



Maksātnespējas kontroles dienests

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Recommendations

Rīga

23.08.2021.

No. 1-03/2021/11

Recommendations for imposing sanctions on Administrators of Insolvency Proceedings for violations of the Law on the Prevention of Money Laundering and Terrorism and Proliferation Financing

Adopted in accordance with
Section 72, Paragraph one, Clause 2
of the State Administration Structure Law

1. The Recommendations set out the procedures and criteria to be followed by the employees (hereinafter – the Employee) of the Insolvency Control Service when imposing sanctions to Administrators of Insolvency Proceedings (hereinafter – the Administrator) for committing a violation of the laws and regulations in the field of prevention of money laundering and terrorism and proliferation financing (hereinafter – the Violation).

2. The purpose of the Recommendations is to ensure:

2.1. proportionate and equal imposition of the sanctions to Administrators specified in the Law on the Prevention of Money Laundering and Terrorism and Proliferation Financing (hereinafter – the PMLTPF Law).

2.2. taking decisions in accordance with the actual circumstances and the nature and severity of the committed violation in order to achieve the effective improvement of the activities of the Administrators or elimination of the violation.

2.3. compliance with fundamental principles in the imposition of sanctions.

3. A sanction may be imposed both for an ongoing violation and for a violation that has been completed.

4. Violations are divided into serious and minor violations:

4.1. a serious violation is when at least one of the following characteristics is established:

4.1.1. the Internal Control System is not established;

4.1.2. essential requirements of the laws and regulations have been violated.

4.2. a minor violation is if, in general, the requirements of the laws and regulations have been implemented, but certain insignificant deficiencies of the Internal Control System or violations of the laws and regulations have been established.

5. If the violation committed by the Administrator has not, in the particular circumstances, created risks for the lawful interests, and there is no reason to impose sanctions for it (minor violation), the Employee may not initiate an administrative case, but if it is initiated, it may be

terminated at any stage without imposing sanctions.

6. A violation is considered to be systematic if it has been committed repeatedly during the last two years prior to the initiation of the administrative case. A violation is considered to be continuing if it has lasted for more than one year.

7. When evaluating the circumstances of the administrative case, the Employee shall impose sanctions for the violation specified in the PMLTPF Law.

8. The Employee carries out an assessment of expediency considerations in order to determine the amount of the imposed fine within the limits specified in the sanction. The Employee shall take aggravating and mitigating circumstances into account, assess the proportionality of the fine, compliance with the specific actual circumstances and take information related to the person's financial situation into account.

9. The sanction for the violation shall be imposed in accordance with the basic principles for the imposition of sanctions set out in these Recommendations (Annex). By way of derogation from the principles set out in these Recommendations, the Employee shall justify this in the decision.

10. The sanction for the violation is determined by assessing all the relevant circumstances in accordance with the provisions of the PMLTPF law.

11. An Employee can impose a fine to the maximum amount set out in the Annex to this Recommendation if at least one of the following aggravating circumstances exists:

11.1. the Administrator does not cooperate with the association "Latvian Association of Administrators of Insolvency Proceedings" (hereinafter – the Association of Administrators) or the Insolvency Control Service, for example, without a justifiable reason delays the submission of requested information, does not reveal the facts regarding the violation, or otherwise interfere with the Association of the Administrators or the Insolvency Control Service in the examination or the Insolvency Control Service in the reviewing of the administrative case;

11.2. the Administrator does not terminate the violation, even after having received information from the Association of Administrators or the Insolvency Control Service regarding the possible violation of the laws and regulations, or has not eliminated it within the specified term.

12. The amount of the fine may be reduced to the minimum amount set out in the Annex to this Recommendation in the following cases:

12.1. the violation is terminated as soon as the Administrator has received information from the Association of Administrators or the Insolvency Control Service regarding the possible violation of the laws and regulations;

12.2. the Administrator has voluntarily eliminated the consequences of the violation before the Insolvency Control Service has made a decision regarding the imposition of sanctions in connection with the established violation;

12.3. the Administrator has provided evidence which is essential for the establishment of the violation;

12.4. the Administrator has reimbursed the losses incurred or caused as a result of the violation.

13. In the event that the Administrator has been sanctioned for the violation specified in the PMLTPF Law more than three times during the last four years prior to the initiation of the administrative case, the Insolvency Control Service shall decide on the suspension of the office of Administrator.

14. The Insolvency Control Service shall publish information on its website on the sanctions imposed on the Administrator, as well as information on appeal of the decision on the imposition of sanctions, the outcome of the appeal, and the decision on revoking the sanctions immediately after informing the Administrator of the decision. The information posted on the

Insolvency Control Service's website is available for five years from the date of its posting.

15. The Insolvency Control Service's Recommendations No. 1-03/2020/33 of 27 October 2020 "Recommendations for imposing sanctions on Administrators of Insolvency Proceedings for violations of the Law on the Prevention of Money Laundering and Terrorism and Proliferation Financing" are repealed.

Director

I. Šteina

I. Grandsberga 67099153

THE DOCUMENT IS SIGNED WITH A SAFE ELECTRONIC SIGNATURE

Principles of imposition of sanctions

Violation	Conditions for the imposition of fines
Important	
No Internal Control System has been established	<ul style="list-style-type: none"> - the amount of the fine is determined taking into account the circumstances of the violation, the duration of the violation, the identity of person held liable, and the financial status; - if the violation lasted for up to one year, a fine of EUR 300 to EUR 50,000 and the obligation to eliminate the violation within the specified time are imposed; - if the violation lasted for more than one year, a fine of EUR 1,500 to EUR 1,000,000 and the obligation to eliminate the violation within a specified period are imposed; - if the violation is not eliminated within a specified period, the Insolvency Control Service shall suspend the office of Administrator until the violation is eliminated and give orders to credit institutions or payment service providers regarding partial or complete suspension of settlement operations of the subject of the Law;
The requested information to the Association of Administrators or the Insolvency Control Service has not been submitted within the specified deadline	<ul style="list-style-type: none"> - the amount of the fine is determined taking into account the circumstances of the violation, the personality of the person held liable, and the financial status; - if the Administrator does not provide the requested information within the period prescribed by the Association of Administrators or the Insolvency Control Service, a fine of EUR 1,500 to EUR 50,000 shall be imposed and shall suspend the office of Administrator until the violation is eliminated.

<p>No suspicious transaction has been reported to the Financial Intelligence Unit of Latvia</p>	<ul style="list-style-type: none"> - the fine shall be imposed having regard to the importance of the transaction, for which the report has not been submitted, and that the size of the transaction, its frequency, the identity and the financial status of the person held liable have not been indicated; - if the transaction is of a one-off nature and it has not been reported, after evaluating the explanations provided by the person held liable, a fine of EUR 500 to EUR 5000 shall be imposed; - if several transactions have been carried out or the transaction has been carried out with a related company and it has not been reported, after evaluating the explanations provided by the person held liable, a fine of EUR 1500 to EUR 40 000 shall be imposed.
<p>Customer identification has not been performed in accordance with the developed Internal Control System (the true beneficiary has not been determined)</p>	<ul style="list-style-type: none"> - the amount of the fine is determined taking into account the circumstances of the violation, its regularity, the personality of the person hold liable, and the financial status; - if the violation is committed for the first time, a fine of EUR 300 to EUR 2500 shall be applied; - if the violation is repeated within two years, a fine of EUR 500 to EUR 30,000 shall be imposed.
<p>The Internal Control System has been developed, but in fact does not perform its function or the Internal Control System does not provide adequate initial customer research on the risks of money laundering and terrorism and proliferation financing.</p>	<ul style="list-style-type: none"> - the amount of the fine is determined taking into account the circumstances of the violation, the duration of the violation, the personality of the person held liable, and the financial status; - if the violation lasted up to one year, a fine of EUR 300 to EUR 2500 and the obligation to eliminate the violation within one month are imposed; - if the violation lasted for more than one year, a fine of EUR 500 to EUR 100,000 and the obligation to eliminate the violation within a specified period are imposed; - if the violation is not eliminated within a specified period, the Insolvency Control Service shall suspend the office of Administrator until the violation is eliminated and give orders to credit institutions or payment service providers regarding partial or complete suspension of settlement operations of the subject of the Law;
<p>The Customer investigation process has not identified all the risks of money laundering and terrorism and proliferation financing and in-depth Customer investigation has not been applied.</p>	<ul style="list-style-type: none"> - the amount of the fine is determined taking into account the circumstances of the violation, its regularity, the personality of the person hold liable, the financial status and the duration of the violation; - if the violation is committed for the first time, a fine of EUR 300 to EUR 2500 shall be imposed; - if a violation has been committed repeatedly during the year, a fine of EUR 500 to EUR 20,000 shall be imposed and a temporary prohibition on a person held liable for the violation to fulfil the obligations specified for him or her by the subject of the Law.

<p>The requirements of Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No. 1781/2006 have not been met.</p>	<ul style="list-style-type: none"> - the amount of the fine is determined taking into account the circumstances of the violation, its regularity, the personality of the person hold liable, the financial status and the duration of the violation; - if the violation is committed for the first time, a fine of EUR 300 to EUR 2500 shall be imposed; - if the violation is repeated within one year, a fine of EUR 500 to EUR 20 000 shall be imposed.
<p>Less important</p>	
<p>The report submitted to the Financial Intelligence Service has not been registered and its availability to the Association of Administrators or the Insolvency Control Service has not been ensured.</p>	<ul style="list-style-type: none"> - issue a warning or determine the amount of the fine taking into account the circumstances of the violation, the duration of the violation, the personality of the person hold liable, and the financial status; - if the violation is committed for the first time, a warning is issued and a fine of EUR 1300 shall be imposed; - if the violation is repeated within one year, a fine of EUR 500 to EUR 10,000 shall be imposed.
<p>No Customer has been identified as a politically exposed person.</p>	<ul style="list-style-type: none"> - express a public announcement or determine the amount of the fine taking into account the circumstances of the violation, the duration of the violation, the personality of the person held liable, and the financial status; - if the violation is committed for the first time, a warning or a public announcement is issued or a fine of EUR 1300 shall be imposed; - if the violation is repeated within one year, a fine of EUR 500 to EUR 8000 shall be imposed.
<p>During the supervision of the Customer's transactions, no documents substantiating the Customer's economic activities have been obtained to the extent and quality to ensure that the transactions performed by the Customer are not considered suspicious.</p>	<ul style="list-style-type: none"> - issue a warning or determine the amount of the fine taking into account the circumstances of the violation, its regularity, the personality of the person hold liable, and the financial status; - if the violation is committed for the first time, a warning is issued and a fine of EUR 1300 shall be imposed; - if the violation is repeated within one year, a fine of EUR 500 to EUR 7000 shall be imposed.
<p>Procedures for customer due diligence have not been developed, procedures for transactions for the detection of suspicious transactions and reporting procedures for the Financial Intelligence Service have not been developed, or procedures for the storage and destruction of documents have not been developed.</p>	<ul style="list-style-type: none"> - issue a warning or determine the amount of the fine taking into account the circumstances of the violation, the duration of the violation, the personality of the person hold liable, and the financial status; - if the violation has lasted for up to one year, a warning or a fine of up to EUR 1300 and the obligation to eliminate the violation within one month shall be imposed; - if the violation lasted for more than one year, a fine of EUR 500 to EUR 7000 and the obligation to eliminate the violation within a specified period shall be imposed;

<p>The Administrator has not verified the origin of the Customer's financial resources, obtaining documents certifying the origin of financial resources and documenting the conclusions of the research results.</p>	<ul style="list-style-type: none"> - issue a warning or determine the amount of the fine taking into account the circumstances of the violation, its regularity, the personality of the person hold liable, and the financial status; - if the violation is committed for the first time, a warning is issued and a fine of EUR 1300 shall be imposed; - if the violation is repeated within one year, a fine of EUR 500 to EUR 6500 shall be imposed.
<p>The information provided for in the laws and regulations regulating the prevention of money laundering and terrorism and proliferation financing has not been submitted within the specified term.</p>	<ul style="list-style-type: none"> - issue a warning or determine the amount of the fine taking into account the circumstances of the violation, its regularity, the personality of the person hold liable, and the financial status; - if the violation is committed for the first time, a warning is issued and a fine of EUR 500 shall be imposed; - if the violation is repeated within one year, a fine of EUR 300 to EUR 2000 shall be imposed.
<p>The Internal Control System does not ensure continuous monitoring of the Customer's transactions (for example, for a Customer who does not meet the criteria for due diligence).</p>	<ul style="list-style-type: none"> - issue a warning or impose a fine on a case-by-case basis, taking the nature of the violation into account; - a warning or a fine is imposed depending on the duration of the violation; - if the violation has lasted for up to one year, a fine of up to EUR 400 is imposed; - if the violation has lasted for more than one year, a fine of EUR 200 to EUR 1800 shall be imposed.
<p>The Customer has been identified and researched, but there are significant deficiencies in documenting the research.</p>	<ul style="list-style-type: none"> - issue a warning or impose a fine on a case-by-case basis, taking the nature of the violation into account; - if the violation has been eliminated during the inspection, a warning shall be issued; - if the violation has not been eliminated during the inspection, a fine of up to EUR 1300 shall be imposed.