

LEGAL UPDATE

Corporate lawyers and the Money Laundering and Terrorist Financing (Prevention) Act

Date: 23 August 2019

In recent years, it has not been entirely clear whether or not corporate lawyers are subject to the Money Laundering and Terrorist Financing (Prevention) Act. Although it was defensible that this was not the case, neither the legislator nor the regulator formulated a clear position on the scope of the Money Laundering and Terrorist Financing (Prevention) Act with regard to corporate lawyers. This has since changed.

Under Section 1a subsection 4 of the Money Laundering and Terrorist Financing (Prevention) Act, the Act applies, in short, to legal entities and natural persons who practice a legal profession similar to that of a lawyer or (junior) civil-law notary. They fall within the scope of the Money Laundering and Terrorist Financing (Prevention) Act if they perform certain services, such as independent consultancy on the purchase or sale of registered property, the incorporation or management of companies or legal entities or the acquisition or sale of shares or companies.

As stated above, until recently there was no explicit explanation from the legislator or regulator as to whether a corporate lawyer is subject to the Money Laundering and Terrorist Financing (Prevention) Act. However, it could be argued that corporate lawyers do not carry out their work (similar to that of a lawyer or junior civil-law notary) independently and would therefore not qualify as an "institution."

The legislator has since explicitly indicated that corporate lawyers are not subject to the Money Laundering and Terrorist Financing (Prevention) Act. The [\(draft\) explanatory memorandum](#) to the proposed implementation act of the amended fourth anti-money laundering directive states the following:

"In the case of the provision of services via other persons affiliated with such persons, legal entities or companies, these persons must carry out these activities autonomously and independently. Persons who work for a client, such as corporate lawyers or corporate tax consultants, are not independent and therefore do not fall within the scope of the Money Laundering and Terrorist Financing (Prevention) Act" (lawyer's underlining).

If there was any doubt about the (possible) applicability of the Money Laundering and Terrorist Financing (Prevention) Act and the associated obligations to conduct client screening and (if applicable) to report to FIU-the Netherlands, it can now be definitively established that this is not the case.

This is a Legal Update from the Banking & Finance team.

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