

# Holst, newsletter



## Danish Act on Measures to Prevent Money Laundering and Financing of Terrorism amended - What should you particularly pay attention to?

In the beginning of May, the Danish Folketing passed a bill amending the Danish Act on Measures to Prevent Money Laundering and Financing of Terrorism according to which new obligations will be imposed on companies and persons covered by the said Act. This newsletter provides you with an overview of the most important amendments.

On 2 May 2019, the Danish Folketing passed Act No. 553 of 7 May 2019 amending the Danish Act on Measures to Prevent Money Laundering and Financing of Terrorism ("the Act"). The Act implements the fifth directive on measures to prevent money laundering and partly effects the political agreement concluded on 19 September 2018 between the Danish Government and several other political parties of the Folketing. The Act contains several amendments to the current Act on Measures to Prevent Money Laundering and Financing of Terrorism ("the Current Act) and imposes new obligations on companies and persons covered by the Current Act.

The Act in headlines:

- Scope of application is extended to also comprise art dealers and virtual forex market operators
- Prohibition against the use of 500-euro bank notes in Denmark
- Obligation to register the beneficial owners of a trust (or similar legal arrangement)

- Obligation to report discrepancies in information on beneficial owners
- Reinforced rules on whistleblower protection and follow-up on warning notifications
- Obligation to report warning notifications on money laundering or financing of terrorism.

In addition hereto, the Act contains adjustments to the KYC procedures which companies and persons subject to the Act must perform, adjustments of the current duty of inspection and registration, certain provisions regarding beneficial owners in trusts and similar legal arrangements, etc.

In the following, we shall elaborate on the last three headlines of the above.

### Reporting discrepancies in information on beneficial owners

Companies and persons covered by the Current Act are obliged to perform KYC procedures entailing that they must verify the identity information on their customers and the beneficial owners of their customers. It appears from the explanatory notes of the Current Act that the Danish Business Authority's records on beneficial owners must generally not alone form the basis of performing a KYC procedure; companies and persons subject to the Current Act must also perform their own assessment on who the beneficial owner of a customer is.

Following the Act, companies and persons performing KYC procedures will be required to report to the Danish Business Authority any discrepancies in information on beneficial owners which they encounter, and they must submit evidence of such.

Specifically, companies and persons covered by the Act will become obliged to collect information on the beneficial owners of their customers, e.g. in the nature of a certificate of incorporation. Such can be compared against the information which the customer has submitted on its beneficial owners, and in the event of any discrepancies, such must be reported. For example, discrepancies may include lacking registration with the Danish Business Authority of: persons, amendments in shareholdings of registered beneficial owners, changes in addresses of beneficial owners, etc.

The requirement for reporting discrepancies takes effect from 10 January 2020. Non-compliance may impose injunctions on your company.

## Whistleblowers

A number of companies and persons covered by the Current Act are already under an obligation to establish whistleblower schemes, enabling their employees to submit anonymous reports through a special, independent and isolated channel on any violations or potential violations of legislation on money laundering.

In order to ensure that whistleblower reports are properly processed, the Act introduces an obligation for companies and persons covered by the Act to produce written documentation if so required by a relevant supervisory authority on how submissions to the whistleblower scheme about suspicious issues in the company have been followed up on.

Such obligation implies that companies or persons subject to the Act must store information on which issues the report concerns, documentation on how the report has been processed and which decisions have been made in consequence of the report.

Failure to comply with the obligation for documentation could become punishable by a fine.

With the amendments to the Current Act the wording pertaining to regulations for protecting whistleblowers against unfair processing or unfair consequences is made more specific, and do not only apply to current employees in a company but also former employees.

An infringement of the prohibition against unfair processing or unfair consequences is punishable, and in the event of civil suits the company may be ordered to pay remuneration to the person being exposed to unfair processing or unfair consequences.

The provisions on whistleblowers will take effect from 1 July 2019.

## Reporting warning notifications on money laundering or financing of terrorism

Under the Current Act there is no specific obligation for the day-to-day management or company key personnel to report warning notifications on money laundering or financing of terrorism to the company's top governing body or day-to-day management.

Based on investigations performed by the Danish FSA regarding issues at Danske Bank and its Estonian bank branch, it has been deemed necessary to intensify management liability.

With the amendments to the Current Act a reporting obligation is introduced, upon which day-to-day management (e.g. the CEO) must report to the top governing body of the company (e.g. the board for directors) all warning notifications about money laundering or financing of terrorism received from other bodies, including foreign authorities, external auditors and advisers, and from whistleblowers. Reporting to the top governing body shall be made without undue delay.

The same reporting obligations apply to company key personnel (e.g. employees who are part of the actual management team or company compliance function) who must report either to the day-to-day management or to the top governing body of the company. If reporting is submitted to the day-to-day management, such is obliged to report the matter on to the top governing body.

When the governing body receives a warning notification about money laundering or financing of terrorism, it must address the warning and provide for necessary and appropriate measures for investigating, preventing, restraining or stopping a current or any future infringement of the regulations on money laundering and financing of terrorism.

The reporting obligation for the day-to-day management and key personnel in the company will take effect from 1 July 2019. The day-to-day management and key personnel may become subject to a fine if breaching the provision.

## Can we assist you?

If you wish to learn more about the Act on Measures to Prevent Money Laundering and Financing of Terrorism, or if you need any sparring in relation to it, our experts are ready to assist you. We also offer to facilitate a whistleblower scheme for you.

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