



CYPRUS IMPLEMENTS THE 5TH AML DIRECTIVE
Key developments and the introduction of
cryptoassets service providers

CONTENTS

	Page
A. INTRODUCTION	3
B. EXTENDED SCOPE OF APPLICATION OF THE ANTI-MONEY LAUNDERING LEGAL FRAMEWORK	3
C. MOVING TOWARDS STRICTER RULES AND REGULATIONS	8
D. HOW WE CAN ASSIST YOU	9
E. DISCLAIMER.....	9

A. INTRODUCTION

The Cyprus House of Representatives on 18.02.2021 has enacted the long-awaited amending law to the Prevention and Suppression of Money laundering and Terrorist Financing Law 188(I)/2007 thus fully implementing EU Directive 2018/843 of the European Parliament and of the Council of 30 May 2018, (“the 5th AML Directive”).

This new enactment, (“the new Law”), implements the provisions of the 5th AML Directive that were not already implemented so far into Cyprus Law. With this new Law, the 5th AML Directive is now fully implemented in Cyprus.

The new Law will come into force once published in the official gazette of the Republic.

B. EXTENDED SCOPE OF APPLICATION OF THE ANTI-MONEY LAUNDERING LEGAL FRAMEWORK

The 5th AML Directive as implemented, extends the scope of application of the Cyprus anti-money laundering legal framework by significantly expanding its range of application.

The key changes effected by the new Law are the following:

1. The Obligated Entities

The obliged entities that will need to strictly follow the Anti – Money Laundering Law provisions, (“the AML Law”), have been expanded and including in addition, the following:

a. Cryptoasset Service Providers

Service providers of cryptoassets dealing with exchanges between cryptoassets or exchanges between cryptoassets and fiat currencies or offering wallet custodian and other financial services for cryptoassets as these are identified in the new Law, have been included now among the obliged entities who are regulated and are subject to the AML Law.

With the new Law, the service providers of cryptoassets must get registered in the registry to be established and maintained by the Cyprus Securities and Exchange Commission ("CySEC") under relevant application to CySEC and provided they meet the criteria to be set by CySEC. Once registered they will be able to offer their services in Cyprus or from Cyprus.

Our observations

It is important to note that, this is a positive development as cryptoasset service providers can offer their services through Cyprus under an approved and regulated legal regime and authorised registration on the relevant registry. It is expected that the regulation of cryptoasset service providers, will boost the relevant activity in Cyprus through Cyprus entities.

The Law, as enacted, uses a broader notion as to this issue than the 5th AML Directive. The Directive refers to "... providers engaged in exchange services between virtual currencies and fiat currencies and custodian wallet providers..." while the new Law covers service providers of cryptoassets in general with additional services included and regulated as specified in the Law. It is our understanding that the broader definition under the Law comes to embrace the provisions of the upcoming EU law on cryptoassets.

b. Art Dealers and Warehouses providing storage services for works of art

Art Dealers and Warehouse providers of storage services for works of art are now included in the notion of obliged entities.

This cover:

- (i) persons trading or acting as intermediaries in the trade of works of art if the value of the transaction or a series of linked transactions is EUR 10.000 or more and
- (ii) persons that own or operate warehouses providing storage services for works of art if the value of the transaction or a series of linked transactions is EUR 10.000 or more.

c. Tax advisers

These are persons whose principal business or professional activity is, directly or through other persons related to them, to provide material aid, assistance or advice in the field of taxation. The notion of tax advisers has been expanded with the new Law, as it was already included in the previous law.

d. Real estate agents

To a certain extent, these persons were already subject to the AML Law as it was in force, but they are now also required to comply with the AML Law when acting as intermediaries in the rental of real estate, but only in respect of transactions for which the monthly rent is EUR 10.000 or more.

e. Persons trading in goods or provision of services

Persons trading in goods or provide services are considered as obliged entities and are subject to the provisions of the Law once the payment of the transaction is made in cash and is EUR 10.000 or more.

2. Beneficial Ownership Registers

The following Beneficial Ownership Registers are set up granting access, under certain conditions, to the public. The EU companies have the obligation to have available the information as to their Beneficial Owners and record it accordingly in the relevant register.

The registers to be set up are:

- a. The Companies' Register kept with the Registrar of companies. This register will be open to the public and relevant information, as identified in the Law will be available.
- b. The Express Trusts and Similar Legal Arrangements Register kept with CySEC. This register will NOT be opened to the public but it may be

accessible to those of the public who can prove their legitimate interest so that the relevant information is disclosed to them. Relevant procedure will be laid down.

- c. The Register of legal bodies, other than those registered with the Registrar of Companies, such as, clubs, foundations, federations and unions. This register will be kept with the General Commissioner. This register will be open to the public and relevant information, as identified in the Law, will be available.

3. Creation of the Service Providers of Cryptoassets register

A service providers' of cryptoassets register will be created. This register will be kept by CySEC and will be open to the public. A service provider of cryptoassets to be included must file the relevant application and meet the conditions set down by CySEC.

4. Creation of Electronic Registry of Bank Accounts, Payment Accounts and Safe Boxes

An electronic registry of bank accounts, payment accounts and safe boxes, will be established and kept by the Central Bank and relevant information will be stored in the registry as to the owners and users of bank accounts opened in banking institutions.

In effect, the identification and verification of the identity of clients is now also explicitly allowed by means of an electronic identification process through the registry which will be established.

In this respect, the Financial Intelligence Units will have access to more information through centralised banks and payment account registers or data retrieval systems.

The Financial Intelligence Units from the different EU Member States will also be able to cooperate more easily, as well as with other competent authorities.

5. Electronic Money Payments

An obliged entity may not follow due diligence procedures and identification processes for its clients' identity verification in relation to electronic money transactions, such as payments through cards, provided, the payment instruments are not reloadable, or can only be used for the execution of payments for which a maximum monthly limit of EUR 150 applies, and the maximum amount stored electronically remains below EUR 150. The threshold was EUR 250 and reduced to EUR 150.

Moreover, the exemption from customer identification and identity verification no longer applies in the event that the redemption or cash withdrawal of the monetary value of the electronic money exceeds EUR 50 or in the case of remote (online) payment transactions. The threshold was EUR 100 and reduced to EUR 50.

6. High – Risk Third Countries

Enhanced due diligence must be carried out when dealing with or transacting with high – risk third countries.

The European Commission has adopted a list of third countries with deficiencies in their anti-money laundering and counter-terrorism financing frameworks.

Banks and other obliged entities covered by the provisions of the AML Law are required to increase due diligence on operations involving these countries to more effectively identify suspicious activities.

7. Politically Exposed Persons (“PEPs”)

A new provision under the new Law is that, politically exposed persons must be identified also through particular public functions. EU Member States are required now to draw up a list of the exact functions that qualify as prominent public functions and consequently identifying a person as PEP.

Member States should also require international organisations located in their jurisdiction to prepare and update such list. These lists must then be shared with the European Commission, which will make them publicly available.

8. Enhanced Cooperation between Supervisory Authorities

The new Law further enhances the exchange of information and cooperation between anti-money laundering supervisors and financial supervisory authorities including with the European Central Bank.

C. MOVING TOWARDS STRICTER RULES AND REGULATIONS

The implementation of the 5th AML Directive constitutes an important change to anti-money laundering framework, as it significantly expands the scope of the application of the AML Law.

The introduction of new persons as obliged entities, the registries for Beneficial Owners open to the public and the other new provisions as to PEPs, electronic money payments, registry of bank accounts, create an environment fully regulated and controlled to identify in an easier way illegal transaction.

Various new entities now fall within the scope of the application of the AML Law and will have to comply with various customer due diligence and continued monitoring requirements.

A gate is now opened for Service providers on cryptoassets, offering extended line of services such as the virtual currency exchanges, custodian wallet services, financial services on cryptoassets, to be regulated and get registered with CySEC and be able to offer in an approved way their services.

Although Cyprus has enacted the implementation of the 5th AML Directive, various supplementary directives and regulations are yet to be adopted by various bodies, to further clarify the extended scope of its application and to further enable the application of the provisions of the new Law.

D. HOW WE CAN ASSIST YOU

Our firm may assist you with AML compliance issues and guide you respectively in the implementation of the AML Law. Also, based on our extensive experience on consulting in blockchain related projects and financial technology, virtual currencies, Initial Coin Offerings, (ICOs), their accounting, VAT and tax treatment and related work, we can support your business comply and evolve under this new enabling environment.

E. DISCLAIMER

This publication has been prepared as a general guide and for information purposes only. It is not a substitution for professional advice. One must not rely on it without receiving independent advice based on the particular facts of his/her own case. No responsibility can be accepted by the authors or the publishers for any loss occasioned by acting or refraining from acting on the basis of this publication.

February 2021

AUTHORS

Christos P. Kinanis

Lawyer – Managing Partner
Christos.Kinanis@kinanis.com

Andri Michael

Advocate - Partner
Financial Services & Funds Department
Andri.Michael@kinanis.com

Savvina Miltiadou

Associate Lawyer
Financial Services & Funds Department
Savvina.Miltiadou@kinanis.com

OUR FIRM

We are a Law Firm with offices in Cyprus and Malta and a representative office in Shanghai China comprising of more than 50 lawyers, accountants and other professionals who advise, international and local clients.

The Firm has been offering legal and consulting services since 1983 evolving from a traditional law firm to an innovative cutting-edge multidisciplinary law firm combining exceptional expertise in law, tax, vat and accounting.

From its establishment the Firm's focus has been heavily business oriented and always abreast with the latest global developments and innovations. Drawing from our pool of experienced professionals we provide our clients' businesses full legal and accounting support on an everyday basis as well as customized solutions in today's global financial and legal challenges.

We consider ourselves as 'traditional pioneers' and our motto is to foresee and anticipate any issues that may potentially impact our clients' business and to offer effective advice and solutions proactively.

Kinanis LLC

Lawyers' Limited Company
12 Egypt Street, 1097, Nicosia
P.O. Box 22303, 1520 Nicosia, Cyprus
Tel: + 357 22 55 88 88 – Fax: + 357 22 66 25 00
E-mail: KinanisLLC@kinanis.com – Web site: www.kinanis.com

Kinanis

Civil Partnership, Law Firm
Kinanis Fiduciaries Limited
Suite 20, The Penthouse, 4th Floor, Ewropa Business Centre,
Dun Karm Street, Birkirkara, BKR 9034, Malta
Tel: + 356 27 54 00 24, Fax: + 356 27 54 00 25
E-mail: malta@kinanis.com Website: www.kinanis.com

Kinanis (China) Limited

China Representative Office
Unit 661, 6/F CIROS PLAZA,
388 Nanjing West Road, Huangpu District,
Shanghai City, 200003, China
Tel: + 86 18 410 072 690
E-mail: china@kinanis.com Website: www.kinanis.com