

Brief analysis of the law “On the fight against the legalization of property obtained through crime and the financing of terrorism” and amendment law to the article 598 of the Code of Administrative Offenses entered into force on January 31, 2023

Introduction

On January 31, 2023, the Laws of the Republic of Azerbaijan "On combating the legalization of property obtained through crime and the financing of terrorism" (hereinafter referred to as “AML/CTF” Law) and "On Amendments to the Code of Administrative Offenses of the Republic of Azerbaijan" (hereinafter referred to as “COA” Law) came into force. Both laws will negatively affect the activities of civil society organisations in the Republic of Azerbaijan.

The AML/CTF Law, which existed before, considered CSOs as monitoring participants, and CSOs had a number of obligations along with financial institutions. Those obligations included the creation of an internal control system, implementation of complex verification and identification measures, appointment of a responsible persons etc. which was practically impossible to implement for CSOs from a material, organisational, and technical point of view. Besides, for non-implementation of those measures and failure to submit relevant information to the financial monitoring body, previous version of the article 598 of the CAO set a fine in the amount of 800 to 1500 manats (approx. 500-800 USD) for officials of CSOs, and in the amount of 8000 to 15000 manats (approx. 5000-8000 USD) for CSOs themselves. The old law did not include a risk-based approach and was criticized by local and international experts for determining burdensome obligations for CSOs.

The new law introduced a number of new concepts into the legislation and a new regulatory mechanism differing from the previous law. Although the new law formally relieved CSOs from some obligations in comparison with financial institutions, the risk-based approach was still not applied. As a result, according to the new law, CSOs again will have to fulfil a number of obligations that will be onerous for them and difficult to implement. At the same time, by updating the article 598 of CAO, a greater amount of fine has been set for the violation of the obligations determined in AML/CTF, compared to the old version of the same article.

Abbreviations

AML/CTF	Anti-Money Laundering and Counter-Terrorism Financing
CAO	Code of Administrative Offenses
CSO	Civil Society Organisation
FATF	Financial Action Task Force
NGO	registered local NGOs as well as registered branches and representative offices of non-governmental organisations of foreign countries in the Republic of Azerbaijan

Sources

- Law on combating the legalization of property obtained through crime and the financing of terrorism: <https://president.az/az/articles/view/58762>
- Law on amendments to the Code of Administrative Offenses: <https://president.az/az/articles/view/58760>

A brief summary of the new laws

The new AML/CTF law defines the main two categories of legal entities and individuals who must implement preventive measures defined in the 2nd chapter of the law. These two main categories - 1) financial institutions, and 2) non-financial institutions and professionals are called obligors in the law. (article 1.1.7)

According to the 2nd chapter of the law, the following preventive measures on AML/CTF are determined:

1. Customer compliance measures;
2. Reliance on third parties;
3. Obligation to store information and documents;
4. Transactions with politically influential persons, their close relatives or persons with whom they have a close relationship;
5. New technologies;
6. High risk zones;
7. Internal control program.

NGOs are not on the list of entities defined as obligors in the law and therefore above-mentioned 7 complex preventive measures are not directly applied to NGOs. However, this does not relieve CSOs

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from obligations and article 12 of the law determines new requirements to comply with for all CSOs without applying any risk-based approach. Thus, with the new law, CSOs and CSO members can be seemed as a special category of legal entities and officials who has obligations and must implement certain measures to prevent AML/CTF risk.

Under the requirements of the new law, financial and non-financial institutions must submit information and documents to the financial monitoring body about all bank transactions of NGOs. (article 11.3.3). According to the article 12.3 of the law, NGOs must have rules and procedures aimed at minimizing risks when receiving and giving grants and donations, and must annually submit to the supervisory body detailed financial reports about grants and donations and their use by April 1. However, it is unclear what those rules and procedures should be, what information will cover the "detailed" report, and whether that report is the current annual financial report NGOs submit to the Ministry of Finance or not. Article 14.11 of the law determines that financial monitoring body has the authority to prepare legal acts in accordance with this Law on the procedure for submitting information and documents to it, customer compliance measures, internal control program, verification measures during the application of new technologies, and the procedure for giving feedback information to the obligors, as well as to the persons defined by Article 12 (religious institution, non-governmental organisation, including the branch or representative office of a foreign non-governmental organisation in the Republic of Azerbaijan) of this Law. Based on the article 14.11 it can be assumed that financial monitoring body will be the main government body adopting and implementing rules and procedures aimed at minimizing AML/CTF risks for CSOs. Besides, according to the article 21.7, NGOs should carry out annual risk assessment in order to comply with AML/CTF law requirements: they must identify and, assess institutional risks, document the assessment results and submit them to the supervisory body, as well as take measures to manage, eliminate or reduce risks in accordance with internal rules and procedures approved by their management. Article 21.7 sets new obligation which did not exist in the previous law.

The only positive thing for CSOs in the law can be considered article 20.2, which determines that in order to increase the effectiveness of the system of combating the financing of terrorism and money laundering, the financing of proliferation and proliferation of weapons of mass destruction, to conduct the implementation of country-level risk assessment, to prepare action plans and projects related to the improvement of legislation, to form cooperation mechanisms between the central executive power and criminal prosecution bodies, courts and other institutions, Coordination Council consisting of representatives of the central executive power bodies, criminal prosecution bodies, supervisory bodies, courts, other state bodies (institutions) and members of NGOs should be established.

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On the other side, by adopting new AML/CTF law and amendment to the CAO, punitive measures have been hardened, too. Article 16.3 of the AML/CTF law determines that, licenses, registrations, permits, certificates of legal entities (including NGOs), and individuals that do not comply with the requirements of the law shall be terminated or suspended. New article 598.8 of the CAO, sets that NGOs not having rules and procedures aimed at minimizing risks shall be fined in the amount of ten thousand to twenty thousand manats (approx. 5400-10800 EUROS), and their officials shall be fined in the amount of two thousand to four thousand manats (approx. 1000-2000 EUROS). It is also worth mentioning that article 18.3 of the Code of Administrative Offenses in force, stipulates that bringing a legal entity to administrative responsibility does not exclude the administrative responsibility of the official who committed the act or participated in its commission.

In the conclusion it can be noted that new obligations and punitive measures in the laws do not match NGOs' financial and organisational capabilities, creates burden for them and do not meet the requirements of FATF standards for CSOs.

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