them with the necessary information, including copies of documents, without undue delay.

The obligation to maintain the determined data shall be reflected in the rules governing the filing and destruction of documents. The Act requires that original powers of attorney be filed as paper documents in file folders (in cases of representation by attorneys), whereas the remaining identification data and copies (if any) of the documents submitted for identification may be maintained in electronic form (and/or on paper) for the purposes of this Act. The data and documents regarding the transactions to which the identification obligation applies shall be filed in forms admissible under other legal regulations (e.g., Act No. 563/1991 on accounting, as amended); however, the filing period is extended to 10 years.

It is recommended to maintain separate records of suspicious transactions reported to the Chamber of Auditors of the Czech Republic on the basis of this Act. Evidence related to suspicious transactions should also be maintained. Such records must be kept in a safe place and must be accessible to only a limited number of persons, specified in internal rules (subject to protection under Section 38(1) of the Act, except as referred to in Section 40(3) of the Act).

4.3 Notification of a suspicious transaction

The obligation to notify the Ministry of Finance of a suspicious transaction is set out in Section 18 of the Act as follows:

(1) Should the obliged person detect a suspicious transaction in connection with its activities, the obliged person shall report it to the Ministry of Finance (hereinafter referred to as “the Ministry”) without undue delay, no later than within 5 calendar days after the date of detection of such a suspicious transaction. If the circumstances of the case so require, particularly if there is a danger of default, the obliged person shall report the suspicious transaction to the Ministry immediately upon its detection.

(2) In the notification of a suspicious transaction, the obliged person shall indicate the identification data of the person(s) whom the notification concerns, the identification data of all the remaining participants of the transaction (as far as such data are available to the obliged person at the time of notification), as well as any information about the relevant circumstances of the transaction and any other information that might be related to the suspicious transaction and are relevant to the consideration of such a transaction from the viewpoint of measures against the legalisation of criminal proceeds or terrorist financing.

(3) The notification shall not contain data about the obliged person’s employee (or person whose relation to the obliged person is similar to employment) who detected the suspicious transaction.

(4) Notifications of suspicious transactions shall be received by the Ministry through its Financial Analytical Unit. The Ministry’s mailing address and other connection options

for the notification of suspicious transactions shall be made public by the Ministry in a manner enabling remote access.

(5) Should a notification under paragraph 2 above also apply to assets subject to an international sanction imposed in order to maintain or restore international peace and security, protect human rights or combat terrorism, the obliged person shall indicate this fact in the notification. The notification shall also contain a brief description of such assets, data on their location and their owner (if known to the notifying person) and the information whether there is any immediate danger of damage or devastation of such assets or danger of their use contrary to law.

(6) The notifying person shall at the same time communicate to the Ministry the name, surname and position of a contact person (Section 22) or the person who, on behalf of the obliged person, prepared the notification of the suspicious transaction, and such a person's telephone number and possibly also the electronic connection address, unless such information is already available to the Ministry.

(7) Should more than one obliged persons, in connection with their activities, learn through information sharing under Section 39(2) about a suspicious transaction, the obligation to notify such a suspicious transaction under Paragraphs 2 to 4 above shall be considered as fulfilled by all such obliged persons if the notification is filed by at least one of them. The obliged persons for whom the notification is being filed shall be indicated in such a notification.

Details of how a notification is to be filed are given in Section 19 of the Act:

Notification of a suspicious transaction shall be made in writing by registered letter or orally on record at an agreed place. A notification filed electronically by technical means providing special protection of the data being transmitted shall also be considered as notification in writing.

On the basis of Section 26(3) of the Act, auditors shall notify suspicious transactions to the Chamber of Auditors of the Czech Republic. Details of the notification are contained in the Chamber's internal rules entitled "**Principles of the Procedures of the Chamber of Auditors of the Czech Republic under Act No. 253/2008 on Certain Measures against Legalisation of Criminal Proceeds and Terrorist Financing**".

A specific formulation of the notification obligation is also indicated, for auditors, in Section 26(1) and (2) of the Act, which lays down the following:

(1) *The provisions of Section 18(1) and Section 24 shall not apply to an auditor, accountant, court executor or tax adviser in respect of the information he or she obtains from his or her client, or information about his or her client he or she obtains through inquiries for the client's legal position or through representation of the client in court proceedings or in connection with such proceedings, including advising on the initiation of court proceedings or avoiding such proceedings, irrespective of whether such information has been obtained before, during or after such proceedings.*

(2) *If an auditor, accountant, court executor or tax adviser suspects that the client requests legal advice for the purpose of legalisation of criminal proceeds or for the purpose of terrorist financing, the provisions of paragraph 1 above shall not apply.*

4.4 Further obligations of obliged persons

Section 21 of the Act lays down the obligation to **implement and apply internal controls and communication channels** in order to meet the obligations set out in the Act.

Section 22 of the Act lays down the **obligation to appoint an employee to be responsible for meeting the notification obligation (unless this responsibility is borne directly by the governing body)**. This obligation to appoint such an employee is not sanctioned. It will primarily be applied by the obliged persons with whom the occurrence of suspicious transactions can be expected to be higher (especially banks).

The **obligation to train employees** is specified in Section 23 of the Act as follows:

(1) The obliged person shall ensure that the employees who may encounter suspicious transactions during their working activities undergo training at least once in 12 months and that each employee is so trained before being placed in any such position.

(2) The obliged person shall also provide training in accordance with paragraph 1 for persons who work for the obliged person under an agreement other than employment contract if such persons may encounter suspicious transactions during their working activities.

(3) The content of the training shall include, without being limited to, the typology and traits of suspicious transactions and the procedures of the detection of a suspicious transaction. The obliged person shall enrich and update the content of the training on a continuous basis.

(4) The obliged person shall maintain records of training attendance and file them for at least 5 years after the date of the training.

Information obligation in respect of the notified suspicious transactions and in respect of the investigations carried out by the Financial Analytical Unit is laid down in Section 24 of the Act:

*Within the period of time determined by the Ministry, the obliged person shall **provide the Ministry on request with data on the transactions** to which the identification obligation applies or transactions in respect of which the Ministry carries out an investigation; the obliged person shall submit documents regarding such transactions or shall enable access thereto for authorised employees of the Ministry who are checking a notification, and shall provide information about the persons involved in any manner in such transactions.*

5. Checking compliance with statutory obligations

On the basis of Section 37(2) of the Act, the Chamber of Auditors of the Czech Republic is entrusted with responsibility for checking compliance with the obligations set out in the Act. If so requested in writing by the Ministry of Finance, the Chamber must carry out a review of how auditors comply with the obligations set out in this Act. The Chamber must inform the Ministry of Finance in writing about the result of the review within the required period of time.

6. Confidentiality

Section 40(3) of the Act sets out auditors' obligation to keep silent about any circumstances related to the notification and investigation concerning a suspicious transaction, measures taken by the Ministry, and compliance with the information obligation (see Section 24 of the Act). However, this does not apply where such information is to be provided to the client in order to discourage the client from involvement in illicit activities.

7. Administrative tort

The following shall be treated as offence:

- Breach of confidentiality (Section 43 of the Act): fine up to CZK 200,000, and up to CZK 1,000,000 if there are more serious consequences;
- Failure to meet the obligations in relation to client identification and inspection (Section 44 of the Act): fine up to CZK 1,000,000, and up to CZK 50,000,000 if there are more serious consequences;
- Failure to meet the information obligation (Section 44 of the Act): fine up to CZK 10,000,000, and up to CZK 50,000,000 if there are more serious consequences;
- Failure to meet the notification obligation (Section 46 of the Act): fine up to CZK 5,000,000, and up to CZK 50,000,000 if there are more serious consequences.

8. Proceedings in accordance with the Act

The general procedural rules are specified in the Code of Administrative Procedure. Specific rules are set out in Section 55 of the Act:

(1) Proceedings conducted under this Act shall always be non-public.

(2) In response to a received notification of a suspicious transaction or any other such impulse, the Ministry shall conduct an investigation without undue delay.

(3) Upon completion of the investigation, the Ministry shall without undue delay inform to that effect in a proper manner the person who notified the suspicious transaction. No other person should be informed about the end of the investigation.

(4) Any authorised employee of the Ministry must show his or her authorisation card (issued on the basis of the International Sanctions Implementation Act) during his or her working activities under this Act.

The Ministry of Finance makes public some of its interpretative positions on its web pages at www.mfcr.cz/cps/rde/xchg/mfcr/xls/reg_stanoviska_fau.html

This guideline was approved by the Audit Standards Committee on 29 June 2009.

Annex No. 1 to the guideline – Procedure used by auditors to prevent legalisation of criminal proceeds (“*Money Laundering*”) and terrorist financing

The form below is an aid for auditors to be used:

- when checking if the auditor or an auditors’ company complies with the provisions of Act No. 253/2008 on Certain Measures against Legalisation of Criminal Proceeds and Terrorist Financing;
- when checking compliance with the provisions of the Act in cases where the auditor provides his or her services to an entity that meets the definition of obliged person.

Statutory auditors or audit firms as obliged persons are themselves obliged to fulfil the obligations set out in the Act. When providing services to an entity that meets the definition of obliged person, an auditor shall modify his or her work program so that it contains procedures checking the entity’s statutory compliance. If any shortcomings are found in these procedures, the auditor should consider issuing a recommendation to the management of the company.

The statutory obligations include, without being limited to:

- identification obligation;
- obligation to maintain information;
- obligation to notify suspicious transactions;
- obligation to implement and apply proper internal controls and communication channels;
- obligation to appoint an employee to be responsible for compliance with the notification obligation;
- obligation to train employees

Form to check compliance with the obligations under Act No. 253/2008 on Certain Measures against Legalisation of Criminal Proceeds and Terrorist Financing

Identification obligation	
- The company carries out identification in accordance with Section 7(1) of the Act	
- The company reviewed the client when a risk factor occurred in a transaction	
- The company refused to carry out or conclude a transaction when the client refused to undergo identification	
Obligation to maintain information	
- The company archives all information under Section 16 of the Act	
- The company archives information for the prescribed period of 10 years	
Obligation to notify suspicious transactions	
- The company notified a suspicious transaction to the Chamber of Auditors (in the case of an audit firm) / Ministry of Finance (in the case of other entities)	
Obligation to implement and apply proper internal controls and communication channels	
- The company implemented proper internal controls and communication channels	
Obligation to appoint an employee to be responsible for compliance with the notification obligation	
- The company appointed an employee to be responsible for fulfilling the notification obligation (where this responsibility is not borne directly by the company's governing body)	
Obligation to train employees	
- The company ensures that the employees who may encounter suspicious transactions during their working activities undergo training at least once in 12 months	
- The company ensures that each employee is so trained before being placed in any position where he or she may encounter suspicious transactions	
- The company also provides training for persons who work for it under an agreement other than employment contract if such persons may encounter suspicious transactions during their working activities	
- The content of the training included the typology and traits of suspicious transactions	
- The content of the training includes the procedures applied when a suspicious transaction is detected	
- The content of the training is enriched and updated on a continuous basis	
- Records of training attendance and training contents are maintained	
- Records of the training are archived for at least 5 years following the date of each training course	

