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# **Third Workshop**

**Pristina 22 June 2015**

## **Revision Process of the AML/CFT Law**

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**Legal Opinion  
on Amendments and Supplements  
to the AML/CFT Law**

***Preventive Measures***

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### Specific findings in Preventive Regime - definitions

- **Games of chance** – link with the Law No. 04/L-080 on Games of Chance;
- **Monetary Instruments** - inclusion of the words “*shall include*” to make it more inclusive of instruments not listed;
- **Transaction** - include the words *in a business relationship one of whom is a reporting subject under this Law.*
- **Occasional transaction** - *means any transaction other than a transaction carried out in the exercise of a business relationship formed by a reporting subject and another person or entity.*

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## Specific findings in Preventive Regime - definitions

- **Politically Exposed Persons** - not clear whether item (viii) *directors, deputy directors and members of boards or equivalent positions in international organisations* is meant to cover situations of persons who are or who have been entrusted with a prominent function by an international organization
- **Financial intermediaries** - used in paragraph (6) of Article 18 is not defined

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## Specific findings in Preventive Regime – reporting subjects

- Should the NGOs and Political Parties remain as reporting subjects? – If so there is a need to provide clarifications on who constitutes a customer for them for the purposes of their obligations under the AML/CFT Law, such as CDD.
- Include with casinos a reference to “*licensed objects of games of chance*” in accordance with the provisions under Article 28 of the AML/CFT Law for consistency - *paragraph (1.3) of Article 16*;
- Clarify why the ‘accountants’ category of DNFBPs is in brackets - *paragraph (1.6) of Article 16*.

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### Specific findings in Preventive Regime – Risk Assessments

- Consolidate sporadic provisions - New Article 16A – ‘Assessment and Prevention of Risk’ which comprises the present/proposed paragraphs relating to risk, with some modifications, viz: Art 17 (2.2); Art 17 (2.6); Art 18(7); Art 19(7);
- New paragraph (1) introduces a legal obligation for Kosovo to undertake a national risk assessment - Recommendation 1 of the FATF Standards 2012 – with a 3 year update period;
- New paragraph (2) reflects second part of Recommendation 1 requiring reporting subjects to assess their risks of ML and TF;
- New paragraph (6) transposes the new Recommendation 19 of the 2012 FATF Standards dealing with high risk countries.

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## Specific findings in Preventive Regime – CDD

- Beneficial owner – verification not for high risk only AND identification not when applicable only (Art 17(2.3));
- Purpose and intended nature of business linked to business and risk profile (Art 17(2.4));
- New paragraph (4a) addressing the CDD measures for beneficiaries of life and other investment related insurance business.

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## Specific findings in Preventive Regime – CDD

- New paragraph (5) to Article 17 dealing with non-completion of CDD process – currently FIs only (Art 19) and not harmonised with international standard;
- Enhanced measures for non-face-to-face business, correspondent banking and PEPS under Article 18 to be applied in addition to measures under Art 18(1);



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### Specific findings in Preventive Regime – CDD

- No distinction for domestic and foreign PEPs;
- No requirements for PEPs who are or who have been entrusted with a prominent function **by** an international organization, although there is a definition of international organizations' PEPs which **includes** their directors, deputy directors and members of the Board or equivalent;
- No requirement that reporting entities should always determine whether a customer or beneficial owner is a foreign PEP - the provision requires the *taking of reasonable measures* which FATF allocates only for domestic PEPs;
- No obligation on source of wealth;
- Senior management approval should be continuous

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## Specific findings in Preventive Regime – CDD

- No requirement under Article 18 to identify if beneficial owner constitutes a PEP status;
- Article 18 is silent on the determination whether the beneficiaries of life or other investment related insurance businesses constitute a PEP status and the additional measures that need to be in place if such status poses a higher risk;
- Other minor amendments regarding CDD for NGOs, covered professionals and casinos since the CDD obligation is to an extent repeated under the respective “additional obligations”.

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### Specific findings in Preventive Regime – Record keeping

- New Article 17A – *Record Keeping* is proposed - previous paragraphs (5) to (8) of Article 17 (renumbered paragraphs (1) and (3) to (5));
- New paragraph (1.4) to ensure 5 year retention period for information related to STRs starts from reporting date;
- New paragraph (5) highlighting the record keeping obligations for the originator, intermediary and beneficiary institution in the case of wire transfers.

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### Specific findings in Preventive Regime – Overall obligations

- Consequent to fragmentation of Law creating complexity in application of overall obligations to all reporting subjects.
- Ascertaining whether a person is acting as principal or obo a third party currently applies to banks and FIs only under paragraphs (3) to (5) of Article 19 – should be applied to all reporting subjects under Article 17;
- A new section entitled 'Internal ML and TF prevention programs' is being introduced under Article 19 applicable to banks and FIs only comprising paragraphs (13) to (16) – should be applicable to all reporting subjects under Article 17.

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## Specific findings in Preventive Regime – Overall obligations

- A new section entitled 'Compliance function for AML/CFT' is being introduced under Article 19 applicable to banks and FIs only comprising paragraphs (17) to (20) dealing with the appointment of a Compliance Officer and its functions - should be applicable to all reporting subjects under a new Article;
- On the other hand there are a few instances where an obligation that is specific to a particular category of reporting subjects is included under the general provisions – see for example paragraph (6) to Article 18 re opening of accounts with shell banks by the (undefined) *financial intermediaries*.

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### Specific findings in Preventive Regime – STRs

- No timeframe for reporting CTRs under paragraph (1.2) of Article 21 – but established for some DNFBPs;
- Timeframe of 24 hours for STRs under paragraph (1.1) of Article 21 extended to 3 days for some DNFBPs – Rationale? Discriminatory?
- Some paragraphs under Article 21 still refer to banks and FIs instead of 'reporting subjects';
- Double reporting obligation will lead to inconsistencies and ambiguities in the AML/CFT Law;
- Absence of cross references to main reporting obligation.

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## **Specific findings in Preventive Regime – Protection and Prohibition of Disclosure**

- Clarification of the disclosure prohibition reviewed in accordance with international standards – Article 21(4);
- New paragraph(7) to Article 21 providing for protection of personal information of persons making reports under the Law;
- Exception of legal privilege to lawyers should apply also to accountants and auditors under international standard – Art 26(9);
- Protection under Article 45 extended to cover directors, officers and employees whether permanent or temporary of reporting subjects thus ensuring legal clarity.

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## Specific findings in Preventive Regime – Supervision & Compliance

- Framework being adopted to implement the supervisory remit is too stringent with possible severe implications on the supervisory efficiency and harmonisation of cooperation.
- Ensure supervisory role of FIU-K does not affect the effectiveness and efficiency of its primary role;
- Consider other structures - CBK be given a supervisory remit for the entire financial sector directly through relevant provisions in the AML/CFT Law with the current and proposed provisions retained to apply only for agreements between the FIU-K and other sectoral supervisors.



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## Specific findings in Preventive Regime – Supervision & Compliance

- New paragraph (1.3) to Article 14 establishing supervisory remit for FIU-K for both on-site and off-site;
- Duties and competencies of the FIU-K to extend beyond training and should incorporate awareness and outreach – para (1.9) Art 14.
- New paragraph (2) to Article 31 for FIU-K and sectoral supervisors to enter into MoU for supervisory remit.

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## Specific findings in Preventive Regime – Supervision & Compliance

- Item (a) of paragraph (3) of Article 31 which is linking supervision of compliance with the adoption, renewal or rejection of the licence or authorization, needs to be clarified.
- New paragraph (5) to Article 31 establishing the powers for the FIU-K, the CBK and other sectoral supervisors to undertake off-site examinations for the purposes of the AML/CFT Law;
- New paragraph (6) to Article 31 for application of prudential supervisory powers under other laws for the purposes of the AML/CFT Law.

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## Specific findings in Preventive Regime – Supervision & Compliance

- The proposed restrictive measures under Article 32 for the empowerment of the FIU-K to withhold the initiation of an inspection until its approval may have implications on the effectiveness of the supervisory regime in Kosovo for the purposes of the AML/CFT Law and may jeopardise the much needed cooperation and coordination in the supervisory process. It is advisable that these provisions be removed.

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## **Specific findings in Preventive Regime – Statistics**

- New Article 32B on Statistical Data as the legal basis for the maintenance, collection and retention of statistics by all stakeholders under the AML/CFT Law including, but not limited to, the police, the prosecutors, the judiciary etc.
- Paragraph (1) establishes the obligation for the maintenance of comprehensive statistics by all stakeholders;
- Paragraph (2) creates the obligation for all stakeholders to liaise with the FIU-K to determine the type of statistics to be maintained;

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## **Specific findings in Preventive Regime – Statistics**

- Paragraph (3) empowers the FIU-K, the CBK or a sectoral supervisor respectively to issue administrative directives, instruction or guidance for the maintenance of statistics by those reporting subjects under their remit;
- Paragraph (4) establishes the obligation for statistical data maintained under the Article to be made available to the FIU-K;
- Paragraph (5) requires the FIU-K, the CBK and any sectoral supervisor to cooperate in the fulfilment of their respective responsibilities under Article 31 for the collection of statistics.

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## **Transitional and other Provisions**

- Applicability of new requirements to existing customers  
- on the basis of materiality and risk.
- Continuity of agreements and sub-legal acts entered into or issued as per provisions of current AML/CFT Law;
- General powers to the FIU-K, the CBK and sectoral supervisors to issue sub-legal acts.

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## Conclusions and Recommendations:

### *to recall:* Preventive Regime

- Consideration of further recommendations made in the PECK Assessment Report;
- A rethink on the fragmentation of the Law;
- A rethink of the compliance supervisory regime;
- A review of proposed approach to risk assessment and risk management provisions;
- Consideration of the proposed additional amendments to the AML/CFT Law;
- Consideration of amendments to other financial laws.

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### Conclusions and Recommendations:

- It is advisable that the Kosovo authorities continue to positively revise the AML/CFT Law in a coordinated manner with the main objective being its harmonization with the international standards through an efficient and effective way of implementation.
- To this effect the cooperation of all stakeholders cannot but be strongly emphasized.



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