Implementation of certain international standards in the Swedish Money Laundering and Terrorist Financing (Prevention) Act

On 1 August 2015, certain amendments were implemented in the Swedish Money Laundering and Terrorist Financing (Prevention) Act (2009:62) (the Money Laundering Act). The amendments are a consequence of the Financial Action Task Force’s (FATF) revision of their international standards in 2012, as well as the shortcomings found in the national risk assessment conducted in 2012. In short, the amendments are the following.

Politically Exposed Persons (PEP)
The definitions of PEPs, immediate family members and persons known to be associated with PEPs have been incorporated in the Money Laundering Act. The definition of PEPs has partly been changed to include persons who are or have been entrusted with prominent public functions in a state, or are or have been members of the senior management in an international organisation.

It should be noted that the definition now states that a PEP shall have or have had a function “in a state”. The requirement that a PEP shall be domiciled in another state (i.e. outside Sweden) no longer applies, and accordingly, Swedish residents can now be regarded as a PEP in relation to Swedish service providers.

In addition, the definition includes persons in international organisations, meaning organisations established through formal political agreements between states, which have status as international treaties. Examples of such international organisations are the UN, the Organisation for Economic Co-operation and Development (OECD), NATO and WTO. Members of the senior management refers in particular to directors, secretaries-generals and their deputies, but also to equivalent functions.

Family members and persons known to be associated with PEPs are not PEPs per se, but shall be treated as if they are PEPs.

The assessment of whether a customer is a PEP, a family member or a person known to be associated to a PEP, or if the beneficial owner is a PEP, is now a part of the basic customer due diligence measures.

Where a person has ceased to have a function as a PEP, enhanced customer due diligence measures shall be applied to the PEP, his/her family members and persons known to be associated with the PEP for not less than 18 months (previously 12 months) and until such time as the person is deemed to pose no further risk for money laundering or financing of terrorism.

Measures taken by a third party
Following the amendments of the Money Laundering Act, a service provider shall upon request and without delay be provided with the customer information that the third party has obtained, which is a difference from the previous regulation which only required that the information was sent upon request. The phrase without delay means that it shall be made promptly and as soon as objectively possible.

Risk assessment
The revised international standards further develops the risk-based approach. The risk assessment is central to the risk-based approach and it is therefore stated in the Money Laundering Act that the service provider shall identify and assess the risk of money laundering and terrorist financing, and to document and keep the assessment updated. The amendment of the Money Laundering Act results in an increased responsibility to assess the risks in the conducted business.

New products, new business practices and the use of new technologies
A service provider must always conduct enhanced customer due diligence measures if the money laundering and terrorist financing risks are high. Following the amendments of the Money Laundering Act, new products, new business practices and the use of new technologies shall be given particular attention when assessing high-risk situations. New technologies also include technologies already existing on the market, but which are new to the service provider.

Maintenance of documents or information
A service provider’s obligation to delete information regarding conduct customer due diligence measures no later than within three years has been replaced by an obligation to maintain the documents and the information for at least five years, commencing when the transaction was executed or when the service provider refrained from executing the transaction.

Processing of personal data
A new chapter with provisions regarding the processing of personal data has replaced the chapter regarding register issues. Service providers are now allowed to process sensitive personal data, but only if it is essential (i) for determining whether the customer or the beneficial owner is a PEP, (ii) for determining whether the customer is a family member or a person known to be associated to a PEP, (iii) for complying with the obligation to review transactions and (iv) for maintaining information concerning measures taken (a) to conduct customer due diligence and (b) to review transactions. Accordingly, the new chapter constitutes an exemption from the Swedish Personal Data Act (1998:204), which, as a main rule,
prohibits the processing of sensitive personal data. However, a service provider’s register may not be shared and merged with another service provider’s corresponding register.

Miscellaneous
Updates from the Swedish Financial Supervisory Authority (SFSA)
In relation to the amendments of the Money Laundering Act, the SFSA has amended the Money Laundering Regulations. The provisions regarding PEPs were repealed when the amendments to the Money Laundering Act entered into force on 1 August 2015. Additional proposals regarding amendments of the regulations will be circulated for consultation during 2015.

Updates from the Financial Action Task Force (FATF)
In June 2015, the FATF issued a new guidance, FATF Guidance for a Risk-Based Approach to Virtual Currencies, regarding the application of a risk-based approach to virtual currencies. The guidance clarifies the application of specific FATF recommendations to virtual currency exchangers and identifies the measures necessary to conduct.

At the same time, the FATF issued a revised version of its Best Practice Paper on Combating the Abuse of Non-Profit Organisations (Recommendation 8), in which the results from a report, published in 2014 regarding the risk for non-profit organisations being abused for terrorist financing, has been taken into account.

Sanctions
The SFSA has found that Nordea and Handelsbanken have failed in their obligations to maintain a satisfactory internal governance and control as regards the anti-money laundering regulations. As a result of the deficiencies, Nordea received a warning and an administrative fine of SEK 50 million, and Handelsbanken a remark and an administrative fine of SEK 35 million.

Contact
For questions or further information, please contract:

Niclas Rockborn
Partner/Advokat
Gernandt & Danielsson Advokatbyrå KB
Dir  +46 8 670 66 46
Mob +46 734 15 26 46
niclas.rockborn@gda.se

Olle Asplund
Advokat/Senior Associate
Gernandt & Danielsson Advokatbyrå KB
Dir  +46 8 670 64 61
Mob +46 734 15 24 61
olle.asplund@gda.se

Camilla Landberg
Associate
Gernandt & Danielsson Advokatbyrå KB
Dir  +46 8 670 66 95
Mob +46 734 15 26 95
camilla.landberg@gda.se