# Managing the Risk of Entering into a Toxic Business Relationship from the Perspective of Anti-Money Laundering Legislation

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## Abstract

**Purpose:** The aim of this article is to provide an introduction to the issue of risk management and the standard of due diligence within the establishment of a business relationship with a client by members of the public trust profession, in particular statutory auditors, in the context of anti-money laundering legislation.

**Methodology/research approach:** Literature research and review of national and European legislation relating to issues of counteracting money laundering and the statutory auditor profession.

**Results:** Based on the review of literature and the content of legal regulations relating to counteracting money laundering and the exercise of the statutory auditor profession, key risk areas and legal requirements for managing the risk of exposure to money laundering involvement were identified. The analysis performed made it possible to propose a number of recommendations in the scope of limiting the exposure to the conscious or unconscious involvement of a statutory auditor in unlawful activities in the context of legal obligations in the area of counteracting money laundering.

**Research limitations/implications:** The literature research and the review of legal regulations only covered documents selected by the author which he considered crucial from the perspective of the purpose of the analysis. The text is



ISSN 2957-1839
www.pana.gov.pl

therefore not an exhaustive overview of all content relevant to the issues of counteracting money laundering issues available in the public domain.

**Originality/value:** Gathering in one place the knowledge of the risks that surround the practice of the statutory auditor profession in the context of regulatory requirements in the area of counteracting money laundering and exposure to the risk of the statutory auditor's involvement in money laundering.

**Keywords:** money laundering, counteracting money laundering, AML, economic crime, financial crime, fraud risk management, due diligence, compliance.

## Introduction

Money laundering is a serious crime, the essence of which is to give the appearance of legitimacy to assets derived from the commission of other crimes. Organising the logistics of money laundering is often the domain of organised crime groups, which this way hide their proceeds from law enforcement authorities and simultaneously make sure that they are able to continue their criminal activities. Criminal groups attempt sometimes to make use of public officials to launder money, most often in the capacity of so-called *gatekeepers,* i.e., people who facilitate access to various services, in particular financial services, which would be impossible or significantly more difficult to secure without their participation. Because of the risks associated with public officials' exposure to money laundering, they have been included in the group of 'obliged institutions' within the meaning of the anti-money laundering regulations.

This text introduces readers to the issue of managing the risk of entering into a toxic business relationship from the perspective of anti-money laundering legislation and of a statutory auditor, as an obliged institution, focusing on the problem of due diligence in establishing business relationships with clients in professional economic trade.

In the era of the global risk economy (WHO, 2023), diligence in selecting business partners is of considerable importance to companies. The risks associated with establishing a new business relationship or continuing an existing one are various, and include, among many, a risk of violating economic sanctions or anti-money-laundering regulations if a relationship is established with a client who attempts to use our credibility as a springboard for committing fraud.

This paper focuses only on the risk of entering into a relationship with an entity that, in the course of its business, may commit acts described in Article 299 para.

1 of the Criminal Code (Journal of Laws of 2022, item 1138, as amended), i.e., the offence of money laundering. In addition, the subject matter of considerations has been narrowed to a particular group of the 'obliged institutions' within the meaning of Article 2 para. 1 of the Act on Counteracting Money Laundering and Terrorism Financing (Journal of Laws of 2023, item 1124), i.e., non-financial obliged institutions, and further to public officials with knowledge of accounting, i.e., statutory auditors

Diligence in establishing a business relationship with a client is of particular importance from the perspective of personal liability of statutory auditors or audit firms they represent, not only at the stage of establishing a business relationship, but also during the performance of contracts concluded with clients.

In business relations, the general rule for assessing diligence in establishing business relations with counterparties is introduced by the provisions of Article 355 para. 2 of the Civil Code (Journal of Laws of 2022, item 1360, as amended), according to which '*due diligence in business activities shall be determined taking into account the professional nature of such activities.'* This provision is interpreted as a duty of special care on the part of professional economic trade participants. In its decisions and resolutions, the Supreme Court leaves no doubt in this context, pointing out that '*in the doctrine (of the application of law) and judicial decisions (of courts) it has been accepted that due diligence is determined by objective and abstract considerations, i.e. independent of the individual characteristics of the perpetrator of damage*' (OSNC 1991, No. 1, item 3), and adding that '*embedded in the essence of business activity is the requirement to possess the necessary expertise, which includes not only purely formal qualifications, but also experience resulting from professional practice and customary established standards (e.g., good practices and codes of ethics)*' (IV CK 100/05, LEX No. 187120).

Statutory auditors, while practising their profession, are obliged, in particular, to '*continuously improve their professional qualifications, in particular, by way of receiving mandatory professional training in each calendar year',* which is subject to documentation and verification by the National Chamber of Statutory Auditors (Journal of Laws of 2023, item 1015, Article 9),

Statutory auditors, in performing their tasks, act under what is known as a reciprocal agreement, within the meaning of Article 487 para. 2 of the Civil Code (Journal of Laws of 2022, item 1360, as amended): 'when both parties undertake in such a way that the performance of one of them is to be equivalent to the performance of the other'. The essence of the performance of statutory auditors or audit firms they represent will be, within the framework of a reciprocal contractual relationship, in particular, the provision of auditing services within the meaning of Article 3 in conjunction with Article 2, para. 7 of the Act on Statutory Auditors (Journal of Laws of 2023, item 1015). The customer's consideration, on the other hand, will be the payment of remuneration for the work performed. Under a reciprocal agreement,

both parties are creditors and debtors to each other. At the same time, the scope of the statutory auditor's duties derives not only from the content of the contract with the client itself, but also, in particular, from the provisions of laws, including the Law on Statutory Auditors (Journal of Laws of 2023, item 1015) and the Act on Counteracting Money Laundering and Terrorism Financing (Journal of Laws of 2023, item 1124). The aforementioned regulations supplement the concept of diligence within the meaning of the aforementioned Article 355 para. 2 of the Civil Code, following Article 56 of the Civil Code (Journal of Laws of 2022, item 1360, as amended), which stipulates that *'a legal action (e.g., the conclusion of a contract) produces not only effects expressed therein, but also those arising from the law, rules of social intercourse and established customs.'*

Given that the title of this paper refers to the perspective of anti-money laundering regulations, the remaining part hereof focuses on the content of the statutory auditor's obligations under the aforementioned laws and established customs that is good market practices. The latter are discussed in the context of a study published in June 2023 by the Association of Certified Fraud Examiners, hereafter referred to as the ACFE) and by Thomson Reuters, titled '*Combating Business-to-Business Fraud: Benchmarking Report*' (ACFE and Thomson Reuters, 2023).

There are a number of risks associated with entering into a business relationship with an entity involved in money laundering, the key of which appears to be the issue of criminal and administrative liability, both on the part of a statutory auditor and the audit firm itself, as well as a reputational risk, although the list of potential risks is certainly not limited to these two elements.

A detailed description of risks related to entering into cooperation with an entity involved in money laundering and of obligations imposed on statutory auditors in this regard by the Act on Counteracting Money Laundering and Terrorism Financing (Journal of Laws of 2023, item 1124), along with the context of the ACFE and Thomson Reuters analysis results, has been presented below (ACFE and Thomson Reuters, 2023).

## 1. Money laundering as a criminal act and the context of obliged institutions

Money laundering is a criminal act, the essence of which is to give the appearance of legitimacy to gains derived from the commission of any other criminal act, the so-called underlying act. The national statutory definition of money laundering can be found, as has already been mentioned in the introduction, in Article 299 para. 1 of the Criminal Code, according to which, '*whoever receives, holds, uses, transfers or transports abroad, conceals, transfers or converts, or assists in transfer of title or possession of legal tenders, financial instruments, securities, or other foreign currencies*

*values, property rights or other real estate or movable property derived from the benefits relating to the commission of an offence, or takes any other actions which can prevent, or make significantly more difficult, determination of their criminal origin or place of deposition, detection or forfeiture, shall be subject to the penalty of deprivation of liberty'*(Journal of Laws of 2020, item 1138, as amended).

In Poland, penalties for money laundering are imposed on the basis of intentional guilt. A person who commits the crime of money laundering, e.g., conceals movable or immovable property derived from the commission of another criminal act, is subject to criminal liability if they act with knowledge that their activity or omission to act amounts to a criminal act under Article 299 para. 1 of the Criminal Code. The burden of proof for demonstrating guilt, i.e., that knowledge that a certain activity or omission to act amounts to a criminal act, rests with a public prosecutor, in accordance with the principle that:

- *'the accused is considered innocent until their guilt is proven and established by a final judgment'* (Journal of Laws of 2022, item 1375, as amended, Article 5),
- *'any doubt that cannot be cleared up shall be resolved in favour of the accused'* (Journal of Laws of 2022, item 1375, as amended, Article 5), and,
- *'the prosecuting body shall be obliged to initiate and carry out preparatory proceedings, and the public prosecutor shall also be obliged to initiate and support a prosecution for any act prosecuted ex officio', and that 'except in cases specified in national or international law, no person can be released from liable for a crime committed'.* (Journal of Laws of 2022, item 1375, as amended, Article 10).

It is perhaps worth pointing out that in many countries, for example in Great Britain, liability for money laundering can also arise in cases of unintentional guilt, i.e., for example, if a perpetrator takes possession of assets in exchange for a price significantly lower than their market value. (UK Proceeds of Crime Act 2002, Article 329). Liability under the *UK Proceeds of Crime Act 2002* is therefore similar to that regulated by the (Polish) national legislation and concerning liability for unintentional handling of stolen goods, resulting from Article 292 of the Criminal Code, according to which, '*whoever acquires or assists in disposing of an item which, based on the accompanying circumstances, should and may be presumed to have been obtained as a result of a prohibited act, or accepts or assists in concealing such an item, shall be subject to a fine, custody or imprisonment (Journal of Laws of 2022, item 1138, as amended)'.*

The provisions of the *UK Proceeds of Crime Act 2002*, moreover, implement the recommendation of Article 9(3) of the Council of Europe Convention of 16 May 2005 on counteracting money laundering, signed in Warsaw, according to which, '*any party may assume that in order to be considered a money laundering activity, it is sufficient*

*that the perpetrator suspected that the property taken into possession came from the commission of a criminal act or should have assumed that the property came from the commission of another criminal act based on the accompanying circumstances* (Council of Europe, CETS No. 198, 2005)*'*.

For the purpose of summarising the argument on the premises of liability for money laundering, it is worth mentioning that auditors are a professional group that has entered the ranks of obliged institutions within the meaning of the Act on Counteracting Money Laundering and Terrorism Financing (Journal of Laws of 2023, item 1124), in relation with the foregoing and in the context of Article 355 para. 2 of the Civil Code, already referred to in the introduction (Journal of Laws of 2022, item 1360, as amended), and are expected to exercise a superior standard of diligence in establishing business relationships with clients. In this context, it is also worth recalling the severe criminal liability referred to in Article 156 para. 1 of the Act on Counteracting Money Laundering and Terrorism Financing, according to which,*'whoever, acting for or on behalf of an obliged institution, fails to comply with the obligation to notify the General Inspector of Financial Information of circumstances that may indicate a suspicion that a money laundering or terrorism financing crime has been committed, or with the obligation to notify the General Inspector of Financial Information of a reasonable suspicion having been raised that a certain transaction or assets subject to the transaction may be related to money laundering or terrorism financing, shall be subject to a penalty of imprisonment from 3 months to 5 years'.* (Journal of Laws of 2023, item 1124).
More information on the obligations of statutory auditors as an obliged institution has been presented further herein.

The imposition of special obligations with regard to establishing business relationships with clients, on statutory auditors and also on other public officials such as attorneys, legal advisers, notaries public and tax advisers, did not come out of nowhere. In this context it is worth recalling that the Financial Action Task Force (FATF) established in 1989 by G7 members, has drawn attention to the role of gatekeepers, i.e., public officials instrumentally used by criminals for the purposes of concealing the source of criminal assets, as early as in the 1990s of the previous century. The 2019 FATF report entitled *FATF Guidance for a Risk-Based Approach for the Accounting Profession* (which replaced its previous version issued in 2008, which in turn replaced earlier FATF considerations) identifies the following areas of increased risk of involvement in money laundering, faced by the accounting professionals, including statutory auditors and audit firms (FATF, 2019, p. 11):

- financial and tax advice – criminals may impersonate legitimate companies and seek the support of professionals in raising funds, managing the capital under their control, or in optimising taxes. Although in many

cases such advice will concern legitimate revenues, where the source of assets is related, directly or indirectly, to the commission of crimes, any assistance in managing and potentially concealing the source of the funds used may be treated as complicity or aiding and abetting money laundering;

- support in the establishment of companies and trusts – criminals may attempt to mask the links between assets under their control and their source by way of creating corporate structures that distance or eliminate personal links visible to third parties between the capital and its real beneficiary;
- brokerage in the acquisition or disposal of assets or an organised part of an enterprise – criminals may use asset ownership transfers as a way of distancing the crime scene from the place of use of proceeds from the crime committed. This makes it difficult to both subjectively and objectively link assets to criminal acts. Using the assistance and reputation of professional intermediaries and advisers to act as the aforementioned gatekeepers may also serve to lull the vigilance of law enforcement authorities and other obliged institutions such as banks, which will often rely on the credibility and diligence of statutory auditors and audit firms in selecting business partners;
- making financial transactions for or on behalf of a client – criminals may use accounting professionals to make such transactions in order to make the rationale of the economic purpose of the financial operation plausible;
- gaining access to financial institutions – criminals can use accounting professionals as intermediaries to manage relationships with financial institutions, thus in this way avoiding direct exposure to potentially uncomfortable questions.

It is also worth remembering that although the primary task of audit firms and statutory auditors who function within their structures is to *'provide auditing services'* Article 47 para. 1 of the Act on Statutory Auditors (Journal of Laws of 2023, item 1015); however, in keeping with Article 47 para. 2 of the Act on Statutory Auditors (Journal of 2023, item 1015), an audit firm may also provide the following services:

- bookkeeping and taxation services;
- tax consultancy;
- conducting bankruptcy or liquidation proceedings;
- publishing or training activities in the area of accounting, auditing and taxation;
- preparation of expert reports or economic and financial opinions;

- consultancy or management services that require knowledge of accounting, auditing, tax law, and business organisation and operations;
- provision of attestation services other than auditing services, other than those reserved for statutory auditors;
- provision of related services;
- provision of other services reserved by separate legal regulations for statutory auditors (Journal of Laws of 2023, item 1015).

In comparing the scope of services provided by statutory auditors and audit firms in accordance with the Act on Statutory Auditors, Audit Firms and Public Supervision (Journal of Laws of 2023, item 1015) with the FATF-indicated areas of higher risk of money laundering exposure for statutory auditors and accountants (FATF, 2019, p. 11), it is easy to see many potential points of contact between the areas of the risk of money laundering and the scope of activities reserved by law for statutory auditors and audit firms.

In the course of providing auditing services, a statutory auditor may come across traces of transactions and other business events that do not have an obvious business rationale and may raise questions in terms of a potential connection to money laundering. For example, an audit firm's client company acquires a new shareholder whose ownership structure does not allow for the parties that control the entity to be identified, and simultaneously the shareholder's registered office is located in a country with a high corruption perception index, and with the acquisition of the shareholder, new entities appear as the company's partners that generate high turnover, both revenues and expenses, although the transactions made with these entities seem to have no economic sense. In addition, such operations with new partners do not generate profits, despite their very high turnover, and furthermore, they are for goods stored in the warehouse area of a third party (which is also a new supplier of the warehouse space, despite the fact that the client has its own warehouse resources, some of which are unused).

The client has no accounting evidence of the actual flow of goods to which the financial flows allegedly relate. There is a risk of fictitious commodity trading, masking the true economic sense of financial flows.

Having a status of an obliged institution and being required to comply with a superior standard of diligence in their operations under the provisions of the Civil Code (Journal of Laws of 2022, item 1360, as amended) and of the Act on Statutory Auditors (Journal of Laws of 2023, item 1015), statutory auditors and the audit firms they represent cannot remain apathetic to red flags and risks linked to clients' participation in unlawful activities.

The audit firm's liability, at least the indirect one, for fulfilling its obligations under the Act on Counteracting Money Laundering and Terrorism Financing (Journal of Laws of 2023, item 1124), results from the fact that, pursuant to Article 3(2) of the

Act on Statutory Auditors and their Self-Regulatory Body, Audit Firms and Public Supervision (Journal of Laws of 2023, item 1015), statutory auditors may act as:

- an individual carrying out business activities in their own name and for his own account, or
- as a partner in an audit firm, or
- an individual in an employment relationship with an audit firm, or
- an individual, including a self-employed person, who has made a civil law contract with an audit firm.

However, whenever a statutory auditor acts within the structures of an audit firm, they are acting on behalf of such an audit firm.

Therefore, it is in the interest of an audit firm to ensure that all statutory auditors acting within its framework perform their duties with due diligence. A cautious analogy can be made here to the need to develop a group procedure, as provided for in Article 51 of the Act on Counteracting Money Laundering and Terrorism Financing (Journal of Laws of 2023, item 1124).

At this point it is worth mentioning that according to Article 2(1)(3)(a) of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorism financing, amending Regulation (EU) No. 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (Directive (EU) 2015/849) *'This Directive shall apply to (...) the following natural or legal persons acting in the exercise of their professional activities: auditors.'* The directive refers explicitly to natural and legal persons acting as auditors, and therefore also to audit firms. Unfortunately, the implementation of this provision to Article 2, para. 1, pt. 15 of the applicable Act on Counteracting Money Laundering and Terrorism Financing (Journal of Laws of 2023, item 1124) remains non-obvious, and a recourse to an extensive interpretation would be, in the context of imposing obligations on entrepreneurs, inconsistent with Article 22 of the Constitution of the Republic of Poland: *'freedom to conduct a business may only be restricted by law and only for reasons of important public interest'* (Journal of Laws No. 78, item 483, as amended) and with Article 8 of the Act on Entrepreneur Law, *'an entrepreneur can only be obliged to act in a certain way in keeping with the provisions of law'* (Journal of Laws of 2023, item 221, as amended). However, it is worth clarifying this issue, as even the Polish Chamber of Statutory Auditors, by letter of 30 January 2020, made an inquiry to the Inspector General of Financial Information, asking it whether *'the obliged institution is a statutory auditor or an audit firm'* (PIBR, AML for Statutory Auditors). As of the date hereof, an official answer to this question has not been made publicly known. However, irrespective of this answer, audit firms should always exercise due diligence, both in terms of the risk of establishing a toxic business relationship

and, at the very least, mitigating the risk of potential criminal liability for collective entities (Journal of Laws of 2023, item 659).

Further on herein, an attempt is made to explain how to ensure compliance with law and why inactivity is not the best approach, as well as how to reduce exposure to the risk of toxic business relationships.

## 2. Legal consequences of establishing a toxic business relationship in the context of money laundering exposure

*'Toxic business relationships'* within the meaning of a dictionary of the Polish language (PWN, SJP, n.d.) and for the purposes hereof, can be defined as those, the establishment of which results in adverse consequences for one of the parties. In the event that a statutory auditor or audit firm enters into a relationship with a business entity involved in money laundering operations referred to in the title hereof, adverse consequences can potentially be very severe, both in terms of liability of statutory auditors as individuals and of audit firms themselves as collective entities.

In the context of national legislation on criminal liability of collective entities (Journal of Laws of 2023, item 659), the regime of liability for acts committed by employees and subcontractors implies that in order to bring criminal charges against a collective entity, the following three qualifying conditions for such liability must be met together:

- firstly, a 'prejudication' [prejudykat] is required, i.e., a situation in which the fact that a criminal act has been committed by a person acting on behalf of or for a collective entity has been confirmed by a final court judgment convicting that person (the exception is an environmental offence, in the case of which prejudication is not required);
- secondly, an act committed by a person acting on behalf of or for the benefit of a collective entity constitutes a catalogue offence [przestępstwo katalogowe] under Article 16 of the Act on the Liability of Collective Entities, (Journal of Laws of 2023, item 659); catalogue offences include, in particular, an offence referred to in Article 299 of the Criminal Code, i.e., participation in money laundering (Journal of Laws of 2022, item 1138, as amended);
- finally, the behaviour of the perpetrator brought or could have brought a collective entity an advantage, albeit a non-pecuniary one (this could be, for example, an audit fee specified in a contract with a client).

A collective entity bears criminal liability if the trial authority proves in criminal proceedings the above three prerequisites for liability towards an individual, and additionally demonstrates that the collective entity failed to exercise due diligence in:

- election of its representative or employee,

- supervision over that person, and
- organisation of activities; here in the context of money laundering, the following aspects are of particular significance: internal procedures, employee training, designation of a person responsible for counteracting money laundering, and documented monitoring of the implementation of obligations under internal procedures and counteracting money laundering and terrorism financing regulations (Journal of Laws of 2023, item 1124).

Potential sanctions, in the event of a final conviction, are extremely severe, as the catalogue of penalties provided for by the Act on the Liability of Collective Entities (Journal of Laws of 2023, item 659) includes, in particular:

- financial penalties in the amount of between PLN 1,000 and PLN 5,000,000, but no more than 3% of the revenue generated in the fiscal year in which the criminal act giving rise to the liability of the collective entity is committed;
- mandatory forfeiture of financial gains derived, even if indirectly, from the commission of a criminal act;
- ban on promoting or advertising the activities carried out (for up to 5 years);;
- ban on using grants, subsidies or other forms of financial support with public funds (for up to 5 years);
- ban on bidding for public contracts (for up to 5 years), and finally
- making a criminal judgment public.

In addition, criminal liability of audit firms and statutory auditors may also arise from the provisions of the Act on Counteracting Money Laundering and Terrorism Financing, as well as from Article 299 of the Criminal Code (at this point it is worth reminding of liability only for intentional acts or omissions).

Criminal provisions and administrative penalties provided for in sections 13 and 14 of the Act on Counteracting Money Laundering and Terrorism Financing include, in particular:

- a financial penalty imposed up to twice the amount of the benefit gained or loss avoided by the obliged institution as a result of a breach or, if it is not possible to determine the amount of that benefit or loss, up to the equivalent of EUR 1,000,000 (higher financial penalty thresholds are naturally applicable to financial institutions);
- publication of information on the obliged institution and the scope of a breach of the Act by this institution in the Public Information Bulletin on the website of the authority providing services to the minister responsible for public finance;
- an order to make the obliged institution cease conducting certain activities
- withdrawal of a license or authorisation or deletion from the register of regulated activities;

- a ban against any person who holds a managerial position and who is held responsible for a breach of the Act by the obliged institution, for a maximum period of one year;
- a penalty of imprisonment of up to 5 years for any person who *'fails to comply with the obligation to notify the General Inspector of Financial Information of circumstances that may indicate a suspicion that a money laundering or terrorism financing crime has been committed, or with the obligation to notify the General Inspector of Financial Information of a reasonable suspicion having been raised that a certain transaction or assets subject to the transaction may be related to money laundering or terrorism financing*' (Journal of Laws of 2023, item 1124).

In addition, criminal liability is without prejudice to the rights to make civil claims against auditors (depending on the configuration of criminal liability and culpability, both of a statutory auditor and an audit firm itself). This is because a claim for damages can be made by stakeholders who find that they have suffered damages due to a lack of anti-money laundering diligence on the part of an auditor of the financial statements. For example, statutory auditors examine financial statements of a joint-stock company, but they fail to raise objections in their auditor's report on the audit of financial statements, although during the reporting period the client engaged in money laundering, which affected the integrity and reliability of the client's financial statements. In the meantime, the audited company issues new shares or bonds, which are acquired by investors relying on the statutory auditor's lack of objections to the proper presentation of the issuer's financial condition. Then it turns out that the issuer was involved in crimes against its clients or was used to launder money, and the statutory auditors did not exercise due diligence in assessing the consequences of this illegal activities, although they should have asked the 'troubling' questions concerning some of the entries in the financial statements before the client's improper operations became known to the public. As a consequence, investors suffer damage as a result of a misguided investment and have trouble retrieving the amounts due from the issuer, for example, because the prosecutor's office has initiated preparatory proceedings. Therefore, they claim damages against the audit firm, claiming that its auditor's report misled them and that it was a direct cause for the adverse disposition of property, i.e., the erroneous investment that led to a damage being incurred by the investors.

This is a scenario that should never be overlooked, or that should always be considered (i.e., the so-called front-page test). In the most pessimistic scenario, if it is proven that the audit firm bears criminal liability, by virtue of lack of diligence in supervision, selection and organisation of work, against an employee who in complicity with the audit firm's client committed a money laundering crime, this may lead to a loss by the audit firm involved of insurance coverage against claims relating to the

consequences of the participation in the commission of a money laundering crime under Article 299 of the Criminal Code. This very adverse scenario which, although highly unlikely, is not impossible.

At this point, it is possibly worth adding that the finding of a statutory auditor guilty or an audit firm culpable for the lack of due diligence in a criminal trial makes it easier to pursue claims on the part of a claimant in a civil trial. According to the provisions of Article 11 of the Code of Civil Procedure, *'The findings of a final judgement of conviction in criminal proceedings as to the commission of a crime are binding on the court in civil proceedings'* (Journal of Laws of 2021, item 1805, as amended). Meanwhile, any conviction also confirms that the culpable act or omission was committed by the convicted person, since guilt, along with the unlawfulness and social harmfulness of the act, is one of the three necessary prerequisites for criminal liability. Pursuant to Article 1 of the Criminal Code (Journal of Laws of 2022, item 1138, as amended):

- criminal liability is incurred only by those who commit an act prohibited under penalty in accordance with laws in force at the time of commission,
- a criminal act whose social harm is insignificant does not constitute a crime,
- a perpetrator of a criminal act does not commit a crime if guilt cannot be attributed to them at the time of the act being committed.

In accordance with the provisions of Article 413 para. 1 pt. 5 of the Code of Criminal Procedure (Journal of Laws of 2022, item 1375, as amended), *'every (criminal court) judicial decision should include (...) a justification'*, which in practice *'takes the form of finding the defendant guilty of the crime concerned'* (Stefański, Zabłocki, 2021). However, in the judicial decisions issued by criminal courts, there is no doubt that *'the omission therein of the phrase confirming that defendants are found guilty of the act alleged is a procedural defect'* (II AKa 30/99, Wokanda 2000, No. 2, item 43). Thus, a civil court is obliged to consider the final criminal judgment as a sufficient premise confirming the culpability and description of the act from the operative part of the criminal judgment, since *'the findings of a criminal conviction issued in criminal proceedings bind the civil court as to all the factual circumstances necessary for the existence of the crime for which the perpetrator is convicted, and in particular all the circumstances that form part of the subjective and objective parts*' (Manowska, LEX/el. 2022, Article 11), which indeed makes it easier to demonstrate the causal link between the culpable act and the effect, in the form of compensation sought in the criminal proceedings for the damage caused.

On the other hand, according to Article 415 of the Civil Code, '*Whoever, through their own fault, caused damage to another, is obliged to make good any such damage caused'* (Journal of Laws of 2022, item 1360, as amended). Furthermore, Article 430 of the Civil Code introduces the concept of liability for subordinates, indicating that, *'whoever, on their own account, entrusts the performance of a task*

*to a person who, in the performance of that task, is subject to their management and is obliged to comply with their instructions, such a person is liable for damage caused through the fault of that person in the performance of the task entrusted*' (Journal of Laws of 2022, item 1360, as amended).

The scope of liability for damages, however, is indicated by Article 361 of the Civil Code, according to which, *'the liable party bears liability only for normal consequences of the act performed or of any omission to act which caused the damage incurred, and the making good of the damage caused consists in covering losses incurred by the party concerned and in providing benefits that the party concerned would have gained, were damage not caused*' (Journal of Laws of 2022, item 1360, as amended).

## 3. Managing the risk of exposure to money laundering

Given the severe penalties for establishing relationships with entities involved in money laundering, and, in the context of the provisions of the Act on Counteracting Money Laundering and Terrorism Financing (Journal of Laws of 2023, item 1124), the liability for failing to implement procedures and preventive controls provided for in this Act, it is extremely important that statutory auditors and audit firms manage the risk of entering into toxic relationships with clients.

Just for the sake of argument, let's summarise that the risk means the measurable probability of damage, (Wikipedia, Risk) and therefore, in keeping with Article 361 para. 2 of the Civil Code, '*the loss incurred by the injured party and the benefit that they could have been provided with, were damage not caused*' (Journal of Laws of 2022, item 1360, as amended).

Furthermore, the society we live in nowadays is a global risk society, and the 21st century is a risk globalisation century, in which nothing that happens is just a local event, and all significant risks have become global risks (Beck, 2012). In this context, we must view relationships with clients not only from a national perspective, but also in an international context. In translating the foregoing into the area of money laundering, the underlying act, within the meaning of Article 299 of the Criminal Code, is very often committed at a considerable distance from the place of money laundering, i.e., abroad, while the proceeds gained end up in Poland.

On the other hand, risk management is defined as '*coordinated activities relating to the direction and supervision of an organisation with respect to risks*' (PKN, Risk Management) and such activities include '*risk identification, analysis, and subsequent evaluation*' (PKN, Risk Management).

In translating the aforementioned definition, made available on the website of the Polish Committee for Standardisation (Polski Komitet Normalizacyjny, PKN) into the language of business, it relates to:

- diagnosing the probability of damage being incurred by an organisation and measuring this potential damage (if a risk materialises in the form of an event causing damage), i.e., determining a potential impact, measured in money, of the materialisation of risk on the organisation's performance and indicating the probability of this materialisation (inherent risks);
- adjusting the diagnosis against inherent risks based on the controls identified in business processes, leading to reduction in the impact of risks on the organisation (in terms of the probability or value of potential damage); the result of the adjustment made is the determination of a residual risk,
- determining the organisation's risk appetite, i.e., determining of whether the residual risk falls within the range of the organisation's acceptable risk levels, and of whether the monitoring of changes in the level of probability and in the value of potential damage forms a sufficient measure of monitoring the risk levels. However, if the risk appetite is lower than the exposure to residual risks, it is necessary to develop a strategy and plan for reducing the risk exposure in order to bring it closer to the level acceptable to the company's management.

The foundations of risk management methodology are obviously not significantly different from the general management theory understood as '*A set of activities including planning, decision-making, organising and leading, directed at the organisation's resources (human, financial, physical and information) and carried out with an intention to make the organisation achieve goals in an efficient and effective manner*' (Kisielnicki, 2008, p. 14).

The most up-to-date and available in the public domain National Risk Assessment of Money Laundering and Terrorism Financing was prepared by the Ministry of Finance (Financial Information Department) in 2019 (Department of Financial Information, National Risk Assessment, 2019, pp. 148–149). According to the document, in 2017 the Financial Information Department at the Ministry of Finance addressed a survey to obliged institutions and cooperating units, asking them to identify five properties of entities participating in business transactions or of products or services available in the financial market, which are or may be the most frequently used for the purposes of money laundering. The survey included a list of potential risk areas, and in particular an area of money laundering risk designated as '*services provided by auditors*'.

According to the survey, the highest money laundering risk was associated with:

- cryptocurrency trading operations;
- cross-border physical transportation of money, securities and other highly valuable assets (including works of art, jewellery, precious stones, gold and luxury goods;
- clients registered in tax and financial havens;

- slot machine games and exchange of chips in gambling casinos;;
- purchases/ sales.

With regard to statutory auditors and audit firms, information on the above risk areas may be of significance at the stage of assessing the risk of entering into a relationship with a client engaged in one of the above activities. In addition, *Krajowa ocena ryzyka prania pieniędzy oraz finansowania terroryzmu* [lit. *National Risk Assessment for Money Laundering and Terrorism Financing*] includes, among other, risk scenarios relating to public officials, in particular, statutory auditors. These scenarios are available in Annex No. 2 to the aforementioned national assessment, entitled *Scenariusze ryzyka prania pieniędzy* [lit. *Money Laundering Risk Scenarios*] (Department of Financial Information, Annex No. 2 to the National Risk Assessment, 2019, p. 35) [accessed:27/07/2023] . The aforementioned scenario relating to statutory auditors and audit firms, reads as follows: '*assisting criminals (often without awareness of the real purpose) in carrying out transactions for the purchase of real estate and high-value goods, establishing and operating business entities, foundations and trusts, and carrying out financial transactions by lending their bank accounts'*.

Although the aforementioned scenario does not seem to apply to the core activity of a statutory auditor, i.e., to auditing, however, the '*assisting'* in the *'establishing and operating business entities*' can be interpreted differently in specific factual situations, but obviously, in the final conclusion, the scope of potential criminal liability for '*assisting*' depends on the demonstration of intentional guilt on the part of the perpetrator (statutory auditor) charged with the allegation of money laundering or of assisting in such operations. Auxiliary services referred to in Article 47 para. 2 of the Act on Statutory Auditors and their Self-Regulatory Body, Audit Firms and Public Supervision (Journal of Laws of 2023, item 1015), may also include the aforementioned money laundering risk scenario.

In *Krajowa ocena ryzyka prania pieniędzy oraz finansowania terroryzmu* [lit. *National Risk Assessment for Money Laundering and Terrorism Financing*] (Department of Financial Information, National Risk Assessment, 2019) it has been highlighted by the Department of Financial Information that with regard to public officials, '*a money laundering operation within the scope of the analysed scenarios is highly likely to be detected, and then the perpetrators will be charged and convicted as a result of the investigation carried out*' (Department of Financial Information, Annex No. 2 to the National Risk Assessment, 2019, p. 35). It has been pointed out, however, that *'entities providing such services are the obliged institutions [within the meaning of the Act on Counteracting Money Laundering and Terrorism Financing] and have some awareness of their obligations in the area of counteracting money laundering. However, they provide no information or relatively little information on suspicious transactions/activities*

*to the Department*' (Department of Financial Information, Annex No. 2 to the National Risk Assessment, 2019, p. 35).

According to the Department of Financial Information, '*the use of third-party intermediaries to transfer and legitimise funds from illegal sources poses a very high risk of money laundering*' (Department of Financial Information, Annex No. 2 to the National Risk Assessment, 2019, p. 35). At the same time the Department of Financial Information '*has a limited ability to collect and analyse information*' (Department of Financial Information, Annex No. 2 to the National Risk Assessment, 2019, p. 35) arguably due to a low level of the suspicious transactions reported, coupled with an insignificant amount of data concerning clients of public officials that the Department can analyse in an automated manner, which, by the way, results from the nature of '*public officials*'.

Thus, it can be concluded that statutory auditors and audit firms are subject to obligations under anti-money laundering regulations, and a risk of '*using their intermediation to legitimise funds from illegal sources triggers a very high risk of money laundering*' (Department of Financial Information, Annex No. 2 to the National Risk Assessment, 2019, p. 35), and this in turn leads to the conclusion that the requirement for diligence on the part of statutory auditors and audit firms is a must. This is because the only way to defend against criminal charges or administrative penalties under the regulations is to demonstrate due diligence counteracting money laundering regulations. The ability to demonstrate due diligence is of particular relevance in view of the opinion of the Ministry of Finance's Department of Financial Information that '*a money laundering operation is highly likely to be detected, and then the perpetrators will be charged and convicted as a result of the investigation carried out*' (Department of Financial Information, Annex No. 2 to the National Risk Assessment, 2019, p. 35).

The issue of the correct implementation of procedures for counteracting money laundering by statutory auditors and audit firms is an area of supervision, on the part of both the Polish Agency for Audit Oversight, in accordance with Article 88 et seq. of the Act on Statutory Auditors and their Self-Regulatory Body, Audit Firms and Public Supervision (Journal of Laws of 2023, item 1015), and the General Inspector of Financial Information, pursuant to Article 130 of the Act on Counteracting Money Laundering and Terrorism Financing (Journal of Laws of 2023, item 1124). Nevertheless, having a procedure is only part of an effective programme for counteracting money laundering. The second important element is its dynamic application. A dynamic one, as it may in certain situations lead to a refusal to enter into a contract with a client, or to a termination of the contract signed and notification of the General Inspector of Financial Information, or to the reporting of information about the client's suspicious behaviour by a client (*SAR* or *Suspicious Activity Report*). All of this, of course, may lead to the resignation

from some of the revenues, and this is inevitably related to a conflict of interest and mechanisms known as the '*Cressey triangle*' (also known as the '*fraud triangle*') (Wikipedia, Donald Cressey).

The issues of counteracting money laundering also remain a current and priority problem on the agenda of not only national (PANA), but also European audit oversight bodies, as evidenced by the contents of the *2023 Law Enforcement Report. Report on the 2023 CEAOB Enforcement Questionnaire*), (PANA, 2023) prepared by the Investigation Subgroup forming part of the Committee of European Auditing Oversight Bodies (*CEAOB*). The report informs that gaps in the counteracting money laundering controls have been the subject of administrative proceedings and of responses by both non-financial (in many EU countries) and financial (in Sweden) oversight bodies for many entities that do not comply with the counteracting money laundering regulations.

In order to avoid inconveniences of participating in administrative and criminal proceedings concerning violations of the provisions of the Act on Counteracting Money Laundering and Financing of Terrorism (Journal of Laws of 2023, item 1124), it is worth taking a look at the scope of obligations that the aforementioned Act imposes on the obliged institutions, within the area of combating the use of the national financial system for money laundering and terrorism financing, and indirectly also for complying with economic sanctions directed against Russia in connection with the armed aggression against Ukraine (Consilium Europe, EU, Summary).

The obligations of the obliged institutions under the Act on Counteracting Money Laundering and Financing of Terrorism (Journal of Laws of 2023, item 1124) have been detailed in its sections 4, 5, 7, 8, 9 and 10. As afar as statutory auditors are concerned, these obligations concern the issues specified below.

1) Assessing the risk of exposure to money laundering, taking into account the business profile (services provided) and risk factors regarding clients, countries or geographic areas, transactions or their supply channels.
   The risk assessment must be documented and updated at least every two years. *Krajowa ocena ryzyka prania pieniędzy* [*National Risk Assessment for Money Laundering*] (Department of Financial Information, National Risk Assessment, 2019) prepared by the General Inspector of Financial Information, and an assessment for the EU territory prepared at the request of the European Commission, e.g., for the financial sector by the European Banking Authority (EBA), (EBA, 2021).
2) Identifying and verifying the identity of:
   a) the client, i.e., the other party to a contract with a statutory auditor or audit firm,

b) the client's beneficial owner, i.e., a natural person who directly or indirectly controls the client through the powers they possess as a result of legal or factual circumstances, enabling them to exercise decisive influence over the client's acts or activities.
If the client is either a legal entity or an organisational unit, or a trust, it is necessary to determine the ownership and control structure of the client (what helps in practice is a graphic presentation in the form of a flow chart).
If the client itself is a company or is controlled by a company whose securities are admitted to trading on a regulated market, subject to disclosure requirements under the EU legislation or corresponding laws of third countries, it may be considered a beneficial owner of the client.
A valuable source of information on beneficial owners of collective entities registered in Poland is the Central Register of Beneficial Owners (Central Register of Beneficial Owners, CRBR), the operation of which is regulated by the Act on Counteracting Money Laundering and Terrorism Financing (Journal of Laws of 2023, item 1124).
However, pursuant to the Act on Counteracting Money Laundering and Terrorism Financing, the identity of beneficial owners may not be verified solely against information from the Central Register of Beneficial Owners or a corresponding register in another country (in practice: it is worth requesting that clients provide corporate documents confirming the identity of the beneficial owner, for example, in the form of a copy of the company's share book or articles of association, or information entered in the National Court Register or a similar register). If this is difficult, what can be of help is to consult information entered in one of the commercial databases or, in case of doubt as to whether the documents provided by the client are reliable, ask a business intelligence service for assistance.
In addition, if during verification of the beneficial owner's the identity it turns out that there are discrepancies between the contents of the Central Register of Beneficial Owners and the data received from the client or concerning the client obtained from other sources, the obliged institution shall determine the discrepancies between information in the register and information about the client's beneficial owner and shall take steps to clarify the discrepancies found. If the discrepancies are confirmed, the obliged institution shall provide the minister responsible for public finance with updated information on the discrepancies, together with justification and documentation concerning the discrepancies found;
c) the person representing the client for the purposes of signing the contract and submitting declarations of intent on behalf of the client

(in practice: a power of attorney or an authorisation to represent the client resulting from the National Court Register (KRS, n.d.) [accessed: 27/07/2023] or other company register, e.g., the UK Companies House. (UK Companies House).

3) If it is not possible to identify and verify the identity of the client, beneficial owner or person representing the client, the obliged institution may not establish a business relationship with the client, and furthermore it should consider notifying the Ministry of Finance's Department of Financial Information of the suspected money laundering (if may be indicated by the factual circumstances).
4) Ongoing monitoring of the client's economic relationships. As a general rule, statutory auditors and audit firms will be able to monitor the clients' economic relationships in practice during the provision of services to clients, and this will involve maintaining a critical approach towards the statements and documents provided by clients in the course of providing services, but also based on other circumstances in relationships with clients such as the client's use of a bank account held by a bank or country considered to be a high-risk location, without reasonable justification for such action.
5) Documentation of the financial security measures applied, so that at the request of the authorised authorities, the obliged institutions are able to demonstrate that, taking into account the level of the identified risk of money laundering and terrorism financing associated with the business relationship or occasional transaction in question, they have applied appropriate financial security measures. Documentation related to the identification and verification of the identity should be kept on an ongoing basis and retained for a 5-year period starting from the termination of business relationships with the client. In turn, the results of regular analyses of business relationships should be kept each time for a 5-year period starting from the date of their carrying out.
6) Informing clients prior to the establishment of a business relationship about the processing of their personal data, and in particular, about obligations of the obliged institution under the personal data processing laws (in practice: such a statement legitimises our questions about information and data, and additionally indicates the legal basis for the processing of personal data within the meaning of the GDPR (Regulation (EU) 2016/679).
7) In the case of higher-risk customers, due to the politically exposed status or higher-risk geographic location, or to information on adverse media, additional actions are required on the part of the obliged institution, such as an approval by senior management to establish a relationship with the customer, or more frequent monitoring of a business relationship, including

a lower threshold on the reliability of the client's statements on its business activities, requirement of additional documentation to support these statements, as well as greater inquisitiveness with regard to determining the source of the client's assets.

8) Introduction of an internal procedure for counteracting money laundering and terrorism financing, hereinafter referred to as the '*internal procedure of the obliged institution*'. Obliged institutions that form part of a capital group (group of companies) shall implement a group procedure for counteracting money laundering and terrorism financing, hereinafter referred to as the '*group procedure*', in order to fulfil the obligations of the capital group and its members set forth in anti-money laundering legislation.
9) The procedure for counteracting money laundering must set out rules for anonymous reporting by employees of factual and potential violations of counteracting money laundering regulations (whistleblowing procedure).
10) Provision of training on counteracting money laundering regulations (what is worth doing in practice is to document this training, as part of the due diligence audit procedure).
11) Notification of the General Inspector of Financial Information of circumstances that may be indicative of a suspected money laundering or terrorism financing crime. The notification shall be made immediately, but no later than within two working days of confirmation of the suspicion by the obliged institution. The obliged institution may not inform the client of the notification made to the General Inspector of Financial Information. Violation of this prohibition results in financial penalties being imposed on the obliged institution.
12) For the purposes of counteracting terrorism and terrorism financing, obliged institutions also apply specific restrictive measures against persons and entities on terrorism lists (both national ones and those used by the UN Security Council). In practice, there are also EU sanctions and the US list maintained by the Office of Foreign Assets Control (OFAC).

    At this point, it is also worth mentioning sanctions against Russia as a result of the Russian aggression against Ukraine, under which, in addition to the Act on Counteracting Money Laundering and Terrorism Financing, restrictions have been imposed on the establishment of relationships with sanctioned entities. For example, as of 4 June 2022, it is prohibited to provide, directly or indirectly, accounting and auditing services, including audits, bookkeeping and tax consulting, as well as business and management consulting or public relations services to state institutions and companies and other legal entities registered on Russian territory (Consilium, Europe, EU).

In practice, specific restrictive measures and other economic sanctions require ongoing verification of whether clients, their beneficial owners or client representatives are not entered in sanction lists, which are subject to updates on an ongoing basis. For larger audit firms, such verification is practically impossible without the use of technology to support verification (if only in the context of various records of foreign names) and the support of commercial tools that provide data on current sanction lists and solutions that automate ongoing (regular/cyclical) verification of clients against up-to-date sanction lists.

In the case of the obliged institutions that carry out one-man operations, the tasks related to the fulfilment of the counteracting money laundering obligations are performed by the person carrying out such activities. In other cases, the obliged institutions shall designate senior management responsible for carrying out the duties set forth in the Act, and also an employee in a managerial position responsible for ensuring that the activities of the obliged institution and its employees and other persons performing activities on behalf of the obliged institution comply with the anti-money laundering and terrorism financing regulations. The scope of obligations of the obliged institutions under the Act is intended to be, as a rule, proportional to the profile of activities of the obliged institution, and valuable support for its application can be found in the Communications of the General Inspector of Financial Information made available on the website of the Ministry of Finance's Department of Financial Information, in the Communications [Komunikaty] section (General Inspector of Financial Information, Communications).

Failure to apply financial security measures, on the other hand, results, as mentioned above, in severe penalties being imposed – Chapter 13 and 14 of the Act (Journal of Laws of 2023, item 1124).

An interesting point of reference for solutions used by businesses around the world in risk management at the stage of establishing a relationship with a counterparty is the report entitled '*Combating Business-to-Business Fraud: Benchmarking Report*', published in June 2023 by the Association of Certified Fraud Examiners (ACFE) and Thomson Reuters (ACFE and Thomson Reuters, 2023). In keeping with the report, regardless of the status of the obliged institution, the most significant areas of risk analysed when establishing a relationship with clients are as follows:

- a risk that the client, its body member or authorised representative, or the client's beneficial owner are on the list of international sanctions (both anti-terrorist and economic, as in the case of Russia) – 75% of respondents considered this risk to be crucial;

- a risk of cooperation with a high-risk industry or a client from a high-risk country (corruption, economic sanctions, etc.) – respectively 65% and 63% of respondents;
- a risk of politically exposed person (PEP) status and of the presence on criminal records or involvement in media legal disputes – respectively 61% and 60% of respondents;
- other risks such as a risk of the client's beneficiary owner being located in a high-risk country or a risk of adverse media, however other than that related to criminal liability or high-profile civil proceedings – respectively 55% and 48% of respondents.

It is not surprising that the risk areas already referred to in the Act on Counteracting Money Laundering and Terrorism Financing (Journal of Laws of 2023, item 1124) reappeared as part of the ACFE and Thomson Reuters survey on the overall management of a toxic counterparty relationship risk (ACFE and Thomson Reuters, 2023). This is the result of the aforementioned global risk society syndrome (Beck, 2012) and the globalisation of risk as part of the overall trend of globalisation and colonisation of the economy by risk (WHO, 2023).

The ACFE and Thomson Reuters report also indicates that two key aspects of evaluation when establishing a relationship with new customers among respondents are as follows:

- identification and verification of the identity of the beneficiary owners, and
- screening against sanctions.

However, the most popular source of information on the beneficiary owner is information provided directly by the client (81% of respondents). Other typical methods for obtaining knowledge about a real beneficiary include using a third-party data provider (71%) or conducting an open-source internet research (OSiNT) – 59% (ACFE and Thomson Reuters, 2023, p. 16).

In addition, procedures that are currently the most commonly used by the majority of organisations for the purposes of monitoring a business relationship on an ongoing basis, once it has been established, include the following:

- monitoring adverse media on clients; and
- automated periodic verification of sanction lists.

Moreover, the two areas with the greatest potential for use in the ongoing monitoring of relationships with clients are:

- the use of artificial intelligence/machine learning; and
- the use of data collected as part of the consortium of companies.

Although the majority of organisations are not yet using these solutions, more than 40% of those surveyed expect to do so in the near future (ACFE and Thomson Reuters, 2023, p. 19).

At this point it may be worth mentioning that an initiative for such a consortium in data exchange has been launched in Poland by the Union of Polish Banks (Związek Banków Polskich, ZBP) and the National Clearing House (Krajowa Izba Rozliczeniowa, KIR) as part of the Sector Centre for AML Services for Financial Institutions Sector (SCU AML) initiative.

According to the project's authors, the Sector Centre for AML service *'is a partnership venture between the KIR and the ZBP and banks established to prepare and make available a catalogue of services to support AML/CFT processes. The goal of the SCU AML is to improve the quality of AML/CFT processes through the exchange and sharing of information in the banking sector, and to reduce the cost of the process by standardising and centralising certain activities. SCU AML provides banks with information that a bank is unable to identify. The results obtained from the analyses carried out on sector data are absolutely unique and impossible for a single bank to obtain on its own*' (KIR, SCU AML).

To conclude the argument on managing the risk of exposure to money laundering and on due diligence in that respect, it is worth mentioning again the Cressey triangle referred to above. Donald Cressey devoted his life to researching organised crime and occupational fraud from a psychological and forensic perspective. As a result of his research on occupational fraud, he developed the theory of the fraud triangle, often referred to as the Cressey triangle (Wikipedia, Fraud Triangle). In keeping with this theory, the necessary conditions for fraud to occur are:

- opportunity, i.e., information on gaps in the company's control mechanisms that allow for fraud to occur;
- pressure, i.e., the causal imperative (it can be of a corrupting nature, involving a reward in return for an action or omission to act that is not in accordance with procedures or laws; alternatively, it can result from a subjective need to address a financial need or a strong need to belong, due to which one gives in to pressure for fear of exclusion);
- rationalisation, i.e., a set of principles adhered to by a fraud perpetrator, which subjectively downplay the reprehensibility of the fraud committed, or justify the perpetrator's action or omission to act in the name of some greater good. In other words, perpetrators have an internal imperative to create a subjectively positive evaluation of their objectively adverse behaviour. In practice, the perpetrator's rationalisation is derived from the organisational culture and lack of proactive promotion and reward of positive behaviour patterns.

At this point, it is worth mentioning that the US Department of Justice (DOJ) and the Securities and Exchange Commission (SEC) in their guidelines on compliance with the American FCPA (Resource Guide to the U.S. Foreign Corrupt Practices Act, Second Edition) (SEC and DOJ, 2020) point to the value of

creating a positive culture of integrity by creating incentives for and rewarding ethics-based behaviour. According to the guidelines, '*DOJ and SEC recognise that positive motivation through incentives for ethics-based behaviour can lead to the promotion of compliance-based behaviour. Incentives can take many forms, such as regular evaluations and staff promotions, rewards for improving and developing the company's compliance programme, as well as rewards for ethics- and compliance-based leadership*' (SEC and DOJ, 2020, p. 61).

## Summary

In the context of effective management of the risk of exposure to toxic business relationships in light of anti-money laundering regulations, Donald Cressey's fraud triangle points out to the way to self-improvement.

This is because there are no organisations that are completely immune to fraud, including money laundering, because fraud is committed by people who either deliberately do not follow procedures, or do not know them, or know that there is a loophole in procedures and exploit that loophole in an instrumental way.

The combating of money laundering therefore requires not only procedures and training, but also management of unjustified and excessive pressure as well as positive rationalisation associated with promoting and rewarding ethical behaviour.

In this context, it is worth remembering the seventeen (17) UN sustainable development priorities (goals) outlined in the 2030 Outlook (SDGs, or *Sustainable Development Goals*) (UN, SDGs). In keeping with the sixteenth (16th) priority titled *Peace, Justice and Strong Institutions*, for the purpose of creating a better environment for socio-economic growth of future generations, it is necessary to '*significantly reduce illicit financial flows and combat all forms of organised crime*'.

Organised crime cannot be combated effectively if criminals are permitted to benefit from proceeds of criminal acts. The proceeds of crime, on the other hand, cannot be enjoyed without money laundering.

Money laundering may also be combated by avoiding toxic business relationships and managing the risk of exposure to such relationships by public officials, in particular by statutory auditors. Owing to the application of financial security measures, two benefits can be achieved simultaneously. The first is to reduce the risk of a statutory auditor or audit firm being involved in the process of money laundering, and the second is to reduce the risk of exposure of statutory auditors and audit firms to any fraud, far beyond the set of activities defined as money laundering.

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ISSN 2957-1839
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