EUROPEAN BANKING GUIDE FOR NONPROFITS

HOW TO OPEN AND MANAGE AN ORGANIZATIONAL BANK ACCOUNT

European Center for Not-for-Profit Law

PILnet

LATVIA

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European Center for Not-for-Profit Law Stichting (ECNL)

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PILnet

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1. OPENING AN ORGANISATIONAL BANK ACCOUNT

a. What are the requirements to open an organisational bank account?

i. Do organisations have to be physically present in the country to open a bank account? I.e., can they operate in country X but have a bank account in country Y? Is the presence of a statutory representative required or can the presence be fulfilled through an authorization?

In certain situations, Latvian law permits banks to perform remote client identification, and therefore, in theory, also the remote opening of bank accounts is possible. Several Latvian banks allow remote identification and onboarding of individuals. However, in practice, banks usually require their clients who are non-Latvian individuals or companies, or organisations to be physically present at the branch to open a bank account to grant access to the Internet banking system. There is no legal restriction for anyone to open an account in Latvia; however, in practice, Latvian banks require their potential clients to show that they have sufficient links to Latvia to open a bank account. Since about 2018, Latvian banks have had some of the strictest client identification requirements and practices across the European Union.

Usually, company or organisation bank accounts are opened by the company's/organisation's management board members or other managers, but it can also be done by any other person based on a power of attorney. Please note that in such a case the only person that will have access to the bank account, including the internet banking system, will be the authorized person. The power of attorney will have to be issued in front of a notary public in a manner that the notary public certifies, which includes having the passport/ID card data of the representative issuing the power of attorney.

ii. Are there specific requirements for CSOs to open accounts by law or asked in practice by the banks (e.g, years of operations, annual turnover, to have director or member of governing body to be national of the country)

Banks can set their requirements depending on the risk appetite, but in general, there are no special legal requirements for opening a bank account based on non-profit status. However, in 2020-2021, there were complaints from several CSOs that banks were hesitant to open bank accounts or continue servicing existing bank accounts for such CSOs because banks were required to indicate specific ultimate beneficiaries of their clients and due to their specific nature, CSOs normally do not have a specific ultimate beneficiary. We are not aware as to whether this issue persists, however, the regulator has since provided clarification, pursuant to which the CSO may not have an ultimate beneficial owner and it should resolve or alleviate this issue. In general, we have seen signals from the regulator that the client identification requirements should be reasonable.

iii. Who is authorized/required to open a bank account? Can this be done online, or that person needs to be present in the country?

Please see the response to Question i.

iv. What is the process of setting up a bank account? E.g., how long it takes, is there a practice to have an interview in the bank?

Each bank has its own process. Normally, at the initial step, the organisation's representative must attend the bank in person to fill out the client questionnaire. Afterward (normally – over the next few weeks) the bank can request the client to provide more documents and information. After the bank has received sufficient information, the organisation's representative must sign bank account documents and agreements, which normally again must be done in person. To make the process simpler, an authorized representative who has a power of attorney can perform some of these steps such as filling the initial client questionnaire.

2. BANKING ACTIVITIES

a. What customer due diligence requirements are in place and what is their impact on civil society organisations' banking activities?

The legal framework for bank client due diligence in Latvia is set by the Law on the Prevention of Money Laundering and Terrorism and Proliferation Financing (AML law). Chapter 3 regulates client due diligence process. The requirements of client due diligence depend on the bank and the client in question.

Here is the list of information and documents typically necessary to open a bank account at bank Latvia:

1. Articles of Association of the company/organisation;
2. Standard bank's client questionnaire;
3. Examples of at least 3 agreements related to business activity in Latvia – these can also be draft agreements that have not yet been concluded. Usually, these are lease agreements on office premises, agreements on the supply of goods, etc. The aim of submitting these agreements is to prove that the company/organisation is active, i.e. carries out or is planning to carry out business activity in Latvia;
4. A detailed description of the planned business/other activity in Latvia – the description should include the reason and purpose for the company's/organisations operations specifically in Latvia;
5. Documentation supporting information on ultimate beneficial owners of the company/organisation;
6. Documents attesting to the firm name, legal form, and incorporation or legal registration of the legal person;
7. Passport/ID of the representative.

The bank may request to submit other documents in addition to the abovementioned and even then may decide to refuse the bank account opening without having to explain the reason for the refusal.

b. Which internal principles or official (central bank) "suspicious transaction" monitoring criteria are in place affecting the civil society organisations? Is it publicly available?

The banking activities of CSOs do not have specific monitoring rules. The monitoring rules for all clients derive from AML law requirements. Also, each bank will have its own monitoring regime in internal rules.

Under AML Law, a suspicious transaction is defined as a transaction or action creating suspicions that the funds involved therein are directly or indirectly obtained as a result of a criminal offense or are related to terrorism and proliferation financing, or an attempt to carry out such actions. Suspicious client transactions must be reported to the Financial Intelligence Unit. In certain cases, the bank must also refrain from carrying out the relevant suspicious transaction or freeze the client's account altogether.

c. Do the banks in the country of operations have any restrictions/limitations to bank transactions and transfers to certain jurisdictions (such as high-risk ones).

Yes, pursuant to AML Law Section 25^1 "Business Relationship with a client from a High-risk Third Country", there are stricter requirements for banks to cooperate with clients from high-risk jurisdictions or to monitor transactions involving persons from high-risk countries. In addition, there are practical restrictions to transactions involving jurisdictions with high sanctions risk, such as Russia and Belarus.

i. If yes, is the list of jurisdictions publicly available?

AML Law Section $1(12^1)$ contains the definition of high-risk countries: "countries or territories where in the opinion of an international organisation or an organisation setting the standards in the field of prevention of money laundering and terrorism and proliferation financing, there is no efficient system for the prevention of money laundering and terrorism and proliferation financing in place, including countries or territories which have been determined by the European Commission as having strategic deficiencies in the regimes for the prevention of money laundering and terrorism and proliferation financing, posing significant threats to the financial system of the European Union".

Such countries include, without limitation*:

- The list by the European Commission of third countries that do not sufficiently fight money laundering and terrorist financing;
- Lists of FATF High-risk Jurisdictions and FATF Jurisdictions under Increased Monitoring.

ii. What would be the procedures the bank would follow in this case for their CSO clients?

The AML law does not prescribe any CSO-specific procedures. Banks may, however, establish specific procedures for specific types of clients.

3. OBLIGATIONS AND REPORTING REQUIREMENTS

a. Are banks required to provide CSO clients' financial information to CSO regulatory authorities or public officials? If yes, under what circumstances must banks do so, and what types of information must they provide?

Normally, banks are required to provide clients' financial information to regulatory authorities only in cases of suspicious transactions or for the purposes of recording the clients' financial liabilities in a common register that is used by other banks or institutions for evaluating the client's creditworthiness. Also, banks provide statistical information to the authorities, but this reporting is done on an aggregate, no-names basis.

b. What obligations do banks have to protect the privacy of clients' information?

Generally, banks must maintain professional secrecy on any client-related facts and evaluations they may know. Based on Section 62(5) of the Credit Institution Law, information regarding a client and their transactions, which the credit institution acquires in providing financial services following a

* Please see the relevant lists on the FIU's website: https://www.fid.gov.lv/lv/darbibas-jomas/starptautiska-sadarbiba/augsta-riska-valstis

concluded contract, is non-disclosable information. Banks may disclose client-related information if they are legally required to do so, if the client has consented to it, or if they are authorized to disclose banking affairs.

Although banks must protect and not disclose clients' information, some exceptions apply. For example, information regarding the client, their accounts, and transactions must be provided in accordance with a written agreement:

1. To the provider of outsourcing services if such information is necessary for the receipt of an outsourcing service;
2. To the person who provides such service to a credit institution, which is related to:
    a. Identification, assessment, management, and supervision of the inherent and potential risks for activities of the credit institution;
    b. Calculation of and compliance with the requirements governing activities of the credit institution.

Besides, banks may provide information to state institutions, state officials, or other institutions if required by the law (for details please see Sections 62 and 63 of the Credit Institution Law). For instance:

- To state institutions (such as the Financial Intelligence Unit of Latvia, the State Revenue Service) if needed for money laundering and terrorist financing prevention functions;
- Courts within the scope of the matters in the record-keeping thereof based on a court (judge) decision;
- In case of criminal investigation, to the person directing the proceedings;
- To the notary public and bailiffs, if necessary for the performance of their functions, etc.

In addition, the General Data Protection Regulation (GDPR) protects the fundamental rights and freedoms of natural persons, particularly their right to the protection of personal data. The requirements of the GDPR must be respected.

c. Are there specific reporting obligations for banks to inform governments on civil society banking in certain circumstances?

No.

d. Are you aware of any change in regulation/practice due to the Russian sanctions?

Yes. Although no specific amendments have been made to the legal enactments, the client identification procedures, especially ultimate beneficiary determination procedures are more stringent for new, as well as existing clients, especially in case the client has any connection with Russia or Belarus.

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