



**MINISTRY OF JUSTICE OF THE REPUBLIC OF
LITHUANIA**

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Data is collected and stored in the Centre of Registers, code 188604955

UAB Raimda auditas
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2020-11- No.
To request 2020-10-23

Copy to
The Public Procurement
Office
Email. info@vpt.lt

REGARDING YOUR REQUEST

Ministry of Justice of the Republic of Lithuania in 23 October 2020 received your inquiry requesting an explanation of the provisions of the Law of the Republic of Lithuania on the Prevention of Money Laundering and Terrorist Financing (hereinafter - the Law on PMLTF). In response to your request, we would like to inform you that the laws of the Republic of Lithuania, resolutions of the Government of the Republic of Lithuania, as well as regulations of the Ministry of Justice of the Republic of Lithuania approved by the Government of the Republic of Lithuania in 9 July 1998 by resolution No. 851, whether other legal acts of the Republic of Lithuania do not provide for the powers of the Ministry of Justice to officially interpret laws and other legal acts, nor do they provide powers in the field of public procurement policy or prevention of money laundering and/or terrorist financing. In this context, the following information and the opinion of the Ministry of Justice cannot be considered as a formal interpretation of the law and is not binding on courts, state and municipal institutions and bodies, companies, other organizations and individuals.

Article 9 and other articles of the Law on PMLTF imposes an obligation on financial institutions and *other obliged entities* to take measures and to identify and verify the identity of the customer and the beneficial owner. Assessing the definitions of financial institutions and other obliged entities in Article 2 (7) and (10) of the Law on PMLTF, it should be noted that public establishments (institutions) are not mentioned in them and it is considered that there are extremely rare exceptional cases when a public establishments could fall within the definition of another obliged entity.

When considering the possibility / need to apply the obligation to identify the customer and the beneficial owner set out in the Law on PMLTF, it should be noted that the Law on PMLTF does not clearly define the moment at which the customer or beneficial owner should be identified. Although Article 9 (1) of the Law on PMLTF lists the cases in which an established obligation must be performed (“prior to establishing a business relationship”), it does not specify which actions are to be considered as a business relationship. In addressing this issue, the regulation of the legal protection of personal data should also be assessed, avoiding unjustified and excessive collection of personal data. It is considered that in the case of customer and beneficial owner data on all tenderers, and not only on the successful tenderer, the requirement and collection could be considered as excess



and therefore unjustified, all the more so as not to affect the outcome of the evaluation of the proposals. It is to be assessed that in accordance with Paragraph 1 of Article 47 of the Law on Public Procurement of the Republic of Lithuania, the qualification requirements for candidates or tenderers established by the contracting authority may not artificially restrict competition, must be proportionate and relevant to the object of the procurement, and information about the supplier's customer or beneficial owner could hardly be considered relevant to the object of the procurement. However, in the interests of the protection, transparency and clarity of the legitimate expectations of tenderers, the Ministry of Justice considers that information that the contracting authority will ask the successful tenderer to provide information on the customer or beneficial owner before the contract is signed and that failure to do so will amount to a refusal to sign the contract should be indicated in the procurement documents (or the obligation to provide information shall be laid down in the contract to be concluded).

It should be noted that the application of public procurement procedures does not release the contracting authority from the requirements and obligations established in other laws, if such obligations are established by other laws, therefore the obligation to implement the Law on PMLTF could not be exempted either.

Taking into account the fact that the Public Procurement Office implements the public procurement policy and provides methodological assistance, prepares recommendations and guidelines on the issues of application and implementation of the Law on Public Procurement (see Sub-paragraphs 8.1, 9.2 of the Regulations of the Public Procurement Service approved by Resolution No. 1517 of the Government of the Republic of Lithuania of 21 December 2011) and could suggest what it considers to be the most appropriate way to implement the Law on PMLTF in public procurement, the request is forwarded to it.

ADDED. 23 October 2020 UAB Raimda auditas inquiry, 1 page (only to the recipient of the copy).

Head of the Legal System Group,
acting as Chancellor of the Ministry

Dalia Baležentė

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✓ *Ministry of Justice of the Republic of Lithuania*
On the application of the provisions of the law

REQUEST

23 October 2020

Law on Prevention of Money Laundering and Terrorist Financing (hereinafter - LPMLTF) 1997-06-19 No. VIII-275 (current wording from 10/07/2020) Chapter 3 of the *Money Laundering and/or Terrorist Financing Prevention Measures* Article 9 *Customer's and the Beneficial Owner's due Diligence* and other related articles establish the obligation **to identify the Beneficial Owner**.

The provisions of the LPMLTF apply to ***other obliged entities*** (Item 10 of Article 2) and to all financial-credit institutions.

The term “customer” is often emphasized in this law, but in a similar *reverse situation*, the term “supplier” is omitted.

For example, Public Institution “X“, in which one of the relevant ministries of the Republic of Lithuania is a shareholder announces an international public procurement tender for the purchase of goods / services.

1. **Question:** Does the Public Institution “X“ not have a legal obligation to obtain the *identification of the final beneficial owner* of the company (supplier) participating in the tender in accordance with the provisions of the *Law on the Prevention of Money Laundering and Terrorist Financing* of the Republic of Lithuania?

In the text of the Public Procurement Law of the Republic of Lithuania No. I-1491 of 13 August 1996 (current wording from 1 August 2020), I did not notice that there was a legal obligation regarding the identification of *the supplier - the beneficial owner*.

2. **Question:** Are the provisions of the Law of the Republic of Lithuania on the *Prevention of Money Laundering and Terrorist Financing* regarding the determination of the ***beneficial owner*** not mandatory, i.e. legally applicable to the Law on Public Procurement of the Republic of Lithuania?

Director and Auditor of UAB Raimda auditas

Member of ACCA (Association of Chartered Certified Accountants) Daiva Žumbakienė

DETALŪS METADUOMENYS

| | |
|---|---|
| Dokumento sudarytojas (-ai) | LIETUVOS RESPUBLIKOS TEISINGUMO MINISTERIJA 188604955, Gedimino pr. 30, LT-01104 Vilnius |
| Dokumento pavadinimas (antraštė) | Dėl įstatymo nuostatų taikymo |
| Dokumento registracijos data ir numeris | 2020-11-18 Nr. (1.11E) 7R-7032 |
| Dokumento gavimo data ir dokumento gavimo registracijos numeris | – |
| Dokumento specifikacijos identifikavimo žymuo | ADOC-V1.0 |
| Parašo paskirtis | Vizavimas |
| Parašą sukūrusio asmens vardas, pavardė ir pareigos | Darius Trinkūnas, Vyresnysis patarėjas, Teisės sistemos grupė |
| Sertifikatas išduotas | DARIUS TRINKŪNAS, Lietuvos Respublikos teisingumo ministerija LT |
| Parašo sukūrimo data ir laikas | 2020-11-18 12:28:38 (GMT+02:00) |
| Parašo formatas | XAdES-EPES |
| Laiko žymoje nurodytas laikas | – |
| Informacija apie sertifikavimo paslaugų teikėją | ADIC CA-B, Asmens dokumentu israsymo centras prie LR VRM LT |
| Sertifikato galiojimo laikas | 2018-11-23 15:46:39 – 2021-11-22 15:46:39 |
| Parašo paskirtis | Pasirašymas |
| Parašą sukūrusio asmens vardas, pavardė ir pareigos | Dalia Baležentė, L.e. kanclerio pareigas |
| Sertifikatas išduotas | DALIA BALEŽENTĖ, Lietuvos Respublikos teisingumo ministerija LT |
| Parašo sukūrimo data ir laikas | 2020-11-18 14:25:05 (GMT+02:00) |
| Parašo formatas | XAdES-T |
| Laiko žymoje nurodytas laikas | 2020-11-18 14:25:20 (GMT+02:00) |
| Informacija apie sertifikavimo paslaugų teikėją | ADIC CA-B, Asmens dokumentu israsymo centras prie LR VRM LT |
| Sertifikato galiojimo laikas | 2018-11-09 10:56:40 – 2021-11-08 10:56:40 |
| Informacija apie būdus, naudotus metaduomenų vientisumui užtikrinti | "Registravimas" paskirties metaduomenų vientisumas užtikrintas naudojant "RCSC IssuingCA, VI Registru centras - i.k. 124110246 LT" išduotą sertifikatą "Dokumentų valdymo sistema Avilys, Lietuvos Respublikos teisingumo ministerija, i.k. 188604955 LT", sertifikatas galioja nuo 2019-09-25 15:37:33 iki 2022-09-24 15:37:33 |
| Pagrindinio dokumento priedų skaičius | 1 |
| Pagrindinio dokumento pridedamų dokumentų skaičius | – |
| Priedamo dokumento sudarytojas (-ai) | – |
| Priedamo dokumento pavadinimas (antraštė) | – |
| Priedamo dokumento registracijos data ir numeris | – |
| Programinės įrangos, kuria naudojantis sudarytas elektroninis dokumentas, pavadinimas | Dokumentų valdymo sistema Avilys, versija 3.4.43 |
| Informacija apie elektroninio dokumento ir elektroninio (-ių) parašo (-ų) tikrinimą (tikrinimo data) | Atitinka specifikacijos keliamus reikalavimus. Visi dokumente esantys elektroniniai parašai galioja (2020-11-18 14:39:00) |
| Paieškos nuoroda | – |
| Papildomi metaduomenys | Nuorašą suformavo 2020-11-18 14:39:00 Dokumentų valdymo sistema Avilys |