SECRETARIAT GENERAL

DIRECTORATE GENERAL
HUMAN RIGHTS AND RULE OF LAW

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

DGI(2013)16
Strasbourg, 11 October 2013

TECHNICAL PAPER OF THE DIRECTORATE GENERAL HUMAN RIGHTS AND RULE OF LAW

Information Society and Action against Crime Directorate
Action against Crime Department
prepared on the basis of the expertise by Mr Herbert Zammit LaFerla

ON

Regulation 16 (formerly Rule X) of the Central Bank of Kosovo[1] on the prevention of money laundering and the financing of terrorism, including Advisory Letter 2007/1

And

Drafting of administrative directives regarding employee training programmes, and the collection and processing of statistics as set out in Financial Action Task Force (FATF) recommendation 18.

ECCU-BO-Kos-5/2013

[1] "All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo."

Table of contents

1. Executive Summary 4

2. Introduction 6

3. Methodological Basis and Approach adopted 6

4. Relevant legal issues 7

5. Memorandum of Understanding 7

6. Proposed Regulation 16 8

7. Advisory Letter 2007/1 16

8. Proposed Administrative Directive No 1 - Training 16

9. Proposed Administrative Directive No 2 - Statistics 18

10. Overall Opinion 20

11. Conclusion 21

12. ANNEXES 22

12.1 Annex 1: Extracts of Memorandum of Understanding between the Financial Intelligence Unit and the Central Bank of Kosovo* with proposed amendments 22

12.2 Annex 2: Regulation 16 24

12.3 Annex 3: Advisory Letter 2007-1 90

12.4 Annex 4: Proposed Administrative Directive No.1 on Training 104

12.5 Annex 5: Proposed Administrative Directive No. 2 on Statistics 113

For more information, please contact:

Economic Crime Cooperation Unit *Action against Crime Department* *Directorate General Human Rights and Rule of Law* *Council of Europe* *67075 Strasbourg CEDEX France*	*Tel: +33 3 90 21 42 14* *Fax: + 33 3 88 41 27 05* *Email: maia.mamulashvili@coe.int*

* see footnote 1 page 1

List of Acronyms

AML/CFT	Anti-Money Laundering / Countering the Financing of Terrorism
BO	Beneficial owner
CBK	Central Bank of Kosovo*
CDD	Customer Due Diligence
CoE	Council of Europe
DAR	Detailed Assessment Report
EU	European Union
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
MoU	Memorandum of Understanding
PEP	Politically Exposed Person
STR	Suspicious Transaction Report
UNMIK	United Nations Interim Administration Mission in Kosovo

* see footnote 1 page 1

1. EXECUTIVE SUMMARY

The purpose of this Technical Paper is to provide the Central Bank of Kosovo* (CBK) with an in-depth review of Regulation 16 on the prevention of money laundering and the financing of terrorism to be issued by the CBK to banks and financial institutions implementing the provisions of the Law on AML/CFT in replacement of the current Rule X including Advisory Letter 2007/1. The Paper further provides for the development and drafting of two Administrative Directives for the purposes of providing principles and parameters for training and for collecting comprehensive and meaningful statistics related to the prevention of money laundering and the financing of terrorism. It should be noted that the Cycle 1 Detailed Assessment Report (Cycle 1 DAR) on Kosovo's* compliance with the international standards in the area of anti-money laundering and combating the financing of terrorism prepared in the framework of the Joint European Union/Council of Europe Project against Economic Crime in Kosovo* (PECK) had identified that the issue of Rule X and its accompanying Advisory Letter 2007/1 had no legal basis as the UNMIK Regulations upon which they were issued were now abrogated through the coming into force of the Law on AML/CFT and the Law No. 04/L-093 on Banks, Microfinance Institutions and Non-Bank Financial Institutions (hereinafter "Law on Banks").

The exercise has been undertaken taking account of the above problems which to date have not been completely resolved. In reviewing the proposed Regulation 16 the Paper takes note of the February 2013 revisions to the Law on AML/CFT, the findings and recommendations of the Cycle 1 DAR and the 2012 FATF Standards. On the other hand, the development of the two Administrative Directives also take into account the views of the EU Commission on training and statistics within the context of the international standards and their effect on jurisdictions in demonstrating the effectiveness of their preventive systems.

In the light of the present legislative provisions the Paper recommends interim measures to enable the CBK to issue these documents pending enactment of appropriate legal provisions. Such interim measures, through proposed amendments to the Memorandum of Understanding (MoU) between the FIU and the CBK (see Annex 1), are also applied to the issue of the proposed new Administrative Directives on training and statistics. The Paper finds that there are extreme dangers, ambiguities and legal conflict for the CBK to issue the Regulation and the Administrative Directives on the basis of its powers under the Law on Banks as such powers are available for prudential purposes only. At the same time any administrative measures for non-compliance under the Law on Banks do not cover non-compliance with the Law on AML/CFT which law provides for administrative measures for reporting subjects who do not comply accordingly.

A major overhaul is proposed for Regulation 16 in particular as regards the integration of Advisory Letter 2007/1 into the Regulation; supervisory powers and sanctions; the appointment and responsibilities of the Head of the AML/CFT Unit; measurement of effectiveness through statistics; risk assessments and the risk based approach; and Customer Due Diligence (CDD) including mandatory and other high risk situations together with the obligation to develop a Customer Acceptance Policy on the basis of an institution's risk appetite. Detailed revised text is provided together with detailed explanatory notes in Annex 2 to this Paper.

Although it is being strongly recommended that Advisory Letter 2007/1 be integrated within the revised Regulation 16, yet it is acknowledged that such a decision is at the discretion and prerogative of the CBK. Consequently, Advisory Letter 2007/1 has also been reviewed as a stand-alone document (see Annex 3) should the CBK decide not to integrate it in the Regulation. Integration of the two documents remains highly recommended due to duplication of text which raises concern and ambiguity for the financial sector to follow obligations there-under.

* see footnote 1 page 1

As requested by the CBK two new Administrative Directives for banks and financial institutions are proposed. The Directives address training and the collection of meaningful statistics, and are applicable to all banks and subsidiaries and branches of foreign banks, non-bank financial institutions and Micro Finance Institutions and subsidiaries and branches of similar foreign institutions licensed by the CBK to operate in Kosovo* in terms of the Law on Banks. It is proposed to issue them as the interim measures through the MoU until the enactment of a stronger legal basis through proposed amendments to the Law on AML/CFT.

The proposed Administrative Directive No 1 on *Training* does not provide a training programme for banks and financial institutions to adopt and implement. The responsibility to develop training programmes for the prevention of money laundering and the financing of terrorism remains the responsibility of banks and financial institutions and may vary from one institution to another depending on a number of individual circumstances. The proposed Administrative Directive does however provide minimum principles on the basis of which banks and financial institutions shall develop their training programmes.

The proposed Administrative Directive No 2 on *Statistics* establishes sets of statistics that are comprehensive and meaningful for banks and financial institutions, and the CBK itself, to enable the authorities to understand and measure the effectiveness of the system for the prevention of money laundering and the financing of terrorism with regard to the financial sector. The statistics detailed in the Directive are not exhaustive and banks and financial institutions may collect and maintain additional information which they may consider necessary to fulfill their obligations under the Law on AML/CFT and Regulation 16. The Directive however does lay down the principles for the minimum sets of statistics that should be maintained in this regard. To this effect the Directive is complemented with a template for the collection and maintenance of comprehensive and meaningful statistics which banks and financial institutions shall be required to complete and submit to the CBK on a periodical basis as the CBK may establish. The Directive requires the CBK to consolidate the statistics it collects and to make them available to the FIU while maintaining its own statistics.

In conclusion, therefore, while it is practical for the CBK, as the nominated supervisory authority for the financial sector for AML/CFT purposes, to issue regulations or other types of directives to banks and financial institutions on how the CBK envisages the sector to be meeting its obligations under the Law on AML/CFT, yet it is expected that such rules and regulations should be binding and mandatory through a proper legal basis. This remains the main concern as the recent amendments to the Law on AML/CFT do not fully address this issue which has been thoroughly argued in the Cycle 1 DAR. Within this context it is therefore recommended that:

- *EITHER* the Kosovo* authorities first enact the appropriate legislative provisions for this purpose as detailed in this Paper and further elaborated in the Cycle 1 DAR and then issue the Regulation and the Administrative Directives on the basis of these legal provisions – in which case some amendments to the proposed documents would be necessary;

- *OR* the Kosovo* authorities may wish to issue these documents on the basis of the interim measures as detailed in this Paper through the amended provisions of the MoU between the FIU and the CBK, and enact the necessary legal provisions later – in which case the Regulation and the Directive would eventually need to be amended as to the legal basis.

* see footnote 1 page 1

2. INTRODUCTION

By letter of 15 July 2013 addressed to the Head of Council of Europe Office in Pristina, the Governor of the Central Bank of Kosovo* requested the Council of Europe to provide assistance in reviewing Regulation 16 proposed to replace current Rule X including Advisory Letter 2007/1 and drafting Administrative Directives concerning training and collection of statistics by banks and financial institutions in the area of the prevention of money laundering and the financing of terrorism in Kosovo*. This request follows the recent amendments to Law No 03/L 196 on the Prevention of Money Laundering and Terrorist Financing of 30 September 2010 as amended by Law No 04/L 178 of 11 February 2013 (hereinafter 'Law on AML/CFT'). However, the present Technical Paper does not review the amended Law on AML/CFT but provides an expert analysis of the guidance and instructions to the banks and financial institutions in Kosovo* on measures to be taken and procedures to be put in place in compliance with the Law on AML/CFT. Therefore, the Paper and the proposed Regulation 16 with amendments are not a replacement of the Law on AML/CFT as amended. A full reading of the Law on AML/CFT would still apply for a better understanding of the review of the Regulation and advice provided in this Paper.

The Technical Paper is drawn up as follows: it first lays down the methodological basis and the approach adopted. Afterwards it addresses some legal issues raised in the Cycle 1 DAR followed by a review of the MoU between the CBK and the FIU in terms of Article 36A of the Law on AML/CFT. The Paper comments on the review of and proposals to amend Regulation 16 followed by comments and proposals on Advisory Letter 2007/1 of the CBK. It then presents the proposed Administrative Directives on Training and on Statistics. Following the overall opinion of the documents and the legal position, the Paper concludes.

For ease of reference, but forming an integral part thereof, the Paper is complemented by Annexes which include the relevant documents with the proposed amendments and details explaining these changes.

3. METHODOLOGICAL BASIS AND APPROACH ADOPTED

The Technical Paper is based on the following documents provided by the Kosovo* authorities: the Law on AML/CFT as amended in February 2013, the proposed Regulation 16 (formerly Rule 10) including Advisory Letter 2007/1 of the CBK, and the MoU between the CBK and the FIU in terms of Article 36A of the Law on AML/CFT as amended. The Paper also takes into account relevant proposals for legislative and other amendments as provided in the Cycle 1 DAR. Moreover, the review takes note of the 2012 FATF Standards and in particular the Interpretative Notes, ensuring implementation where certain obligations need not be imposed through legislative procedures.

Regulation 16 is reviewed both against the Law on AML/CFT as amended and the proposals for upgrading made in the Cycle 1 DAR taking account of the provisions of Advisory Letter 2007/1 of the CBK. On the other hand, the Administrative Directive on training takes account of the obligations of banks and financial institutions under the Law on AML/CFT and the Regulation, and establishes training principles to be followed, while the Administrative Directive on statistics takes account of relevant proposals in the Cycle 1 DAR, the requirements under the Law on AML/CFT and international guidance and standards on the maintenance of relevant AML/CFT comprehensive and meaningful statistics also as required under the new FATF Methodology for measuring effectiveness of preventive ML/FT measures. In this regard the proposals for the two Administrative Directives take account of the EU Commission advice on specialist training and statistics.

* see footnote 1 page 1

4. RELEVANT LEGAL ISSUES

The Cycle 1 DAR raises various legal issues and proposes amendments of the draft legal text to address these issues. It is not the aim of this Paper to address these issues as these are clearly explained in the DAR which is available to the Kosovo* authorities. The DAR however identifies four legal issues that are very relevant to the review of Regulation 16 in particular while also affecting the proposed Administrative Directives. These relate to:

- The supervisory legal authority for the CBK to supervise banks and financial institutions on AML/CFT issues in terms of the Law on AML/CFT;
- The legal authority for the CBK to issue binding rules or regulations to banks and financial institutions for the purposes of the Law on AML/CFT;
- The supervisory powers available to supervisory authorities under the Law on AML/CFT; and
- The imposition of sanctions under the Law on AML/CFT.

While the first issue on the supervisory legal authority has been positively addressed through the February 2013 amendments to the Law on AML/CFT and the consequent MoU between the CBK and the FIU, the other three relevant issues remain pending. These outstanding legal issues, and in particular the legal basis for the CBK to issue rules and regulations for the purposes of the Law on AML/CFT, have direct impact on the purpose of this Paper.

While this Paper proposes interim solutions for the way forward, it is still strongly advised and recommended that appropriate legislative amendments to the Law on AML/CFT are enacted thus providing a stronger and more permanent legal basis. To this effect, while the interim solutions are provided in the respective sections of this Paper, including the relevant Annexes, recommendations for legislative changes based on the proposals of the Cycle 1 DAR are reviewed and proposed again in this Paper as and where appropriate. It is strongly recommended that such legislative proposals be reviewed by the Kosovo* authorities within the context of this Paper with the necessary legislative amendments being enacted at the earliest possible time.

5. MEMORANDUM OF UNDERSTANDING

The MoU was entered into between the CBK and the FIU in June 2013 in accordance with Article 36A of the Law on AML/CFT. In brief the MoU provides for the efficient and effective ways of information exchange between the two authorities and the delegation of a supervisory mandate from the FIU to the CBK for banks and financial institutions for the purposes of the Law on AML/CFT.

In the light of the absence of legal powers under the Law on AML/CFT for the CBK to issue rules or regulations to banks and financial institutions for the purposes of the prevention of money laundering and the financing of terrorism, it is proposed, as an interim measure, to amend the MoU for the FIU to authorise the CBK to do so.[2]

Pursuant to the Law on AML/CFT the power to issue administrative directives, instructions [regulations] and guidance is only vested in the FIU through Article 14 paragraph (1.12).[3] The Law on AML/CFT does not authorise the FIU to delegate such powers, but neither does it prohibit it. Therefore the proposed

---

* see footnote 1 page 1

[2] For an assessment and advice on concerns raised for not issuing regulations under the Law No. 04/L-093 on Banks, Microfinance Institutions and Non-Bank Financial Institutions (Official Gazette of Kosovo*, No.11 / 11 May 2012) for the purposes of the Law on AML/CFT please refer to the section on the review of Regulation 16.

[3] The term 'regulations' is shown in square brackets [ ] as the Law on AML/CFT does not specifically use this term.

amendments to the MoU do not foresee delegating such powers to the CBK. They call for the FIU to authorise the CBK to issue administrative directives, instructions [regulations] and guidance to banks and financial institutions within the context of the delegated supervisory powers in close cooperation with the FIU with such administrative directives, instructions [regulations] and guidance being recognised by the FIU as if issued by itself and, for the purpose of continuity, with provisions that they remain in force should the MoU be withdrawn until replaced or amended by the FIU.

Within this context, the proposed amendments to the MoU (see Annex 1 with proposed amendments and explanatory notes) refer to:

(i) An amendment to Article 2 to broaden the scope of the MoU to issuing rules and regulations by the CBK;

(ii) A new paragraph (6.1A) to Article 6 whereby the FIU authorises the CBK to issue administrative directives, instructions [regulations] and guidance to banks and financial institutions for the purposes of the Law on AML/CFT; and

(iii) A new paragraph (8.4) to Article 8 whereby any such administrative directives, instructions [regulations] and guidance issued by the CBK remain in force even if the MoU is withdrawn.

In the light of the more permanent recommendations in the Cycle 1 DAR for supervisory authorities under the Law on AML/CFT to have the power to issue binding rules and regulations for the purposes of the Law, it is therefore recommended that the interim measures detailed above through the MoU be replaced by more permanent legislative provisions. Thus, and in accordance with similar recommendations in the Cycle 1 DAR, it is recommended that a new paragraph (2) to Article 36A be added as follows:

> Article 36A(2) Pursuant to any agreement entered into in accordance with paragraph (1) of this Article, the FIU may further delegate to the Central Bank of Kosovo* or other sectoral supervisory authorities the power to issue administrative directives, instructions and guidance on issues related to ensuring or promoting compliance with this Law, and any such administrative directives, instructions and guidance issued shall remain in force if the agreement under paragraph (1) is withdrawn until the FIU amends or replaces them.

6. PROPOSED REGULATION 16

The CBK proposes to issue Regulation 16 on the prevention of money laundering and the financing of terrorism to banks and financial institutions in terms of the provisions of Law No. 04/L-093 on Banks, Microfinance Institutions and Non-Bank Financial Institutions (hereinafter the "Law on Banks"). It replaces Rule X of the CBK which was issued in accordance with UNMIK Regulation no. 1999/21 on Bank Licensing, Supervision and Regulation, now repealed. Regulation 16 is applicable to all banks and subsidiaries and branches of foreign banks and non-bank financial institutions and microfinance institutions and subsidiaries and branches of similar foreign institutions authorised to operate in Kosovo* by the CBK in accordance with the Law on Banks.

The proposed Regulation has been reviewed against the Law on AML/CFT as amended, the FATF Standards 2012, the MoU between the CBK and FIU in terms of Article 36A of the Law on AML/CFT, and against Advisory Letter 2007/1 of the CBK.

* see footnote 1 page 1

The review of the Regulation has resulted in a major overhaul. Some of the major proposals for amending Regulation 16 are defined in more detail below but can be summarised as follows:

- Legal basis for the issue of the Regulation;
- Designation;
- Integration of Advisory Letter 2007/1;
- Sanctions;
- Supervisory powers;
- Internal responsibilities;
- Appointment of Head of AML/CFT Unit;
- Measurement of effectiveness;
- Risk assessments;
- Risk based approach;
- Customer Due Diligence
- Beneficial ownership;
- Mandatory and other high risk situations;
- Reporting of suspicious and currency transactions; and
- Instructions issued by the FIU.

Annex 2 to this Paper provides for a revised version of Regulation 16 with proposed draft text and explanatory notes. It is not the aim of this Paper to duplicate the detailed comments in the Annex which forms an integral part of this Paper. However, some of the main aspects of the proposals in the revised Regulation are clarified below.

Legal basis

The question of the legal basis for the CBK to issue directives, rules or regulations for the purposes of the Law on AML/CFT has been debated at length in the Cycle 1 DAR. The conclusion reached in the DAR is that the CBK has no such legal basis. First as Rule X is issued in terms of a UNMIK Regulation that has since been repealed with the coming into force of the Law on Banks, albeit to the extent that any regulations issued there-under do not conflict with the Law on Banks. Second, because none of the referenced sections of UNMIK Regulation 1999/21 for the issue of Rule X provided for the issue of rules or regulations by the CBK or its forerunner for the purposes of the prevention of money laundering and the financing of terrorism. Third, because the current Law on AML/CFT, does not even recognise the CBK as a supervisory authority for AML/CFT purposes.

It is now being proposed that the revised Rule X through Regulation 16 be issued pursuant to Articles 83 and 85 of the Law on Banks. In terms of Article 85 of the Law on Banks any regulations issued by the CBK are of a prudential nature for the purposes of the Law on Banks. Article 83, which does not provide for the issue of regulations, is superfluous for this purpose as the obligations for banks and financial institutions not to be involved in or to aid and abet another person to be involved in money laundering or the financing of terrorism are laid down in the specific law through the Law on AML/CFT. Moreover, for the purposes of the Law on AML/CFT banks and financial institutions do not directly fall within the supervisory regime of the CBK.

If Regulation 16 were to be issued pursuant to Article 85 of the Law on Banks then it would be subject to the relevant provisions of the Law on Banks for other regulations issued under the Law on Banks for banking prudential purposes - a situation which would create legal conflicts as, among others, non-compliance with the Regulation which reflects the Law on AML/CFT is punishable under the Law on AML/CFT and not the Law on Banks. Indeed the Law on AML/CFT gives the power to issue regulations for the purposes of the

Law only to the FIU through Article 14(1)(1.12). A delegation of a supervisory mandate by the FIU cannot be interpreted as also empowering the CBK to issue regulations under the Law on Banks as this is not within the remit of the FIU. The proposals in the Cycle 1 DAR are to the effect that supervisory authorities appointed under the Law on AML/CFT should be provided with the legal power to issue directives or regulations applicable to those they supervise for the purposes of the Law on AML/CFT.

The situation remains the same under the revised Law on AML/CFT. The absence of a legal power reduces any 'regulations' to the level of non-mandatory guidance for the purposes of the mutual evaluations under the FATF Methodology. It is for this reason that it is therefore proposed that, in the absence of a direct legal provision and as an interim measure, through the MoU between the CBK and the FIU in terms of the new Article 36A of the Law on AML/CFT the FIU empowers the CBK to issue such regulations for the financial sector and such regulations shall have power as if issued by the FIU. Notwithstanding, the best solution would be for the CBK to be vested with such powers directly under Article 36A – for this purpose please refer to the Section on the review of the MoU above.

Designation

In light of the proposed interim arrangements for amendments to the MoU empowering the CBK to issue 'administrative directives, instructions and guidance' (see text in the Law on AML/CFT empowering the FIU under paragraph (1.12) to Article 14) and in light of the Regulations issued by the CBK under the Law on Banks for the purposes of the Law on Banks which may create ambiguities in legislation (see 'Legal basis' above) the CBK may wish to consider the use of the designation 'Regulation' as opposed to, for example 'Administrative Directive' which would still be mandatory and subject to sanctions.[4]

Integration of Advisory Letter 2007/1

It is proposed that Advisory Letter 2007/1 be integrated into Regulation 16 (please see also the Section on Advisory Letter 2007/1 below).

Until now the Central Bank of Kosovo* has issued two documents to the banks and financial institutions in relation to the prevention of money laundering and the financing of terrorism: Rule X and Advisory Letter 2007/1. While the former sets the rules for the industry to implement and to follow in compliance with the Law on AML/CFT, the latter provides for additional guidance to the industry in implementing Rule X and obligations under the Law on AML/CFT. Thus banks and financial institutions have to consult both documents to ensure compliance and to establish their internal AML/CFT programmes, policies and procedures. Moreover, while it would have been better to include some of the provisions of the Advisory Letter in Rule X for the sake of completion and consistency, others may create conflict or ambiguity with Rule X or are outright a repetition of the provisions of Rule X with different text and thus superfluous.

The proposals made in the review of the proposed Regulation 16 provide guidance to banks and financial institutions in understanding their obligations. In doing so, Regulation 16 sets the context within which obligations under the Law on AML/CFT are to be fulfilled.

It is therefore recommended that certain provisions of the Advisory Letter be transposed, amended and integrated accordingly into Regulation 16 with the Advisory Letter – which is based on UNMIK Regulations that have since been abrogated with the coming into force of the Law on AML/CFT - being abrogated. To this effect, and for the sake of clarity for the Kosovo* authorities, text transposed from the Advisory Letter and comments are included in the revised Regulation 16 in Annex 2.

[4] For the purposes of this Paper the document will continue to be referred to as 'Regulation 16'

* see footnote 1 page 1

Sanctions

One of the main concerns that have emerged through the mutual evaluation of certain countries and jurisdictions is the application of prudential measures envisaged under the laws for banks and financial institutions for the purposes of the laws for the prevention of money laundering and the financing of terrorism. One such measure is the imposition of sanctions meant for prudential purposes under the laws for banks and financial institutions to breaches of the AML/CFT laws and regulations which are punishable under the AML/CFT laws.

Paragraph (2) of Article 22 of Regulation 16 is doing that by invoking the administrative measures under Articles 58, 59 and 82 of the Law on Banks. A closer look and assessment of these Articles show that it is not entirely correct to state that their provisions empower the CBK to impose administrative sanctions for the purposes of the prevention of money laundering and terrorist financing, as the measures foreseen under the Law on Banks are applicable to violations of the Law on Banks or any regulations issued thereunder and are therefore of a prudential nature. As argued above, Regulation 16 cannot be issued by the CBK under its powers under the Law on Banks. It is precisely for this reason, among others, that this Paper argues – see 'Legal basis' above – on the conflicts that arise if the Regulation is issued in terms of the Law on Banks.

It is within this context therefore that it is proposed to remove paragraph (2) of Article 22 of the Regulation as drafted and to replace it with a new paragraph (2) which specifically provides for graduated administrative measures that the CBK may apply to banks and financial institutions in proportion to the offence. However, this is an interim measure pending the enactment of more permanent measures in the Law on AML/CFT.

The Cycle 1 DAR identified this major weakness in the application of administrative measures under the Law on AML/CFT in relation to the FATF Recommendation 17 (Recommendation 35 under the 2012 Standards). Some action has been taken through the amendments to the Law introducing pecuniary penalties applicable to violations of the Law on AML/CFT as specified under Articles 31A and 31B. The DAR however comments that graduated administrative measures should also be available and for this purpose proposes a complete overhaul of Article 31 of the Law on AML/CFT on ''*Administrative Sanctions and Remedial Measures'*. The proposal takes account of new Articles 31A and 31B and proposes a list of administrative sanctions that could be applied in a graduated manner in proportion to the size of the offence. It is therefore highly recommended that the proposed amendments to Article 31 of the Law on AML/CFT as detailed in the Cycle 1 DAR for FATF Recommendation 17 (Recommendation 35 under the 2012 Standards) be implemented at the earliest.

Moreover new Articles 31A and 31B do not specifically provide for sanctions for non-compliance with administrative directives, instructions and guidance issued by the FIU in accordance with the Law on AML/CFT – or any other authority in accordance with the proposed amendments to the Law on AML/CFT. It is further suggested that such an offence be included and sanctioned directly – unless a broader interpretation of paragraph (1) of Article 31 covers this eventuality.

Supervisory powers

Another important issue identified in the Cycle 1 DAR and that has not been addressed in the amendments to the Law on AML/CFT relates to the supervisory powers of authorities identified (directly or indirectly) under the Law on AML/CFT to supervise reporting subjects on compliance with their obligations under the Law.

The Cycle 1 DAR had established that the Law on AML/CFT is limited in providing for supervisory powers and this only in relation to the FIU. Within the context that the CBK was already undertaking such supervision and with awareness of the intended changes to the Law on AML/CFT with regards to the supervision of the financial sector, the Cycle 1 DAR, in assessing FATF Recommendation 29 (Recommendation 27 under the 2012 Standards) on the 'Powers of Supervisors' had made a

recommendation for the inclusion of a new Article in the Law on AML/CFT empowering those supervisory authorities designated under the Law on AML/CFT and who already had another prudential supervisory remit under other laws (for example the CBK for the financial sector under the Law on Banks) to apply such supervisory powers for the purposes of their supervisory remit under the Law on AML/CFT *with the exception of the power to impose administrative or other sanctions and penalties contemplated by such specific laws for infringement of such laws* in order to avoid conflicts, as administrative and other sanctions for AML/CFT purposes are contemplated under the Law on AML/CFT – see comments above under 'Sanctions'. Thus the CBK could, for example, apply its right of entry to inspect; its right to demand documents and other information; its right to exercise onsite and offsite examinations, and all other similar powers under the Law on Banks.

For this purpose it is proposed to insert a new Article 21A in Regulation 16 which, as an interim measure, provides to clarify the application of the supervisory powers of the CBK for banks and financial institutions under the Law on Banks for the purposes of supervising banks and financial institutions for the purposes of the Law on AML/CFT.

For a more permanent measure, and in accordance with the recommendations made in the Cycle 1 DAR, it is proposed to insert a new paragraph (3) to Article 36A of the Law on AML/CFT to the effect that:

> Article 36A(3) Pursuant to any agreement entered into in accordance with paragraph (1) of this Article, a competent authority that is delegated to supervise and monitor a category of reporting subjects on compliance with this Law and which already has a supervisory mandate for prudential purposes conferred upon it through specific laws, shall apply such prudential supervisory powers as conferred upon it and as may be applicable in fulfilling its supervisory remit for the purposes of this Law with the exception of the power to impose administrative or other sanctions and penalties contemplated by such specific laws for infringement of such laws.

Appointment of Head of AML/CFT Unit

Article 4 is being proposed to be amended for various reasons. First to structure better the suggestion that for subsidiaries and branches of foreign institutions operating in Kosovo* the Head of the AML/CFT Unit is appointed by the parent institution/Head Office. Although this element can be accepted, in particular in the case of branches, it is important that the Board of Directors of the subsidiary is involved in the appointment as it is responsible under the Law for appointments and for ensuring compliance. It must be kept in mind that while a branch is an integral part of Head Office, a subsidiary is a separate legal entity with a legal mind of its own. This would be in line with other prudential issues where the Board of Directors is kept responsible.

The Article is also being amended to provide direction to banks and financial institutions on the requisites of the person occupying this position. Thus the Regulation specifies who can and who cannot be appointed to Head the Unit and act as the compliance officer for the purposes of Article 23 of the Law on AML/CFT. In this way, and in the light of the proposal for the parent institution/Head Office to appoint the Head of the Unit, it is ensured that such an official is a permanent employee of the subsidiary or branch in Kosovo* and that such an official resides permanently in Kosovo* in accordance with international standards.

Finally the amendments proposed expand on the role and responsibilities of the Head of the AML/CFT Unit by obliging this official first to undertake an assessment of all risks arising from existing and new customers, new products and services provided by bank or financial institution and second to undertake an assessment

* see footnote 1 page 1

of the effectiveness of the internal procedures using statistical information collected internally and in accordance with the proposed Administrative Directive No 02 on Statistics. The amendments further create the link between the Head and internal staff in internal reporting and the Head and the FIU in external communications.

The Risk Based Approach

One of the major amendments proposed to Regulation 16 is the detailed introduction of principles of procedures to be followed by banks and financial institutions in their application of a risk based approach. Paragraph (4) of Article 7 of Regulation 16 currently requires banks and financial institutions to draw up their risk analysis based upon *guidelines issued by and within the powers of the CBK as competent supervisory body*. Apparently no such guidance has been provided.

In the light of the emphasis on the risk based approach in the Law on AML/CFT in particular according to Article 17 and further in the light of the new obligations under the 2012 FATF Standards and the proposals in the Cycle 1 DAR, detailed proposals for amending Regulation 16 accordingly are being proposed.

First, in Article 7 of the Regulation, there is a proposal to introduce a two stage risk assessment dealing with:

- A *business based risk assessment* of the bank's or financial institution's products, services, delivery channels and the geographic location in which the bank or financial institution undertakes its business operations and which presupposes a good knowledge of the institution's business operations; and

- A *relationships based* or *customer-based risk assessment* as an assessment on a sensitivity basis of the potential customer and the products and services proposed to be used by the banks' or financial institution's potential customers as well as the geographic locations in which they operate or do business and other risk factors.

In this regard the Regulation is being complemented by two Annexes providing a risk matrix template for each type of risk assessment with instructions that could be adopted by banks and financial institutions to develop their own risk assessment methodology.

The risk based approach is further complemented with obligations to develop the institutions Risk Appetite to be approved by the Board of Directors. A template with explanatory notes for this purpose is included in an Annex to the Regulation.

Customer Due Diligence

CDD measures as defined in the Regulation are being amended for various reasons. First is the introduction or further clarification on the application of the 'verification' procedures separate from but complementary to the 'identification' procedures.

Second, and a main issue that arises, is the proposal to remove references to opening of accounts on a face-to-face basis under paragraph (3) of Article 9 of the Regulation. In principle the Law on AML/CFT does not exclude the physical absence of a customer but then it does not directly include it either. The Law however does provide for enhanced due diligence measures to be applied in addition to the standard measures in the circumstances where the customer is not physically present – see paragraphs (2) and (3) of Article 21 of the Law on AML/CFT. Within this context the revised Regulation provides different text as an

option for the Kosovo* authorities to consider and which links non-face-to-face business relationships with the mandatory enhanced CDD procedures under proposed new Article 14A of the Regulation reflecting paragraph (2) of Article 21 of the Law on AML/CFT. It is recommended to adopt the proposed option for amending paragraph (3) of Article 9 and introduce a new paragraph (3A) in the Regulation.

Third are the proposals to include the obligation for banks and financial institutions to develop a Customer Acceptance Policy within the context of the 'Risk Appetite' as established by the Board of Directors within the risk sensitivity approach in accepting customers. To this effect, Appendix 4 to the Regulation provides guidance on the development of a Customer Acceptance Policy which should assist banks and financial institutions to develop their own policy consequent to their individual identified risks.

Finally, while a template for establishing the customer business and risk profile is provided under Article 11 of the Regulation, indicative monitoring periods for accounts and relationships based on risk are provided under Article 12 of the Regulation.

Beneficial ownership

Various proposals are put forward to refine and clarify the obligations of banks and financial institutions under Article 10 of the Regulation in identifying and verifying the identity of the BO. In brief these refer to:

- Clarification of the link between the definition of beneficial owner under Article 2 of the Law on AML/CFT and the identification obligation of the BO under Article 17 of the Law on AML/CFT;
- Identifying the 'mind and management' and all beneficial owners with a stakehold of 20% and more and large stakeholders where no person holds this equivalence;
- Direction on what constitutes 'direct and indirect' shareholding;
- Definition of what constitutes 'control'; and
- Identifying the beneficial owner of other legal arrangements.

Mandatory and other high risk situations

It is proposed that while those circumstances under which the Law on AML/CFT imposes mandatory enhanced CDD be better defined and highlighted in the Regulation with procedures to be followed by banks and financial institutions, the application of enhanced CDD to other identified high risk relationships be retained separately. For this purpose, while the latter are treated under Article 17, the former are retained under Article 14 (correspondent banking relationships) and the proposed new Article 14A (Non Face-to-Face Relationships) and Article 14B (PEPs).

In the latter case for PEPs a customer declaration template is proposed. The template provided under Appendix 6 to the Regulation is based on the international definitions of 'immediate family members' and 'public prominent positions' for PEPs since no definitions are available to the Consultant for these terms in accordance with the Law on AML/CFT which requires such definitions to be established by the FIU in cooperation with the Ministry of Finance. Therefore it is advisable that this template is included in Regulation 16 **only if** such definitions are made available by the FIU in consultation with the Ministry of Finance as required under the Law on AML/CFT - in which case the template may need to be reviewed accordingly. It is worth noting that the Cycle 1 DAR in assessing EC 6.1 for Recommendation 6 (Recommendation 12 under the 2012 Standards) had recommended that '*consideration be given for such measures to identify whether a*

* see footnote 1 page 1

potential customer, a customer or a beneficial owner is a PEP as part of the risk based approach and outside the enhanced due diligence procedures to be applied for higher risk customer'.

For the purposes of other high risk situations and relationships identified as such through the risk assessments of potential customers, under Article 17 of the Regulation some changes are proposed relating to:

- business relationships and transaction with high risk countries in accordance with Recommendation 19 of the 2012 FATF Standards;
- elevating and applying enhanced due diligence on business relationships and accounts where an STR has been filed;
- type and extent of enhanced due diligence measures to be applied.

Reporting of Suspicious and Currency Transactions

The DAR for Cycle 1 identifies two main issues in the recognition and reporting of suspicious acts and transactions which have not been addressed by the recent amendments to the Law on AML/CFT. These relate to the situations where information available indicates that a person is or may be involved in money laundering or the financing of terrorism and that there is no legal obligation under the Law on AML/CFT for reporting transactions or persons suspected to be linked to the financing of terrorism – although it has been held by the Kosovo* authorities that the latter is being done in practice. In both cases the Cycle 1 DAR makes recommendations to rectify these shortcomings.

It should be highlighted that without such amendments some parts of Article 18 of this Regulation as currently drafted and as proposed to be amended may fall outside the provisions of the Law. Such provisions are being retained in Article 18 as they reflect the actual position but it is highly recommended that the necessary amendments to the Law on AML/CFT as proposed in the Cycle 1 DAR are effected as soon as possible to rectify this situation.

Some amendments are being recommended for Article 18 of the Regulation as follows:

- prohibition (tipping off);
- the obligation to file an STR where a currency report that is filed is also found to be suspicious of being related to money laundering or the financing of terrorism; and
- the disclosure responsibilities of employees once they identify a suspicious act or transaction.

Instructions issued by the FIU

Within the context and the spirit of the proposed interim amendments to the MoU for the CBK to issue binding rules and regulations and within the context and spirit of the more permanent empowerment to do so through the proposed new paragraph (2) to Article 36A, there should not be circumstances where directives issued by the FIU impose conflicting obligations to those issued by the CBK. In any case it is counter-productive to categorically state that in such instances, if they occur, then the FIU instructions supersede those of the CBK. It is therefore being proposed that the authorities (FIU and CBK) commit themselves first to avoid such situations and to rectify them immediately should they occur. There are proposals to amend Article 21 of the Regulation accordingly.

* see footnote 1 page 1

7. ADVISORY LETTER 2007/1

As already detailed above under 'Integration of Advisory Letter 2007/1' it is proposed that those parts of the Advisory Letter that add value to Regulation 16 will not be considered as separate guidance but as an integral part of the Regulation which establishes the context within which banks and financial institutions are expected to fulfill their obligations under the Law on AML/CFT. This provides banks and financial institutions with a more comprehensive, consistent and user friendly document (Regulation 16) which should enable them to better develop their internal policies and procedures. To this effect, and as explained above, those parts of the Advisory Letter 2007/1 that add value to the Regulation have been integrated with a proposal under Article 23 of Regulation 16 for the Advisory Letter to be abrogated.

Notwithstanding, in recognition that such decision lies with the discretion of the Kosovo* authorities, in this case the Board of Directors of the CBK, this review leaves the option open.

For this purpose, Advisory Letter 2007/1 has been reviewed as a stand-alone document complementary to Regulation 16. Particular focus in the review has been placed on the legal basis for the CBK to issue this document – adopting the same temporary legal basis as suggested for Regulation 16 through the amendments to the MoU with more permanent and legal powers to be provided through the Law on AML/CFT itself.

Therefore, while those sections or paragraphs of the Advisory Letter that have not been integrated into Regulation 16 are being reviewed and amended, those sections and parts of the Advisory Letter that have been proposed for integration into Regulation 16 are still retained in the stand-alone document for the Advisory Letter with the necessary amendments. However, should the CBK decide to retain the Advisory Letter as a stand-alone document, such sections should be removed from the Regulation as proposed to avoid duplication.

Notwithstanding the option, it is hereby strongly recommended that the Advisory Letter be integrated within Regulation 16 with the Advisory Letter being abrogated.

Annex 3 to this Paper details the proposed amendments with explanatory comments.

8. PROPOSED ADMINISTRATIVE DIRECTIVE NO 1 - TRAINING

One of the areas indicated in the request for technical assistance of the CBK of July 2013 is in the area of drafting administrative instructions on employee training programmes in accordance with Recommendation 18 of the FATF Standards of 2012.

In its communication to the Kosovo* authorities, with regard to training under FATF Recommendation 18, the EU Commission states *COM can support the GoK's suggestion to specify in the sub-legal act training commitments for the FIU, the police and district prosecutors. At the same time, the FATF recommendation also advises financial institutions to set up "ongoing employee training programmes"; therefore, banks and other reporting institutions should also be covered by the sub-legal act.*

In accordance with the CBK request, the proposed Administrative Directive covers only the financial sector.

* see footnote 1 page 1

The legal basis for the issue of this Directive has been established on the same lines as for Regulation 16 through the proposed amendments to the MoU as an interim measure and in accordance with the provisions of the Law on AML/CFT on a more permanent legal basis following the enactment of the proposed amendments/additions to Article 36A of the Law on AML/CFT as detailed earlier in this Paper and which are strongly recommended.

The proposed Administrative Directive does not provide a training programme for banks and financial institutions to adopt and implement. The responsibility to develop training programmes for the prevention of money laundering and the financing of terrorism remains the responsibility of banks and financial institutions and may vary from one institution to another depending on a number of individual circumstances.

The proposed Administrative Directive does however provide minimum principles on the basis of which banks and financial institutions shall develop their training programmes. The Directive is applicable to all banks and subsidiaries and branches of foreign banks, non-bank financial institutions and Micro Finance Institutions and subsidiaries and branches of similar foreign institutions licensed by the CBK to operate in Kosovo* in terms of the Law on Banks.

It should be emphasised that the responsibility to provide training has a broader dimension both domestically and at the international level. Training statistics are an essential element in the new FATF Methodology for assessing effectiveness of the implementation of the 2012 Standards and is a tool through which jurisdictions can demonstrate such effectiveness.

Some of the provisions of Article 19 of Regulation 16 have been transposed to the Administrative Directive for the sake of completion and to avoid conflicts of interpretation between the two documents.

The Administrative Directive 01 on Training in Annex 4 to this Paper is divided as follows:

(i) Having established its purpose and scope, the Directive establishes the responsibilities of banks and financial institutions in providing training. It establishes that training must be provided at all levels of employees and should also include higher level training to the Board of Directors. Banks and financial institutions are required to ensure that their training programmes are composed of both internal and external training sessions and shall include refresher courses. While requiring that training be an ongoing process, the Directive establishes that specific training to employees at all levels should be given periodically and as a minimum annually. As part of the responsibilities of banks and financial institutions the Directive establishes the obligation of retaining training records in accordance with the record keeping obligations for a period of five (5) years.

(ii) The Directive next establishes the nature of training and awareness that banks and financial institutions are expected to provide. It requires that specific training should be tailored in accordance with the specific responsibilities and functions of the respective employees within the broader range of activities of the bank or financial institution. The Directive also identifies those areas where ongoing training and awareness is a necessity, such as CDD, record keeping, identification and reporting of suspicious acts and transactions, the risk based approach and policies and procedures including risk management.

(iii) Having established these areas, the Directive provides detailed principles on the type of training that banks and financial institutions should consider for each category. These are not exhaustive and banks and financial institutions are encouraged to develop these principles in accordance with their individual needs and circumstances.

* see footnote 1 page 1

(iv) Finally the Directive provides for measures for its implementation while referring to administrative measures for non-compliance. Administrative measures are linked to those provided for under Regulation 16 as proposed above. It should again be noted that the Law on AML/CFT does not specifically provide for sanctions for non-compliance with directives or rules issued there-under.

9. PROPOSED ADMINISTRATIVE DIRECTIVE NO 2 - STATISTICS

Another area indicated in the request for technical assistance of the CBK of July 2013 is in the area of drafting administrative instructions on the collection and maintenance of meaningful statistics in accordance with Recommendation 33 of the FATF Standards of 2012.

In its communication to the Kosovo* authorities, with regard to the maintenance of statistics under FATF Recommendation 33, the EU Commission states that *COM would advise the GoK to specify in the sub-legal act the collection and processing of statistics as set out in the above FATF recommendation.*

The legal basis for the issue of this Directive has been established on the same lines as for Regulation 16 through the proposed amendments to the MoU as an interim measure and in accordance with the provisions of the Law on AML/CFT on a more permanent legal basis following the enactment of the proposed amendments/additions to Article 36A of the Law on AML/CFT as detailed earlier in this Paper and which are strongly recommended.

In accordance with the CBK request, the proposed Administrative Directive covers only the financial sector. The proposed Administrative Directive establishes sets of statistics that are comprehensive and meaningful for banks and financial institutions, and the CBK itself, to be able to understand and measure the effectiveness of the system for the prevention of money laundering and the financing of terrorism with regards to the financial sector. The statistics detailed in the Directive are not exhaustive and banks and financial institutions may collect and maintain additional information which they may consider necessary to fulfill their obligations under the Law on AML/CFT and Regulation 16. The Directive however does lay down the principles for the minimum sets of statistics that should be maintained and provided to the CBK in this regard.

To this effect the Directive is complemented with a template for the collection and maintenance of comprehensive and meaningful statistics which banks and financial institutions shall be required to complete and submit to the CBK on a periodical basis as the CBK may establish. The sets of statistics in the template are detailed in depth and are expected to be maintained on a reporting period and stock position i.e the cumulative position. It is at the discretion of the CBK to decide the depth of statistics to be maintained keeping in view the importance of comprehensive meaningful statistics both for domestic use by the authorities, in particular the CBK itself and the FIU, and also the international or external factor.

The Directive is applicable to all banks and subsidiaries and branches of foreign banks, non-bank financial institutions and Micro Finance Institutions and subsidiaries and branches of similar foreign institutions licensed by the CBK to operate in Kosovo* in terms of the Law on Banks.

In this regard it should be emphasised that the responsibility to collect and maintain comprehensive meaningful statistics has a broader dimension both domestically and at the international level. Comprehensive and meaningful Statistics are an essential element in the new FATF Methodology for

* see footnote 1 page 1

assessing effectiveness of the implementation of the 2012 Standards and is a tool through which jurisdictions can demonstrate such effectiveness.

The proposed Administrative Directive 02 on Statistics in Annex 5 to this Paper is divided as follows:

(i) Having established its purpose and scope, the Directive establishes the responsibilities of banks and financial institutions in the collection and maintenance of comprehensive and meaningful statistics. It provides direction on determining the additional statistics banks and financial institutions may wish to maintain above the minimum requirements the Directive establishes. In this regard it obliges banks and financial institutions to consider not only their internal requirements but also the external requirements of the authorities. Finally the Directive obliges banks and financial institutions to use statistics in measuring the effectiveness of their internal procedures and to report periodically to the CBK.

(ii) The Directive next establishes the main pillars of statistical information that banks and financial institutions shall maintain as a minimum. The eight pillars which are defined in more detail in the Annex to the Directive providing a reporting template to be used by banks and financial institutions are: CDD; Relationships and Accounts; Suspicious Transaction reporting; Currency Transaction reporting; Compliance assessment; Resources; Training and Awareness; and Court Orders. The Directive, more specifically through its Reporting Template in the Annex, provides details of the minimum set of statistics to be maintained for each pillar. Moreover it allows for the CBK to request and collect other one off sets of statistics it may require from time to time to fulfill its supervisory responsibilities for the prevention of money laundering and the financing of terrorism.

(iii) The Directive requires the CBK to consolidate the statistical information received from banks and financial institutions. The CBK shall decide on the consolidation methodology. It also requires the CBK to undertake an effectiveness assessment of the whole financial sector on the basis of the individual assessments reported by the banks and financial institutions and the consolidated statistics. The consolidated statistics results and the effectiveness assessment shall be made available to the FIU. The Directive requires the CBK itself to maintain its own sets of statistics in this regard.

(iv) Finally the Directive provides for measures for its implementation while referring to administrative measures for non-compliance. Administrative measures are linked to those provided for under Regulation 16 as proposed above. It should again be noted that the Law on AML/CFT does not specifically provide for sanctions for non-compliance with directives or rules issued there-under.

10. OVERALL OPINION

The Cycle 1 DAR identified major issues on the legal basis for the CBK to issue binding rules and regulations to banks and financial institutions for the prevention of money laundering and the financing of terrorism in terms of the Law on AML/CFT. The issue has been debated at length and was further impacted by the fact that, at the time, the CBK did not even have a legal supervisory mandate in terms of the Law on AML/CFT.

Consequently in its request for technical assistance of July 2013 the CBK has identified this area as one requiring assistance in correcting problems of legal validity for the CBK to issue such rules and regulations.

The Cycle 1 DAR has already made various proposals with draft legal text on ways how to correct this problem. However, the amendments to the Law on AML/CFT of February 2013 did not address these issues as raised in the DAR as the amendments had already been prepared prior to the submission of the DAR to the Kosovo* authorities.

Notwithstanding, this matter has been partly addressed by the indirect appointment of the CBK as the supervisory authority for the financial sector for the purposes of the Law on AML/CFT through the MoU between the CBK and the FIU in terms of the new legal provisions of Article 36A of the Law on AML/CFT.

With the absence of the other proposals in this regard made in the Cycle 1 DAR, an issue arises as to the powers of the CBK to fulfill its new supervisory remit for the purposes of the prevention of money laundering and the financing of terrorism in terms of the Law on AML/CFT. It is often found that in such cases in other jurisdictions central banks apply their prudential supervisory powers under the respective financial laws (e.g Law on Banks) thus creating legal conflicts as such provisions are meant for prudential purposes for the financial laws and not for the prevention of money laundering and the financing of terrorism where the specific law might be providing differently. This situation has been the subject of long discussions on the adoption of mutual evaluation reports and have always been considered as an issue for jurisdictions to address.

The main concern in the case of Kosovo* therefore remains the legal basis for the CBK, under its delegated supervisory powers, to issue rules and regulations to banks and financial institutions for the purposes of the Law on AML/CFT.

This Paper, together with the Annexes, proposes interim measures that can be taken through proposed amendments to the MoU but emphasizes the need for the Kosovo* authorities to have appropriate legal provisions in place through further amendments to the Law on AML/CFT thus conclusively correcting this issue.

* see footnote 1 page 1

11. CONCLUSION

In conclusion, therefore, while it is practical for the CBK to issue regulations or other type of directives to banks and financial institutions on how the CBK envisages the sector to be meeting its obligations under the Law on AML/CFT, yet it is expected that such rules and regulations should be binding and mandatory through a proper legal basis. Without a legal basis, and particularly since the supervisory remit of the CBK is not permanent but only delegated through an MoU, the CBK can only issue guidance to the industry without any enforcement powers. This would not meet the criteria for international standards but, more so, it would not allow the CBK to take corrective administrative measures for non-compliance.

Within this context it is therefore recommended that:

- *EITHER* the Kosovo* authorities first enact the appropriate legislative provisions for this purpose as detailed in this Paper and as further elaborated in the Cycle 1 DAR and then issue the Regulation and the Administrative Directives on the basis of these legal provisions – in which case some amendments to the proposed documents would be necessary;

- *OR* the Kosovo* authorities may wish to issue these documents on the basis of the interim measures as detailed in this Paper through the amended provisions of the MoU between the FIU and the CBK and then enact the necessary legal provisions later – in which case the Regulation and the Directive would eventually need to be amended as to the legal basis.

* see footnote 1 page 1

12. ANNEXES

12.1 Annex 1: Extracts of Memorandum of Understanding between the Financial Intelligence Unit and the Central Bank of Kosovo* with proposed amendments

Article 2

Aim

2.1 The aim of this Memorandum is to enhance and increase the level of cooperation and coordination and to improve the level of security of exchange of information, and to accelerate the process of exchange of information between the Parties, with regard to the prevention and combating of money laundering and terrorist financing. The Memorandum also aims to delegate the authority to CBK pursuant to Article 36A of the Law Supplementing and Amending the Law on Prevention of Money Laundering and Terrorist Financing for conducting inspections of compliance with FIU-K in line with provisions of the laws No. 03L/196 and No.04/L-178 on the Prevention of Money Laundering and Terrorist Financing. CBK as a licensing, supervisory and regulatory authority of the financial sector will be responsible for inspections of the financial sector's compliance in the context of prevention of money laundering and terrorist financing based on the legislative framework for prevention of money laundering and terrorist financing and respective sub-legal acts issued by FIU-K in close cooperation with CBK or by the CBK in close cooperation with the FIU-K in accordance with Article 6 of this Memorandum.

Comment 1 (Consultant): The proposed amendment completes the aim of the Memorandum by further setting the compliance scenario with links to the authorization under Article 6 for the CBK to issue administrative directives, instructions [regulations] or guidance to the financial sector.

Article 6

Inspection of Financial Sector

6.1 By the virtue of this Memorandum FIU-K delegates to CBK the authority to perform compliance inspections with respect to banks, other financial institutions and other sectors under the supervision of CBK with the aim of ensuring and promoting compliance with the law on prevention of money laundering and prevention of terrorism financing. CBK will perform compliance inspections in accordance with the applicable legislative framework on prevention of money laundering and terrorism financing and other regulations issued by FIU-K in close cooperation with CBK. For every compliance inspection concerning prevention of money laundering and terrorism financing the CBK will inform in written FIU-K at least 3 working days in advance.

6.1A Within this context, FIU-K further authorizes CBK, in close cooperation with the FIU-K, to issue administrative directives, instructions [regulations] and guidance to banks, other financial institutions and other sectors under the supervision of CBK for the implementation of the obligations of the financial sector under Law No. 03L/196, as amended by Law No.04/L-178 on the Prevention of Money Laundering and Terrorist Financing and, for all intents and purposes of the Law No. 03L/196, the FIU-K shall consider such administrative directives, instructions [regulations] and guidance as if issued by itself. FIU-K and CBK shall cooperate closely to ensure that administrative directives, instructions [regulations] and guidance issued by either Party are not in conflict but consistent in creating a level playing field for all reporting subjects under the Law.

Comment 2 (Consultant): In the absence of a direct empowerment under the Law on AML/CFT for the CBK to issue sub-legal acts, which power to issue administrative directives, instructions [regulations] and guidance is only vested in the FIU-K through Article 14 paragraph (1.12), the FIU-K is hereby empowering the CBK to issue any of the aforementioned sub-legal acts on its behalf and in close cooperation with the FIU-K. Admittedly the Law does not directly provide for the FIU-K to *delegate* its powers under paragraph (1.12) of Article 14. It is for this reason that the FIU-K is not *delegating the powers* but *authorizing* the CBK to issue these sub-legal acts on its behalf and which the FIU-K considers as being issued by itself. The reference to [regulations] is in square brackets as the Law on AML/CFT does not refer to 'regulations' and hence CBK may wish to consider a different designation in line with the Law on AML/CFT rather than

* see footnote 1 page 1

the Law on Banks. As already indicated in the Cycle 1 DAR and in the comments on amendments to Regulation 16 it is strongly recommended that such powers to the CBK or other supervisory authority be directly provided under the Law on AML/CFT.

Article 8

Commencement and Termination

8.1 This Memorandum will enter into force on the date of its signature and will be valid until its expiration or until it is replaced by any other memorandum or instrument.

8.2 This Memorandum can be terminated by any Party with a written notification 14 days in advance, but can be supplemented only with the agreement of both Parties.

8.3 In case of termination, procedures, conditions and criteria with regard to the use and dissemination of exchanged information according to this Memorandum will remain in force and binding for Parties with regard to received information from the other Party according to this Memorandum before termination.

8.4 Moreover, in case of termination, any administrative directives, instructions [regulations] and guidance issued by the CBK in terms or Article 6 of this Memorandum shall remain in force and binding on the financial sector until amended or replaced by FIU-K as may be necessary.

Comment 3 (Consultant): The aim of the proposed paragraph 8.4 is to ensure continuity in any directives issued to the financial sector should this Memorandum be withdrawn. Without such provisions any administrative directives, instructions [regulations] and guidance would become null and void creating continuity and consistency problems for the financial sector and the authorities themselves.

12.2 Annex 2: Regulation 16

NOTE: ***(1) Text in red represents proposals and comments by the Consultant***
(2) Text in blue represents proposals and comments by the Kosovo* authorities
(3) Text in green represents text lifted from CBK Advisory Letter 2007/1

GENERAL COMMENT (Consultant): Currently the CBK has issued two documents to the financial sector in relation to the prevention of money laundering and the financing of terrorism. Rule X sets the rules for the industry to implement and to follow in compliance with the Law on AML/CFT while Advisory Letter 2007/1 provides for additional guidance to the industry in implementing Rule X and obligations under the Law on AML/CFT. Thus banks and financial institutions have to consult both documents in ensuring compliance and in establishing their internal AML/CFT programs, policies and procedures. Moreover, while some of the provisions in the Advisory Letter should be better included in the Rule X for the sake of completion and consistency, others may create conflict or ambiguity with Rule X or are outright a repetition of the provisions of Rule X under different text. The proposals made in the review of the proposed Regulation 16 provide guidance, direction and principles to banks and financial institutions in understanding their obligations. In doing so, Regulation 16 sets the context within which obligations under the Law are to be fulfilled while expressing its views as the regulatory authority. It is therefore recommended that certain provisions of the Advisory Letter are transposed, amended and integrated accordingly into Regulation 16, with the Advisory Letter – which is based on UNMIK Regulations that have been abrogated with the coming into force of the Law on AML/CFT - being abrogated. To this effect, and for the sake of clarity for the Kosovo* authorities, text transposed from the Advisory Letter and comments thereto are shown in **green** with amendments in **red.**

Pursuant to the provisions of the Memorandum of Understanding entered into between the Central Bank of Kosovo* (hereinafter also referred to as 'the CBK') and the Financial Intelligence Unit (hereinafter also referred to as 'the FIU') in terms of Article 36A of the Law No 03/L 196 on the Prevention of Money Laundering and Terrorist Financing (Official Gazette, No XX of 30 September 2010) as amended by Law No 04/L 178 (Official Gazette XX of 11 February 2013), and in accordance with Article 35.1.1 of the Law No. 03/L-209 On CBK (Official Gazette, No.77 / 16 August 2010), ~~to Article 35.1.1 of the Law No. 03/L-209 On Central Bank of the Republic of Kosovo (Official Gazette of the Republic of Kosovo, No.77 / 16 August 2010), Articles 83 and 85 of the Law No. 04/L-093 on Banks, Microfinance Institutions and Non-Bank Financial Institutions (Official Gazette of the Republic of Kosovo, No.11 / 11 May 2012)~~, the Board of the CBK at the meeting held on July XX, 2012 approved the following:

* see footnote 1 page 1

Comment 1 (Consultant): The issue of the legal basis for the CBK to issue directives, rules or regulations for the purposes of Law No 03/L 196 on the Prevention of Money Laundering and Terrorist Financing has been debated at length in the Detailed Assessment Report of the 1st Cycle Assessment under the Project against Economic Crime in Kosovo*. The conclusion reached is that the CBK has no legal basis as in terms of Article 85 of the Law on Banks any regulations issued by the CBK are of a prudential nature for the purposes of the Law on Banks. References to Article 83 are superfluous as the Article only refers to the obligations of banks and financial institutions under the Law on AML/CFT which is the specific law for the prevention of money laundering and the financing of terrorism and does not provide for the issue of regulations particularly since for the purposes of the Law on AML/CFT banks and financial institutions do not directly fall within the supervisory regime of the CBK. If Regulation 16 were to be issued pursuant to Article 85, even though with reference to Article 83, then it would be subject to the relevant provisions of the Law on Banks, a situation which would create legal conflicts as non-compliance with the Regulation which reflects the Law on AML/CFT is punishable under the Law on AML/CFT and not the Law on Banks. Indeed the Law on AML/CFT gives the power to issue regulations for the purposes of the Law only to the FIU through Article 14(1)(1.12). The proposals in the DAR are to the effect that supervisory authorities appointed under the Law on AML/CFT should be provided with the legal power to issue directives or regulations. The situation remains the same under the revised Law on AML/CFT. The absence of a legal power reduces any 'regulations' to the level of non-mandatory guidance for the purposes of the mutual evaluations under the FATF Methodology. *It is therefore proposed that, in the absence of a direct legal provision, through the MoU between the CBK and the FIU in terms of the new Article 36A the FIU concedes this right under the Law to the CBK to issue such regulations for the financial sector and such regulations shall have power as if issued by the FIU. The above text is based on such a provision. There is therefore a need to amend the MoU accordingly. Notwithstanding, amending the MoU is an interim measure as the best and more permanent solution would to provide directly under Article 36A for such powers to the CBK.*

REGULATION 16
PREVENTION OF MONEY LAUNDERING AND TERRORIST FINANCING

Chapter I
General Provisions

Article 1
Purpose and Scope

1. The ~~Central Banking Authority~~ Central Bank of Kosovo* ~~(CBAK)~~ recognizes that the territory of Kosovo* could become a target for money laundering. Therefore, there is a need to protect the financial and operational integrity of the local and international markets. Consequently, much emphasis has been made on regulatory requirements for the prevention of money laundering and terrorist financing activities.

Comment 1 (Advisory Letter 2007/1): The proposed paragraph (1) is transposed from the first paragraph of Section 2 of the Advisory Letter.

1A. The purpose of this Regulation is to establish the parameters and procedures for banks and financial institutions ~~banks~~ required to manage the process of preventing money laundering and financing of terrorism in accordance with Law No 03/L-196 on Prevention of Money Laundering and Terrorist Financing (hereafter: Law on AML/CFT)..

2. This Regulation applies to all banks and subsidiaries and branches of foreign banks, non-bank financial institutions and Micro Finance Institutions and subsidiaries and branches of similar foreign institutions

* see footnote 1 page 1

licensed by the CBK to operate in Kosovo* in terms of the Law No. 04/L-093 on Banks, Microfinance Institutions and Non-Bank Financial Institutions (hereafter referred as: the Law on Banks). For the purposes of this Regulation all institutions are referred to as 'banks and financial institutions' in accordance with the definitions of the terms in the Law on Banks.

Comment 2 (Consultant): While as drafted the Regulation is applicable to banks and branches of foreign banks only, Advisory Letter 2007/1 which is complementary to the Regulations applies to all banks and financial institutions – Article 2: *These guidelines are issued by the CBAK pursuant to the provisions of the Regulation and are applicable to all banks and financial institutions licensed by, or registered with, the CBAK.* Also Rule 10 is applicable to all banks and financial institutions. Therefore there is an inconsistency. The CBK may wish to consider whether Regulation 16 should be applicable to all types of financial institutions as defined in the Law on Banks i.e banks, subsidiaries and branches of foreign banks, non-bank financial institutions and MFIs or subsidiaries and branches of similar institutions operating in Kosovo*. For this purposes, references to 'banks' in the Regulation have been replaced by references to 'banks and financial institutions'.

3. ~~These guidelines~~ This Regulation also gives an overview of the ~~P~~prevention of ~~M~~money ~~L~~laundering and terrorist financing concept of the Law on AML/CFT. ~~section of the Regulation, and of Amended CBAK Rule X, on Money Laundering.~~ It must be emphasized, however, that this Regulation is ~~these guidelines are~~ complementary to the Law on AML/CFT. ~~Regulation. They~~ and should not be construed as a substitute to the Law on AML/CFT itself. ~~Regulation.~~ The responsibility for observing laws and regulations rests entirely with the individual institutions and their employees.

Comment 2 (Advisory Letter 2007/1): Proposed paragraph (3) is transferred from Section 2 under subtitle 'Guidance Notes' paragraphs (4) and (5). It is proposed to amend as indicated as the current text still refers to the repealed UNMIK Regulation.

Article 2
Definitions

1. All terms used in this Regulation are as defined in Article 3 of the Law on Banks ~~No. 04/L-093 on Banks, Microfinance Institutions and Non-Bank Financial Institutions (hereafter referred as: the Law on Banks)~~ and Article 2 of Law on AML/CFT. ~~No 03/L-196 on Prevention of Money Laundering and Terrorist Financing (hereafter: Law on AML/CFT).~~ ~~with the exception of the following terms.~~

~~Beneficial owner refers to the natural person(s) who ultimately owns or controls a customer or account, and/or the person on whose behalf a transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or legal arrangement. Natural persons shall be deemed the beneficial owner if they control directly or indirectly 20% or more of a legal person.~~

2. In this Regulation the terms 'customer(s)' and 'client(s)' are used intermittently but they shall both be construed to have the same meaning as the term 'client' as defined in the Law on AML/CFT.

Comment 1 (Kosovo* authorities): The definition is in accordance with the changes to be applied in the AML/FT Law. It is recommended its inclusion in the regulation because banks are facing major challenges with current definitions in the application of relevant demands from beneficial owners

* see footnote 1 page 1

Comment 3 (Consultant): (i) Reference to Law No 04/L093 as 'Law on Banks' now included in Article 1 as amended. (ii) Reference to Law No 03/L196 as 'Law on AML/CFT' now included in Article 1 as amended. (iii) The revised Law on AML/CFT already provides for the definition of 'beneficial owner' with a threshold partly under Article 2(1)(1.2) in defining 'beneficial owner' and partly under Article 17(1)(1.2) in establishing obligations of reporting subjects. It is therefore not recommended to include in the Regulations. Please refer to proposed changes under Article 10. (iv) Because of the internationally accepted terminology of 'customer due diligence' it is deemed appropriate that the terms 'customer' and 'client' as used intermittently in this Regulation have the same meaning as defined in the Law on AML/CFT .

3. A 'business relationship' with a bank or financial institution within the definition of the term in the Law on AML/CFT means to engage the financial services of the bank or financial institution for more than an occasional transaction or transactions. Financial services mean those activities as listed in the Law on Banks and as reflected in the definition of 'financial institution' in the Law on AML/CFT. ~~section 1.12 of Regulation 2004/2, as amended.~~ A business relationship with a bank or financial institution does not include doing business with the bank or financial institution in another capacity, such as providing goods or services to the bank or financial institution or engaging other services from the bank or financial institution.

Comment 3 (Advisory Letter 2007/1): The proposed paragraph (3) under Article 2 on definitions is considered appropriate for the sake of clarity even if the definition of 'business relationship' is already included in the Law on AML/CFT/ This in particular due to the last clarifying sentence. The text has been transposed from the definition under Section 3 of the Advisory Letter.

Article 2A
Prevention of Money Laundering and Terrorist Financing

Comment 4 (Advisory Letter 2007/1): A new Article 2A is proposed which will cover most of Section 2 of the Advisory Letter with reference to an overview of money laundering and the financing of terrorism. Paragraphs in this new Article 2A indicate their source through the Advisory Letter.

1. *Money laundering* is the process through which criminals attempt to conceal the true origin and ownership of the proceeds of their criminal activities with the ultimate aim of providing a legitimate and legal cover for their sources of income and finance. It is the vehicle through which organizations of serious crime live respectably with no apparent connections with the criminal world. The international recognition to fight money laundering on a global approach has identified the need to collectively prevent criminals, through all means possible, from legitimizing the proceeds of their criminal activities by converting funds from dirty to clean. Although there are various methods of laundering money which can range from the purchase of property or luxury items to complex international networks of apparently legitimate businesses, the requirement of laundering the proceeds of criminal activity through the financial system is quite often vital to the success of such criminal operations. Moreover ~~T~~the increased integration of the international financial systems, coupled with the free movement of capital through the removal of barriers, have enhanced the ease with which criminal money can be laundered by shifting it from one jurisdiction to another thus complicating the tracing or audit process.

Comment 5 (Advisory Letter 2007/1): Proposed paragraph (1) is transferred from the definition of money laundering under the subtitle 'Definitions' and the three paragraphs under the subtitle 'Prevention of Money Laundering' under Section 2 of the Advisory Letter.

2. The very definition of money laundering calls for an underlying *criminal activity* as defined under the Law on AML/CFT which generates the money to be laundered. Different countries have adopted different

methods of addressing the underlying criminal activities. Whereas some countries have generalized and included all criminal activities, others have included a list of serious crimes which tend to generate large amounts of money. Kosovo* has adopted an all crimes approach.

Comment 6 (Advisory Letter 2007/1): Proposed paragraph (2) is transferred from the definition of criminal activities under the subtitle 'Definitions' under Section 2 of the Advisory Letter. It is appropriate that the generality of the definition of criminal activities as the underlying offence is linked to the definition under the Law on AML/CFT and complemented by stating the position in Kosovo* which, according to the Cycle 1 DAR, has adopted an all crimes approach.

3. Whatever method is used to launder money, the process is normally accomplished in *three stages*. These may occur as separate and distinct phases although they may occur simultaneously, at times even overlapping, depending on the criminal organizations involved. The three stages usually comprise numerous transactions by the launderers to try to hide or conceal the tracing process. Such transactions could, however, alert a bank or financial institution to suspect criminal activity through any of these three stages:

- Placement - the physical disposal of cash proceeds derived from illegal activity, e.g., placing it in a bank account;
- Layering - the creation of numerous complex layers of financial transactions being the separation of proceeds from their source aimed to disguise the audit trail thus providing anonymity, e.g., transfers from one account to another, switching currency, changing jurisdiction; and
- Integration - the provision of an apparent legitimate explanation for the illegally derived wealth to be put back into the economic sector, e.g., liquidation of an investment to use proceeds for an apparent legitimate business.

A successful layering process simplifies the integration process schemes to put the laundered proceeds back into the economy in such a way that they re-enter the financial system as normal business funds.

Comment 7 (Advisory Letter 2007/1): Paragraph (3) transposes the text under subtitle 'Stages of Money Laundering' under Section 2 of the Advisory Letter.

4. Conversely, terrorist financing involves the receipt or provision of money or other property intended or suspected to be used for the purpose of terrorism. Money or property that is used to fund terrorism may not necessarily be money or property derived from a criminal offence but could very often involve legitimate money or property that is received, collected or provided for the purpose of the financing of terrorism. The primary objective of terrorism according to one definition is "to intimidate a population, or to compel a Government or an international organisation to do or abstain from doing any act".[5] In contrast, financial gain is generally the objective of other types of criminal activities. While the difference in ultimate goals between each of these activities may be true to some extent, terrorist organisations still require financial support in order to achieve their aims. A successful terrorist group, like any criminal organisation, is therefore necessarily one that is able to build and maintain an effective financial infrastructure.[6]

Comment 4 (Consultant): Paragraph (4) above is a new addition to the proposed new Article 2A which would also be appropriate as an addition to the Advisory Letter should the Kosovo* authorities decide to maintain the Advisory Letter separate from the Regulation 16 – not recommended though.

* see footnote 1 page 1

[5] Source: Article 2 UN *International Convention for the Suppression of the Financing of Terrorism*, 9 December 1999

[6] Source: FATF *Guidance for financial institutions in detecting terrorist financing activities*, April 2002

Article 2B
Use of banks and financial institutions

1. Certain points of vulnerability have been identified in the laundering process which the money launderer finds difficult to avoid and where ~~his~~ the activities are therefore more susceptible to being recognized:

- Entry of cash into the financial system;
- Cross-border flow of funds; and
- Transfers within and from the financial system.

2. It is for this reason that most countries have, to a large extent, concentrated their efforts on the placement stage. Preventing the financial system from being used for money laundering activities has proved to be more effective in making the process of money laundering more difficult. It does not, however, prevent the money launderer from looking for and using other methods to launder ~~his~~ the illegal proceeds.

3. Although most regulations on the prevention of money laundering focus on the placement stage, it is emphasized that banks and financial institutions, as providers of a wide range of services, are still vulnerable to being used in the layering and integration stages. Extending credit and the rapid switching of funds between accounts in different names and jurisdictions may be used as that part of the process to create complex layers of transactions.

4. Banks and financial institutions which become involved in money laundering schemes will risk likely prosecution, loss of their good market reputation and the possible loss of their operation license.

Comment 8 (Advisory Letter 2007/1): Paragraph (1) to (4) are entirely transferred from Section 2 of the Advisory Letter under the same sub-heading.

5. It is therefore of utmost importance that banks and financial institutions ensure that they effectively implement measures to fulfill their obligations under the Law on AML/CFT through this Regulation and that through their risk assessments of their businesses and relationships there-under they effectively identify and manage their risks and vulnerabilities to prevent the illegal use of their services and products.

Comment 9 (Advisory Letter 2007/1): Paragraph (5) is a proposed addition to the text transposed from the Advisory Letter with the objective of linking the generic comments in paragraphs (1) to (4) to the purpose and objective of Regulations 16.

Chapter II
AML/CFT requirements and compliance

Article 3
Responsibilities of the Banks and Financial Institutions

1. For the purpose of preventing money laundering and financing of terrorism (hereafter also referred to as AML/CFT), the Board of Directors or Senior Management of the bank or financial institution shall:

a) adopt effective AML/CFT policies and procedures;

b) approve the procedures for the implementation of AML/CFT policies and ensure that the AML/CFT policies and procedures are fully implemented in practice;

c) appoint and remove the Head of the AML/CFT Unit who shall assume the responsibilities of the 'compliance officer' in terms of Article 23 of the Law on AML/CFT. In the case of subsidiaries and branches, appointment and removal ~~should~~ could be done by the Parent Bank or Head Office

respectively in consultation and in agreement with the domestic institution and in accordance with the provisions of this Regulation;

Comment 2 (Kosovo* authorities): It is recommended the acceptance of the industry's comment: in the case of Raiffeisen Bank of Kosovo* and TEB appointment and removal are done at the group level, it shows the seriousness of the group in terms of AML/CFT conformity at the international level.

Comment 5 (Consultant): First it is suggested to immediately link the Head of the AML/CFT to the *compliance officer* in terms of the Law on AML/CFT. Second, in acknowledging the proposed amendment re subsidiaries and branches it is important to keep in mind that the Law on AML/CFT does not provide for group sharing of information unless so authorised by the FIU, Prosecutor or a Court (Article 22 paragraph (4)) and hence the responsibilities of the compliance officer fully lie with the domestic institution and not at 'group level'. Moreover, according to international standards and as reflected in proposed changes to this Regulation, the compliance officer has to be a permanent officer of the domestic institution (subsidiary or branch) and residing in Kosovo*. Hence it is important first that it is not made mandatory that the appointment has to be done by Head Office/Parent Institution, and second that the domestic institution would have to be consulted. Hence proposed amendments to the proposal of the Kosovo* authorities as indicated.

d) establish a AML/CFT program;

e) ensure that its internal AML/CFT Unit and internal audit department are technically equipped and staffed with personnel who have thorough knowledge of the AML/CFT policies and procedures, as well as possessing high ethical standards and relevant expertise;

f) adopt a policy on establishing and maintaining business relationships, particularly those involving higher risk, including politically exposed persons and for this purpose develop effective risk sensitivity procedures for the acceptance and removal of customers, products and services;

g) setting the risk policy including the risk appetite;

h) approving the Customer Acceptance Policy within the institution's risk appetite;

i) taking decisions on matters referred to them in their area of operational responsibility in accordance with the provisions of this Regulation.

Comment 6 (Consultant): The Law on AML/CFT recognizes and establishes risk based operations for the identification of money laundering risks and vulnerabilities for banks and for assessing customers. In line with proposed amendments to this Regulation in relation to risk, it is proposed to amend item (f) as indicated above and to include new responsibilities under items (g) to (i).

j) receive and discuss the internal audit reports regarding AML/CFT policies and procedures implementation;

k) adopt such other measures that may from time to time, be required by the CBK.

2. ~~Senior~~ Line ~~M~~management of the bank or financial institution shall be responsible for: ~~approving all procedures that comply with AML/CFT policies adopted by the Board of Directors and for~~

a) ensuring compliance with the prevention of money laundering and funding of terrorism procedures within those areas of the institution for which they are responsible;

b) ensuring effective implementation of all of its AML/CFT policies and procedures on a day-to-day basis;

* see footnote 1 page 1

c) providing the Head of the AML/CFT Unit with all the assistance, information and advice on internal suspicious activity reports made in a timely manner.

Comment 3 (Kosovo* authorities) : Considering that other CBK regulations have foreseen the adoption of procedures by senior management and this is generally applied by the industry, therefore this change is recommended.

Comment 7 (Consultant): Although there is no objection for this proposed amendment it may be superfluous as it is already included in paragraph (1) item (b) as amended. Paragraph (2) establishes the responsibilities of line management in their area of responsibility thus spreading the responsibilities throughout the entire management structure of the institutions.

3. All employees are responsible for:

a) remaining vigilant to the possibility of the institutions's services and products being used for money laundering or the financing of terrorism;

b) reporting to the Head of the AML/CFT Unit all transactions, activities or persons suspected to be related or connected to money laundering or the financing of terrorism and currency transactions in terms of Article 22 of the Law on AML/CFT;

c) effectively implementing and complying with all prevention of money laundering and the financing of terrorism procedures as detailed in this Regulation and the Law on AML/CFT as reflected in their institution's internal procedures and in particular in respect of customer due diligence, ongoing monitoring of transactions and record keeping; and

d) participating actively in training and awareness sessions provided by the bank or financial institution.

4. The responsibilities of the Internal Auditor are established and specified in Article 20 of this Regulation.

5. The responsibilities of the Head of the AML/CFT Unit are established and specified in Article 4 of this Regulation.

Comment 8 (Consultant): The inclusion of new paragraph (3) aims to establish the responsibilities for implementing the institution's internal ML/TF preventive programme in compliance with the obligations under the Law by all employees. Paragraphs (4) and (5) are inserted for completion of responsibilities as these are treated separately under the respective Articles mentioned. It is preferred to outlay this as guidance as each individual institution has its own organizational structure. The important element is to ensure that all elements of the structure are involved in the process as the prevention of money laundering and financing of terrorism is a collective and integrated process that involves the institution's entire internal structure.

Article 4
Internal AML/CFT Unit

1. Banks and financial institutions shall establish an internal AML/CFT Unit, and appoint a qualified individual with relevant expertise and experience as Head of the Unit who will act as ~~contact~~ the responsible compliance person for the purposes of Article 23 of the Law on AML/CFT in accordance with paragraphs 1A and 1B of this Article. This will be deemed as a minimum compliance criterion with this Regulation ~~rule~~, and banks and financial institutions may ~~are free and encouraged to~~ raise the compliance with AML/CFT function at a higher ~~the department~~ level in their organizational structure provided that the function retains its independence, enjoys a senior management level and reports directly to the Board of Directors in accordance with the parameter established by this Regulation.

* see footnote 1 page 1

Comment 4 (Kosovo* authorities): In order to encourage the development of compliance with AML/CFT criteria as one of the basic conditions for visa liberalization, and taking into account that some banks (RBKO; BKT; TEB) have AML/CFT policies at the department level, it is recommended to have the unit as a minimum requirement.

Comment 9 (Consultant): First paragraph (1) should be linked with the proposed paragraphs (1A and 1B). Second it is immaterial whether the AML/CFT function is identified as a Unit or as a higher level provided that within the organizational structure of the bank the function is (i) independent of other operational or monitoring (example audit) function within the same Department; (ii) the function enjoys a senior management level; (iii) the function reports preferably directly to the Board.

1A. The Head of the AML/CFT Unit shall be a person in the permanent employment of the institution or a full time executive director and residing in Kosovo*. The Head of the Unit must occupy a senior position of sufficient seniority and command within the institution where effective influence can be exercised on the AML/CFT policy of the bank or the financial institution. The person occupying this position must have a direct reporting line to the Board of Directors and should not be precluded from posing effective challenge where necessary. In this regard this officer must also have the authority to act independently in carrying out his responsibilities and should have full and unlimited access to all records, data, documentation and information of the bank or the financial institution for the purposes of fulfilling responsibilities.

1B. Consequently the role of the Head of the Unit cannot be:

(i) outsourced;
(ii) undertaken by a non-executive director or by the company secretary who does not hold any other permanent position within the institution and which is not in conflict with the role;
(iii) undertaken by an officer of the bank or financial institution who also has responsibilities for internal audit, other operational monitoring function or an operational function.

Comment 10 (Consultant): It is important for this Regulation to establish the parameters within which the compliance officer under Article 23 of the Law on AML/CFT is appointed. Given the wish expressed for allowing the Parent Institution/Head Office to appoint the compliance officer for subsidiaries and branches of foreign banks the CBK must ensure that these are appointed under equal conditions for other banks and financial institutions in Kosovo*. It is important to avoid that a 'Group compliance officer' of the Parent Institution, for example, be appointed for a subsidiary in Kosovo* as this is not allowed by Law.

1C. [Taking into account the defined obligations and responsibilities in the Law on AML/CFT and this Regulation, the responsible compliance person regarding AML/CFT is regarded as Senior Manager in accordance with and for the purposes of the Law on Banks.]

Comment 5 (Kosovo* authorities): According to the Law on Banks, any manager, director or officer who is responsible for policy making and reports to the Board is considered as senior manager. The Regulation should be in accordance with the Law, but in order to encourage the respect of compliance with AML/CFT criteria from banks it is recommended the introduction of this paragraph. – proposed as paragraph 4 to this Article

* see footnote 1 page 1

Comment 11 (Consultant): While this proposal and the accompanying comment are fair within the context that this Regulation, in line with international standards it is required that the compliance officer occupies a senior position of sufficient seniority. This is not to say that the officer is a senior manager in terms of the Law on Banks for Kosovo*. While it is true that the compliance officer has the responsibility to prepare internal AML/CFT policies and procedures for approval by the Board it is up to the CBK to determine whether this falls within the definition of Senior Manager in the Law on Banks. Including the proposed paragraph is an outright statement by the CBK that the compliance officer is a senior manager in terms of the Law on Banks – see definition in the Law on Banks which requires also *and (ii) is designated as a senior manager by the CBK.* This is crucial for the inclusion or exclusion of this proposed paragraph. If included, the compliance officer would be captured by all the provisions of the Law on Banks for senior managers – including that the appointment of the compliance officer has to be approved in terms of Article 34 of the Law on Banks which, with the 30 day period for informing the CBK under Article 23(1) of the Law on AML/CFT may already pose problems. Moreover, the involvement of the compliance officer as a senior manager in various activities defined in the Law on Banks could jeopardize the independency and the confidentiality nature of the function. The CBK therefore may wish to consider this proposal within the context that occupying a senior position of sufficient seniority does not necessarily make the compliance office a senior manager for the purposes of the Law on Banks. For this purpose the paragraph has been placed within […].

2. Banks and financial institutions shall notify immediately the CBK for appointment of the Head of Unit according to paragraph 1 of this Article. The Head of the Unit can be removed from his position only with the prior consent of the Board of Directors, and where, ~~while~~ in the case of subsidiaries or branches, the appointment has been done by the Parent Institution/Head Office in consultation and in agreement with the domestic institution, removal can be done only through similar procedures. ~~by a decision of the Parent Bank.~~ Should this occur, the banks and financial institutions shall notify the CBK immediately indicating the basis for removal.

Comment 6 (Kosovo* authorities): See comment 2

Comment 12 (Consultant): There is no objection to this proposal provided it follows the same procedures as indicated in paragraph (1) of Article 3 above as amended. The proposed amendments to the proposal are to this effect.

3. The AML/CFT Unit of the banks and financial institutions shall advise and assist the Board of Directors and/or Senior Management in implementing the AML/CFT rules and regulations. It shall be responsible, inter alia, for:

a) preparing internal AML/CFT policies and procedures (according to Article 5 of this Regulation) for approval by the Board of Directors;

b) monitoring the implementation of internal AML/CFT policies and procedures;

c) liaising with internal and external auditors and management on matters relating to AML/CFT;

d) planning and overseeing AML/CFT training and awareness;

e) defining the criteria for business relationships involving higher risk as described in Article 6 of this Regulation;

f) undertaking, as a minimum on an annual basis, an assessment of all risks arising from existing and new customers, new products and services provided by bank and financial institutions in accordance with Article 7 of this Regulation;

* see footnote 1 page 1

Comment 13 (Consultant): Recommendation 1 of the new FATF Standards requires that *Countries should require financial institutions and designated non-financial businesses and professions (DNFBPs) to identify, assess and take effective action to mitigate their money laundering and terrorist financing risks.* The proposed addition is to fulfil this criterion for banks and financial institutions in Kosovo* with the full guidance for applying such risk assessment provided in Article 7 and related annexes. This proposal is in relation to the requirements under Article 21 and 23 of the Law on AML/CFT. The need to undertake such assessments has also been identified in the Cycle 1 DAR

g) undertaking an assessment of the effectiveness of the internal procedures using statistical information collected internally and as may be submitted to the CBK and/or the Financial Intelligence Unit and in this regard banks and financial institutions shall maintain relevant meaningful statistics in accordance with Administrative Directive No 02 issued by the CBK on <DD/MM/YY>;

Comment 14 (Consultant): Effectiveness of the AML/CFT regimes in countries has become top priority for the assessment of the implementation of the new FATF Standards. Effectiveness for these purposes are measured at sectoral and at a country level. For the CBK to measure the effectiveness at the financial sector level there is a need for starting at the institutional level. Institutions themselves need such assessments to ensure that their internal procedures are being applied appropriately and results are achieved. It is therefore proposed to require banks to undertake such effectiveness assessments. On the issue of statistics the DAR under Cycle 1 in assessing EC 32.2 for Recommendation 32 on statistics (Recommendation 33 under the 2012 FATF Standards) proposes a new Article 30A to the Law on AML/CFT – which meets the COM concerns overall. It is highly recommended that this proposal in the DAR be adopted.

h) receiving internal suspicious activity reports and undertaking the internal review of such reports in order to determine whether the suspicion is justified and therefore requires disclosure to the FIU.

i) reporting to the Financial Intelligence Unit (FIU) in accordance with the Law on AML/CFT;

j) liaising between the bank or the financial institution and the relevant authorities in respect of suspicious acts or transaction reports filed with the FIU.

Comment 15 (Consultant): The proposed items (h) and (j) aim to highlight and complete the reporting responsibilities of the institutions to the FIU in terms of Article 22 of the Law on AML/CFT.

k) other tasks assigned by the Board of Directors and/or Senior Management to assist in preventing the use of the bank for money laundering or terrorist financing purposes.

Article 5
Internal AML/CFT Policies and Procedures

1. Banks shall adopt internal AML/CFT policies and procedures and communicate them to all relevant staff.

2. Internal policies and procedures according paragraph 1 of this Article shall at a minimum set out:

a) a procedure on customer due diligence in accordance with Law on AML/CFT and this regulation including a Customer Acceptance Policy within the risk appetite of the bank or financial institution;

Comment 16 (Consultant): The proposals made in reviewing this Regulation include the development of a Customer Acceptance Policy and the establishment of the 'risk appetite' of the institution for AML/CFT purposes. The change to item (a) initiates the linking process in this regard in the Regulation

* see footnote 1 page 1

b) a procedure for collecting and maintaining information and records in accordance with Law on AML/CFT and this Regulation;

c) a procedure for reporting to the FIU in accordance with ~~c~~Chapter III of Law on AML/CFT;

d) the criteria to be applied in identifying business relationships which involve higher risk;

e) the policy on politically exposed persons;

f) the policies on risk assessment and risk monitoring for customers, business relationships, products and transactions;

g) the procedures for the development by the bank or financial institution of the set of indicators of money laundering and terrorist financing activities based on FATF ~~r~~Recommendations, FIU and CBK requirements;

h) the situations in which the internal AML/CFT Unit must be consulted by staff and cases in which the Board of Directors and/or Senior Management must be notified of events relevant to AML/CFT;

i) the policy on staff vetting, screening and training for AML/CFT purposes;

2. These internal ~~P~~AML/CFT policies and procedures shall be adopted by resolution of the Board of Directors and implemented on a day-to-day basis by management and staff.

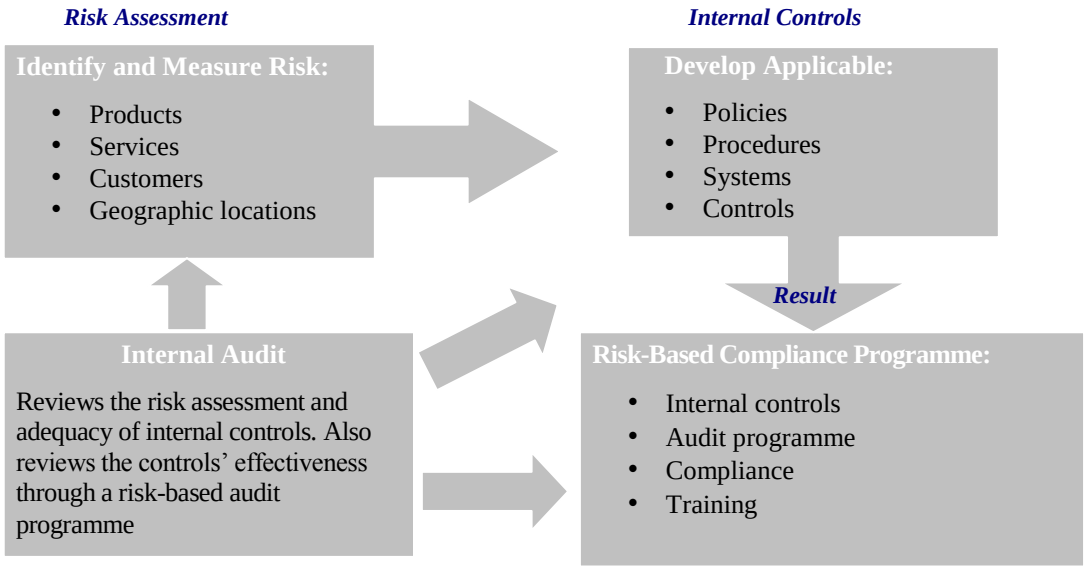
Article 6
AML/CFT Program

1. Banks and financial institutions shall establish and maintain a AML/CFT program which is central to the risk-based approach.

2. The primary purpose of the AML/CFT program is to identify, mitigate and manage the risk that the provision of a designated service by a bank or a financial institution might knowingly, inadvertently or otherwise, involve or facilitate money laundering or financing of terrorism.

3. In addition, the AML/CFT program sets out applicable customer identification and due diligence procedures for bank's or financial institution's customers.

4 The following chart-flow, borrowed from the work of the *Working Group on Cross Border Banking* of the Basle Committee on Banking Supervision, defines the risk assessment links to a bank's or financial institution's anti-money laundering and financing of terrorism internal control management process.



Comment 17 (Consultant): The BCBS Chart used above is a very important element as a visual aid for banks and financial institutions to develop their internal AML/CFT risk assessment and management programme. In the light of the development of the risk assessment framework through the following Articles and the related Appendices in the Regulation it is recommended to adopt this framework which has also been adopted by the FATF and most jurisdictions following the work of the BCBS.

Article 7
Risk Analysis of AML/CFT

1. A bank or a financial institution shall prepare a risk analysis and establish a risk assessment for individual groups or customers, business relationships, products or transactions with respect to their potential misuse for money laundering or terrorist financing pursuant to the provisions of paragraph (1.1.1) of Article 17 of the Law on AML/CFT. Within this context banks should understand and acknowledge risks and vulnerabilities that expose the institution itself for potential misuse of its products, services and delivery channels.

Comment 18 (Consultant): A minor amendment with the objective of always linking the provisions of the Regulations to a legal basis is proposed to paragraph (1). At the same time introducing the first leg of a risk analysis and that is the identification of risks and vulnerabilities faced by banks and financial institutions in their activities – leading to the proposed new paragraph 3A and paragraph 3B below.

2. The risk assessment needs to take into consideration the following risk elements that are present in every business relationship:

a) Customer Risk (the risk posed by the type of customer);

b) Product Risk (the risk posed by the product proposition itself);

c) Country Risk (the risk posed to the firm by the geographic providence of the economic activity of the business relationship);

3. Elements set out on paragraph (2) of this Article, ought to be combined together to produce a risk-profile. The risk profile or the procedure to establish risk profile, referred to in paragraph (1) of this Article shall reflect the specific features of the organization and its operations (e.g. its size and composition, scope and structure of business, type of customers doing business with the organization and types of products offered by the organization) – refer also to Article 11 of this Regulation.

3A. The risk analysis is therefore to be undertaken in two stages:

- Stage 1: *Business-based risk assessment* of the bank's or financial institution's products, services, delivery channels and the geographic location in which the institution undertakes its business operations.
- Stage 2: *Relationships-based risk assessment* of the bank's or financial institution's customers, and products and services used by its customers as well as the geographic locations in which they reside, operate or do business and other related risk factors.

Comment 19 (Consultant): The proposed new paragraph (3A) clarifies that the risk analysis is twofold in accordance with the FATF Standards. In relation to EC5.8 the Cycle 1 DAR makes the following recommendation:

> *It is therefore strongly recommended that provisions in Rule X and the Advisory Letter 2007/1 that refer to higher risk situations be reviewed in accordance with a revision of the Law on AML/CFT to introduce an obligation on reporting subjects to:*
>
> - *develop and establish effective procedures to identify the risk posed by each customer, including the categorisation of customers according to risk;*
> - *develop and apply the institutions' risk appetite in the acceptance of risk related to money*

laundering and the financing of terrorism;

- *develop and institute effective customer acceptance policies in line with the institution's risk appetite; and*
- *develop and establish procedures for the application of enhanced CDD measures according to risk.*

The proposals in this and following new Articles aim to achieve the level of risk assessment analysed under the DAR.

3B. A *business based risk assessment* of the bank's or financial institution's products, services, delivery channels and the geographic location in which the bank or financial institutions undertakes its business operations presupposes a good knowledge of the institution's business operations and the exercise of sound judgment such that the risks for money laundering and terrorist financing can be weighed according to each individual factor as well as a combination of them. Although the tools developed for risk analysis aim to provide objectivity, an element of subjectivity in determining the risk factor remains and therefore the more informed the decision taking process is the more realistic is the judgement of the degree of the risk factor. It cannot but be over-emphasised that the business risk assessment is not static and will change over times as the way banks and financial institutions operate changes and the products and services provided develop. To this effect *Appendix 1* to this Regulation provides a sample risk matrix with explanatory notes for measuring the money laundering and financing of terrorism risks that an institution could be subject to consequent to its operations. In this way banks and financial institutions can ensure that their internal policies and procedures are determined to address these risks.

Comment 20 (Consultant): The risk matrix for assessing and measuring the business based risks of an institution is provided as guidance to the institutions and is mostly based on banking activities. It is not meant to be adopted in its entirety as the business activities, products, delivery channels and operations locations differ for the individual institutions. Banks and financial institutions should therefore be provided with the option of adapting the matrix according to their individual activities. The important factor is that this Regulation introduces this element as part of the overall risk based approach under the FATF Standards and in establishing their AML/CFT programmes in accordance with Article 23 of the Law on AML/CFT

3C. A *relationship-based* or *customer-based risk assessment* is an assessment on a sensitivity basis of the products and services used by the customers of banks and financial institutions as well as the geographic locations in which they operate or do business and other risk factors. A relationships-based risk assessment follows a methodology that finally arrives in identifying the risk level posed by a particular customer and thus enables banks and financial institutions to determine whether the acceptance of that new customer could pose risks that could be harmful to them. *Appendix 2* provides a detailed matrix that shall serve as guidance to banks and financial institutions for assessing customer relationships on the basis of the identified risk indicators. The matrix assesses each potential customer on the basis of status and industry/profession, geographic location, products and services to be used including volumes and the contact / relationship with the bank or financial institution. The risk assessment matrix is the first step to be applied in the risk sensitivity acceptance of new customers or in re-assessing existing customers whose business and risk profile would have changed. It is therefore accompanied with guidance on risk-scoring and customer acceptance.

Comment 21 (Consultant): The risk matrix in Appendix 2 is provided as guidance to the institutions and is mostly based on banking activities. While banks and financial institutions are given the option to adopt the matrix or to adapt it to their circumstances it is important that the principle of risk assessment of customers and their categorization into risk degree be established by this Regulation. Moreover, using a risk assessment matrix ensures that, for example, checking against lists of designated persons and entities is always undertaken as part of the risk assessment process – a concern raised by the Cycle 1 DAR.

4. Banks and financial institutions shall draw up the two stage risk analysis referred to in the preceding paragraphs in accordance with guidance provided in Appendix 1 and Appendix 2 of this Regulation but may adapt the risk matrices to reflect their products, services and customers. It is however of paramount importance that the principles for risk assessment provided in the Appendices is respected and maintained. ~~guidelines issued by and within the powers of the CBK as competent supervisory body.~~

Comment 22 (Consultant): Paragraph 4 is being retained with amendments since the risk assessment guidance is being included in Regulation 16 and not in separate guidelines yet to be issued by the CBK thus making the Regulation more comprehensive and consistent in guiding banks and financial institutions through principles in fulfilling their responsibilities and obligations under the Law on AML/CFT.

Article 7A
Establishing the Risk Appetite

1. In order to arrive at an objectively based decision on the acceptance of customers and in particular where customers may present a high risk for the institution, banks and financial institutions should have in place a policy of the level of risk that is acceptable to the Board of Directors. Notwithstanding the implementation of mitigating factors, such as enhanced customer due diligence as detailed in this Regulation and as required under Article 21 of the Law on AML/CFT, an element of risk that needs to be managed always remains. The amount of risk that an institution is prepared to accept in pursuit of its business goals is known as the institution's 'risk appetite'. According to international standards on risk '(risk appetite) reflects the entity's risk management philosophy, and in turn influences the entity's culture and operating style'. Moreover, such standards explicitly state that 'risk appetite is directly related to an entity's strategy'.[7]

2. Banks and financial institutions shall establish and maintain a 'risk appetite' which should be conducive to assist in their customer acceptance policies. 'Risk appetite' is not static and should be periodically reviewed and approved by the Board of Directors. Appendix 3 to this Regulation provides guidance for banks and financial institutions to establish their risk appetite within the level of risks identified in their *business based risk assessment* under Article 7 of this Regulation. Banks and financial institutions shall adapt the guidance in Appendix 3 according to their risk analysis and the level of risk that is acceptable depending on the size, operations, structure and internal risk mitigating procedures of each institution.

Comment 23 (Consultant): Developing the 'risk appetite' of an institution is the basis for the application of its risk based approach in the acceptance of customers. It is of utmost importance that the Board of Directors of a bank or a financial institution establishes the degree of risk that the institution is prepared to accept and manage. This applies also for the prevention of money laundering and financing of terrorism and was recommended in the Cycle 1 DAR in relation to the FATF EC 5.8 *develop and apply the institutions' risk appetite in the acceptance of risk related to money laundering and the financing of terrorism.* The guidance and principles provided in Appendix 3 foresee four (4) levels of risk ranging from 'Low' to 'Extreme' notwithstanding that the Law on AML/CFT does not provide for reduced CDD – although the low category of risk may require less monitoring as also indicated in this Regulation.

[7] Source: The Committee of Sponsoring Organisations (COSO) - *Enterprise Risk Management – Integrated Framework (2004).*

Article 8
Customer Due Diligence

1. AML/CFT program is to set out the applicable customer identification and due diligence procedures for customers of the banks and financial Institutions. Banks and financial institutions must conduct customer due diligence on:

    a) A customer;
    b) Any beneficial owner of a customer;
    c) Any person acting on behalf of a customer.

2. For the purposes of ~~If not otherwise provided by~~ this ~~r~~Regulation and pursuant to Article 17 of ~~or~~ the Law on AML/CFT and in accordance with international standards, Customer Due Diligence is comprised of, but not limited to:

    a) Establishing and verifying the customer's identity on the basis of valid documents issued by competent authorities;

    b) Determining the beneficial owner and taking risk-based adequate measures to verify his/her identity;

    c) Obtaining information on the purpose and intended nature of the business relationship and creating a customer' profile based on gathered information;

    d) Conducting ongoing due diligence and ~~M~~monitoring of customer business relationships and transactions consistent with the customer's profile;

    e) Implementing prescribed policies and practices on electronic or wire transfers and correspondent banking; and

    f) Record-Keeping and Retention.

Comment 24 (Consultant): The Cycle 1 DAR raises serious concerns with consequential problems on the customer due diligence concept as the then Law on AML/CFT defined the concept through Article 17 but did not apply it through Article 18. The recent amendments to the Law include an amendment to Article 17 which has now become more mandatory with however Article 18 still referring to the identification procedures as opposed to the application of the full CDD – recommended reviewing. The proposed amendments to Article 8 of Regulation 16 are meant to link the definition of CDD under Article 17 with that under international standards (although different, definitions are providing for a common principle) for the purposes of the Regulation thus ensuring the financial sector that CDD under the Law reflects that under the international standards. It is still highly recommended that the Kosovo* authorities take note of the recommendations in the Cycle 1 DAR within this context.

* see footnote 1 page 1

Article 9
Identification, Verification and Acceptance of New Customers[8]

1. Bank and financial institutions shall ensure that they know the true identity of the customer and have thorough knowledge of the customer's business before establishing a business relationship, on the basis of the obligations of Article 18 of the Law on AML/CFT. In addition, before establishing a business relationship with a customer banks and financial institutions should consult the updated international list of persons wanted for terrorist financing as part of undertaking a *relationships-based* or *customer-based risk assessment* in accordance with Article 7 of this Regulation.

Comment 25 (Consultant): The identification process and the verification process are two separate but complementary processes which however are not both identified under this Article 9 – hence the proposed change. Moreover, paragraph (1) is being amended to link the proposed provisions for risk assessments under Article 7 to the identification, verification and acceptance processes. Banks and financial institutions are also being encourage (see footnote) to consult the relevant publications by the BCBS.

2. Banks and financial institutions shall take additional steps to ensure proper customer identification when doubts have arisen as to the truthfulness and adequacy of previously-obtained identification data, or where there is a suspicion that the customer is or could be involved in money laundering or terrorist financing.

2A. Banks and financial institutions shall verify the identification information against independent sourced documents as detailed in Article 17 of the Law on AML/CFT. The process of verification is separate from but complementary to the identification process. The documents referred to under Article 17 should not be considered as exhaustive and banks and financial institutions shall request and obtain any additional identification documents for verification purposes as they deem fit and appropriate in the circumstances of each case in order to satisfactorily complete the due diligence process.

Comment 26 (Consultant): Paragraph (2A) is proposed for the sake of completion of the due diligence identification process. It however serves to invite banks and financial institutions to be proactive and to ensure that further to the documents mentioned in Article 17 of the Law on AML/CFT and the guidance through paragraphs (2B) and (2C) of this Regulation as transposed from the Advisory Letter 2007/1 they should seek to obtain other verification documents until they are satisfied that they know who the customer is.

2B. Thus, ~~F~~for verification of the identity of customers who are natural persons, the bank or financial institution should use reliable, independent source documents, data, or information, such as a government issued ID card or passport. Identification of natural persons and verification of their identity shall include the full name and address, and date and place [~~and place~~] of birth.

Comment 10 (Advisory Letter 2007/1): Paragraph (2B) is transposed from Section 3 of the Advisory Letter under paragraph (1) of 'Additional Guidance on Identification Documents.

2C. Moreover, ~~I~~in the process of obtaining and verifying an entity's identification information (such as corporate name, head office address, identities of directors, proof of incorporation or evidence of legal status, legal form and provisions governing the authority to commit the entity) banks and financial institutions should use documents that prove:

a. the customer's name and legal form, including proof of incorporation or similar evidence of establishment or existence (such as a certificate of incorporation or a trust instrument);

[8] For the purposes of identification and verification processes and independent sourced documentation banks and financial institutions are also encouraged to consult the two publications of the Basle Committee on Banking Supervision *Customer Due Diligence for Banks* of October 2001 (publication 85), and its attachment *General Guide to Account Opening and Customer Identification* of February 2003.

b. the names and addresses of members of the customer's controlling body such as for companies the directors, for trusts the trustees, and for limited partnerships, the general partners, and senior management such as the chief executive officer;

c. the legal provisions that set out the power to bind the customer (such as the memorandum and articles of association or trust instrument);

d. the legal provisions that authorize persons to act on behalf of the customer (such as a resolution of the board of directors or statement of trustees on opening an account and conferring authority on those who may operate the account); and

e. the identity of the physical person purporting to act on behalf of the customer

Comment 11 (Advisory Letter 2007/1): Paragraph (2C) is transposed from Section 3 of the Advisory Letter under paragraph (2) of 'Additional Guidance on Identification Documents.

3. ~~The process of opening a bank account even if it will be used for conducting electronic transactions (e-banking account) will be performed only with the physical presence of the client.~~ In case the customer is represented by a third person through an act of representation, bank or financial institution ought to require data to identify the client and his representative, and keep the customer file of all submitted documentation from the third person, including original or notarized copy of the power of attorney. ~~Even in such cases, the bank will not open the account without the client's physical presence, while other actions after the account opening can be performed through his legal representative.~~

Comment 7 (Kosovo* authorities): The Law on AML/CFT does not include such a prohibition; moreover, it foresees different activities without the physical presence of the customer; therefore such a paragraph would be formally considered as a breach of the law. It is therefore recommended to remove the prohibition.

Comment 8 (Kosovo* authorities): See comment 7.

OR

3. The process of opening a bank account even if it will be used for conducting electronic transactions (e-banking account) will generally be performed only with the physical presence of the client. In case the customer is represented by a third person through an act of representation, bank or financial institution ought to require data to identify the client and his representative, and keep the customer file of all submitted documentation from the third person, including original or notarized copy of the power of attorney. Even in such cases, generally the bank or financial institution will not open the account without the client's physical presence, while other actions after the account opening can be performed through his legal representative.

3A Notwithstanding the generality of the requirement of the physical presence of the customer for opening accounts as required under paragraph (3) of this Article, the Law on AML/CFT indirectly envisages that there may be circumstances where an account could be opened or a business relationship established without the physical presence of the customer (non face-to-face). Indeed the Law establishes higher customer due diligence requirements in such circumstances as provided for in its Article 21 and as reflected in Article 14A of this Regulation. In acknowledging this eventuality however, the CBK cautions that such procedures should be the exception and not the rule and that the additional measures under the enhanced customer due diligence process are strictly adhered to – refer also to Article 14A of this Regulation.

* see footnote 1 page 1

Comment 27 (Consultant): In principle the Law on AML/CFT does not exclude the absence of a customer but then it does not directly include it either. The Law however does provide for enhanced due diligence in the circumstances where the customer is not physically present – see paragraph (2) and (3) of Article 21. Therefore the interpretation that the Law leaves the option of the presence of the customer open is more plausible **BUT** under special circumstances where enhanced due diligence is to be applied. Consequently whereas the proposed changes by the Kosovo* authorities may be valid, yet these may create dangerous precedents. Within this context therefore it should be acceptable that in its Regulation the CBK establishes the general principle that the customer must be present at all times but acknowledges that there may be circumstances where the customer cannot be present and these will only be pre-established exceptions where enhanced measures should be applied in accordance with the Law on AML/CFT as reflected in Article 14A of this Regulation. It is within this context that it is being proposed to retain paragraph (3) as is with minor amendments to indicate that this is the general principle and with the addition of a new paragraph (3A) which established the exception for non-face-to-face circumstances. The latter will be further supported through Article 14A on enhanced measures in accordance with the Law on AML/CFT – hence the link.

4. Banks and financial institutions shall not establish a business relationship, open accounts or undertaken transactions on behalf of a potential customer until the satisfactory completion of the full identification and verification process. Thus ~~I~~in cases where a bank or a financial institution is unable to satisfactorily complete items (a) to (c) of paragraph (2) of Article 8 of this Regulation for ~~verify the identity of~~ a customer in accordance with Chapter III of the Law on AML/CFT, the bank or financial institution shall refuse the transaction or business relationship and shall consider filing a suspicious transaction report with the FIU in accordance with the established reporting procedures.

Comment 28 (Consultant): The proposed addition to paragraph (4) is to reflect the timing of establishing a business relationship, opening an account or undertaking a transaction which cannot be done prior to completion of full due diligence measures being satisfactorily applied**.** In assessing compliance with Essential Criterion 5.13 for Recommendation 5 (Recommendation 10 under the 2012 FATF Standards) the Cycle 1 DAR had identified lack of guidance in Rule X for this purpose. Moreover as amended paragraph (4) confirms that the Law on AML/CFT does not provide for options for the timing of verification – see analysis of Essential Criterion 5.14 for Recommendation 5 in the Cycle 1 DAR which provides criteria to be applied should the Kosovo* authorities take the option in the timing of the verification process separate from the identification process. Furthermore in assessing Essential Criterion 5.15 the DAR had identified that banks and financial institution shall not proceed with a transaction or business relationships only if the verification process is not completed – Article 18 of the Law on AML/CFT which has not been amended since. The Regulation is extending this obligation to situations as required by Essential Criterion 5.15 for Recommendation 5 by cross referring to the customer due diligence procedures that should be applied and satisfactorily completed. Notwithstanding it is again strongly recommended that Article 18(6) of the Law on AML/CFT be amended accordingly at the earliest.

5. Procedures, policies, and controls on acceptance of new customers shall be robust but shall not be so restrictive that they result in a denial of access by members of the general public to financial services, especially for persons who are financially or socially disadvantaged.

Comment 29 (Consultant): The objective of the proposed amendment to paragraph (5) is to ensure that while customer acceptance procedures should not be restrictive yet they should be robust to prevent banks and financial institutions taking on customers that pose a higher than average risk. Thus this is complementary to the establishment of the 'risk appetite' and the application of the relationships based risk assessments.

* see footnote 1 page 1

6. Within this context, and in order to lessen the risks related to customer take-on, banks and financial institutions shall develop clear customer acceptance policies and procedures within their risk appetite and as an integral part of their risk based approach. Such customer acceptance policies shall include a description of the types of customers that are likely to pose a higher than average risk to a bank or a financial institution so that more extensive due diligence measures may be applied to higher risk customers. Factors such as a customer's background, country of origin, public or high-profile position, linked accounts, business activities and other risk indicators should be considered.

Comment 30 (Consultant): The proposed new paragraph (6) aims to impose the obligation on banks and financial institutions to develop their own Customer Acceptance Policy in accordance with the requirements under international standards such as the recommendations of the Basle Committee for Banking Supervision (BCBS) for the customer due diligence procedures,

7. To this effect, Appendix 4 to this Regulation provides principles for the development of a Customer Acceptance Policy which should assist banks and financial institutions to develop their own policy consequent to their identified risks and within their risk appetite policy. Customers who satisfy the criteria laid down there-under may open an account or do business with the bank or financial institution. A person or entity not eligible as per the Customer Acceptance Policy shall not be allowed to open an account or undertake any business.

Comment 31 (Consultant): Consistent with the proposed adopted framework in this Regulation banks and financial institutions are being provided with principles and guidance on the development of a policy document but allowed the option to adapt and develop their own document accordingly retaining the principles set by this Regulation.

Article 10
Determination of the Beneficial Owner

1. The Law on AML/CFT defines a 'beneficial owner' as 'the natural person who ultimately owns or controls a customer or an account, the person on whose behalf a transaction is being conducted, or the person who ultimately exercises effective control over a legal person or arrangement' – Article 2 paragraph (1) item (1.2). However in requiring reporting subject to identify the beneficial owner as applicable, Article 17 paragraph (1) item (1.2) of the Law on AML/CFT elaborates this definition 'all reporting subjects shall identify the beneficial owner and/or a natural person or persons who directly or indirectly control 20% or more of a legal person.'

Comment 32 (Consultant): Under Article 2 above there is a proposition by the Kosovo* authorities to redefine 'beneficial owner' by the inclusion of a reference to a direct or indirect threshold of ownership. Notwithstanding the comment made in Article 2, it is deemed appropriate to include the definition here for the sake of clarity even though the Regulation notes that definitions used are those found in the Law on AML/CFT or the Law on Banks. Moreover, because of the various elements of the term 'beneficial owner', including the definition here makes the Article more comprehensive. This will also be complementary to the proposed additional guidance included hereunder in this Article to clarify procedures for the determination of the beneficial owner within the context of 'direct' and 'indirect' holdings. [Note: *Consequent to this proposed paragraph (1) the previous paragraph 1 is renumbered as (1A)*]

1A. Banks and financial institutions shall take measures to determine if a customer is acting on behalf of one or more beneficial owner(s) in accordance with Chapter III of Law on AML/CFT. If so, the bank shall take reasonable steps to identify and verify the identity of that person and of the beneficial owner by using

* see footnote 1 page 1

relevant information or data obtained from a reliable source so that the bank or financial institution is satisfied that it knows the identity of both the authorised person and the beneficial owner.

Comment 33 (Consultant): A minor amendment to the renumbered paragraph (1A) to clarify that in such circumstances banks and financial institutions are to identify and verify the identity of both the authorised person and the beneficiary of the transaction.

1B. Banks and financial Institutions shall ensure that a person acting on behalf of another person is so authorised and shall retain a copy of the document providing such authorization.

Comment 34 (Consultant): The addition of the proposed paragraph (1B) is being included for the sake of completion reflecting paragraph (4) of Article 18 of the Law.

2. For customers that are entities (legal persons), as defined in the Law on AML/CFT, banks and financial institutions shall take reasonable measures to understand the ownership and control structure of the entity. This includes identifying the natural person(s) who ultimately owns or controls the entity. In this regard, banks and financial institutions shall identify the 'mind and management' of the legal person and the ultimate (physical persons) beneficial owners who, directly or indirectly, control 20% or more of the legal person. It is important to note that since the Law on AML/CFT establishes a threshold of 20% there may be circumstances where banks and financial institutions need to identify more than one beneficial owner. Moreover the Central Bank requires that where, in the case of a legal person, there is no direct or indirect control through holding of 20% or more banks and financial institutions shall identify at least the two largest shareholders/controllers in that legal person. Having identified the beneficial owner(s) banks and financial institutions shall establish through their customer risk assessment procedures whether such beneficial owner(s) falls within the status of politically exposed person(s) in terms of the Law on AML/CFT. In such eventuality banks and financial institutions shall apply the enhanced measures for politically exposed persons as contemplated by the Law on AML/CFT and this Regulation.

Comment 35 (Consultant): The objective for the proposed change is to clarify to banks and financial institutions what they need to do in identifying the beneficial owner. The issue of the lack of understanding by the industry for the identification of the beneficial owner has been raised in the Cycle 1 DAR with recommendations to amend the Law and clarify the position to the industry. While the recent amendments to the Law have met the proposed legislative changes, this Regulation aims to provide clarifications and guidance on applications. Moreover the proposed amendments to paragraph (2) highlight the obligation for banks and financial institutions to identify whether a beneficial owner is a politically exposed person and to apply the enhanced due diligence measures in such eventualities.

2A. Article 17 of the Law on AML/CFT establishes a threshold of 'direct or indirect control of 20% or more of a legal person' for the purposes of the identification of the beneficial owner as defined. The Law however does not provide a definition of what constitutes a 'direct or indirect' control or of the term 'control' itself. Therefore for the purposes of this Regulation, the Central Bank adopts the following definition for 'direct or indirect' which is not exhaustive:

> "A person shall be considered as exercising 'direct' or 'indirect' control in a legal person through any of the following situations:
>
> - Through the holding of 20% or more of the equity capital of a legal person registered in that person's name;
> - Through the holding of 20% or more of the voting rights in a legal person irrespective of the shareholding held;
> - When, acting in concert with other persons, that person exercises control through the collective holding of 20% or more of the equity capital or voting rights;

- Through the holding of 20% or more of the equity capital of a legal person registered in the name of another legal person which is ultimately owned by that person;
- Through the holding of 20% or more of the voting rights of a legal person by another legal person that is ultimately owned by that person."

2B. Moreover, and also for the purposes of this Regulation, the Central Bank adopts the definition of 'control' as detailed in the Law on Banks:

> **"Control** - a relationship where a person or group of persons, directly or indirectly: (i) owns a majority of the shares of a legal entity; (ii) has the power to appoint or remove the majority of the Board of Directors of the legal entity; or (iii) has the ability to exert a significant influence on the management or policies of a legal entity."

Comment 36 (Consultant): The inclusion of the proposed paragraphs (2A) and (2B) aim to provide further guidance to the industry also in line with the recommendations in the Cycle 1 DAR. The CBK may wish to consider the above definitions which may need to be revised in the light of any similar definitions already provided elsewhere in particular with regards to 'direct and indirect' control.

3. For entities that are non-profit organizations (such as clubs, societies and charities) the bank or financial institution shall also satisfy itself as to the legitimate purpose of the organization, including by reviewing its charter, constitution, or trust instrument.

3A. For other legal arrangements, such as trusts, further to the identification of the trustee, the settlor and/or the principal, banks and financial institutions shall also identify the beneficiaries of the trust of 20% or more of the property where the beneficiaries have been determined, or, where the beneficiaries have not been determined, the class of persons in whose interest the legal arrangement is set up or operates. For other types of legal arrangements banks and financial institutions shall identify persons with equivalent or similar positions.

Comment 37 (Consultant): The proposed paragraph (3A) introduces the identification requirements for the beneficiaries or class of beneficiaries in the case of legal arrangements such as trusts in accordance with the requirements under the new Recommendation 10 of the 2012 FATF Standards. Even if trusts for example may not be recognized in Kosovo*, foreign trusts may seek banking services in Kosovo* and hence the identification obligation of the customer and beneficial owner requirements under the Law on AML/CFT would come in force.

Article 11
Establishment of Customer Profile

1. Banks and financial institutions shall collect information, on an ongoing basis, regarding the anticipated purpose and intended nature of the business relationship. Documents, data, or information collected under the customer due diligence process shall be kept up to date and relevant by undertaking periodic reviews of existing records, including transaction records.

2. Banks and financial Institutions shall create and maintain a customer profile for each customer, of sufficient nature and detail to enable the bank or financial institution to monitor the customer's transactions, apply enhanced customer due diligence where necessary, and detect suspicious transactions as required by Chapter III of Law on AML/CFT and this Regulation. The level of detail contained in the profile should be consistent with the level of risk expected to be posed by the customer.

* see footnote 1 page 1

3. A customer profile shall include relevant information as to the normal and reasonable activity for particular types of customers taking into account the nature of the customer's business, as well as a comprehensive understanding of the customer's transactions (including as needed the source and legitimacy of the funds) and the overall relationship with the bank or financial institution.

3A. A Customer Business and Risk Profile template is provided in Appendix 5 to this Regulations. Banks and financial Institutions may wish to use this template for developing their individual customer profile and may thus adapt the template to their own circumstances.

Comment 38 (Consultant): Consistent with the proposed amendments to Regulation 16 providing practical guidance based on principles to banks and financial institutions to fulfill their obligations under the Law, Appendix 5 provides a Customer Business and Risk Profile template which banks and financial institutions may wish to adopt or adapt to their circumstances.

~~4. If the bank or financial institution is unable to comply with the customer due diligence required, it shall terminate the customer relationship and determine if it should file a suspicious transaction report as provided in Chapter III of the Law on AML/CFT.~~

Comment 39 (Consultant): It is proposed to delete paragraph (4) to Article 11 as this obligation is already included under paragraph (4) of Article 9 of this Regulation.

Article 12
Monitoring of Business Relationships and Transactions

1. Banks and financial institutions shall conduct ongoing due diligence on business relationships and scrutinize transactions undertaken throughout the course of the relationship to ensure that the transactions being conducted are consistent with the bank's or financial institution's knowledge of the customer~~,~~ and their business and risk profile. Where necessary for this purpose, information should be sought to confirm the source of funds. Banks and financial institutions shall have systems in place to detect large or complex transactions being carried out outside of expected norms for that type of customer.

2. Banks and financial institutions shall apply intensified monitoring for higher risk customers. Every bank and financial institution should set key indicators for such accounts taking note of the background of the customer, such as the country of origin and source of funds, the type of transactions involved, and other risk factors as set out in the Law on ~~of~~ AML/CFT and this Regulation.

3. The table below provides *indicative* information to enable banks and financial institutions to structure the ongoing monitoring of accounts, transactions and customer identification and risk profile information as detailed in this Article. Such timing shall not apply where there is a suspicion of money laundering or financing of terrorism or where the bank or financial institutions identifies major divergences in the transactions in relation to the customer risk profile. Although the Law on AML/CFT does not provide for the application of reduced due diligence measures for low risk situations, the indicative timing for 'low' risk situations differs from that for the 'medium' or standard risk provided banks and financial institutions identify that the risk of money laundering or the financing of terrorism is very low for such accounts and relationships in accordance with the customer based risk assessments.

Risk Category	Minimum Monitoring Frequency
3. High	Transactions: *Daily* Account overall: *Monthly* Customer information: *Quarterly*
2. Medium	Transactions: *Weekly* Account overall: *Quarterly* Customer information: *Six Monthly*
1. Low	Transactions: *Monthly* Account overall: *Six Monthly* Customer information: *Annually*

Comment 40 (Consultant): The CBK may wish to consider providing the banks and financial institutions with an indicative schedule of monitoring of accounts and customer information within which banks and financial institutions have an option to adjust such timing to their own needs or to leave the timing open for the banks to decide. Providing an indication establishes principles gives guidance to the institutions.

Article 13
Electronic or wire transfers

1. In addition to the definitions provided in the Law on AML/CFT the following definitions shall apply for the purposes of electronic or wire transfers:

The ***beneficiary*** is the natural or legal person or legal arrangement who is identified by the originator as the receiver of the requested wire transfer.

The ***beneficiary financial institution*** is the bank or financial institution which receives the wire transfer from the ordering financial institution directly or through an intermediary financial institution and makes the funds available to the beneficiary.

The ***intermediary financial institution*** is the bank or financial institution in a serial or cover payment chain that receives and transmits a wire transfer on behalf of the ordering bank or financial institution and the beneficiary bank or financial institution, or another intermediary bank or financial institution.

The ***ordering financial institution*** is the bank or financial institution which initiates the wire transfer and transfers the funds upon receiving the request for a wire transfer on behalf of the originator.

The ***originator*** is the account holder, or where there is no account, the person (natural or legal) that places the order with the ordering bank or financial institution to perform the electronic or wire transfer.

Comment 41 (Consultant): The provisions of the Law on AML/CFT under Article 19 fall short in meeting the criteria for FATF Special Recommendation VII (now Recommendation 16 under the 2012 FATF Standards). Higher compliance can be achieved through the provisions in this Regulation 16. First is the missing definition of the main parties involved in wire transfers. The Law on AML/CFT defines a wire transfer but does not define the parties thereto. These are being included in this Regulation for clarity and consistency. The definitions are inspired by those in the FATF Interpretative Note for the new Recommendation 16 under the 2012 Standards.

Comment 12 (Advisory Letter 2007/1): The definition of 'originator' has been transposed from Section 3 of the Advisory Letter under subsection headed 'Additional Guidance on Originator Information for Electronic or Wire Transfers'

1A The Law on AML/CFT provides that the obligations ~~The policies and procedures~~ on originator information are not intended to cover:

a) any transfer that flows from a transaction carried out using a credit or debit card so long as the credit or debit card number accompanies all transfers flowing from the transaction;

b) any transfers and settlements between banks and financial institutions where both the originator and the beneficiary are banks or financial institutions acting on their own behalf.

When credit or debit cards are used as a payment system to effect a transfer, they are covered by the Law on AML/CFT and this Regulation ~~Rule X and its Guidelines~~, and the necessary information should be included in the message.

Comment 13 (Advisory Letter 2007/1): The exception to the obligation of full originator information accompanying the transfer is transposed from the third and fourth paragraph of subsection headed 'Additional Guidance on Originator Information for Electronic or Wire Transfers' from Section 3 of the Advisory Letter

1B. Banks and financial institutions shall obtain and maintain full originator information for all electronic or wire transfers and verify that the information is accurate and meaningful. Full originator information includes:

a) The name of the originator;
b) Originator's account number, or a unique reference number if there is no account number; and
c) Originator's official identification number, or another identification number, date and place of birth, and address.
d) the name of the beneficiary; and
e) the beneficiary account number where such an account is used to process the transaction.

Comment 42 (Consultant): The addition of items (d) and (e) bring the definition of what constitutes full originator information in line with the definition in the Interpretative Note for Recommendation 16 (previously SR VII) in the 2012 FATF Standards.

2. Banks and financial institutions shall include the full originator information in the message or payment form accompanying the transfer, and when they act as intermediaries in a chain of payments, they shall maintain the full originator information with the transfer and transmit it.

3. In the case of domestic electronic or wire transfers, it is sufficient for the ordering bank or financial institution to include only the originator's account number or, where no account number exists, a unique identifier, within the message or payment form, providing that full originator information can be made available to the beneficiary bank or financial institution and to the CBK or the FIU within three business days of receiving a request.

3A. Although the Law on AML/CFT does not establish thresholds for originator information, banks and financial institutions ~~Money Transfer Operators~~ sending an electronic or wire transfers amounting to under one thousand euro ~~[≤~~ (€1,000) ~~]~~ and which funds do not originate from an account held with that bank or financial insitution do not have to include full originator information with the transfer but only the name of the originator and the beneficiary and a unique reference number. Moreover in such circumstances banks and financial institutions do not need to verify such information unless there is a suspicion of money laundering or financing of terrorism.

Comment 14 (Advisory Letter 2007/1): Proposed paragraph (3A) is party inspired by transposing part of the first paragraph under 'Originator Information' under sub-header 'Additional Guidance for Foreign Exchange Offices and Money Transfer Operators' under Section 3 of the Advisory Letter. The paragraph has been extensively amended in compliance with the Interpretative Note to Recommendation 16 under the 2012 FATF Standards and the EU AML Third Directive which only exempt the verification and not the accompanying information. The Cycle 1 DAR had identified that there is no threshold for occasional transactions when they are wire transfers and hence the Report raised doubts whether the threshold is the established normal €10,000 for occasional transactions for the application of CDD measures. Establishing a threshold in accordance with international standards at €1,000 as recommended in the DAR should still be given due consideration in support of the proposed paragraph (3A) above.

~~4. Beneficiary banks shall identify and scrutinize wire transfers that are not accompanied by complete originator information. They shall take measures to obtain and verify the missing information from the ordering bank from the beneficiary. Should they not obtain the missing information they should refuse acceptance of the transfer and consider filing a suspicious activity report with the FIU.~~

4. Beneficiary banks and financial institutions shall have risk sensitive procedures in place to identify and scrutinize wire transfers that are not accompanied by complete originator information. Procedures to address these cases should include the bank or financial institution first requesting the missing originator information from the bank or financial institution that sent the wire transfer.

5. If the missing information is not forthcoming, the requesting bank or financial institution should consider whether, in all the circumstances, the absence of complete originator information creates or contributes to suspicion about the transfer. If the transfer is deemed to be suspicious, it should be reported by the beneficiary bank or financial institution to the FIU~~C~~ in accordance with the established reporting procedures. In addition, the risk sensitive procedures of the bank or financial institution may lead the institution to decide not to accept the transfer.

6. In appropriate circumstances, such as two or more transactions with incomplete or absent originator information, the beneficiary bank or financial institution should consider restricting or terminating business relationships with the bank or financial institution that does not comply with this requirement.

Comment 15 (Advisory Letter 2007/1): Proposed paragraph (4) to (6) are transposed from the last three paragraph under the subheader 'Additional Guidance on Originator Information for Electronic or Wire Transfers' under Section 3 of the Advisory Letter. In general these are already reflected in the previous paragraph (4) of this Article 13 but with some contradiction. For example whereas the previous paragraph (4) leaves the reporting requirement optional (consider), the Advisor Letter is mandatory and thus more in line with the Law on AML/CFT under Article 19. Moreover, the paragraphs under the Advisory Letter are more clear for the procedures to be followed. It is therefore proposed to replace the current paragraph (4) with the three paragraphs lifted from the Advisory Letter with minor amendments as indicated above.

7. The ordering bank or financial institutions shall keep records of complete information on the originator which accompanies transfer of funds for a period of five (5) years in accordance with the Law on AML/CFT and Article 15 of this Regulation. .

8. The beneficiary bank or financial institutions shall keep records of information received on the originator which accompanies transfer of funds for a period of five (5) years in accordance with the Law on AML/CFT and Article 15 of this Regulation.

9. The intermediary bank or financial institution shall keep records of all information which accompanies transfer of funds for a period of five (5) years in accordance with the Law on AML/CFT and Article 15 of this Regulation.

Comment 43 (Consultant): The proposed new paragraphs (7) to (9), inspired through Regulation 1781/2006 of the European Parliament and the Council, establish the records to be retained in fulfilling the record keeping obligation under the Law for the three players in wire transfers since any bank or financial institution in Kosovo* may be transacting in any of these roles at a point in time.

Article 14
Cross-border Correspondent Banking

Comment 44 (Consultant): There appears to be some ambiguity or lack of clarity in the Regulation against the Law. The Law on AML/CFT establishes that non-face-to-face relationships, correspondent banking relationships and relationship with PEPs call for a mandatory enhanced due diligence. Article 17 of the Regulation, in covering enhanced due diligence, only takes account of PEPs among other situations that present high risk. It is therefore proposed that the mandatory high risk situations be covered separately under the existing Article 14 as proposed to be amended for correspondent banking relationships, and the new Article 14A on non-face-to-face relationships and Article 14B on politically exposed persons while other high risk situations are covered under Article 17.

1. Article 21 of the Law on AML/CFT elevates correspondent banking relationships to represent a high risk for banks and thus requiring mandatory enhanced due diligence measures in addition to the standard measures. Banks shall therefore develop and implement policies and procedures concerning correspondent banking and which address the elevated risks in such relationships.

Comment 45 (Consultant): The objective of the proposed amendment to paragraph (1) is to highlight the importance of managing risks related to correspondent banking relationships within the context of the mandatory enhanced measures contemplated by the Law on AML/CFT. As already indicated earlier it is important in this Regulation that the mandatory high risk areas under the Law are highlighted separate from the additional measures that should be applied for other high risk areas as identified under Article 17 of this Regulation.

1A. Correspondent banking is defined as the provision of banking services by one bank (the correspondent) to another bank (the respondent) ~~of~~ which may include credit, deposit, collection, clearing or payment services. Banks in Kosovo* will be acting as 'respondent banks' when they establish relationships for the receipt of banking services by another bank (the correspondent bank) or as 'correspondent banks' when they establish relationships for the provision of banking services to another bank (the respondent bank).

Comment 16 (Advisory Letter 2007/1): Transferred from the definition in the first paragraph of sub-heading 'Additional Guidance on Cross-Border Correspondent Banking and Similar Relationships' under Section 3 of the Advisory Letter as there is no definition for the term in the Law on AML/CFT. In its assessment of EC 18.2 for Recommendation 18 the Cycle 1 DAR makes recommendations for the inclusion of a definition of correspondent banking services. The definition in the Advisory Letter as transposed to paragraph (1A) is amended accordingly.

2. A bank should exercise caution and due diligence regarding the potential correspondent bank's controls against money laundering and terrorist financing and determine that such controls are adequate and effective, and should document the respective AML/CFT responsibilities of each institution. Furthermore, the bank should not undertake business relationships with correspondent banks from countries that present high risks of money laundering and the financing of terrorism and thus pose a risk to the international financial system unless the bank can apply enhanced measures to mitigate such risks as required under Article 17 of this Regulation. ~~check the List compiled by Financial Action Task Force on Money Laundering (FATF) which identifies non-cooperative countries and territories (NCCTs) in the effort to prevent money laundering and~~

* see footnote 1 page 1

~~the FATF AML/CFT List which identifies countries that have strategic AML/CFT deficiencies and pose a risk to the international financial system.~~

Comment 46 (Consultant): The previous text gives the impression that the reference is being made to the old (NCCT) lists which now carry no names. The proposed text sets the obligation with reference to Article 17 of the Regulation which deals with enhanced due diligence and which is being proposed to be amended to include references to the FATF Public Statements in accordance with the new Rec. 19 on 'High Risk Countries' under the new FATF Standards.

2A. To assess the potential respondent bank's controls against money laundering and terrorist financing in accordance with the requirement under paragraph (2) of this Article, the bank should gather sufficient information about the potential respondent bank to understand ~~their~~ its business and determine from publicly available information the reputation of the institution, quality of supervision, and whether it has been subject to a money laundering or terrorist financing investigation or regulatory action. The bank should in general establish or continue a correspondent relationship with a foreign respondent bank only if it is satisfied that an authority is effectively supervising the respondent bank. In particular, a bank should not establish or continue a correspondent banking relationship with a shell bank as defined in the Law on AML/CFT. ~~non-resident respondent bank incorporated in a jurisdiction in which the bank has no presence and which is unaffiliated with a regulated financial group (i.e., a shell bank)~~.

Comment 17 (Advisory Letter 2007/1): Transposed from the second paragraph of sub-section under header 'Additional Guidance on Cross-Border Correspondent Banking and Similar Relationships' under Section 3 of the Advisory Letter. It is being linked to the previous paragraph as guidance to what is expected out of banks to fulfill the requirements.

2B. Particular care should also be exercised where the bank's respondent allows direct use of the correspondent account by third parties to transact business on their own behalf (i.e., payable-through accounts). The bank has to be satisfied that the respondent bank has performed the customer due diligence for those customers that have direct access to the accounts of the ~~cor~~ respondent bank, and that the respondent bank is able to provide relevant customer identification information upon request of the correspondent bank.

Comment 18 (Advisory Letter 2007/1): The proposed paragraph (2B) which is transposed from the penultimate paragraph of sub-section under header 'Additional Guidance on Cross-Border Correspondent Banking and Similar Relationships' under Section 3 of the Advisory Letter adds value to the correspondent banking relationships as a mandatory high risk and reflects the enhanced due diligence required.

3. A bank shall develop and implement policies and procedures concerning the ongoing monitoring of activities conducted through correspondent accounts. A bank shall obtain approval from senior management before establishing new correspondent relationships and shall apply the enhanced due diligence measures contemplated under paragraph (4) of Article 21 of the Law on AML/CFT.

Comment 47 (Consultant): A minor proposed amendment to ensure that banks apply the the enhanced due diligence measures as contemplated by the Law on AML/CFT and not the requirement for senior management authorization only.

Article 14A
Non Face-to-Face Relationships

1. As detailed under Article 9 of this Regulation in principle no business relationships should be established unless with the physical presence of the client. It is however acknowledged under Article 9 that there may

be special circumstances where a relationship is established or a transaction is conducted without the physical presence of the client, referred to in international standards as 'non face-to-face business'.

2. Consequently in their AML/CFT programs under Article 6 of this Regulation banks and financial institutions are to establish the exceptional circumstances when a relationship could be established or an account opened when the customer may not be physically present.

3. The CBK deems it appropriate that ~~N~~non face-to-face business shall ~~may~~ include:

a. business relationships concluded over the internet or by other means such as through the post;

b. services and transactions over the internet including trading in securities by retail investors over the internet or other interactive computer services;

c. use of ATM machines;

d. telephone banking;

e. transmission of instructions or applications via facsimile or similar means; and

f. making payments and receiving cash withdrawals as part of electronic point of sale transaction using prepaid, re-loadable or account-linked value cards.

Comment 19 (Advisory Letter 2007/1): Paragraph (3) is transposed from Section 3 of the Advisory Letter under the subheading 'Non face-to-face Business'. It is included here for guidance to the industry in establishing their circumstances of such business but at the same time as a mandatory minimum requirement - hence the replacement of 'may' by 'shall'.

4. In circumstances where, under the conditions of Article 9 of this Regulation, banks and financial institutions establish relationships or undertake a transaction without the physical presence of the customer, banks and financial institutions shall apply the enhanced due diligence measures as required under Article 21 of the Law on AML/CFT which considers such relationships as a mandatory high risk situation. In such cases the requirement in ensuring that the first payment of the operations is carried out through an account opened in the customer's name in a credit institution shall always apply.

Comment 48 (Consultant): Consistent with Comment 44 above, Article 14A is proposed for inclusion to highlight the importance of the enhanced due diligence for non-face-to-face relationships. This is also consistent with the provisions of Article 9 of the Regulation as amended. Moreover it sets the requirement for the first payment to be done through the banking system as a mandatory enhanced due diligence measure.

Article 14B
Politically Exposed Persons

1. Article 21 of the Law on AML/CFT further identifies business relationships with politically exposed persons as defined under the Law to present a higher risk situation requiring mandatory enhanced due diligence measures to be applied in addition to the standard measures contemplated by the Law on AML/CFT where a person is identified as a foreign politically exposed person. For domestic politically exposed persons the Law on AML/CFT applies the standard measures. Banks and financial institutions shall ensure that they apply the appropriate measures in such situations, including where a beneficial owner is identified has having the status of a politically exposed person. Banks and financial institutions shall also apply the enhanced due diligence measures for the continued relationship with an existing customer or beneficial owner who is eventually identified to be a politically exposed person.

Comment 49 (Consultant): Consistent with Comment 44 above, Article 14B is proposed for inclusion to highlight the importance of the enhanced due diligence for foreign politically exposed persons. This is also consistent with the provisions of Article 9 of the Regulation as amended. For domestic politically exposed persons the Law on AML/CFT under Article 21states *then reporting subjects shall take measures set out in Article 19 paragraph 1*. Article 19 of the Law refers to "wire transfers" and hence for the purposes of the proposed paragraph (1) to new Article 14B this is interpreted to be referring to the standard due diligence. **Central Bank please confirm accordingly**. Otherwise the paragraph is highlighting the obligation on banks and financial institutions to apply the enhanced due diligence measures under the Law at the business establishement and for continued relationships as identified in the Cycle 1 DAR for Recommendation 6.

2. In taking adequate measures to establish the origin of the assets used in the relationship or transaction in accordance with paragraph (5) of Article 21 of the Law on AML/CFT, banks and financial institutions shall ensure that such measures will include scrutiny of the source of wealth and the source of funds of the customer. Whereas 'source of wealth' refers to the assets that the customer possesses and may have accumulated over the years, the 'source of funds' refers to the funds to be applied to the first and following transactions undertaken by the customer within his status as a politically exposed person.

Comment 50 (Consultant): Is assessing E.C 6.3 for Recommendation 6 on politically exposed persons (Recommendation 12 under the 2012 FATF Standards) the DAR for Cycle 1 had recommended that the text under Article 21 of the Law on AML/CFT referring to *assets and funds used in relationship or transaction* may need some clarification. The aim of the proposed paragraph (2) to this Article is to fulfill this recommendation.

3. Banks and financial institutions shall ensure that 'immediate family members' and 'persons known to be close associates' of a politically exposed person shall be subject to the same enhanced due diligence measures where that person is a foreign politically exposed person .

Comment 51 (Consultant): Although the Law is not clear on the application of enhanced measures for 'immediate family members' and 'persons known to be close associates' of a politically exposed person, yet it follows through the definition that this is the case. Paragraph (3) aims to clarify this in the Regulation. No definition is provided as to what constitutes 'immediate family members' as, according to the Law, this and the definition of 'prominent public functions' should be defined by the FIU in consultation with Ministry of Finance.

4. Procedures for determining who is a ~~PEP~~ politically exposed person may include:

   a. seeking relevant information from the potential customer – refer to paragraph (4) of this Article;

   b. referring to publicly available information; and

   c. ~~making~~ accessing ~~to~~ commercial electronic databases of ~~PEPs~~ politically exposed persons.

Comment 20 (Advisory Letter 2007/1): Paragraph (4) is transposed from the last paragraph of Section 3 of the Advisory Letter under subheading 'Enhanced customer due diligence for higher risk customer'.

5. As part of the *relationships-based* or *customer-based risk assessment* under Article 7 (Appendix 2) of this Regulation, banks and financial institutions may wish to adapt and apply the template in Appendix 6 for the identification of politically exposed persons. The template is applicable to potential customers, beneficiary owners as defined and existing customers in the review process.

Comment 52 (Consultant): The template provided under Appendix 6 is based on the international definitions of 'immediate family members' and 'public prominent positions' for 'politically exposed persons' since no definitions are available to the Consultant for these terms in accordance with the Law on AML/CFT. Therefore it is advisable that this template is **only** included in Regulation 16 **if** such definitions

are made available by the FIU in consultation with the Ministry of Finance as required under the Law on AML/CFT. In which case the template may need to be reviewed accordingly. It is worth noting that the Cycle 1 DAR in assessing E.C. 6.1 for Recommendation 6 (Recommendation 12 under the 2012 Standards) had recommended that '*consideration be given for such measures to identify whether a potential customer, a customer or a beneficial owner is a PEP as part of the risk based approach and outside the enhanced due diligence procedures to be applied for higher risk customer'.*

Article 15
Record-Keeping and Retention

1. Banks and financial institutions shall retain all necessary records of transactions, both domestic and international, for at least five (5) years following completion of the transaction or the completion of the last transaction in a series of connected transactions (or longer if requested by CBK, FIU or any other competent authority in specific cases). This requirement applies regardless of whether the business relationship is ongoing or has been terminated.

Comment 53 (Consultant): The Cycle 1 DAR identified two main issues with the record keeping procedures when assessing compliance with EC 10.1 for Recommendation 10 (Recommendation 11 under the 2012 FATF Standards). First that the timing for the commencement period of retention in the case of a series of connected transactions is not established. The proposed amendment meets this shortcoming. Second that the Law on AML/CFT does not empower either the FIU or the CBK to extend the retention period. Although this is logical and in line with international standards and, for this reason, notwithstanding the comments in the DAR this is being retained in both paragraph (1) and paragraph (3) it is highly recommended that amendments to the Law on AML/CFT in this regard are effected as detailed in the DAR.

2. Transaction records must be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity. Necessary components of transaction records include:

a) The name of the customer and the beneficial owner (and holder of a power of attorney, if applicable) and their addresses or other identifying information as normally recorded by the bank;

b) The nature and date of the transaction;

c) The type and amount of currency involved; and

d) The type and identifying number of any account involved in the transaction.

3. Banks and financial institutions shall also retain all necessary records relating to the customer, beneficial owner, or holder of power of attorney, account files, and business correspondence for at least five (5) years following the termination of the business relationship, or in specific cases for a longer period if requested by the CBK, FIU, or other competent authority. The records shall identify the staff member who carried out the identification of the customer (and beneficial owner, where applicable). Banks shall establish safeguards to protect the records from damage and to prevent unauthorized access.

3A Banks and financial institutions shall also retain reports of the findings of the analysis of large complex transactions and of business relationships that are subject to special monitoring as detailed under Article 20 of the Law on AML/CFT. Reports of findings shall be retained as a minimum for a period of five (5) years from the completion of the analysis or longer if requested by the CBK or the FIU.

Comment 54 (Consultant): Paragraph 3A is proposed to reflect the additional record keeping obligation under Article 20 of the Law on AML/CFT for transactions and relationships that are subject to special monitoring. The extension of the retention period if requested by CBK or FIU is retained notwithstanding the comments in DAR but again it is strongly advisable that the Law be amended accordingly.

3B. ~~Also in~~ In the absence of an ongoing business relationship, banks and financial institutions, and in particular Foreign Exchange Offices and Money Transfer Operators, ~~should~~ shall keep copies of the identification data and transaction data for a period of five (5) years following an occasional transaction or the last transaction in a series of occasional but linked transactions.

Comment 21 (Advisory Letter 2007/1): Transferred from the paragraph under record keeping and retention under sub-header 'Additional Guidance for Foreign Exchange Offices and Money Transfer Operators' under Section 3 of the Advisory Letter. Amended to better reflect the reference to occasional transactions.

4. Banks and financial institutions shall make available if requested by the CBK, FIU, and any other competent authority all records and available information on a customer, beneficial owner, or holder of a power of attorney and all requested transaction records, in a form and manner that is complete, timely, and comprehensible.

5. Where the bank is aware regarding records related to on-going investigations, such records should be retained until it is confirmed by the relevant law enforcement agency that the case has been closed.

6. Electronic records of banks and financial institutions must be backed up electronically and must be readily available in legible form to the CBK and competent authorities.

Article 16
Standard Customer Due Diligence

1. Banks and financial institutions in relation to the risk level shall conduct standard or enhanced customer due diligence.

2. Banks and financial institutions shall conduct standard customer due diligence in accordance with the terms and conditions provided in the following circumstances, but not limited to:

a) When~~,~~ establishing a business relationship with a new customer;

b) When~~,~~ in relation to an existing customer there has been a material change in the nature or purpose of the business relationship; considers that it has insufficient information about the customer;

c) When~~,~~ there are doubts about the truthfulness and adequacy of previously obtained customer or beneficial owner information;

d) When~~,~~ carrying out a transaction in currency amounting to EUR 10,000 or more, whether the transaction is carried out in a single operation or in several operations which are evidently linked and carried out in a single day;

e) When conducting a transaction that is a wire transfer either domestically or internationally; and

f) Whenever there is a suspicion of money laundering or terrorist financing

Comment 55 (Consultant): The above provisions detailing when customer due diligence is required is close to requirements under international standards but do not exactly reflect Article 17 of the Law on AML/CFT. Proposed amendments to item (d) reflect the recent amendments to the Law on AML/CFT in Article 17. The insertion of item (e) is to better reflect the provisions under Article 17 of the Law. However, the Cycle 1 DAR had identified two main issues with regard to when customer due diligence is required (Essential Criterion 5.2). First that *either that the identification measures are to be applied for every transaction that is a wire transfer without any threshold or that the threshold is set at €10,000 consequent to item 2.2.1.* Although it is being proposed to include item (e) to better reflect the Law in the

Regulation, this concern remains and should be addressed through an amendment to the Law - see also paragraph (3A) under Article 13 if this Regulation. Second that in situations where doubts arise on the veracity or adequacy of previously obtained customer identification data, *whereas the FATF Standard apply in all circumstances, the obligation under the Law on AML/CFT applies only when the customer is carrying out an occasional transaction.* Although the text in this Regulation is addressing this issue the concern remains over the Law in which case in this instance the Regulation is not faithfull to the Law although it reflects international standards. It is therefore highly recommended that the Law on AML/CFT rectifies these issues as highlighted in the DAR.

Article 17
Enhanced Customer Due Diligence

1. In applying enhanced due diligence, banks and financial institutions should take care not to engage in unlawful discrimination on the basis of race, colour, religion, or national origin.

Comment 22 (Advisory Letter 2007/1): Transferred from the second paragraph under 'Customer due diligence' under Section 3 of the Advisory Letter

1A. Further to the application of mandatory enhanced due diligence measures in accordance with Article 14 (Cross Border Correspondent Banking), Article 14A (Non face-to-face Relationships) and Article 14B (Politically Exposed Persons), ~~B~~banks and financial institutions shall conduct enhanced customer due diligence in addition to the standard measures in accordance with the terms and conditions provided by this Regulation in the following circumstances, but not limited to:

Comment 56 (Consultant): Consistent with Comment 44 above and the proposed amendments to Article 14 including the inclusion of the new Article 14A and Article 14B, the proposed amendment to paragraph (1) - now renumbered as paragraph (1A) - of Article 17 of the Regulation provides a link to the mandatory enhanced due diligence measures to be applied separate from those under the circumstances provided under Article 17 and thus better reflecting the Law and that these are to be applied in addition to the standard measures established under the Law. Moreover the DAR for Cycle 1 had identified that there is a need to clarify that enhanced measures for elevated risks are to be applied in addition to the standard due diligence measures (Essential Criterion 5.8).

a) When, establishing a business relationship with a customer that is a trust or another vehicle for holding personal assets; a non–resident customer; a company with nominee shareholders;

b) ~~When, establishing a business relationship with a customer who it has determined is a politically exposed person;~~

Comment 57 (Consultant): Consistent with Comment 44 above and in the light of the proposed new Article 14B it is proposed to remove item (b) as it is already being addressed separately as a mandatory high risk.

c) At each stage of the customer due diligence process to customers, business relationships, and transactions that the bank, through its *relationships/customer based* risk assessments undertaken in accordance with Article 7 of this Regulation has determined are of higher risk of money laundering and terrorist financing. This will include scrutiny of the source of wealth and the source of funds of the customer; and

Comment 58 (Consultant): The aim of the proposed minor but important amendment is to link the enhanced due diligence situations of higher risk to the risk assessments as established under Article 7 of this Regulation.

d) When, carrying out a transaction amounting to EUR 10,000 or more, whether the transaction is carried out in a single operation or in several operations which are evidently linked; ~~and~~

e) ~~Whenever there is a suspicion of money laundering or terrorist financing~~

f) business relationships and transactions with natural and legal persons, including financial institutions, from countries which are publicly declared as presenting higher risks of money laundering and terrorism financing by an international standard setting body or a recognized body that monitors countries on their programmes for the prevention of money laundering and terrorism financing. To this effect banks and financial institutions shall take account of public statements issued by the Financial Action Task Force on Money Laundering (FATF) on high risk and non-cooperative jurisdictions which identify jurisdictions which present an ongoing and substantial risk of money laundering and financing of terrorism and upon which other jurisdictions are required to apply counter-measures; jurisdictions which do not cooperate in making progress in addressing their money laundering and financing of terrorism deficiencies together with other jurisdiction who are committed to address their deficiencies. Such lists may be found on the website of the FATF at www.fatf-gafi.org. Banks and financial institutions shall also check similar lists issued by other monitoring bodies such as MONEYVAL of the Council of Europe.

Comment 59 (Consultant): It is proposed to include item (f) as a high risk situation requiring enhanced due diligence measures in situations where banks or financial institutions enter into business relationships or undertake transactions with legal or natural persons, including other banks and financial institutions, from countries that have been declared as representing a high risk of money laundering or financing of terrorism – e.g. the FATF Public Statements. Moreover, the proposed item (f) implements part of the requirements under Recommendation 19 (Higher risk countries) of the 2012 FATF Standards.

1B. Banks and financial institutions shall apply enhanced measures in monitoring accounts, transaction and business relationships and elevate the risk element of such situations, where, as a result of a suspicion of money laundering or terrorist financing, a report has been filed with the FIU.

Comment 60 (Consultant): It is not clear nor understandable why the Regulations require banks and financial institutions to apply enhanced due diligence measures in situations where there is a suspicion of money laundering or terrorist financing – item (e) – since this is already required under the standard customer due diligence and enhanced measures for higher risk are to be applied in addition to the standard due diligence measures. In such eventualities, the more so if the suspicion is elevated because of the customer risk level, the Law requires that a report is filed with the FIU. However, if item (e) is meant to refer to enhanced monitoring, then it is still suggested that item (e) be removed but to be replaced by paragraph (1B) as proposed.

2. A bank or a financial institution shall not enter into or maintain a business relationship with a higher risk customer unless a senior member of the management of the bank has given approval in writing. Enhanced customer due diligence measures that banks and financial institutions may apply include, but are not limited to:

- additional identification information and documents for the verification of the customer and the beneficial owner identity as appropriate;
- additional information and clarification on the source of wealth and source of funds;
- obtaining and assessing additional information on the intended nature of the business relationships;
- understanding better the reasons for an intended or performed transaction through obtaining additional information;
- increased monitoring and scrutiny of business relationship, transactions and accounts including source of funds;

- increased frequency for updating information available on customer identification, risk level, and business profile;
- increased periodic reporting to senior management.

Comment 61 (Consultant): It is proposed to provide the views of the CBK to banks and financial institutions on the type of enhanced due diligence measures they are expected to apply for higher risk customers. The lack of guidance and direction has been identified as a weakness in the Cycle 1 DAR in assessing compliance with Essential Criterion 5.12 for FATF Recommendation 5 (Recommendation 10 for the 2012 Standards).

Article 18
Recognition and reporting of suspicious acts and transactions

Comment 62 (Consultant): The DAR for Cycle 1 identifies two main issues in the recognition and reporting of suspicious acts and transactions which have not been addressed by the recent amendments to the Law on AML/CFT. These relate to:

(i) the legal obligation for reporting suspicious acts or transaction does not include situations where information available indicates that a person is or may be involved in money laundering or the financing of terrorism – there is a recommendation to this effect for the definition of 'suspicious act or transaction' to include: *The definition shall include situations where information available indicates that a person or entity may be or may have been involved in criminal activities* and

(ii) that there is no legal obligation under the Law on AML/CFT for reporting transactions or persons suspected to be linked to the financing of terrorism – in this regard there is a recommendation to amend Article 22 (1.1) to read as follows: "*all suspicious acts or transactions, **or suspicions that an act or transaction or an attempted act or transaction may be related to the financing of terrorism, or that a person or an entity may be involved in the financing of terrorism**, within twenty four (24) hours of the time the act or transaction was identified as suspicious*".

It should be highlighted that without such amendments some parts of Article 18 of this Regulation as currently drafted and as proposed to be amended may fall outside the provisions of the Law. Such provisions are being retained in Article 18 as they reflect the actual position and the position under the international standards but it is highly recommended that the necessary amendments to the Law on AML/CFT as proposed in the DAR are effected as soon as possible to rectify this situation. Consequently proposed amendments relating to the above recommendations in the DAR are encased in square brackets [.....] .

1. Certain types of transactions should alert ~~the~~ banks and financial institutions to the possibility that the customer is conducting suspicious activities. They may include transactions that do not appear to make economic, lawful or commercial sense, or that involve large amounts of cash movements that are not consistent with the normal and expected transactions of the customer in accordance with the business and risk profile for that customer. Very high account turnover, inconsistent with the amount of funds normally held in the account, may indicate that funds are being laundered. Examples of bank-specific suspicious activities can be very helpful to financial institutions and should be included in the training activities. A suspicious act or transaction will often be one that is inconsistent with a customer's known, legitimate business or personal activities or with the normal business for that type of financial product. ~~The financial institution should gather information to learn about the customer and the customer's business to help them to recognize when a transaction is unusual.~~

1A. Questions that a bank or financial institution might consider when determining whether an act or transaction might be suspicious are:

- Is the size of the transaction consistent with the normal activities of the customer?
- Is the transaction rational in the context of the customer's business or personal activities?
- Has the pattern of transactions conducted by the customer changed?

- Where the transaction is international in nature, does the customer have any apparent reason for conducting business with the other country involved?

To this effect ~~S~~some indicators of suspicious acts or transactions are given in the Annex to this Regulation.

Comment 23 (Advisory Letter 2007/1): Paragraphs (1) and (1A) are transposed from Section 3 of the Advisory Letter under sub-header 'Recognition of Suspicious Acts and Transactions'. This inclusion renders this section of the Regulation more comprehensive and supported by the Annex of indicators.

1B. ~~The~~ Banks and financial institutions, and in particular Foreign Exchange Offices and Money Transfer Operators, should consider that the fact that a customer shows a preference to conduct a currency transaction under the €10,000 threshold, presumably to avoid reporting, creates or contributes to a suspicion about the transaction. They should also consider that multiple currency transactions that are conducted by or on behalf of one person or entity and that appear to be linked and that total to or more than €10,000 over a period of time creates or contributes to suspicion about the transactions.

Comment 24 (Advisory Letter 2007/1): The proposed paragraph (1B) is transposed from the paragraph on reporting of transactions under sub-header 'Additional Guidance for Foreign Exchange Offices and Money Transfer Operators' under Section 3 of the Advisory Letter. Although it is being amended to apply to all banks and financial institution consistent with the rest of the Regulation, the emphasis on Foreign Exchange Offices and Money Transfer Operators has been retained.

1C. Banks and financial institutions shall give sufficient guidance and training to staff to enable them to recognize suspicious acts and transactions. They shall ensure that all employees know to which person within the bank or financial institution the staff member should report suspicions and that there is a clear reporting chain under which those suspicions will be passed to the AML/CFT Unit. The reporting line between the person having the suspicion and the AML/CFT Unit should be as short as possible.

1D. The AML/CFT compliance function should acknowledge receipt of a report of a staff member and at the same time provide any directions and a reminder of the obligation not to ~~do nothing~~ take any action that might prejudice enquiries, i.e., 'tipping off' in the sense of Article 22 of the Law on AML/CFT as reflected in paragraph (7A) to this Article. ~~section 3.12 of Regulation 2004/2.~~

Comment 25 (Advisory Letter 2007/1): Proposed paragraph (1D) transposes the first paragraph of sub-section *'Action of AML/CFT Compliance Function on Being Notified of a Potential Suspicious Transaction'* of Section 3 of the Advisory Letter. The other parts of the sub-section are not transferred partly because they are generally reflected in paragraph (2) of this Article; partly because such information should always accompany the internal report in accordance with internal policies and procedures; and partly because some of the functions detailed – such as obtaining information from the customer and visiting his place of business by the AML/CFT Unit - could risk the 'tipping off' prohibition even if inadvertently since any asssessment of an STR should be done on the basis of informational available.

2. Once the AML/CFT Unit has received this initial report, it shall check and analyze the case on the basis of internal information. Banks and financial institutions shall keep records of such analysis and results. If, on review of the analysis and results, the bank or financial institution concludes that the acts or transactions or the attempted acts or transactions provide reasonable grounds for suspicion of money laundering, or that there is a link to terrorist or terrorist financing activity, the AML/CFT Unit shall report the act or transaction or the attempted act or transaction to the FIU promptly. [Banks and financial institutions shall also report to the FIU situations where information available indicates that a person or an entity may be or may have been involved in criminal activities.]

Comment 63 (Consultant): Two amendments are proposed to paragraph (2). First with reference to attempted transaction in accordance with the recent amendment to the definition of 'suspicious act or

transaction' in the Law on AML/CFT. Second amendment with reference to the proposed amendment to the definition of 'suspicious act or transaction' in the DAR and which brings the reporting obligation more in harmony with the FATF Standards.

3. All internal enquiries made in relation to the report, and the basis for deciding whether or not to submit the report to the FIU, should be documented. Records of suspicions which were raised internally with the AML/CFT Unit but not disclosed to the FIU should be retained for five (5) years, from the date of the transaction. Records of reported suspicions that assist with investigations should be retained until the bank or financial institution is informed by the relevant law enforcement agency that the records are no longer needed.

4. According to the Article 22.1 of Law on AML/CFT banks and financial institutions shall report to the FIU all acts or suspicious transactions within 24 hours from time when such acts or suspicious have been identified. Sufficient information should be disclosed which indicates the nature and the basis for the suspicion and, if a particular offence is suspected, this should be stated. Where the bank or financial institution has additional relevant evidence that could be made available, the nature of this evidence should be clearly indicated when reporting, without delay, to the FIU.

5. Banks and financial institutions shall report to FIU all individual transactions in amount of ten thousand (10,000) Euros or more per day according to the Law on AML/CFT.

5A Where a bank or a financial institution files a report in accordance with paragraph (5) of this Article but has suspicion that the transaction may involve money laundering or may be linked to the financing of terrorism it shall also file a suspicious transaction report for that transaction with the FIU in accordance with paragraph (2) of this Article indicating that the two reports refer to the same transaction, act or person.

Comment 64 (Consultant): The Cycle 1 DAR comments that a factor that could contribute to the low number of STRs filed with the FIU is that a transaction that is equal to or exceeds €10,000 that is reported to the FIU as a currency transaction but upon which banks and financial institutions may have a ML/FT suspicion is then not re-reported as a suspicious one and remains so unless the FIU raises suspicion. Experience has shown during mutual evaluations that this is often common in countries which have such a dual reporting obligation. The objective of the proposed paragraph (5A) highlights this situation for banks and financial institutions to take note accordingly and avoid such eventualities from occurring which would negatively impact the system and statistics.

6. If a bank or a financial institution decides not to enter into a business relationship because of suspicion of money laundering or terrorist financing, it shall report the matter to the FIU immediately.

7. Banks and financial institutions shall report to the FIU any customer or transaction that they have reasonable grounds to suspect may be linked to the financing of terrorism or to individuals who support terrorism. Attention should be devoted to monitoring and keeping up to date the list of organizations and individuals related to terrorists or terrorism based on information received from the FIU, or other available sources. Attention shall be paid to non-profit and humanitarian organizations, especially if the activities are not in accordance with the registered activity, if the source of funds is not clear, or if such organizations receive assets from suspicious sources.

Comment 65 (Consultant): As indicated above (Comment 62) one of the main findings of the Cycle 1 DAR is the absence of a legal obligation to report financing of terrorism related transactions. Notwithstanding the inclusion of the definition of 'Terrorist Financing Criminal Offense' in new Article 36B of the Law on AML/CFT the legal reporting obligation is still missing. Hence the first part of paragraph (7) goes beyond the Law. The text is being retained as is as explained above under Comment 62. It is therefore highly recommended that the necessary amendments as detailed in the Cycle 1 DAR to the Law on AML/CFT are effected at the earliest.

7A. Directors, officers, employees and agents of banks and financial institutions shall not disclose the fact that a report has been filed or is to be filed with the FIU including any information thereon, or [that an investigation is or may be underway], to the person involved or to any other third party other than the FIU or the CBK, unless authorized in writing by the FIU, a Prosecutor, or a Court.

Comment 66 (Consultant): In guiding banks and financial institutions on their reporting obligation it is important to remind their directors, officers, employees and agents on the confidentiality aspect of the reporting obligation. There is a recommendation in the Cycle 1 DAR to amend the relevant paragraph in the Law on AML/CFT to bring it more in line with the Essential Criteria for FATF Recommendation 14 (Recommendation 21 under the new Standards). Notwithstanding that the proposed change has not yet been effected it is proposed that the Regulation should cover all aspects compliant with the FATF Standards. It is still highly recommended that the proposed amendments in the Cycle 1 DAR in this regard be effected.

7B. It is the responsibility of every officer or employee of a bank or a financial institution who first raised suspicion on an act or transaction or person of being involved or linked to money laundering or the financing of terrorism to ensure that an internal report of such suspicion is raised to the Head of the AML/CFT Unit. Officers or employees are reminded that under the Law on AML/CFT any type of intimidation to induce them to refrain from making a report or to make a false statement or otherwise fail to state true information to the FIU, the CBK, or other investigative agencies or judicial authorities is a punishable offence under the Law on AML/CFT. In such eventualities reporting officers or employees should immediately report the case in accordance with their institutions internal reporting lines and procedures.

Comment 67 (Consultant): The objective of paragraph (7B) is twofold. First to remind officers and employees who first raised suspicion that it is their responsibility to ensure that an internal report is filed. Second to put them aware that in the eventuality that any person tries to intimidate them not to file a report or to give false information is an offence under the Law and should be reported. This reflects the new Article 36C in the Law on AML/CFT.

Article 19
Vetting, Screening and Training of Staff

1. The effectiveness of the procedures and recommendations contained in this Regulation depends on the extent to which staff in banks and financial institutions understands the serious nature of money laundering and terrorist financing. Banks and financial institutions shall make the staff aware of their personal statutory obligations, and inform them that they can be held personally liable for failure to report information in accordance with internal policies and procedures.

2. Banks and financial institutions shall introduce comprehensive measures to ensure that their employees, especially staff having contact with customers or executing transactions and staff within the AML/CFT Unit, do not have a criminal record or are not the subject of an ongoing criminal prosecution for financial crime, terrorism, or other serious crime which could call into question their trustworthiness.

3. Banks and financial institutions shall provide regular, at least annually, training to all relevant staff on AML/CFT in accordance with the Administrative Directive No 01 of the CBK issued on <DD/MM/YYYY>. ~~The training shall include current methods and typologies of money laundering and financing of terrorism. New staff shall undergo AML/CFT training before they engage in opening business relationships with customers or executing financial transactions.~~

~~4. Employees must be made aware of the internal policies and procedures put in place to prevent money laundering and financing of terrorism, the legal requirements contained in the Law AML/CFT and in this Regulation, particularly in relation to recognition, monitoring and reporting of suspicious acts or transactions. The relevant documents published or disseminated by the FIU and/or the CBK shall be taken into consideration.~~

~~5. Although directors and senior managers may not be involved in the day-to-day procedures, it is important that they understand the statutory duties placed on them, their staff and the business itself. Therefore, they shall participate in training appropriate to their function. This training shall also cover possible sanctions arising from laws and regulations.~~

6. The documents on the structure of the training programs, their content and the names and signatures of the participants shall be kept in the files of the bank or the financial institution for at least five (5) years.

Comment 68 (Consultant): Since a separate Administrative Directive on training is being drafted it is recommended that part of paragraph (3) and paragraphs (4) and (5) be transferred to the new Administrative Directive and amplified. Consequently it is proposed to amend paragraph (3) to create a link to the new Administrative Directive.

Article 20
The role of internal and external audit

1. The internal audit department of banks and financial institutions shall perform regular examinations to ensure that the policies and procedures for AML/CFT prevention are fully implemented and compliant with all requirements of Law on AML/CFT~~,~~ and this Regulation. ~~and relevant Guidelines.~~ The internal audit department shall report annually to the Board of Directors or management of banks and financial institutions on its findings and evaluations, including an evaluation of the adequacy of staff training on AML/CFT matters.

2. The CBK may require that banks and financial institutions engage their external auditors to evaluate and report on the quality of implementation of AML/CFT measures (including the application of the legal and regulatory requirements, implementation of policies and procedures, internal control systems and performance of internal audit).

Chapter III
Implementation of Regulation

Article 21
Administrative Directives and Instructions of the Financial Intelligence Unit

1. This Regulation is issued by the CBK in accordance with the Memorandum of Understanding between the CBK and the FIU pursuant to Article 36A of the Law on AML/CFT for the supervision of the financial sector and through which the FIU empowers the CBK under the Law on AML/CFT to issue Administrative Directives or Instructions to the financial sector and which Administrative Directives and Instructions in any form issued by the CBK become mandatory for the financial sector as if issued by the FIU.

Comment 69 (Consultant): The Cycle 1 DAR makes proposals to the effect that any supervisory mandate to a competent authority, in this case the CBK, should be complemented with the power to issue rules and regulations – see for example the analysis under EC 23.2 and EC 23.4 for Recommendation 23 (Recommendation 26 under the 2012 FATF Standards). The Law on AML/CFT reserves such powers to the FIU, at times in conjunction with the Ministry of Finance. In the absence of a direct legal empowerment it is proposed to amend the MoU to provide for such circumstances – see proposed amendments to MoU under Annex 1 to the Technical Paper.

1A. In the event that the Financial Intelligence Unit issues an Administrative Directive or Instruction that may or may not be applicable to the financial sector and that contains provisions that may be ~~that is~~ inconsistent with any provision of this Regulation, ~~the FIU issuance will supersede that provision.~~ the FIU and the CBK shall clarify such inconsistency and advise the banks and financial institutions accordingly. If banks or

financial institutions identify any such inconsistency they shall bring this to the attention of the CBK in writing with explanations at the earliest.

Comment 70 (Consultant): Once it is being established that the Regulation is being issued on the basis of *delegated* powers according to the MoU between the CBK and the FIU there should not arise situations where the FIU issues instructions that are in conflict with those of this Regulation as this will pose and send negative and conflicting messages to the industry. Indeed, on the contrary, the industry should receive a positive message that this will not occur and that should it occur, even if inadvertently, the authorities commit themselves to rectify such conflict immediately. Arbitrarily stating that the FIU instruction will supersede this Regulation is also dangerous in itself as such conflict could have direct or indirect repercussions on other provisions of the Regulation in which case banks and financial institutions may have to review their internal programmes and procedures while the CBK may have to readdress its regulatory and supervisory procedures and findings.

Article 21A
Supervision by the Central Bank of Kosovo*

1. The CBK shall supervise banks and financial institutions on compliance with the obligations under the Law on AML/CFT and this Regulation on the basis of the provisions of the Memorandum of Understanding between the CBK and the FIU pursuant to Article 36A of the Law on AML/CFT delegating supervisory powers to the CBK.

2. The CBK shall supervise banks and financial institutions both on an off-site and on-site basis. To this effect the CBK shall apply such supervisory powers for the right of entry, right to demand information and documents and to take copies as necessary, and similar rights conferred upon it through the Law on Banks and the Law on the CBK as applicable for the purposes of the Law on AML/CFT.

Comment 71 (Consultant): The objective of the proposed new Article 21A is to clarify and consolidate the supervisory powers of the CBK for banks and financial institutions for the purposes of the Law on AML/CFT. The Cycle 1 DAR had established that the Law on AML/CFT is limited to supervisory powers and this only in relation to the FIU. Within the context that the CBK was already undertaking such supervision and with awareness of the intended changes to the Law on AML/CFT with regards to the supervision of the financial sector, the Cycle 1 DAR, in assessing FATF Recommendation 29 (Recommendation 27 under the 2012 Standards) on the 'Powers of Supervisors' had made the following recommendation:

> ***Article 30B***
>
> ***Powers of designated supervisory authority***
>
> *A competent authority that is appointed under this Law to supervise and monitor reporting subjects on compliance with this Law and which authority already has a supervisory mandate for prudential purposes conferred upon it through specific laws shall apply such prudential supervisory powers as conferred upon it and as may be applicable in fulfilling its supervisory remit for the purposes of this Law with the exception of the power to impose administrative or other sanctions and penalties contemplated by such specific laws for infringement of such laws.*

Pending decisions by the Kosovo* authorities on such proposal it is recommended that this principle be reflected in this Regulation. It is however highly recommended that such provisions be included in the Law on AML/CFT.

* see footnote 1 page 1

Article 22
Administrative Measures

1. For all violations identified concerning the prevention of money laundering and terrorism financing, the CBK must inform the FIU, and make available the full documentation, as sourced by the CBK, relating to the finding of a violation.

1A. Violations of obligations concerning the Law on AML/CFT and as reflected in this Regulation implementing the provisions of the Law are punishable as specified under the Law on AML/CFT and shall be imposed accordingly.

Comment 72 (Consultant): The Law on AML/CFT as revised provides for a wide array of sanctions for different non-compliance situations under the Law – Article 31A and Article 31B. It is important to highlight this position as otherwise conflicting and ambiguous situations will arise if sanctions under the Law on Banks are protruded to be applicable to offences under the Law on AML/CFT as reflected through the Regulation. This proposed paragraph (1A) is consistent with and complementary to paragraph (1).

~~2. Under Article 58, 59 and 82 of the Law on Banks, the CBK has the authority to take appropriate measures against any bank if it determines that the bank has not implemented the required regulatory framework on preventing money laundering and terrorist financing.~~

Comment 73 (Consultant): It is not entirely correct to state that the provisions under Article 58, 59 and 82 of the Law on Banks empower the CBK to impose administrative sanctions for the purposes of the prevention of money laundering and terrorist financing as the measures contemplated under the Law on Banks are applicable to violations of the Law on Banks or any regulations issued there-under and are therefore of a prudential nature. As already established above, this Regulation is not being issued under the provisions of the Law on Banks as this would create legal conflicts and ambiguities in relation to the Law on AML/CFT and its application. Paragraph (2) is consequently being removed and replaced by a new paragraph (2) as indicated below.

2. Notwithstanding, the CBK acknowledges that graduated, proportionality based administrative measures should be imposed without prejudice to the pecuniary sanctions contemplated by the Law on AML/CFT for non-compliance with this Regulation. To this effect, and consistent with the generality of such powers vested to the CBK under the relevant provisions of the Law on Banks, the CBK may impose such administrative measures as appropriate in proportion to the severity of the offence, to individual and legal persons under the Law on AML/CFT or their directors or senior management as the case may be:

- issue written warnings;
- issue written orders requiring the reporting subject or other person or entity to take remedial action to rectify specified identified weaknesses within a specified period of time;
- order a reporting subject or any other person or entity to periodically report on the remedial measures being taken;
- requiring a reporting subject or any other person or entity not to engage in one or more of the licensed activities;
- dismiss, suspend or replace a person from his or her position in the entity concerned;
- prohibit such person from serving or engaging in activities or being employed within the same sector of business for a stated period or for life;
- restrict the powers of managers, directors or other senior officials; or
- suspend or withdraw the licence or registration.

Comment 74 (Consultant): The Cycle 1 DAR had identified a major weakness in the application of administrative measures under the Law on AML/CFT at the time in relation to the FATF Recommendation 17 (Recommendation 35 under the 2012 Standards). Some action has been taken through the amendments to the Law through the introduction of pecuniary penalties applicable to violations of the Law as specified under Articles 31A and 31B. The Cycle 1 DAR however comments that graduated administrative measures should also be available and for this purposes the Cycle 1 DAR proposes a complete overhaul of Article 31 on '*Administrative Sanctions and Remedial Measures'*. The proposal takes account of the new Article 31A and 31B and proposes a list of administrative sanctions that could be applied. In the absence of this legal basis, similar graduated administrative sanctions (inspired by Articles 58 and 59 of the Law on Banks) are being proposed in this Regulation with a reference to the *generality* of the relevant provisions of the Law on Banks as a legal (though weak) basis. It is therefore highly recommended that the proposed amendments to Article 31 as detailed in the Cycle 1 DAR for FATF Recommendation 17 be implemented at the earliest.

Article 23
Abrogation

Upon the entry into force of this Regulation, it shall abrogate the Amended Rule X [and Advisory Letter 2007/1] on the Prevention of Money Laundering and Terrorist Financing, and any other provisions that may be in collision with this Regulation.

Comment 75 (Consultant): Should the Kosovo* authorities, as strongly recommended, integrate the provisions of Advisory Letter 2007/1 into Regulation 16 then the Advisory Letter has to be abrogated also.

Article 24
Entry in to Force

This Regulation shall enter in to force 15 days after approved by the CBK Board.

The Chairman of the CBK Board

* see footnote 1 page 1

BUSINESS BASED RISK ASSESSMENT MATRIX

Products, Services, Delivery Channels and Geographic Locations

BUSINESS BASED RISK ASSESSMENT MATRIX			
Identify whether the bank provides any of the following products, services or delivery channels.	**Yes**	**No**	**N.A**
Services that make it difficult to fully identify the customer(s)?	☐	☐	☐
Services that make it difficult to fully identify the ultimate beneficial owner or beneficiary where applicable?	☐	☐	☐
Services to and business relationships with Politically Exposed Persons (PEPs)?	☐	☐	☐
Services to and business relationships with Non-Profit Organisations (NPOs)?	☐	☐	☐
Electronic funds payment services?	☐	☐	☐
Any of the following services:			
▪ Electronic cash (for example stored value cards – *e-money*)?	☐	☐	☐
▪ Funds transfers (domestic and international):	☐	☐	☐
– Inwards?	☐	☐	☐
– Outwards?	☐	☐	☐
▪ Automated Teller Machines (ATMs)?	☐	☐	☐
▪ Currency Exchange Machines?	☐	☐	☐
Electronic Banking?	☐	☐	☐
Services involving the use of carriers or couriers for international transport of cash, monetary instruments or other financial documents of value – also referred to as *pouch activities*?	☐	☐	☐
Services involving banknote and/or precious metal trading and delivery?	☐	☐	☐
Services, business relationships or transactions on a non face-to-face basis, such as Internet services, or services by mail or by telephone?	☐	☐	☐
Private banking facilities:	☐	☐	☐
▪ Domestic?	☐	☐	☐
▪ International?	☐	☐	☐
Trade finance activities, such as letters of credit?	☐	☐	☐
Lending activities, particularly for these purposes loans secured by cash collateral and/or marketable securities?	☐	☐	☐
Non-deposit account services (for example, non-deposit investment products and insurance)?	☐	☐	☐
Correspondent banking relationships?	☐	☐	☐
International correspondent banking services involving transactions such as commercial payments to non-customers of the bank (for example acting as an intermediary bank)?	☐	☐	☐

Correspondent banking accounts through which cheque or bank draft writing privileges are extended to the customers of the other institution – 'pass through' or 'payable through' type accounts?			
Identify whether the bank deals with customers from or provides products or services in, the following geographic locations.	**Yes**	**No**	**N.A**
Are any of the bank's customers located in a known high crime area or jurisdiction – high risk jurisdiction?	☐	☐	☐
Does the bank or any of its customers operate or undertake activities in any of the following countries or jurisdictions and thus involving the bank in either incoming or outgoing business operations:	☐	☐	☐
▪ Any country that is subject to sanctions, embargoes or similar measures issued by, for example, the United Nations? – this includes sanctions or measures similar to those issued by bodies such the United Nations but which may not be universally recognized.	☐	☐	☐
– The bank?	☐	☐	☐
– Customers?	☐	☐	☐
▪ Any country identified as a financial secrecy haven or jurisdiction?			
– The bank?			
– Customers?		☐	
▪ Any country subject to an FATF or other recognised monitoring body (for example the Council of Europe MONEYVAL Committee) public statement with regards to the prevention of money laundering and the funding of terrorism OR that is identified by same as not being an internationally cooperative country or jurisdiction in the fight against money laundering or the funding of terrorism?	☐	☐	☐
– The Bank?	☐	☐	☐
– Customers?		☐	
▪ Any country that, for other reasons, is considered as high risk by the bank:			
– The bank?			
– Customers?			

Instructions for the Business Based Risk Assessment Matrix

A business based risk assessment of the products, services, delivery channels and the geographic location in which the bank or the financial institution could undertake its business operations presupposes a good knowledge of the bank's or the financial institution's business operations and the exercise of sound judgment such that the risks for money laundering and the financing of terrorism can be weighed according to each individual factor as well as a combination of them. Although the procedures developed in Regulation 16 of the CBK aim to provide objectivity, an element of subjectivity in determining the risk factor remains and therefore the more informed the decision taking process is the more realistic is the judgement of the degree of the risk factor. It cannot but be over-emphasised that the business based risk assessment is not static and will change over time as the way banks and financial institutions operate changes and the products and services provided develop.

The first step in a business based risk assessment is that management and staff be aware of and recognise all products and services or combinations of them that may pose higher risks of money laundering or financing of terrorism. Legitimate products and services can be used to hide illegal origins of funds, to move funds to finance terrorist acts or to hide the true identity of the actual owner or beneficiary of the product or service. Products and services that can support the movement and conversion of assets into, through and out of the financial system may pose a high risk. For example, these could include a money laundering related purported sale of high value goods that results in a cheque payable to bearer (such as a blank endorsement of a cheque payable to 'order') which is then deposited into another individual's account to make the transaction difficult to trace and detect.

The Business Based Risk Assessment Matrix shall serve as a guide to banks and financial institutions as the tool to assess products, services, delivery channels and geographic locations that may pose higher risks of money laundering or the funding of terrorism. The business based risk assessment tool has been developed through a list of questions in a checklist format which only needs a careful and informed 'yes' or a 'no' or a 'n.a' answer for each question. The assessment tool is not static and should be reviewed periodically in line with the business strategies of the bank or the financial institution.

A 'yes' reply to any question in the assessment tool shall *prima facie* be considered as posing a higher risk for money laundering or the financing of terrorism in that particular product or service provided or country of operation. Where appropriate therefore risk mitigation measures should be taken and applied in line with the bank's or the financial intitution's risk mitigation procedures. For the sake of completeness, the assessment tool includes references to situations which the Law on the Prevention of Money Laundering and the Financing of Terrorism already consider as posing a higher risk. In these circumstances the enhanced Customer Due Diligence measures contemplated by the Law and recognised in Regulation 16 shall be automatically applied in addition to the standard measures. For the same reason, the assessment tool further includes products or services which individual banks or financial institutions may not currently offer or provide.

RELATIONSHIPS-BASED RISK ASSESSMENT MATRIX

The following matrix assesses the AML/CFT risk that a potential customer may be exposed to. The matrix assesses each potential customer on the basis of status and industry/profession, geographic location, products and services to be used including volumes and the contact / relationship with the institution.

RELATIONSHIPS-BASED RISK ASSESSMENT MATRIX			
Name of customer to be assessed:			
1.0 Customer Status - General	**Yes**	**No**	**N.A**
Is the potential customer a:			
(i) Natural person?	☐	☐	☐
(ii) Legal person?	☐	☐	☐
(iii) Legal arrangement such as:			
- a trust?	☐	☐	☐
- nominee?	☐	☐	☐
- other fiduciary arrangement _____	☐	☐	☐
(iv) Foundation?	☐	☐	☐
(v) Non Government or Non Profit Organisation? (NGO / NPO)	☐	☐	☐
(vi) Public Authority or Public Body?	☐	☐	☐
(vii) Other (*please state type*: _____)	☐	☐	☐
1.1 Customer Status – Natural Persons	**Yes**	**No**	**N.A**
Is the potential customer considered as a Politically Exposed Person (PEP)?	☐	☐	☐
Does the name or any of its derivatives appear on Sanction Lists issued by the United Nations, the European Union or other organization?	☐	☐	☐
Is the person opening the account the owner of the account and the person who will be operating the account?	☐	☐	☐
Is the person opening the account a lawyer, accountant or other professional person opening the account to be operated with 'clients' money'?	☐	☐	☐
Has the origin of wealth and the source of funds been obtained?	☐	☐	☐
Has the potential customer ever had previous direct or indirect relationships with the bank?	☐	☐	☐

1.2 Customer Status – Legal Persons	Yes	No	N.A
Is the company listed on a regulated market in a reputable jurisdiction, including domestic regulated markets?	□	□	□
Does the company in whose name the account is to be opened allow any part of its capital to be in the form of bearer shares? (*please state part* _____%)	□	□	□
Is the structure of the company complex that it makes it difficult to identify the ultimate beneficial owner (natural person) and understand its mind and management structure?	□	□	□
Have the ultimate beneficial owner (natural person), mind and management and directors of the company been identified?	□	□	□
Is the ultimate beneficial owner (natural person) considered as a Politically Exposed Person (PEP)?	□	□	□
Does the name of the beneficial owner or any of its derivatives appear on Sanction Lists issued by the United Nations, the European Union or other organizations?	□	□	□
Does the name of the company or any of its derivatives appear on Sanction Lists issued by the United Nations, the European Union or other organizations?	□	□	□
Has the potential customer or the beneficial owner (natural person) ever had previous direct or indirect relationships with the bank?			

1.3 Customer Status – Legal Arrangements	Yes	No	N.A
Have the beneficiaries of the legal arrangement been identified?	□	□	□
If the legal arrangement is in the form of trust, have the trustee and settlor/principal been identified?	□	□	□
Is the settlor/principal of the trust considered as a Politically Exposed Person (PEP)?	□	□	□
Does the name of the settlor/principal of the trust or any of its derivatives appear on Sanction Lists issued by the United Nations, the European Union or other organizations?	□	□	□
If the legal arrangement is under a nominee structure, has the principal been identified?	□	□	□
Is the principal under nominee considered as a Politically Exposed Person (PEP)?	□	□	□
Does the name of the principal under nominee or any of its derivatives appear on Sanction Lists issued by the United Nations, the European Union or other organizations?	□	□	□
Has the potential customer or the trust settlor/principal or the principal under nominee ever had previous direct or indirect relationships with the bank?			

1.4 Customer Status – Foundations	Yes	No	N.A
Have the persons who formed the foundation been identified?	□	□	□
Does the name of any of the founders (natural or legal persons) or any of its derivatives appear on Sanction Lists issued by the United Nations, the European Union or other organizations?	□	□	□
Are any of the founders (natural persons) considered as Politically Exposed Persons (PEPs)?	□	□	□
Have the objectives of the foundation been identified?	□	□	□
Do the activities of the foundation *per se* raise any money laundering or financing of terrorism concerns?	□	□	□
Has the potential customer or any of the founders (natural or legal persons) ever had previous direct or indirect relationships with the bank?	□	□	□

1.5 Non Government or Non Profit Organisations (NGO / NPO)	Yes	No	N.A
Is the NGO / NPO registered under the Law on Freedom of Association in NGOs?	□	□	□
Have the persons managing the NGO / NPO been identified?	□	□	□
Does the name of any of the persons managing the NGO / NPO or any of its derivatives appear on Sanction Lists issued by the United Nations, the European Union or other organizations?	□	□	□
Are any of the persons managing the NGO / NPO considered as Politically Exposed Persons (PEPs)?	□	□	□
Have the objectives of the NGO / NPO been indentified?	□	□	□
Do the activities of the NGO / NPO *per se* raise any money laundering or financing of terrorism concerns?	□	□	□
Has the potential customer or any of the managing persons of the NGO / NPO ever had previous direct or indirect relationships with the bank?	□	□	□

1.6 Public Authorities or Public Bodies	Yes	No	N.A
If the potential customer is a domestic public authority or a public body:			
- Has it been entrusted with a public function pursuant to a specific legislatiion?	□	□	□
- Is its identification publicly available, transparent and verified?	□	□	□
- Are its activities transparent?	□	□	□
- Is it accountable to a domestic relevant authority, or are appropriate and effective procedures in place to control its activity?	□	□	□

2.0 Geographic location	Yes	No	N.A
Is the potential customer: (i) Domestic? (ii) Foreign?	☐ ☐	☐ ☐	☐ ☐
2.1 Geographic location - Domestic	**Yes**	**No**	**N.A**
Are/is the residence and/or the place of business of the potential customer in the bank's area?	☐	☐	☐
If not, have satisfactory reasons been obtained for the potential customer requesting the bank's services in its area?	☐	☐	☐
2.2 Geographic location - Foreign	**Yes**	**No**	**N.A**
Are/is the residence and/or the place of business of the potential customer located in a: - jurisdiction with low risk of ML/FT? - jurisdiction with moderate risk ML/FT? - jurisdiction with higher risk ML/FT? - jurisdiction with no known risk of ML/TF?	☐ ☐ ☐ ☐	☐ ☐ ☐ ☐	☐ ☐ ☐ ☐
Does the bank already have business relationships in this jurisdiction?	☐	☐	☐
Is there commercial rationale for the business relationship between the bank and the potential customer considering the geographic location?	☐	☐	☐
2.3 Geographic location - General	**Yes**	**No**	**N.A**
Will the potential customer be undertaking activities with persons and entities located in: - jurisdictions with low risk of ML/FT; - jurisdictions with moderate risk of ML/FT; - jurisdictions with higher risk ML/FT; - jurisdictions with no known risk of ML/FT.	☐ ☐ ☐ ☐	☐ ☐ ☐ ☐	☐ ☐ ☐ ☐
Are such transactions: - Outwards? - Inwards?	☐ ☐	☐ ☐	☐ ☐
3.0 Products and Services including volumes	**Yes**	**No**	**N.A**
Will the potential customer be making use of the normal banking facilities and services offered by the bank, including: - Cheque accounts? - Term deposits? - Loans / overdrafts? - Treasury services?	☐ ☐ ☐ ☐	☐ ☐ ☐ ☐	☐ ☐ ☐ ☐

3.0 Products and Services including volumes … *(continued)*	Yes	No	N.A
Will the potential customer only make use of some of the bank's products and services such as the use of a savings account with periodic receipts and withdrawals of funds?	☐	☐	☐
Does the potential customer intend to make use of the bank's and/or international private banking services?	☐	☐	☐
Does the potential customer intend to make use of products and services that are intended to render him/her anonymous?	☐	☐	☐
Will the potential customer be making use of products that facilitate non face-to-face access?	☐	☐	☐
The potential customer intends to make use of internet banking facilities?	☐	☐	☐
The potential customer will be involved in unusually large and complex transactions?	☐	☐	☐
Will the potential customer be making considerable periodic deposits in cash?	☐	☐	☐
3.1 Products and Services *(continued)* – Correspondent Banking	**Yes**	**No**	**N.A**
Is the potential applicant a credit institution that holds a:	☐	☐	☐
- Domestic authorisation;	☐	☐	☐
- Foreign authorisation.	☐	☐	☐
Is the credit institution seeking to establish a correspondent banking relationship?	☐	☐	☐
If yes:			
- Is the credit institution subject to adequate anti-money laundering and funding of terrorism obligations and supervision?	☐	☐	☐
- Are the internal controls for the prevention of money laundering and the funding of terrorism adequate and effective?	☐	☐	☐
- Have the respective AML/CFT responsibilities been established?	☐	☐	☐
- Is the institution making use of 'payable through accounts'?			
4.0 Contact and Relationship	**Yes**	**No**	**N.A**
Is the relationship being established on a non face-to-face basis?	☐	☐	☐
Is the relationship to be of a continuous non face-to-face nature?	☐	☐	☐
Is the potential customer being introduced to the bank by:	☐	☐	☐
- Head Office/Parent Institution?	☐	☐	☐
- Another member of the same group that is also a credit institution?	☐	☐	☐
- A third party (*please indicate*: _____)	☐	☐	☐
Is the relationship expected to be of a long duration?			

Customer Risk Scoring

Having assessed the customer against the risk indicators according to Appendix 2, the next step in the process is to calculate the risk scoring for each risk indicator in order to establish the overall risk score in comparison with the risk appetite and the Customer Acceptance Policy of the institution. The customer risk scoring is arrived at through the Risk Scoring Matrix (Table 1) by applying a risk score to the individual risk indicators in accordance with the Risk Scoring under Table 2. Since the Law on AML/CFT does not provide for reduced customer due diligence, a 'Low' risk score and a 'Medium' risk score should attract the same level of standard customer due diligence in accordance with Article 16 of Regulation 16.

Table 1 **Risk Scoring Matrix**

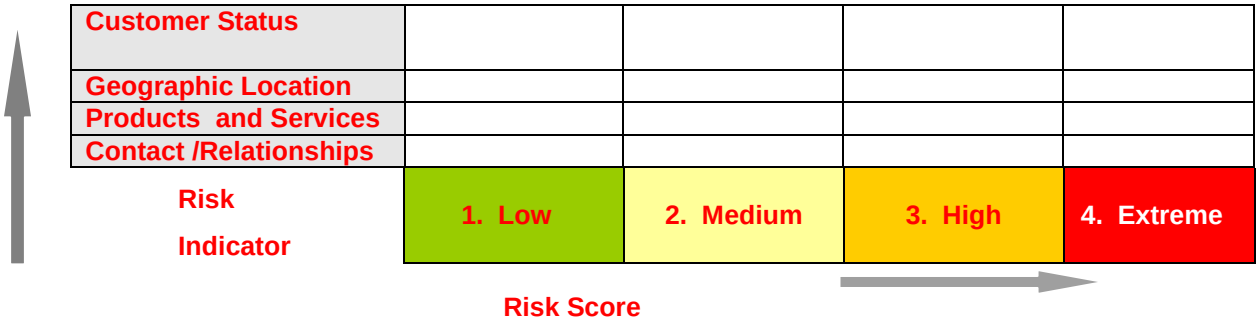


Table 2 **Risk Scoring**

Rating	Impact – of an ML/TF risk
4. Extreme	Risk almost sure to happen and/or to have very serious consequences. *Response*: Do not allow transaction or relationship to occur.
3 High	Risk likely to happen and/or to have moderate to serious consequences. *Response*: Do not allow transaction or relationship until risk is reduced through mitigating measures within accepted tolerances – eg. by applying enhanced due diligence.
2 Medium	Possible this could happen and/or have moderate consequences. *Response*: May go ahead but preferably reduce risk.
1 Low	Unlikely to happen and/or have minor or negligible consequences. *Response*: May go ahead.

An overall risk score is arrived at depending on the highest risk score allocated. For example, a customer with two Medium scores (2), one High score (3) and one Extreme score (4) will *prima facie* fall within the *Extreme (4)* and is therefore unacceptable unless the extreme risk can be reduced to acceptable levels in accordance with the risk appetite of the bank or financial institution. A person identified as a Politically Exposed Person will, for example, be immediately allocated a risk score of *High (3)* in accordance with the mandatory provisions of the Law on AML/CFT. That risk score, however, can go up to an overall risk score of *Extreme (4)* if, for example, the Geographic Location is in high risk jurisdiction (eg. one that is subject to international sanctions).

Table 3 is meant to provide an indicative allocation of risk scoring for the individual risk indicators depending on the situations identified under the Risk Assessment Matrix. Table 3 is not exhaustive and not conclusive. Experience and common sense should be applied throughout the whole exercise depending on the particular circumstances in each case.

Table 3 **Indicative Risk Scoring**

Risk Category	Indicative situations
4. Extreme	▪ Natural and legal persons sanctioned on designated list. ▪ Structure or nature of the entity or relationship makes it difficult to identify the true owner or controlling interest – eg. through nominee or bearer shareholding. ▪ Services intended to render the customer anonymous. ▪ High risk jurisdiction. ▪ Continued non face-to-face relationship.
3 High	▪ Politically exposed persons including ultimate beneficiaries of legal entities. ▪ Establishment of non face-to-face relationships. ▪ Correspondent banking. ▪ Fiduciary arrangement. ▪ Non Government or Non Profit Organisations. ▪ Jurisdictions with high but manageable risk. ▪ Geographic distance and commercial rationale. ▪ Undue levels of secrecy. ▪ Internet based banking. ▪ High levels of cash transactions. ▪ A very high net worth individual. ▪ A private banking customer. ▪ Engaged in a business that is particularly susceptible to money laundering or terrorist financing. ▪ A legal person or arrangement that is a personal asset holding vehicle. ▪ A legal person or arrangement whose ownership structure is complex for no apparent reason
2 Medium	▪ Employees of the bank. ▪ General public and entities. ▪ Jurisdictions with moderate or low risk. ▪ Use of normal products and services of the Bank. ▪ Persons and entities introduced by Head Office or Group members. ▪ Employment based persons with regular source of income. ▪ Moderate levels of cash transactions.
1 Low	▪ Other individuals (eg. pensioners). ▪ Public Authorities and Public Bodies ▪ Other Credit and Financial Institutions. ▪ Entities listed on regulated markets. ▪ Jurisdictions with low or no risk.

Customer acceptance

Having established an overall risk score for the ML/FT level of risk presented by the new customer, the next step is to measure and match that score with the institution's risk appetite applying the Risk Matrix under Table 4 in Appendix 3. If the potential customer falls within the acceptable levels of the matrix, this should be followed by ensuring that the appropriate level of CDD is applied. Since the Law on AML/CFT does not provide for reduced or simplified due diligence, standard customer due diligence shall be applied for *low* and *medium* risk situations and ECDD for the high risk ones. In this regard banks and financial institutions are to

follow the procedures established under this Regulation in accordance with the Law on AML/CFT. Table 4 below provides guiding principles accordingly.

Table 4 **Customer acceptance *(indicative)***

Risk Category	Account Opening	Account Monitoring
3. High	• Apply Enhanced Customer Due Diligence • Approval by Senior Management • Document customisation of customer relationship • Changes in customer relationship require compliance approval	Periodic reports to Senior Management
2. Medium	• Apply normal Customer Due Diligence • Document customisation of customer relationship	Yearly reports to Senior Management as a minimum and as necessary
1. Low	• Apply Simplified Customer Due Diligence • As determined by General Terms for Account Opening or Business Relationships	None

ESTABLISHING THE RISK APPETITE

Risk appetite is usually expressed as the acceptable/unacceptable level of risk. For the purpose of establishing the 'risk appetite' in accordance with this guidance, banks and financial institutions may wish to be guided by the Risk Scoring Matrix in Table 1 below:

Table 1 **Risk Scoring**

Rating	Impact – of an ML/TF risk
4. Extreme	Risk almost sure to happen and/or to have very serious consequences. *Response*: Do not allow transaction or relationship to occur.
3 High	Risk likely to happen and/or to have moderate to serious consequences. *Response*: Do not allow transaction or relationship until risk is reduced through mitigating measures within accepted tolerances – eg. by applying enhanced due diligence.
2 Medium	Possible this could happen and/or have moderate consequences. *Response*: May go ahead but preferably reduce risk.
1 Low	Unlikely to happen and/or have minor or negligible consequences. *Response*: May go ahead.

In order to arrive at a rating of identified risk situations in accordance with Table 1 above, the risks identified need to be assessed or measured in terms of the chance (*likelihood*) they will occur and the severity or amount of loss or damage (*impact*) which may result if they do occur. Thus each risk element can be rated by:

- the chance of the risk happening – 'likelihood'
- the amount of loss or damage if the risk happened – 'impact' (consequence).

To help assess the risks identified in the process, the risk rating scales for likelihood (Table 2) and impact (Table 3) should first be applied.

A *likelihood* scale refers to the potential of a ML/TF risk occurring in the institution's business, operations or business relationships for the particular risk being assessed. Three levels of risk occurring are identified as shown in Table2.

Table 2 **Likelihood scale**

Frequency	Likelihood of an ML/TF risk
Very likely	Almost certain: it will probably occur several times in a year.
Likely	High probability it will happen – could be once in a year.
Unlikely	Not probable, but not impossible.

An impact scale refers to the seriousness of the damage (or otherwise) which could occur should the event (risk) happen. In assessing the possible impact or consequences, the assessment can be made from several viewpoints depending on individual business circumstances, such as:

- how it may affect the business of the bank or financial institution if through not dealing with risks properly the institution suffers a financial loss from either a crime or through fines from the regulator;

- the risk that a particular transaction may result in the loss of life or property through a terrorist act;
- the risk that a particular transaction may result in funds being used or having been used for criminal activities such as for any of the following: corruption, bribery, smuggling of goods/workers/immigrants, banking offences, narcotics offences, psychotropic substance offences, slavery and trade in women and children, illegal arms trading, kidnapping, terrorism, theft, embezzlement, or fraud;
- the risk that a particular transaction may cause suffering due to, for example, the financing of illegal drugs;
- reputational risk – how it may affect the business of the bank or financial institution if the institution is eventually found to have (even though unknowingly) aided an illegal act, which may mean sanctions and/or being shunned by the bank's or financial institution's own community of customers;
- how it may affect the wider community of the bank or the financial institution, including that of the parent institution or head office if applicable, in general if the bank or financial institution is found to have aided (even though unknowingly) an illegal act. The community of customers may also suffer through the bank's or financial institution's bad reputation.

Table 3 **Impact scale**

Consequence	Impact – of an ML/TF risk
Major	Serious consequences – major damage or effect, serious terrorist act or large-scale money laundering.
Moderate	Moderate level of money laundering or terrorism financing impact.
Minor	Minor or negligible consequences or effects.

From these scales one can then get a level of risk or risk score (Table 1) using the risk matrix (Table 4) and applying the formula where (likelihood x impact = risk level/score).

Table 4 **Risk Matrix showing Risk Appetite**

Very Likely	**Acceptable Risk** **Medium** **2**	**Acceptable Risk with mitigating factors** **High** **3**	**Unacceptable Risk** **Extreme** **4**
Likely	**Acceptable Risk** **Low** 1	**Acceptable Risk** **Medium** **2**	**Acceptable Risk with mitigating factors** **High** **3**
Unlikely	**Acceptable Risk** **Low** 1	**Acceptable Risk** **Low** 1	**Acceptable Risk** **Medium** **2**
Likelihood **What is the chance it will happen?**	**Minor**	**Moderate**	**Major**

Impact - How serious is the risk?

Category 3 Risk means that the bank or financial institution accepts high risk situations provided the risk is mitigated through other factors. The mitigating factors for risk category '3' situations shall comprise the additional enhanced measures as specified by Article 21 of the Law on AML/CFT for specific high risk situations and customers, and the additional mitigating measures identified by Regulation 16 of the CBK. Category 4 Risk is unacceptable and the bank or financial institution will not enter into any transactions or business relationships in this category.

It is important to remember that identifying, for example, a customer, transaction or country as high risk does not necessarily mean that money laundering or terrorism financing is involved. The opposite is also true: just because a customer or transaction is seen as low risk does not mean the customer or transaction is not or may not be involved in money laundering or terrorism financing. Experience and common sense should be applied throughout the whole risk management process with ongoing monitoring of relationships and scrutiny of transactions.

It should be reiterated that since the Law on AML/CFT does not provide for reduced customer due diligence, a 'Low' risk score and a 'Medium' risk score should attract the same level of standard customer due diligence in accordance with Article 16 of Regulation 16.

CUSTOMER ACCEPTANCE POLICY[9]

1.0 Introduction

Inadequate understanding of a customer's background and purpose for utilising a bank account may expose banks, and possibly other members of the financial group to which that bank may belong, to a number of risks. According to the recommendations of the Basle Committee on Banking Supervision for the customer due diligence procedures,[10] in order to lessen the risks related to customer take-on, banks should develop clear customer acceptance policies and procedures, including a description of the types of customers that are likely to pose a higher than average risk to a bank so that more extensive due diligence measures may be applied to higher risk customers. Factors such as a customer's background, country of origin, public or high-profile position, linked accounts, business activities or other risk indicators should be considered.

The Customer Acceptance Policy is complementary to the bank's customer risk sensitivity assessment and is therefore an integral part of the risk based approach and the management of risk required under the Law on the Prevention of Money Laundering and Terrorist Financing and Regulation 16 of the CBK.

2.0 Objective of the Policy

The main objective of the Customer Acceptance Policy document is to establish, within the bank's risk appetite, a framework within which customer acceptance, and consequently maintenance and monitoring, are managed through adequate procedures as established by the bank to reduce reputation, operation, concentration and legal risks to the bank.

3.0 Scope

In scope this Policy applies to all those business areas of the bank that establish customer relationships and shall be applied in conformity with the bank's internal procedures for the prevention of money laundering and terrorist financing as applied through the bank's internal risk management process.

4.0 Applicability

Without prejudice to the bank's risk assessment policies and procedures for doing business, the adoption of this Customer Acceptance Policy and its implementation should not become too restrictive and must not result in denial of banking services to the general public.

Customers who satisfy the criteria laid down in this Policy may open an account with the bank. A person or entity not eligible as per this Policy shall not be allowed to open an account.

Notwithstanding, the bank shall decline or terminate business relationships or transactions where there appears to be a risk that its services and infrastructure will be abused for the purposes of money laundering and/or terrorist financing.

5.0 Customer acceptance / refusal

The customer acceptance or refusal procedures shall follow the application of the risk sensitivity analysis of the customer. In principle the bank will accept customers that fall within its risk appetite as established by the Board of Directors in accordance with Regulation 16 of the CBK.

The bank will not enter into business relationships and/or activities with customers who do not satisfactorily fulfil the customer due diligence procedures of the bank or where there is suspicion of money laundering or terrorism financing.

---

[9] Although the Customer Acceptance Policy is drafted with reference to account opening with banks it is applicable to all types of business relationships for all banks and financial institutions if adapted accordingly.

[10] Source: Basle Committee on Banking Supervision, Customer Due Diligence for Banks, October 2001.

The following paragraphs shall provide guidance to management and staff on the type of customer, both natural and legal, which would fall within the profile that the bank is prepared to accept to do business with, safeguarding its credibility, reputation, and legal compliance. Experience and common sense should be applied throughout the whole risk management process.

5.1 General principles

Customers who request the opening of an account normally live in the area close to the bank's offices. However customers who do not live in the area and wish to open an account also qualify for account opening as long as there is a valid reason such as introduction by staff member, introduction by a reliable client, a request in response to a particular product or service promoted through the bank's website/media or as a result of business location.

Customers, be they natural or legal persons, should be profitable to the bank. This should be determined on the basis of the purposes and intended nature of the relationship and account (as part of the customer due diligence process). It will also be determined on the basis of the activity that the customer will be undertaking such as whether the customer will be utilising the bank's more profitable services such as term deposits, exchange rates and outward transfer service.

These general principles shall not override the implementation of the customer risk assessment as established by the bank in accordance with the provisions of Regulation 16 of the CBK.

5.2 Natural persons

The bank shall not accept customers who are natural persons:

(i) who wish to operate accounts that are held anonymously or in fictitious names;

(ii) who intend to undertake activities or transact in products that involve anonymity;

(iii) whose risk profile falls outside the bank's risk appetite;

(iv) whose risk profile falls within the higher end of the bank's risk appetite, i.e. where the risk is higher than average, and appropriate mitigating measures cannot be applied;

(v) on whom the bank cannot establish a proper business and risk profile;

(vi) on a non-face-to-face basis except in exceptional circumstances with the approval of senior management and in liaison with the Head of the AML/CFT Unit and in accordance with Regulation 16 of the CBK;

(vii) unless, in circumstances where a customer is permitted to act on behalf of another person, for example where an account is to be operated by a mandate holder or where an account may be opened by an intermediary in a fiduciary capacity, such circumstances are clear and in conformity with the provisions of the Law on the Prevention of Money Laundering and Terrorism Financing and acceptable practice of banking;

(viii) who intend to open and operate clients' accounts unless the person opening and operating the account is himself a 'reporting subject' and provides a written declaration that the clients' identification and verification thereof has been undertaken by him/her and such information would be made available to the bank if required;

(ix) whose name(s) appear on sanction lists issued by the United Nations, the European Union and other similar organisations.

5.3 Legal persons and legal arrangements

The bank shall not accept customers who are legal persons (corporates and other forms of legal entities) or legal arrangements (trusts, nominees or other fiduciary arrangements):

(i) that allow their capital to be in the form of bearer shares unless ownership and transferability of such shares is registered and controlled or unless such shares constitute not more than 5% of the share capital and do not have voting rights;

(ii) where the ultimate beneficiary owner (natural person) cannot be identified and if identified falls within any criteria defined under Section 5.2 above for natural persons;

(iii) where the structure of the customer or the group to which it may belong is complex such that the bank cannot understand its management and operations;

(iv) where, in the case of legal arrangements, the bank cannot obtain all relevant information;

(v) who intend to undertake activities or transact in products that involve anonymity;

(vi) on a non-face-to-face basis except in exceptional circumstances with the approval of senior management and in liaison with the Head of the AML/CFT Unit and in accordance with Regulation 16 of the CBK;

(vii) whose risk profile falls outside the bank's risk appetite;

(viii) whose risk profile falls within the higher end of the bank's risk appetite, i.e. where the risk is higher than average, and appropriate mitigating measures cannot be applied;

(ix) on whom the bank cannot establish a proper business and risk profile;

(x) whose name(s) appear on sanction lists issued by the United Nations, the European Union and other similar organisations.

6.0 Conclusion

The indicators provided by this Policy for the acceptance of customers are not exhaustive and conclusive. Experience and common sense should be applied throughout. It is of utmost importance that the application of this Policy is considered as an integral part of the entire customer risk sensitivity assessment process and should never be applied in isolation. Moreover the application of this Policy is not static and should be reapplied to existing customers where circumstances so warrant within the bank's risk management procedures.

APPENDIX 5

CUSTOMER BUSINESS AND RISK PROFILE TEMPLATE

The following template should be used as a minimum basis for developing and structuring the customer business and risk profile.

CUSTOMER BUSINESS AND RISK PROFILE	
Customer Details	
Type	☐ Natural Person ☐ Legal Person ☐ Trust ☐ Nominee ☐ Other legal arrangement ☐ Foundation ☐ NGO/NPO ☐ Public Authority/Body ☐ Credit Institution ☐ Non-bank financial institution ☐ MicroFinance Institution
Name	……
Address	…… ……
Contact person and telephone	…… ……..
Activity	
Type	……
Cash based	☐ Yes ☐ No
Estimated Annual Turnover	€uro ……
Status	
Self Employed	☐ Yes ☐ No
Employed	☐ Yes ☐ No Employer……..
Retired	☐ Yes ☐ No
Other	(*Please indicate*) ……

Bank / Customer Relationship	
Purpose of relationship	……
Accounts type	☐ Current ☐ Savings ☐ Term
Credit Facilities	☐ Yes ☐ No
Treasury Services	☐ Yes ☐ No

Account Transactions	
Source of income	……
Annual Average	€uro ……
Monthly Highest	€uro ……
Monthly Lowest	€uro ……
Cash transactions >€10,000	☐ Yes ☐ No
Frequency of cash transactions >€10,000	Weekly Monthly other (*please specify* ……)

Risk Factor	
Risk score	☐ 1. Low ☐ 2. Medium ☐ 3. High
PEP	☐ Yes ☐ No
Beneficial owner	☐ Yes ☐ No
Non face-to-face	☐ Yes ☐ No

Monitoring Minimum Period	
Relationship	☐ Daily ☐ Weekly ☐ Monthly ☐ Quarterly ☐ Six monthly ☐ Annual
Overall Account	☐ Daily ☐ Weekly ☐ Monthly ☐ Quarterly ☐ Six monthly ☐ Annual
Transactions	☐ Daily ☐ Weekly ☐ Monthly ☐ Quarterly ☐ Six monthly ☐ Annual

Customer Profile Monitoring History

Established	Date: __ / __/ ____
Review 1	Date: __ / __/ ____ Reason ……
Review 2	Date: __ / __ / ____ Reason ……
Review 3	Date: __ / __ / ____ Reason ……

APPENDIX 6

IDENTIFYING A POLITICALLY EXPOSED PERSON

In terms of the Law No 03/L 196 on the Prevention of Money Laundering and Terrorist Financing (Official Gazette, No XX of 30 September 2010) as amended by Law No 04/L 178 (Official Gazette XX of 11 February 2013), banks and financial institutions are required to establish whether a customer or a beneficial owner is a "politically exposed person" when entering into a business relationship with or executing transactions for a customer, in which case banks and financial institutions are required to apply enhanced due diligence measures for that customer or beneficial owner.

The following definition in the Law on the Prevention of Money Laundering and Terrorist Financing shall assist the completion of this Questionnaire.

Law No 03/L 196 on the Prevention of Money Laundering and Terrorist Financing (Official Gazette, No XX of 30 September 2010) as amended by Law No 04/L 178 (Official Gazette XX of 11 February 2013), defines a ***politically exposed person*** as "natural persons who are or have been entrusted with prominent public functions and immediate family members, or persons known to be close associates, of such persons."

Enhanced due diligence measures required by the Law No 03/L 196 on the Prevention of Money Laundering and Terrorist Financing to be applied to persons identified as *politically exposed persons* including their immediate family members and close associates further to the standard measures include:

- obtaining the approval of a senior officer of the reporting subject;
- taking adequate measures to establish the origin of the assets used in the relationship or transaction; and
- ensuring continuous and strengthened monitoring of the account and the relationship.

In order to assist the bank or financial institution in identifying whether an applicant for business qualifies as a *politically exposed person* in terms of the Law on the Prevention of Money Laundering and Terrorist Financing, potential customers of the bank or financial institutions are kindly required to complete the questions below and sign the document in confirmation.

.

1. Are you or have you since the last twelve months been:

		Y	N
a.	A Head of State		
b.	A Head of Government		
c.	A Minister or a Deputy Minister or an equivalent position		
d.	A Member of Parliament		
e.	A Member of the Courts or of other high-level judicial bodies whose decisions are not subject to further appeal, except in exceptional circumstances		
f.	A Member of courts of auditors, Audit Committees or of the boards of central banks		
g.	An Ambassador, a *charge d'affaires* and any other high ranking officer in the armed forces		
h.	A Member of the administration, management or boards of State-owned corporations		

2. Are you or have you since the last twelve months been:

		Y	N
a.	An immediate family member of any person as defined in point (1) above? *Please indicate:* • Spouse or partner • Child, or spouse or partner thereof • Parent • Brother / sister • Other family relationship *Please specify* _____		
b.	A close associate of any person as defined in point (1) above? *Please specify type of association in terms of the above definition:* _____		

If you have answered YES to any of the above questions, you may be considered as a "politically exposed person" according to the Law on the Prevention of Money Laundering and Terrorist Financing and the bank/financial institution may therefore require additional information in order to fulfil its obligations at law.

Name of applicant: _____ Date: _____ Signature: _____

ANNEX

INDICATORS OF POTENTIAL MONEY LAUNDERING AND FINANCING OF TERRORISM

The indicators of potential money laundering and terrorist financing activity set out below are primarily intended to raise awareness among the staff of banks and financial institutions.

These indicators are not intended to be exhaustive and provide examples only of the most basic ways by which money may be laundered or terrorism may be financed. However, identification of any of the types of transactions listed here should prompt further analysis.

GENERAL INDICATORS

Transactions where the structure indicates some illegal purpose, their commercial purpose is unclear or appears absurd from a commercial point of view.

Transactions where the customer's reason for selecting this particular financial institution or branch to carry out its transactions is unclear.

Transactions which are inconsistent with the financial intermediary's knowledge and experience of the customer and the stated purpose of the business relationship.

Customers who supply false or misleading information to the bank or financial institution, or refuse for no credible reason to provide information and documents which are required and routinely supplied in relation to the relevant business activity.

Transactions with a country or jurisdiction deemed to present a high risk of money laundering or financing of terrorism or to be uncooperative by the Financial Action Task Force (FATF) or by other similar bodies such as the Council of Europe MONEYVAL Committee, or business relationships with counterparts domiciled in these countries.

The execution of multiple cash transactions just below the threshold for which customer identification or transaction reporting is required.

The structure of the customer's business relationship with the bank or financial institution lacks a logical rationale (large number of accounts at the same institution, frequent transfers between accounts, excessive liquidity, excessive use of cash where the type of business usually is non-cash etc.).

Transfers of large amounts, or frequent transfers, to or from countries producing illegal drugs or known for terrorist activities.

Customer tries to evade attempts by the financial intermediary to establish personal contact.

Customer requests business relationships to be closed and to open new relationship in his own name, or in the name of a family member, without leaving a paper trail.

Customer has been prosecuted for a criminal offence, including corruption or misuse of public funds.

Transactions that unexpectedly result in zero customer's balance.

Application for business from a potential client in a distant place where comparable service could be provided closer to home.

Application for business outside the bank's or the financial institution's normal pattern of business.

Any want of information or delay in the provision of information to enable verification to be completed.

Any proposed transaction involving an undisclosed party.

Unusually large introductory commissions.

SPECIFIC INDICATORS FOR BANKS AND FINANCIAL INSTITUTIONS

Transactions involving a withdrawal of assets shortly after funds have been deposited with the bank (pass-through accounts).

Transactions resulting in significant, but unexplained, activity on an account which was previously mostly dormant.

The exchange of a large amount of small-denomination banknotes (EUR or foreign) for large

denomination banknotes.

The exchange of large amounts of money without crediting a customer account or outside the normal course of business for the customer.

Cashing cheques for large sums, including travellers' cheques, outside the normal course of business for the customer.

The purchase or sale of large amounts of precious metals outside the normal course of business for the customer.

The purchase of banker's drafts for large amounts outside the normal course of business for the customer.

Instructions to make a transfer abroad by occasional customers, without apparent legitimate reason. The acquisition of bearer instruments by means of physical delivery.

Frequent deposits or withdrawals of large amounts of cash which cannot be explained by reason of the customer's business.

Use of loan facilities that, while normal in international trade, is inconsistent with the known activity of the customer.

Accounts through which a large number of transactions are routed, though such accounts are not normally used, or only used to a limited extent.

Provision of security (pledges, guarantees) by third parties unknown to the bank or financial institution, who have no obvious affiliation to the customer and who have no credible and apparent reasons to provide such guaranties.

Accepting funds transferred from other banks or financial institutions when the name or account number of the beneficiary or remitter has not been supplied.

Transfers of large amounts of money with instructions that the sum be paid to the beneficiary in cash.

A large number of different individuals make cash deposits into a single account.

Unexpected repayment of a non-performing loan without any credible explanation.

Withdrawal of funds shortly after these have been credited to the account (pass-through account).

Fiduciary loans (back-to-back loans) for which there is no obvious legal purpose.

Customer requests receipts for cash withdrawals or deliveries of securities which in effect never took place, followed by the immediate deposit of such assets at the same bank.

Customer requests payment orders to be executed with incorrect remitter's details.

Customer requests that certain payment be routed through nostro accounts held by the financial intermediary or sundry accounts instead of its own account.

Request by the customer to accept or record in the accounts loan collateral which is inconsistent with commercial reality, or grant fiduciary loans for which notional collateral is recorded in the accounts.

Customers has several accounts in different branches of the same bank or financial institution which cannot be explained by reason of the customer's business.

A customer makes a lot of cash deposits for a company that normally does not deal with cash.

Frequent unusual transactions between a customer's personal and business accounts

Introduction of business by an agent/intermediary in an unregulated or loosely regulated jurisdiction or where criminal activity is prevalent.

SPECIFIC INDICATORS FOR SECURITIES DEALERS

Business relationships that have been inactive suddenly experience large investments that are inconsistent with the normal investment practice of the customer or their financial ability.

Customer wishes to purchase securities, where the transaction is inconsistent with the normal investment practice of the customer or their financial ability.

Customer uses securities or brokerage firm as a place to hold funds that are not being used in

trading of securities for an extended period of time and such activity is inconsistent with the normal investment practice of the customer or their financial ability.

Customer makes large or unusual settlements of securities in cash.

Transfers of funds or securities between accounts not known to be related to the customer.

Comment 20 (Advisory Letter 2007/1): The Annex has been entirely transferred from the Annex to the Advisory Letter. Only minor changes have been effected as it is presumed that these indicators have been developed on experiences acquired within the financial sector activities for Kosovo*.

* see footnote 1 page 1

12.3 Annex 3: Advisory Letter 2007-1

Advisory Letter 2007-1	May 2007
Prevention of Money Laundering and Terrorist Financing	

General Comment (Consultant): As already explained in the General Comment to Regulation 16 it is highly recommended that, for reasons explained therein, the Advisory Letter be integrated into the Regulation thus having one comprehensive, complete and consistent document for banks and financial institutions to follow in complying with the Law on AML/CFT. Notwithstanding, in acknowledging that this decision is at the discretion of the Kosovo* authorities – CBK - while Regulation 16 is completed with the integration of the relevant parts of the Advisory Letter (see transpositions in **green** with comments), this version of the Advisory Letter has been revised as a stand-alone document should it be decided not to integrate the two documents – not recommended. Proposed amendments (in **red**) are made for those parts of the Letter that have not been integrated into the Regulation. For those parts that have been integrated (in **green**) in the revised version in the Regulation (with amendments in **red**) have been retransferred to the Advisory Letter – although this is not recommended.

1. PURPOSE

The purpose of this ~~advisory letter~~ Advisory Letter is to provide guidelines for additional assistance to banks and financial institutions when implementing certain aspects of the anti-money laundering and combating the financing of terrorism (AML/CFT) requirements of Law No 03/L-196 on Prevention of Money Laundering and Terrorist Financing (Official Gazette, No XX of 30 September 2010) as amended by Law No 04/L 178 (Official Gazette XX of 11 February 2013) (hereafter: Law on AML/CFT) and Regulation 16 of the CBK authorised in terms of the Memorandum of Understanding between the CBK and the FIU in terms of Article 36A of the Law on AML/CFT. ~~Regulation 2004/2 on the Deterrence of Money Laundering and Related Criminal Offences, as amended, and Amended Rule X on the prevention of money laundering and terrorist financing, authorized under sections 20.1(a), 22, 24, 28.1(f), 32, 33 and 46 of Regulation no. 1999/21 on Bank Licensing, Supervision and Regulation.~~

Comment 1 (Consultant): The proposed amendments specify the basis for the issue of the Advisory Letter. The paragraph as amended is applicable only should the Kosovo* authorities opt to retain the Advisory Letter as a separate document from Regulation 16.

2. OVERVIEW OF AML/CFT GUIDELINES

The ~~Central Banking Authority of Kosovo (CBAK)~~ Central Bank of Kosovo* (CBK) recognizes that the territory of Kosovo* could become a target for money laundering. Therefore, there is a need to protect the financial and operational integrity of the local and international markets. Consequently, much emphasis has been made on regulatory requirements for the prevention of money laundering and terrorist financing activities.

Comment 2 (Consultant): Transferred as new paragraph (1) to Article 1 of Regulation 16 with minor amendments.

* see footnote 1 page 1

GUIDELINE NOTES

~~Section 22 of Regulation 1999/21 and Amended Rule X~~ Article 22 of the Law on AML/CFT as reflected in Article 18 of Regulation 16 provides that banks and financial institutions shall inform the Financial Intelligence Unit (FIU) ~~Center (FIC)~~ of any ~~evidence~~ suspicion of money laundering or terrorism financing, and report large currency transactions.

Comment 3 (Consultant): Proposed amendments reflect the current legal basis for reporting. Reporting obligation has been maintained to cover also financing of terrorism for the sake of consistency. The Cycle 1 DAR concludes that the obligation to report transaction suspected of being linked to the financing of terrorism is absent from the Law on AML/CFT and makes recommendations to amend the Law on AML/CFT accordingly. It is strongly recommended to carry out the necessary amendments to the Law prior to issuing this document.

These guidelines are issued by the ~~CBAK~~ CBK pursuant to the provisions of the Memorandum of Understanding between the CBK and the FIU in terms of Article 36A of the Law on AML/CFT, and are complementary to Regulation 16 of the CBK. ~~and~~ The guidelines are applicable to all banks and financial institutions licensed by, or registered with, the CBK ~~CBAK~~. In terms of Law No. 04/L-093 on Banks,, Microfinance Institutions and Non-Bank Financial Institutions (Official Gazette, No.11 / 11 May 2012).

Comment 4 (Consultant): The proposed amendments set the legal basis for the issue of the Advisory Letter through the MoU on the basis of Article 36A of the Law on AML/CFT thus removing references to the UNMIK Regulation which is no longer in force.

The scope of these guidelines is to assist banks and financial institutions establish best practices according to international standards pursuant to established rules and regulations in terms of Regulation 16, and to establish standard procedures of communication between these institutions, the ~~CBAK~~, CBK and criminal investigation authorities.

Comment 5 (Consultant): The best practices are established mainly through Regulation 16 while the Advisory Letter assists the industry in implementing the Regulation. Minor changes accordingly.

These guidelines give an overview of the ~~P~~prevention of ~~M~~money ~~L~~laundering and terrorist financing concept of the Law on AML/CFT and Regulation 16 of the CBK. ~~section of the Regulation, and of Amended CBAK Rule X, on Money Laundering.~~

It must be emphasized, however, that these guidelines are complementary to ~~the~~ Regulation 16. Even together with Regulation 16 ~~T~~they should not be construed as a substitute to the Law on AML/CFT. ~~Regulation.~~ The responsibility for observing laws and regulations rests entirely with the individual institutions and their employees.

Comment 6 (Consultant): Both paragraphs (4) and (5) are transferred to paragraph (3) of Article 1 of the Regulation 16 as proposed to be amended.

DEFINITIONS

Money laundering is the process through which criminals attempt to conceal the true origin and ownership of the proceeds of their criminal activities with the ultimate aim of providing a legitimate and legal cover for their sources of income and finance. It is the vehicle through which organizations of serious crime live respectably with no apparent connections with the criminal world.

Comment 7 (Consultant): Definition of money laundering transferred under paragraph (1) of new Article 2A of Regulation 16 as proposed for amending.

Criminal activities. The very definition of money laundering calls for an underlying criminal activity as defined under the Law on AML/CFT which generates the money to be laundered. Different countries have adopted different methods of addressing the underlying criminal activities. Whereas some countries have generalized and included all criminal activities, others have included a list of serious crimes which tend to generate large amounts of money. Kosovo* has adopted an all crimes approach.

Comment 8 (Consultant): Definition of criminal activities transferred under paragraph (2) of new Article 2A of Regulation 16 as proposed for amending

PREVENTION OF MONEY LAUNDERING

The international recognition to fight money laundering on a global approach has identified the need to collectively prevent criminals, through all means possible, from legitimizing the proceeds of their criminal activities by converting funds from dirty to clean.

Although there are various methods of laundering money which can range from the purchase of property or luxury items to complex international networks of apparently legitimate businesses, the requirement of laundering the proceeds of criminal activity through the financial system is quite often vital to the success of such criminal operations.

Moreover ~~T~~the increased integration of the international financial systems, coupled with the free movement of capital through the removal of barriers, have enhanced the ease with which criminal money can be laundered by shifting it from one jurisdiction to another thus complicating the tracing or audit process.

Comment 9 (Consultant): All three highlighted paragraphs transferred to paragraph (1) of proposed new Article 2A of Regulation 16 as proposed to be amended.

STAGES OF MONEY LAUNDERING

Whatever method is used to launder money, the process is normally accomplished in three stages. These may occur as separate and distinct phases although they may occur simultaneously, at times even overlapping, depending on the criminal organizations involved. The three stages usually comprise numerous transactions by the launderers to try to hide or conceal the tracing process. Such transactions could, however, alert a bank or financial institution to suspect criminal activity through any of these three stages:

- Placement - the physical disposal of cash proceeds derived from illegal activity, e.g., placing it in a bank account;
- Layering - the creation of numerous complex layers of financial transactions being the separation of proceeds from their source aimed to disguise the audit trail thus providing anonymity, e.g., transfers from one account to another, switching currency, changing jurisdiction; and
- Integration - the provision of an apparent legitimate explanation for the illegally derived wealth to be put back into the economic sector, e.g., liquidation of an investment to use proceeds for an apparent legitimate business.

A successful layering process simplifies the integration process schemes to put the laundered proceeds back into the economy in such a way that they re-enter the financial system as normal business funds.

* see footnote 1 page 1

Comment 10 (Consultant): All the above section dealing with the stages of money laundering has been transferred as paragraph (3) to the proposed new Article 2A in the proposed amendments to Regulation 16.

Conversely, terrorist financing involves the receipt or provision of money or other property intended or suspected to be used for the purpose of terrorism. Money or property that is used to fund terrorism may not necessarily be money or property derived from a criminal offence but could very often involve legitimate money or property that is received, collected or provided for the purpose of the financing of terrorism. The primary objective of terrorism according to one definition is "to intimidate a population, or to compel a Government or an international organisation to do or abstain from doing any act".[11] In contrast, financial gain is generally the objective of other types of criminal activities. While the difference in ultimate goals between each of these activities may be true to some extent, terrorist organisations still require financial support in order to achieve their aims. A successful terrorist group, like any criminal organisation, is therefore necessarily one that is able to build and maintain an effective financial infrastructure.[12]

Comment 11 (Consultant): Paragraph (4) above is a new addition to the proposed new Article 2A which would also be appropriate as an addition to the Advisory Letter should the Kosovo* authorities decide to maintain the Advisory Letter separate from the Regulation 16 – not recommended though.

USE OF BANKS AND FINANCIAL INSTITUTIONS

Certain points of vulnerability have been identified in the laundering process which the money launderer finds difficult to avoid and where ~~his~~ the activities are therefore more susceptible to being recognized:

- Entry of cash into the financial system;
- Cross-border flow of funds; and
- Transfers within and from the financial system.

It is for this reason that most countries have, to a large extent, concentrated their efforts on the placement stage. Preventing the financial system from being used for money laundering activities has proved to be more effective in making the process of money laundering more difficult. It does not, however, prevent the money launderer from looking for and using other methods to launder ~~his~~ the illegal proceeds.

Although most regulations on the prevention of money laundering focus on the placement stage, it is emphasized that banks and financial institutions, as providers of a wide range of servicers, are still vulnerable to being used in the layering and integration stages. Extending credit and the rapid switching of funds between accounts in different names and jurisdictions may be used as that part of the process to create complex layers of transactions.

Banks and financial institutions which become involved in money laundering schemes will risk likely prosecution, loss of their good market reputation and the possible loss of their operation license.

Comment 12 (Consultant): This section has been entirely transferred to the proposed Article 2B in Regulation 16 with additions.

[11] Source: Article 2 UN *International Convention for the Suppression of the Financing of Terrorism*, 9 December 1999.

[12] Source: FATF *Guidance for financial institutions in detecting terrorist financing activities*, April 2002

* see footnote 1 page 1

3. GUIDELINES TO BANKS AND FINANCIAL INSTITUTIONS ON THE PREVENTION OF MONEY LAUNDERING AND TERRORIST FINANCING

Customer Due Diligence

The following sections provide explanations and additional guidance with respect to some of the terminology used in Regulation 16. ~~the Amended Rule X.~~

Comment 13 (Consultant): Not necessary to transfer to the integrated Regulation 16

In applying enhanced due diligence, banks and financial institutions should take care not to engage in unlawful discrimination on the basis of race, color, religion, or national origin.

Comment 14 (Consultant): Transferred as paragraph (1) to Article 17 of Regulation 16

CUSTOMERS

~~Customer includes a person or entity which conducts a transaction with or uses the services of a bank or financial institution, as well as any owner or beneficial owner or other person or entity on whose behalf the transaction is conducted or the services are received.~~

Customer includes any person that conducts, or attempts to conduct, a transaction with or use the services of a reporting subject as defined in Article 16, and shall include any owner or beneficiary or other person or entity on whose behalf the transaction is conducted or the services are received;"

Comment 15 (Consultant): Not transferred to Regulation 16 since the definition is already included in the Law on AML/CFT and the Regulation has adopted the definitions under the Law but stating that the terms 'customer' and 'client' are used intermittently but both bear the same definition under the Law on AML/CFT. The definition is being changed to reflect the new definition in the Law AML/CFT as amended.

BUSINESS RELATIONSHIP

A business relationship with a bank or financial institution within the definition of the term in the Law on AML/CFT means to engage the financial services of the bank or financial institution for more than an occasional transaction or transactions. Financial services mean those activities as listed in the Law on Banks and as reflected in the definition of 'financial institution' in the Law on AML/CFT. ~~section 1.12 of Regulation 2004/2, as amended.~~ A business relationship with a bank or financial institution does not include doing business with the bank or financial institution in another capacity, such as providing goods or services to the bank or financial institution or engaging other services from the bank or financial institution.

Comment 16 (Consultant): Although already included in the definitions under the Law on AML/CFT. the defintion has been transferred to a new paragraph (3) to Article 2 in the Law on AML/CFT for the purposes of clarifying the definition

NON FACE-TO-FACE BUSINESS

Non face-to-face business may include:

a. business relationships concluded over the internet or by other means such as through the post;

b. services and transactions over the internet including trading in securities by retail investors over the internet or other interactive computer services;

c. use of ATM machines;

d. telephone banking;

e. transmission of instructions or applications via facsimile or similar means; and

f. making payments and receiving cash withdrawals as part of electronic point of sale transaction using prepaid, re-loadable or account-linked value cards.

Comment 17 (Consultant): Paragraph moved entirely as paragraph (3) to the proposed new Article 14A on the enhanced measures for non-face-to-face relationships.

ADDITIONAL GUIDANCE ON IDENTIFICATION DOCUMENTS

For verification of the identity of customers who are natural persons, the bank or financial institution should use reliable, independent source documents, data, or information, such as a government issued ID card or passport. Identification of natural persons and verification of their identity shall include the full name and address, and date ~~[~~and place~~]~~ of birth.

Comment 18 (Consultant): Transferred to paragraph (2B) under Article 9 of Regulation 16

In the process of obtaining and verifying an entity's identification information (such as corporate name, head office address, identities of directors, proof of incorporation or evidence of legal status, legal form and provisions governing the authority to commit the entity) banks and financial institutions should use documents that prove:

a. the customer's name and legal form, including proof of incorporation or similar evidence of establishment or existence (such as a certificate of incorporation or a trust instrument);

b. the names and addresses of members of the customer's controlling body such as for companies the directors, for trusts the trustees, and for limited partnerships, the general partners, and senior management such as the chief executive officer;

c. the legal provisions that set out the power to bind the customer (such as the memorandum and articles of association or trust instrument);

d. the legal provisions that authorize persons to act on behalf of the customer (such as a resolution of the board of directors or statement of trustees on opening an account and conferring authority on those who may operate the account); and

e. the identity of the physical person purporting to act on behalf of the customer.

Comment 19 (Consultant): Transferred to paragraph (2C) under Article 9 of Regulation 16.

ENHANCED CUSTOMER DUE DILIGENCE FOR HIGHER RISK CUSTOMERS

Relevant factors in determining if a customer is higher risk include if the person is:

a. a non-resident, or if the nationality, current residency, or previous residency of the person suggests greater risk of money laundering or terrorist financing;

b. connected with jurisdictions that lack proper standards in the prevention of money laundering or terrorist financing;

c. a politically exposed person (PEP) or linked to a PEP;

d. a very high net worth individual;

e. a private banking customer;

f. engaged in a business that is particularly susceptible to money laundering or terrorist financing;

g. a legal person or arrangement that is a personal asset holding vehicle;

h. a legal person or arrangement whose ownership structure is complex for no apparent reason; and

i. a company with nominee shareholders or shares in bearer form.

This list is not exhaustive and other factors may also be relevant.

Comment 20 (Consultant): Since the proposed amendments to Regulation 16 are introducing the concept of the customer or relationships based risk assessment, Appendix 2 provides indicative risk scoring situations. The above have been therefore transferred to Table 3 in Appendix 2 under 'customer risk scoring'.

In addition to scrutiny of the source of wealth and the source of funds of the customer, enhanced customer due diligence may, among other things, include enhanced:

a. scrutiny of customer identification (including of the beneficial owner and controller);

b. scrutiny of the legitimacy of the recipient of funds;

c. transaction monitoring; and

d. customer profiling.

Politically exposed persons means any natural persons who ~~is or has~~ are or have been entrusted with prominent public functions and immediate family members, or persons known to be close associates, of such persons. ~~in any country~~[13], ~~as well as members of such person's family or those closely associated with that person.~~

Comment 21 (Consultant): Definition amended in accordance with the new definition in the Law on AML/CFT. Definition not transferred to Regulation 16 as the Regulation adopts all definitions in the Law.

Procedures for determining who is a PEP may include:

a. seeking relevant information from the potential customer;

b. referring to publicly available information; and

c. ~~making~~ accessing ~~to~~ commercial electronic databases of PEPs.

Comment 22 (Consultant): Transferred to paragraph (4) under the proposed new Article 14B on politically exposed persons in Regulation 16 as proposed to be amended.

Recognition of Suspicious Acts and Transactions

Certain types of transactions should alert ~~the~~ banks and financial institutions to the possibility that the customer is conducting suspicious activities. They may include transactions that do not appear to make economic, lawful or commercial sense, or that involve large amounts of cash movements that are not consistent with the normal and expected transactions of the customer in accordance with the business and risk profile for that customer. Very high account turnover, inconsistent with the amount of funds normally held in the account, may indicate that funds are being laundered. Examples of bank-specific suspicious activities can be very helpful to financial institutions and should be included in the training activities.

A suspicious act or transaction will often be one that is inconsistent with a customer's known, legitimate business or personal activities or with the normal business for that type of financial product. ~~The~~

[13] [1 In line with FATF (Financial Action Task Force) Recommendation 6, the CBAK may choose whether to retain this requirement only for foreign PEPs, or to apply it also to domestic PEPs.]

~~financial institution should gather information to learn about the customer and the customer's business to help them to recognize when a transaction is unusual.~~

Questions that a bank or financial institution might consider when determining whether an act or transaction might be suspicious are:

- Is the size of the transaction consistent with the normal activities of the customer?
- Is the transaction rational in the context of the customer's business or personal activities?
- Has the pattern of transactions conducted by the customer changed?
- Where the transaction is international in nature, does the customer have any apparent reason for conducting business with the other country involved?

Some indicators of suspicious acts or transactions are given in the Annex.

Comment 23 (Consultant): The entire section has been transferred to paragraphs (1) and (1A) of Article 18 of the Regulation 16 under the same heading.

Action of AML/CFT Compliance Function on Being Notified of a Potential Suspicious Transaction

The AML/CFT compliance function should acknowledge receipt of a report of a staff member and at the same time provide any directions and a reminder of the obligation not to take any action ~~to do nothing~~ that might prejudice enquiries, i.e., 'tipping off' in the sense of Article 22 of the Law on AML/CFT as reflected in paragraph (7A) to Article 18 of Regulation 16. ~~section 3.12 of Regulation 2004/2.~~

Comment 24 (Consultant): Paragraph transferred as paragraph (1D) to Article 18 of Regulation 16

After receiving the initial report, the internal AML/CFT compliance function must make certain enquiries, among others (if appropriate):

a. The origin of the assets deposited;
b. The purpose of large withdrawals of assets;
c. The rationale for large deposits;
d. The occupation or business activity of the customer and the beneficial owner;
e. Whether the customer or the beneficial owner is a politically exposed person;
f. In the case of legal entities: who controls such entities.

Comment 25 (Consultant): These steps have not been transferred to Regulation 16 as all this information should already be available to the bank or financial institution and hence to the compliance function in the course of the ongoing monitoring and the customer profile under the customer due diligence procedures.

Depending on the circumstances, the analysis shall include, among others:

a. ~~obtaining information in written or oral form from the customer or beneficial owner;~~
~~b. visits to the places of business of the customer and beneficial owner;~~
c. consulting publicly accessible sources and databases;
d. information from other trustworthy individuals, where necessary.

Comment 26 (Consultant): In carrying out an analysis of an internal suspicious report the Head or other staff of the AML/CFT Unit shall only use internal information (see paragraph (2) of Article 18 as amended) as any external contacts may prejudice any eventual investigation by the FIU or law enforcement and might place such officers in jeopardy with regards to the tipping off prohibition. Consequently these have not been transferred to Regulation 16 which already requires an internal investigation. Notwithstanding, should the Kosovo* authorities opt to retain the Advisory Letter separate from Regulation 16 – which is not recommended – then items (a) and (b) should be removed and due consideration given to also remove item (d)

Additional Guidance on Originator Information for Electronic or Wire Transfers

Electronic or wire transfer means any transaction carried out on behalf of an originator person (both natural and legal) through a financial institution by electronic means with a view to making an amount of money available to a beneficiary person at another financial institution.

Comment 27 (Consultant): The definition of electronic or wire transfers have not been transferred to Regulation 16 as the Regulation already adopts all definitions in accordance with the Law on AML/CFT.

The ***beneficiary*** is the natural or legal person or legal arrangement who is identified by the originator as the receiver of the requested wire transfer.

The ***beneficiary financial institution*** is the bank or financial institution which receives the wire transfer from the ordering financial institution directly or through an intermediary financial institution and makes the funds available to the beneficiary.

The ***intermediary financial institution*** is the bank or financial institution in a serial or cover payment chain that receives and transmits a wire transfer on behalf of the ordering bank or financial institution and the beneficiary bank or financial institution, or another intermediary bank or financial institution.

The ***ordering financial institution*** is the bank or financial institution which initiates the wire transfer and transfers the funds upon receiving the request for a wire transfer on behalf of the originator.

The ***originator*** is the account holder, or where there is no account, the person (natural or legal) that places the order with the financial institution to perform the electronic or wire transfer.

Comment 28 (Consultant): The definition of 'originator' has been transferred to Regulation 16 under paragraph (1) to Article 13. The Regulation provides definitions to other terminology used in wire transfer services and which definition is not provided in the Law on AML/CFT. Definitions provided are in accordance with those of the FATF Standards.

The Law on AML/CFT provides that the obligations ~~The policies and procedures~~ on originator information are not intended to cover a) any transfer that flows from a transaction carried out using a credit or debit card so long as the credit or debit card number accompanies all transfers flowing from the transaction; b) any transfers and settlements between banks and financial institutions where both the originator and the beneficiary are banks or financial institutions acting on their own behalf.

When credit or debit cards are used as a payment system to effect a transfer, they are covered by the Law on AML/CFT and Regulation 16 ~~Rule X and its Guidelines~~, and the necessary information should be included in the message.

* see footnote 1 page 1

Comment 29 (Consultant): Transferred to paragraph (1A) under Article 13 of Regulation 16.

Beneficiary banks and financial institutions shall have risk sensitive procedures in place to identify and scrutinize wire transfers that are not accompanied by complete originator information. Procedures to address these cases should include the bank or financial institution first requesting the missing originator information from the bank or financial institution that sent the wire transfer.

If the missing information is not forthcoming, the requesting bank or financial institution should consider whether, in all the circumstances, the absence of complete originator information creates or contributes to suspicion about the transfer. If the transfer is deemed to be suspicious, it should be reported by the beneficiary bank or financial institution to the FIU ~~FIC~~ in accordance with the established reporting procedures. In addition, the risk sensitive procedures of the bank or financial institution may lead the institution decide not to accept the transfer.

In appropriate circumstances, such as two or more transactions with incomplete or absent originator information, the beneficiary bank or financial institution should consider restricting or terminating business relationships with the bank or financial institution that does not comply with this requirement.

Comment 30 (Consultant): Transferred as paragraphs (4) to (6) under Article 13 of Regulation 16

Additional Guidance on Cross-Border Correspondent Banking and Similar Relationships

Correspondent banking is defined as the provision of banking services by one bank (the correspondent) to another bank (the respondent) of which may include credit, deposit, collection, clearing or payment services. Banks in Kosovo* will be acting as 'respondent banks' when they establish relationships for the receipt of banking services by another bank (the correspondent bank) or as 'correspondent banks' when they establish relationships for the provision of banking services to another bank (the respondent bank).

Comment 31 (Consultant): The definition of correspondent banking has been transferred as paragraph (1A) under Article 14 of Regulation 16 as the Law on AML/CFT does not carry a definition for this term.

To assess the potential respondent bank's controls against money laundering and terrorist financing, the bank should gather sufficient information about the potential respondent bank to understand their business and determine from publicly available information the reputation of the institution, quality of supervision, and whether it has been subject to a money laundering or terrorist financing investigation or regulatory action. The bank should in general establish or continue a correspondent relationship with a foreign respondent bank only if it is satisfied that an authority is effectively supervising the respondent bank. In particular, a bank should not establish or continue a correspondent banking relationship with a non-resident respondent bank incorporated in a jurisdiction in which the bank has no presence and which is unaffiliated with a regulated financial group (i.e., a shell bank).

Comment 32 (Consultant): Transferred as paragraph (2A) to Article 14 of Regulation 16.

The information to be collected may include details about the non-resident respondent bank's management, major business activities, where it is located, its money laundering and terrorist financing prevention efforts, the system of bank regulation and supervision in the respondent bank's country, and the purpose of the account.

* see footnote 1 page 1

Comment 33 (Consultant): Text not transferred to Regulation 16 as Article 14 already includes text to this effect.

A bank should pay particular attention when maintaining a correspondent banking relationship with non-resident banks incorporated in jurisdictions that do not meet international standards for the prevention of money laundering and terrorist financing. Enhanced due diligence measures applied in general to correspondent banking relationships in terms of the Law on AML/CFT and Regulation 16 will ~~generally~~ be required to be further strengthened in such cases, including obtaining details of the beneficial ownership of such banks and more extensive information about their policies and procedures to prevent money laundering and terrorist financing.

Comment 34 (Consultant): Text not transferred to Regulation 16 as Article 14 already includes text to this effect. Since enhanced due diligence is always required for correspondent banking relationships being mandatory under the Law, some changes are proposed first to indicate the heightened risk and second to harmonise with equivalent provisions in Regulation 16 under Article 14

Particular care should also be exercised where the bank's respondent allows direct use of the correspondent account by third parties to transact business on their own behalf (i.e., payable-through accounts). The bank has to be satisfied that the respondent bank has performed the customer due diligence for those customers that have direct access to the accounts of the ~~cor~~ respondent bank, and that the respondent bank is able to provide relevant customer identification information on request of the correspondent bank.

Comment 35 (Consultant): Transferred as paragraph (2B) to Article 14 of Regulation 16.

The banks should document the respective AML/CFT responsibilities of each institution. It is not necessary that the two banks always have to reduce the respective responsibilities into a written form provided there is a clear understanding as to which institution will perform the required measures.

Comment 36 (Consultant): Text not transferred to Regulation 16 as Article 14 already includes text to this effect.

Additional Guidance for Foreign Exchange Offices and Money Transfer Operators

CDD AND MONITORING

~~Although the identification and verification requirements of section 3.1(d) of Regulation 2004/2 must be complied with, application of full customer due diligence is not necessary when transactions with a client occur occasionally (i.e., a few times per year). In cases where transactions occur more frequently, the business relationship should be perceived as ongoing, requiring further customer identification procedures.~~

Comment 37 (Consultant): This is a dangerous exemption which is not even contemplated by the Law on AML/CFT. It goes against the principle of the timing of the application of customer due diligence under the Law and in terms of international standards. It is proposed that should the Authorities decide to retain the Advisory Letter separate from the Recommendation – not recommended – then this paragraph should be removed.

RECORD KEEPING AND RETENTION

~~Also in~~ In the absence of an ongoing business relationship, banks and financial institutions, and in particular Foreign Exchange Offices and Money Transfer Operators shall ~~should~~ keep copies of the identification data and transaction data for a period of five (5) years following an occasional transaction or the last transaction in a series of occasional but linked transactions.

Comment 38 (Consultant): Traansferred as paragraph (3B) under Article 15 of the Regulation 16

ORIGINATOR INFORMATION

Money Transfer Operators sending an electronic or wire transfers under [≤ €1,000] do not have to include full originator information with the transfer. They shall however~~, in accordance with section IV(g) of Rule XVI,~~ be in a position to make the full originator information available to the beneficiary and to the CBK or FIU ~~CBAK or the FIC~~ within three business days of receiving a request.~~]~~

Comment 39 (Consultant): The first part of the paragraph has been transferred to paragraph (3A) of Article 13 of Regulation 16 and amended. There is no such obligation under the Law on AML/CFT and according to international standards it is only the verification process that is exempted if the transfer is not done through an existing account in the name of the originator with the originating institution. Therefore, although the CBK and the FIU may have a right to request such information, any references to any law should be removed

REPORTING OF TRANSACTIONS

~~The~~ Banks and financial institutions, and in particular Foreign Exchange Offices and Money Transfer Operator should consider that the fact that a customer shows a preference to conduct a currency transaction under the €10,000 threshold, presumably to avoid reporting, creates or contributes to a suspicion about the transaction. They should also consider that multiple currency transactions that are conducted by or on behalf of one person or entity and that appear to be linked and that total to or more than €10,000 over a period of time creates or contributes to suspicion about the transactions.

Comment 40 (Consultant): The entire paragraph has been transferred to new paragraph (1B) under Article 18 of the Regulation 16.

Annex to Guidelines

Indicators of Potential Money Laundering and Financing of Terrorism

The indicators of potential money laundering and terrorist financing activity set out below are primarily intended to raise awareness among the staff of banks and financial institutions.

These indicators are not intended to be exhaustive and provide examples only of the most basic ways by which money may be laundered or terrorism may be financed. However, identification of any of the types of transactions listed here should prompt further analysis.

GENERAL INDICATORS

Transactions where the structure indicates some illegal purpose, their commercial purpose is unclear or appears absurd from a commercial point of view.

Transactions where the customer's reason for selecting this particular financial institution or branch to carry out its transactions is unclear.

Transactions which are inconsistent with the financial intermediary's knowledge and experience of

the customer and the stated purpose of the business relationship.

Customers who supply false or misleading information to the bank or financial institution, or refuse for no credible reason to provide information and documents which are required and routinely supplied in relation to the relevant business activity.

Transactions with a country or jurisdiction deemed to present a high risk of money laundering or financing of terrorism or to be uncooperative by the Financial Action Task Force (FATF) or by other similar bodies such as the Council of Europe MONEYVAL Committee, or business relationships with counterparts domiciled in these countries.

The execution of multiple cash transactions just below the threshold for which customer identification or transaction reporting is required.

The structure of the customer's business relationship with the bank or financial institution lacks a logical rationale (large number of accounts at the same institution, frequent transfers between accounts, excessive liquidity, excessive use of cash where the type of business usually is non-cash etc.).

Transfers of large amounts, or frequent transfers, to or from countries producing illegal drugs or known for terrorist activities.

Customer tries to evade attempts by the financial intermediary to establish personal contact.

Customer requests business relationships to be closed and to open new relationship in his own name, or in the name of a family member, without leaving a paper trail.

Customer has been prosecuted for a criminal offence, including corruption or misuse of public funds.

Transactions that unexpectedly result in zero customer's balance.

Application for business from a potential client in a distant place where comparable service could be provided closer to home.

Application for business outside the bank's or the financial institution's normal pattern of business.

Any want of information or delay in the provision of information to enable verification to be completed.

Any proposed transaction involving an undisclosed party.

Unusually large introductory commissions.

SPECIFIC INDICATORS FOR BANKS AND FINANCIAL INSTITUTIONS

Transactions involving a withdrawal of assets shortly after funds have been deposited with the bank (pass-through accounts).

Transactions resulting in significant, but unexplained, activity on an account which was previously mostly dormant.

The exchange of a large amount of small-denomination banknotes (EUR or foreign) for largedenomination banknotes.

The exchange of large amounts of money without crediting a customer account or outside the normal course of business for the customer.

Cashing cheques for large sums, including travellers' cheques outside the normal course of business for the customer.

The purchase or sale of large amounts of precious metals outside the normal course of business for the customer.

The purchase of banker's drafts for large amounts outside the normal course of business for the customer.

Instructions to make a transfer abroad by occasional customers, without apparent legitimate reason. The acquisition of bearer instruments by means of physical delivery.

Frequent deposits or withdrawals of large amounts of cash which cannot be explained by reason of the customer's business.

Use of loan facilities that, while normal in international trade, is inconsistent with the known activity of the customer.

Accounts through which a large number of transactions are routed, though such accounts are not normally used, or only used to a limited extent.

Provision of security (pledges, guarantees) by third parties unknown to the bank or financial institution, who have no obvious affiliation to the customer and who have no credible and apparent reasons to provide such guaranties.

Accepting funds transferred from other banks or financial institutions when the name or account number of the beneficiary or remitter has not been supplied.

Transfers of large amounts of money with instructions that the sum be paid to the beneficiary in cash.

A large number of different individuals make cash deposits into a single account.

Unexpected repayment of a non-performing loan without any credible explanation.

Withdrawal of funds shortly after these have been credited to the account (pass-through account).

Fiduciary loans (back-to-back loans) for which there is no obvious legal purpose.

Customer requests receipts for cash withdrawals or deliveries of securities which in effect never took place, followed by the immediate deposit of such assets at the same bank.

Customer requests payment orders to be executed with incorrect remitter's details.

Customer requests that certain payment be routed through nostro accounts held by the financial intermediary or sundry accounts instead of its own account.

Request by the customer to accept or record in the accounts loan collateral which is inconsistent with commercial reality, or grant fiduciary loans for which notional collateral is recorded in the accounts.

Customers has several accounts in different branches of the same bank or financial institution which cannot be explained by reason of the customer's business.

A customer makes a lot of cash deposits for a company that normally does not deal with cash.

Frequent unusual transactions between a customer's personal and business accounts

Introduction of business by an agent/intermediary in an unregulated or loosely regulated jurisdiction or where criminal activity is prevalent.

SPECIFIC INDICATORS FOR SECURITIES DEALERS

Business relationships that have been inactive suddenly experience large investments that are inconsistent with the normal investment practice of the customer or their financial ability.

Customer wishes to purchase securities, where the transaction is inconsistent with the normal investment practice of the customer or their financial ability.

Customer uses securities or brokerage firm as a place to hold funds that are not being used in trading of securities for an extended period of time and such activity is inconsistent with the normal investment practice of the customer or their financial ability.

Customer makes large or unusual settlements of securities in cash.

Transfers of funds or securities between accounts not known to be related to the customer.

Comment 41 (Consultant): The entire Annex has been transferred as Annex to Regulation 16

12.4 Annex 4: Proposed Administrative Directive No.1 on Training

Pursuant to the provisions of the Memorandum of Understanding entered into between the CBK and the FIU it in terms of Article 36A of the Law No 03/L 196 on the Prevention of Money Laundering and Terrorist Financing (Official Gazette, No XX of 30 September 2010) as amended by Law No 04/L 178 (Official Gazette XX of 11 February 2013), and in accordance with Article 35.1.1 of the Law No. 03/L-209 On CBK (Official Gazette, No.77 / 16 August 2010), the Board of the CBK at the meeting held on <DD/MM/YY> approved the following:

ADMINISTRATIVE DIRECTIVE 01

PREVENTION OF MONEY LAUNDERING AND TERRORIST FINANCING – TRAINING

Chapter I
General Provisions

Article 1
Purpose and Scope

1. Article 23 of the Law on AML/CFT requires that banks and financial institutions set forth the provision of an employee training and awareness program on the responsibilities of these institutions under the Law and on the prevention of money laundering and the financing of terrorism. The CBK attaches great importance to training programmes in the effective fulfillment of the requirements of the Law No 03/L-196 on Prevention of Money Laundering and Terrorist Financing (hereafter: Law on AML/CFT) as detailed in its Regulation 16.

2. The purpose of this Administrative Directive is to establish the parameters and principles for banks and financial institutions to provide adequate training and awareness to all relevant staff in preventing money laundering and financing of terrorism and in recognizing suspicious transactions for internal reporting in accordance with the Law on AML/CFT and Regulation 16 issued by the CBK.

3. This Administrative Directive applies to all banks and subsidiaries and branches of foreign banks, non-bank financial institutions and Micro Finance Institutions and subsidiaries and branches of similar foreign institutions licensed by the CBK to operate in Kosovo* in terms of the Law No. 04/L-093 on Banks, Microfinance Institutions and Non-Bank Financial Institutions (hereafter referred to as: the Law on Banks). For the purposes of this Administrative Directive all institutions are referred to as 'banks and financial institutions' in accordance with the definitions of the terms in the Law on Banks.

Article 2
Definitions

1. All terms used in this Directive are as defined in Article 3 of the Law on Banks and Article 2 of Law on AML/CFT.

* see footnote 1 page 1

Chapter II
AML/CFT training requirements

Article 3
Responsibilities of Banks and Financial Institutions

1. As part of their internal programmes required under the Law on AML/CFT, banks and financial institutions shall provide for employee awareness and training programmes on the prevention of money laundering and the financing of terrorism and the responsibilities set upon them by the Law on AML/CFT.

2. Regulation 16 charges the internal AML/CFT Unit of banks and financial institutions with the responsibility of planning and overseeing training on the prevention of money laundering and the financing of terrorism. Within this context the AML/CFT Unit shall periodically assess the effectiveness of training in the implementation of the institution's internal policies and procedures.

3. In considering a training plan, banks and financial institutions need to keep in mind the objectives they are trying to achieve, which is to create an environment effective in preventing money laundering and the financing of terrorism and which thereby helps protect employees and the institutions themselves. This may mean different training packages for different departments. To test and assess an individual's knowledge against the training received, it is recommended that training programmes provide for some form of evaluation to confirm that each participant has understood the training.

4. Banks and financial institutions need to ensure that training programmes are set out to provide adequate and effective training to senior managers, AML/CFT compliance officers and any employees whose role exposes them to the risk of facilitating money laundering or terrorism financing. Employees who are exposed to money laundering or the financing of terrorism risk include those who have direct contact with customers, open customer accounts, handle cash, process transactions or process customer information. Additionally employees in compliance, accounting and internal audit departments should attend AML/CFT training. These groups of employees will be the strongest lines of defence against money laundering or the financing of terrorism

.

5. Although directors and senior managers may not be involved in the day-to-day procedures, it is important that they understand the statutory duties placed upon them, their staff and the business itself. Therefore, they shall participate in training appropriate to their function and in particular training concerning the risk based approach including understanding the risk appetite levels and customer acceptance policies. This training shall also cover possible sanctions arising from laws and regulations.

6. The training shall include current methods and typologies of money laundering and financing of terrorism. New staff shall undergo AML/CFT training before they engage in opening business relationships with customers or executing financial transactions. Preferably new staff should undergo such training as part of induction courses on the activities of the bank or financial institution upon joining the institution.

Comment 1 (Consultant): Paragraphs (5) and (6) are transposed from paragraphs (3) and (4) of Article 19 of Regulation 16 as they are more appropriate in this Directive and to avoid duplication of same requirements.

8. Banks and financial institutions shall ensure that their training programmes are composed of both internal and external training sessions and shall include refresher courses in accordance with this Directive and as may be necessary for each individual institution. Specialist training courses, usually of an external nature, should be provided to the key personnel such as the AML/CFT Unit and Internal Audit Department.

9. The frequency of awareness and training depends on a number of factors including the size and nature of business, the money laundering and financing of terrorism risks of the bank or financial institution and the functions and responsibilities of the particular employees. However, the established principle is that

awareness and training should be an ongoing exercise to ensure that employees are constantly kept up-to-date with any developments or changes in the operations of the bank or the financial institution and any changes in the applicable laws and regulations. Specific training and awareness shall therefore be provided periodically and as a minimum annually to all staff, with a higher degree of training to key personnel.

10. Training records shall be retained for a period of five (5) years from date of delivery of training or awareness sessions in accordance with the requirements under Regulation 16 and shall be made available to the CBK and the FIU upon request.

11. Retaining records of training material will allow the quality of the training to be assessed during independent audit reviews Maintaining attendance records detailing the type of training received will also be evidence that employees have completed the training. Retained records should include, but not be limited to:

- the date on which the training was delivered;
- the nature of the training;
- the names, designation and attendance signature of employees receiving the training;
- the results of assessment or evaluations undertaken by employees; and
- a copy of any handouts or slides.

12. Banks and financial institutions are reminded that training is an essential element for Kosovo* in meeting international standards and in demonstrating the effectiveness of its money laundering and financing of terrorism preventive regime in any eventual external evaluation.

Comment 2 (Consultant): Paragraph (12) is proposed to emphasis that the responsibility to provide training has a broader dimension both domestically and at the international level. Training information is an essential element in the new FATF Methodology for assessing effectiveness of the implementation of the 2012 Standards.

Article 4
Nature of training and awareness

1. Specific training should be tailored in accordance with the specific responsibilities and functions of the respective employees within the broader range of activities of the bank or financial institution. Thus, for instance, front-office employees should be provided with a different kind of training to that provided to employees carrying out back-office functions.
2. Notwithstanding banks and financial institutions shall ensure training coverage of the main concepts and principles for the prevention of money laundering and the financing of terrorism that each institution should have in place in accordance with the Law on AML/CFT. This shall include, but not be limited to:

- customer due diligence measures;
- record-keeping procedures;
- identification of suspicious transaction and internal reporting procedures;
- policies and procedures on internal control;
- policies and procedures on the risk based approach, including risk assessment and risk management; and
- policies and procedures on compliance management and communication.

* see footnote 1 page 1

3. Banks and financial institutions shall further ensure that all employees are also made aware of the following, and particularly any changes since the previous awareness sessions, which could be part of the training programme:

- the provisions of the Law on AML/CFT;
- the provisions in other laws, such as the Criminal Code, that is relevant for the prevention of money laundering and the financing of terrorism;
- the offences and penalties in relation to any breach of the Law on AML/CFT or Regulation 16; and
- the provisions of Regulation 16.

4. As part of awareness sessions banks and financial institutions shall also include awareness to key employees on the collection and maintenance of comprehensive and meaningful statistics and on developments in international standards that may have an impact on their obligations in the prevention of money laundering and the financing of terrorism.

5. Training and awareness as indicated in the following Articles is not meant to be implemented in separate sessions but could form part of the broader integrated training programme.

Article 5
Customer Due Diligence

1. Training on the application of customer due diligence measures in accordance with the banks' or financial institutions' procedures shall include training on the main measures that constitute customer due diligence:

- identification of the customer and verification of identity as two separate but complementary processes;
- identification of the beneficial owner and verification of identify in two separate but complementary processes;
- purposes and intended nature of the business relationship; and
- ongoing monitoring of customer identification and scrutiny of transactions.

2. Banks and financial institutions shall ensure that training within the context of the customer due diligence measures to be applied in accordance with the institution's internal procedures includes:

- the risk based approach;
- customer risk assessments and customer scoring;
- customer acceptance policies;
- customer risk profile;
- application of standard and enhanced due diligence;
- risk appetite of the institution as established by the Board of Directors; and
- importance of the customer due diligence for the identification and reporting of suspicious transactions.

3. Within this context in their training programmes for customer due diligence banks and financial institutions shall ensure that there is a thorough understanding of the beneficial owner concept, the principles of mandatory high risk relationships and applicable mitigating measures and the measures applicable to potential customers identified as presenting a higher risk through the customer risk assessment process.

4. Training should be of a more practical nature rather than simply theoretical. Thus the training provided should make references to real-life situations such as, for instance, the steps to be followed when accepting customers, or the handling of high-risk customers or suspicious business relationships.

Article 6
Record-Keeping Procedures

1. The maintenance of adequate records that enable a transaction to be re-constructed or a customer to be identified even after the business relationship has been closed is an important element in the prevention of money laundering and the financing of terrorism framework in each institution.

2. Training sessions in this regard should cover the purpose of maintaining records, the method of retaining records and the type of documents or records that are to be maintained in accordance with the provisions of the Law on AML/CFT and Regulation 16. This should include the timing and period of retention and procedures to be followed where a transaction or a customer identification record is to be maintained for longer periods.

3. Banks and financial institutions shall ensure that higher degree specific training on record keeping and maintenance is given to key officers such as archiving officers and office staff responsible to retain records in general.

Article 7
Identification of Suspicious Transactions and Internal Reporting Procedures

1. The Law on AML/CFT requires banks and financial institutions to report to the Financial Intelligence Unit suspicious acts and transactions as defined in the Law and currency transactions equal to or in excess of €10,000. Such reporting presupposes an internal procedure for the identification of suspicious transaction and for reporting internally.

2. In order to be in a position to recognise and handle suspicious transactions, employees should be trained on how the products and services of the bank or the financial institution may be misused for the purposes of money laundering or the financing of terrorism and the manner in which such vulnerabilities should be managed. This should also include awareness on typologies relevant to Kosovo*.

3. In this regard banks and financial institutions shall use the results of their individual *business related risk assessment* and the lists of indicative suspicious acts as included in Regulations 16 (non exhaustive list) for training purposes.

4. Banks and financial institutions should ensure that staff are fully aware of the internal reporting procedures and in particular to whom to report, the responsibilities of the person making an internal report and the legal prohibition of informing the customer or any third party that a report has been filed with or that information has been passed to the Head of the AML/CFT Unit in terms of Regulation 16 or that such information has eventually been passed to the Financial Intelligence Unit in terms of the Law on AML/CFT.

5. Training in this regard should further cover, but not be limited to, aspects related to:

- over-the-counter customer behaviour that could lead to suspicion of illicit activities;
- differences in reporting suspicious acts or transactions and in reporting currency transactions, particularly where the latter also raises suspicion;
- the importance of knowing the customer through the business and risk profile and of applying such knowledge when undertaking transactions for that customer;
- procedures covering the reporting of attempted transactions;
- procedures for reporting past transactions that are eventually identified as being suspicious; and

* see footnote 1 page 1

- the continued reporting of additional information internally related to a previous report of a suspicious act or transaction.

Article 8
Policies and Procedures on Internal Control

1. The CBK believes that the way that the implementation of obligations under the Law on AML/CFT and Regulation 16 is effected by banks and financial institutions is an important factor in educating their staff to better understand and appreciate the importance of internal procedures to prevent the institution from being used for illicit activities. Thus training and awareness on the internal control aspect in this regard assumes higher importance.

2. Since the internal control monitoring function is normally vested in the internal audit department and the AML/CFT Unit of the bank or financial institution such training should ideally be provided by the internal audit function or the AML/CFT Unit.

3. Awareness and training on internal control should ideally cover the main aspects as follows:

- *Function* - The purpose of an internal control in the prevention of money laundering and the financing of terrorism procedures is to keep the bank or financial institution running smoothly without any wrongdoing by its employees which may be intentional or unintentional.
- *Types* – Internal controls can be placed anywhere in the process. Internal controls for the purposes of the prevention of money laundering and the financing of terrorism as established to ensure that employees adhere to the policies and procedures instituted by the bank or financial institution to prevent and detect possible activities or transactions that may be related to criminal activities.
- *Identification* - Examples of internal controls implemented by the bank or financial institutions should be discussed and explained during training sessions. These could range from small controls such as a double signature (k/a four eyes principle) to higher controls such as a senior management authorisation. For the purposes of the prevention of money laundering and the financing of terrorism, various internal controls are usually found for high risk areas and for the implementation of enhanced customer due diligence.
- *Benefits* - The benefits of internal control are many. From making sure that the bank or financial institution does not, even inadvertently, get involved in money laundering or the financing of terrorism to the protection of employees from criminals who attempt to use the services of the institution for their illicit activities.
- *Trust* - Internal controls are normally put in all work environments to ensure that procedures are being effectively implemented. Employees should be trained to appreciate that through their work they are contributing to the money laundering and financing of terrorism preventive measures as a whole and that internal controls are not in place because management does not trust them.

Article 9
Policies and Procedures on the Risk Based Approach, including Risk Assessment and Risk Management

1. Understanding the procedures for the assessment and management of risk is centre to the risk based approach to be applied by banks and financial institutions in accordance with the Law on AML/CFT and Regulation 16, the latter establishing the principles for this purpose. It is therefore of utmost importance that banks and financial institutions make their employees aware of the institution's policies and procedures in this regard and train them to apply them effectively.

2. In making employees aware of the importance of identifying risks and applying mitigating factors to manage them, banks and financial institutions shall include training to employees in all related areas including:

- The risk based approach – definition, scope, objective and importance of implementing a risk based approach.
- The business related risk assessment of the institution explaining findings and highlighting the risk areas of the institution through its products and services and the management of such risk.
- The purpose and importance of the customer or relationships based risk assessment – including management through customer scoring and identification of high risk customers further to the mandatory ones as detailed in the Law on AML/CFT.
- The customer acceptance policy – scope, objective and rationale.
- The customer business and risk profile – its importance in the ongoing monitoring obligations of the business relationship and scrutiny of transactions as part of the customer due diligence concept.
- The institution's risk appetite as approved by the Board of Directors – scope, objective and rationale for the management of risk.
- High risk countries or jurisdictions – objective and importance in customer acceptance and implementation of mitigating factors.

3. Since senior management and the Board of Directors are ultimately responsible for the management of risk it is important that banks and financial institutions ensure that high level training in this area is also provided to senior management and Board Directors.

Article 10
Policies and Procedures on Compliance Management and Communication

1. Regulation 16 requires that banks and financial institutions establish an internal AML/CFT Unit and appoint its Head who shall assume the responsibilities of the 'compliance officer' under Article 23 of the Law on AML/CFT. All employees should be informed of the identity of the Head of the AML/CFT Unit and of the functions and responsibilities attributed to this position in managing compliance and the lines of communication for the purpose of internal reporting and follow ups.

2. Banks and financial institutions shall include awareness on the internal responsibilities of employees in accordance with their position, grade and functionality.

3. Employees must be made aware of the documented internal policies and procedures put in place by banks and financial institutions in terms of Article 23 of the Law on AML/CFT to prevent money laundering and financing of terrorism, ~~the legal requirements contained in the Law AML/CFT and in Regulation 16,~~ particularly in relation to recognition, monitoring and reporting of suspicious acts or transactions as detailed in this Directive. The relevant documents published or disseminated by the FIU and/or the CBK shall be taken into consideration. All employees should have access (physical or electronic) to the internal policies and procedures manual and banks and financial institutions shall periodically ensure that employees acknowledge that they have access to and have read and understood such policies and procedures manual. Any amendments should likewise be brought to the attention of all employees and confirmations as per the foregoing retaken.

Comment 3 (Consultant): Paragraph (2) is transposed from paragraph (7) of Article 19 of Regulation 16 as it is more appropriate in this Directive and to avoid duplication of same requirements. References to legal requirements are deleted as these are addressed separately under Article 4. The addition of the last sentence ensures that there is an obligation, as part of the ongoing awareness and training obligation, for all staff to have access to the internal documented procedures and that they have read and understood them. This places responsibilities in the management process on both sides – management and staff.

4. Banks and financial institutions shall ensure that all employees are aware of any disciplinary measures that the bank or financial institution may impose for negligent or willful non-compliance with the institution's documented internal policies and procedures.

Chapter III
Implementation of Administrative Directive

Article 11
Administrative Directives and Instructions of the Financial Intelligence Unit

1. This Administrative Directive is issued by the CBK in accordance with the Memorandum of Understanding between the CBK and the FIU pursuant to Article 36A of the Law on AML/CFT for the supervision of the financial sector and through which the FIU empowers the CBK to issue Administrative Directives or Instructions under the Law on AML/CFT and which Administrative Directives and Instructions in any form issued by the CBK become mandatory for the financial sector as if issued by the FIU.

Comment 4 (Consultant): The Cycle 1 DAR makes proposals to the effect that any supervisory mandate to a competent authority, in this case the CBK, should be complemented with the power to issue rules and regulations – see for example the analysis under EC 23.2 and EC 23.4 for Recommendation 23 (Recommendation 26 under the 2012 FATF Standards). The Law on AML/CFT reserves such powers to the FIU, at times in conjunction with the Ministry of Finance. In the absence of a direct legal empowerment it is proposed to amend the MoU to provide for such circumstances until the necessary provisions are included in the Law on AML/CFT – ***see similar comment in Regulation 16 for Article 21.*** It is strongly recommended to enact appropriate legislative provisions as proposed in the DAR at the earlies to provide a stronger legal basis to the CBK.

2. In the event that the Financial Intelligence Unit issues an Administrative Directive or Instruction that is applicable to the financial sector and that contains provisions that may be inconsistent with any provision of this Directive, the FIU and the CBK shall clarify such inconsistency and advise the banks and financial institutions accordingly. If banks or financial institutions identify any such inconsistency they shall bring this to the attention of the CBK at the earliest.

Comment 5 (Consultant): Once it is being established that the Directive is being issued on the basis of empowerment according to the MoU between the CBK and the FIU there should not arise situations where the FIU issues instructions that are in conflict with those of this Directive as this will pose and send negative and conflicting messages to the industry. Indeed, on the contrary, the industry should receive a positive message that this will not occur and that should it occur, even if inadvertently, the authorities commit themselves to review such conflict immediately. Arbitrarily stating that the FIU instruction will supersede this Directive is also dangerous in itself as such conflict could have direct or indirect repercussions on other provisions of the Directive– ***see similar comment in Regulation 16 for Article 21 and in Administrative Directive No 02 on Statistics.***.

Article 12
Administrative Measures

1. Non-compliance with the principles laid down in this Administrative Directive for the mandatory provision of training to employees by banks and financial institutions shall be subject to such administrative measures as provided for under Article 22 of Regulation 16.

Comment 6 (Consultant): In order to enforce a mandatory commitment by banks and financial institutions in respecting the principles established under this Administrative Directive for maintaining comprehensive and meaningful statistics,, an element of sanctioning needs to be introduced. This is being done through a link to Regulation 16. Notwithstanding that the Law on AML/CFT does not provide for specific sanctions for not providing training (See Articles 31A and 31B of the Law) by linking this Administrative Directive to Regulation 16 the CBK would be in a position to impose the graduated administrative measures therein. It remains however highly recommended that the proposed amendments to Article 31 as detailed in the Cycle 1 DAR for FATF Recommendation 17 be implemented at the earliest.

Article 13
Entry in to Force

This Administrative Directive shall enter in to force 15 days after being approved by the CBK Board.

The Chairman of the CBK Board

12.5 Annex 5: Proposed Administrative Directive No. 2 on Statistics

Pursuant to the provisions of the Memorandum of Understanding entered into between the CBK and the FIU in terms of Article 36A of the Law No 03/L 196 on the Prevention of Money Laundering and Terrorist Financing (Official Gazette, No XX of 30 September 2010) as amended by Law No 04/L 178 (Official Gazette XX of 11 February 2013), and in accordance with Article 35.1.1 of the Law No. 03/L-209 On CBK (Official Gazette, No.77 / 16 August 2010), the Board of the CBK at the meeting held on <DD/MM/YY> approved the following:

ADMINISTRATIVE DIRECTIVE 02

PREVENTION OF MONEY LAUNDERING AND TERRORIST FINANCING – STATISTICS

Chapter I
General Provisions

Article 1
Purpose and Scope

1. For the purposes of fulfilling the obligation under Regulation 16 for banks and financial institutions to assess the effectiveness of their internal procedures for the prevention of money laundering and the financing of terrorism as part of the risk assessment procedures, banks and financial institutions shall collect comprehensive meaningful statistics. The CBK attaches great importance to the collection and interpretation of meaningful statistics in the effective fulfillment of the requirements of the Law No 03/L-196 on the Prevention of Money Laundering and Terrorist Financing (hereinafter: Law on AML/CFT).

Comment 1 (Consultant): On the issue of statistics the DAR under Cycle 1 in assessing EC 32.2 for Recommendation 32 on statistics (Recommendation 33 under the 2012 FATF Standards) has identified major shortcomings and thus proposes a new Article 30A to the Law on AML/CFT – which meets the COM concerns overall. It is highly recommended that this proposal be adopted. Thus the collection of statistics, being an extremely important element for jurisdictions to demonstrate the effectiveness of their money laundering and financing of terrorism preventive regimes, will have a stronger legal basis imposed not only on banks and financial institutions but on all reporting subjects and authorities with a responsibility under the Law on AML/CFT, including the FIU itself.

2. The purpose of this Administrative Directive is to establish the principles and parameters for banks and financial institutions to collect, maintain and interpret meaningful statistics and to provide guidance accordingly for the use of statistics in the prevention of money laundering and financing of terrorism.

3. This Administrative Directive applies to all banks and subsidiaries and branches of foreign banks, non-bank financial institutions and Micro Finance Institutions and subsidiaries and branches of similar foreign institutions licensed by the CBK to operate in Kosovo* in terms of the Law No. 04/L-093 on Banks, Microfinance Institutions and Non-Bank Financial Institutions (hereafter referred as: the Law on Banks). For the purposes of this Directive all institutions are referred to as 'banks and financial institutions' in accordance with the definitions of the terms in the Law on Banks.

* see footnote 1 page 1

Article 2
Definitions

1. All terms used in this Directive are as defined in Article 3 of the Law on Banks and Article 2 of Law on AML/CFT.

Chapter II
Collecting and maintaining statistics

Article 3
Responsibilities of Banks and Financial Institutions

1. Regulation 16 of the CBK charges the internal AML/CFT Unit of banks and financial institutions with the responsibility of undertaking an assessment of the effectiveness of the internal procedures using statistical information collected internally and as may be submitted to the CBK and/or the Financial Intelligence Unit. Within this context the AML/CFT Unit shall periodically collect, maintain, structure and interpret meaningful statistics from areas of the bank or financial institution that are relevant for the prevention of money laundering and the financing of terrorism in accordance with the institution's internal policies and procedures.

2. In considering the type of statistics to be maintained, the period covered, and the degree of depth of statistics, banks and financial institutions shall take account of both their internal requirements and the external requirements for the purposes of the Financial Intelligence Unit and the CBK Preferably banks and financial institutions should work into developing one set of statistics that meets the criteria of both internal and external requirements and which is collected on a monthly basis.

3. In developing the set of comprehensive and meaningful statistics required, banks and financial institutions shall follow the principles of this Administrative Directive and any other instructions that may be issued by the FIU or the CBK.

4. Developing the criteria for the set of statistics required for internal purposes presupposes that banks and financial institutions have developed their internal methodology for assessing the effectiveness of their internal policies and procedures for the prevention of money laundering and the financing of terrorism using, applying and interpreting these statistics.

5. Having developed the set of statistics required and having established the coverage period, banks and financial institutions shall ensure that the internal AML/CFT Unit provides guidance and awareness to all employees involved in maintaining such statistics as part of the institution's training and awareness programmes.

6. Banks and financial institutions shall maintain records of statistics for a period of five (5) years from the end of the coverage period in accordance with the retention of records under Regulation 16. This shall include the report on the assessment of the effectiveness of the internal system for the prevention of money laundering and financing of terrorism.

7. Records of statistics shall be maintained in such forms that they present continuity, consistency and trends taking in account the Annex to this Administrative Directive.

8. Banks and financial institutions shall submit to the CBK records of statistics on a [six monthly] [annual] basis using the forms in the Annex to this Administrative Directive. Submissions shall be made by the middle of the month following the coverage period.

Comment 2 (Consultant): The CBK may wish to decide whether statistics are received on a six monthly or yearly basis. Receiving statistics on a six monthly basis may be the most practical option as it will give time to the CBK to monitor compliance and understand trends within banks and financial institutions as part of its supervisory remit. It is opined that at this stage statistics are only sent to the CBK who – see Article 5 – will then consolidate the statistical data and report to the FIU on the overall effectiveness of the financial system preventive regime at least on an annual basis. This should contribute to the overall statistics collected by the FIU as recommended in the Cycle 1 DAR – see proposals for a legal obligation in this regard in assessing FATF Recommendation 32.

9. Banks and financial institutions are reminded that the maintenance of comprehensive meaningful statistics and their interpretation is an essential element for Kosovo* in meeting international standards and in demonstrating the effectiveness of its money laundering and financing of terrorism preventive regime in any eventual external evaluation.

Comment 3 (Consultant): Paragraph (9) is proposed to emphasis that the responsibility to collect and maintain meaningful statistics has a broader dimension both domestically and at the international level. Statistics are overall an essential element in the new FATF Methodology for assessing effectiveness of the implementation of the 2012 Standards – in this case within the financial sector – and jurisdictions shall demonstrate such effectiveness partly through the use of statistics.

Article 4
Type of Statistics

1. Without prejudice to any statistical data that a bank or financial institution may decide to maintain in support of its methodology for assessing the effectiveness of its internal policies and procedures for the prevention of money laundering and the financing of terrorism, statistical data showing both the change in the reporting period covered and the stock position shall be maintained in relation to the following in accordance with the Annex to this Directive:

- *Customer due diligence* – completed procedures; procedures not completed; identification of beneficial owner.
- *Relationships and accounts*: number of relationships-based risk assessments undertaken; resident and non-resident accounts opened; number of accounts opened; accounts closed or refused for AML/CFT reasons; business relationships and accounts (by type) subject to standard customer due diligence; business relationships and accounts (by type) subject to enhanced customer due diligence; relationships and accounts reviewed as part of the ongoing monitoring process; business relationships with and accounts in the name of 'politically exposed persons', including beneficial owners; correspondent banking relationships ('nostro' and 'vostro'); non-face-to-face relationships.
- *Suspicious transaction reporting*: internal suspicious activity reports received by internal AML/CFT Unit; suspicious transaction reports (STRs) forwarded to the FIAU related to money laundering or financing of terrorism; internal suspicious activity reports not forwarded to the FIAU; follow up (feedback) requested to / given by the FIAU including timing; additional information requested by the FIAU including timing; transactions refused or not undertaken for AML/CFT reasons i.e. attempted transactions; suspension of transactions.
- *Currency transaction reporting*: number of reports of currency transaction equal to or exceeding €10,000 separate for single transaction or linked transactions; number of currency transaction reports reported also as suspicious transaction reports.
- *Compliance assessments*: compliance assessments by internal AML/CFT Unit; compliance examination by the competent authorities (FIU or CBK); internal audit examinations on AML/CFT compliance; sanctions imposed by FIU or CBK for non-compliance; amendments to internal procedures.

* see footnote 1 page 1

- *Resources*: Number of staff in the internal AML/CFT Unit; number of staff in the Internal Audit Department dedicated to AML/CFT audits.
- *Training and awareness*: number of internal sessions held and number of participants; number of external sessions attended and number of participants.[14]
- *Others*: [Court Orders for (i) freezing of assets; (ii) confiscation of assets; (iii) monitoring of accounts; (iv) other information.]

Comment 4 (Consultant): The above reflect the normal type of statistics required during external mutual evaluations from the financial sector. The CBK may wish to consider and add other statistical information it considers appropriate. The item '*Others*' has been included on the basis of international statistics but Kosovo* authorities are kindly requested to ensure its applicability within the context of the Kosovo* laws.

2. The CBK may amend the type of statistical information as defined in paragraph (1) of this Article at its discretion. The CBK shall however allow appropriate time for banks and financial institutions to change their internal procedures for the collection of statistical information accordingly.

3. In addition to the statistical information as detailed in paragraph (1) to this Article, the CBK may need additional statistical information from time to time for its supervisory or other purposes related to the prevention of money laundering and the financing of terrorism. In such eventualities the Central Bank shall agree on an appropriate timeframe for the submission of such statistical information if this is not already available at the bank or financial institution. Banks and financial institutions shall comply accordingly.

Article 5
Consolidated Statistics

1. The CBK shall consolidate the statistical information received from banks and financial institutions in accordance with paragraph (8) of Article 3, including effectiveness assessments. The CBK shall decide on the method of consolidation.

2. The CBK shall itself maintain relevant statistical information in relation to its supervisory remit – such as number of onsite and offsite visits; findings and sanctions imposed; and resources.

3. The CBK shall assess and interpret the consolidated statistical information within the context of arriving at an assessment of the effectives of the procedures in the financial sector for preventing money laundering and the financing of terrorism.

4. The CBK shall make the consolidated statistical information, its own statistical information and its findings on the effectiveness of the financial sector in the prevention of money laundering and the financing of terrorism available to the Financial Intelligence Unit as input for any eventual national risk assessment or as may be required by the Financial Intelligence Unit.

Comment 5 (Consultant): In accordance with Recommendation 1 of the new 2012 FATF Standards the Cycle 1 DAR makes proposals for Kosovo* to undertake a national risk assessment. The Recommendation further requires banks and financial institutions to have their own business based risk assessment. The proposed paragraph (4) aims to establish the link between the CBK and FIU for an eventual national risk assessment.

[14] These statistics are in addition to the training records that banks and financial institutions are obliged to maintaine in accordance with Administrative Directive No 01 on Training.

* see footnote 1 page 1

Chapter III
Implementation of Administrative Directive

Article 6
Administrative Directives and Instructions of the Financial Intelligence Unit

1. This Administrative Directive is issued by the CBK in accordance with the Memorandum of Understanding between the CBK and the FIU pursuant to Article 36A of the Law on AML/CFT for the supervision of the financial sector and through which the FIU empowers the CBK to issue Administrative Directives or Instructions under the Law on AML/CFT and which Administrative Directives and Instructions in any form issued by the CBK become mandatory for the financial sector as if issued by the FIU.

Comment 6 (Consultant): The Cycle 1 DAR makes proposals to the effect that any supervisory mandate to a competent authority, in this case the CBK, should be complemented with the power to issue rules and regulations – see for example the analysis under EC 23.2 and EC 23.4 for Recommendation 23 (Recommendation 26 under the 2012 FATF Standards). The Law on AML/CFT reserves such powers to the FIU, at times in conjunction with the Ministry of Finance. In the absence of a direct legal empowerment it is proposed to amend the MoU to provide for such circumstances until the necessary provisions are included in the Law on AML/CFT – ***see similar comment in Regulation 16 for Article 21 and in Administrative Directive 01 on Training.***

2. In the event that the FIU issues an Administrative Directive or Instruction that is applicable to the financial sector and that contains provisions that may be inconsistent with any provision of this Directive, the FIU and the CBK shall clarify such inconsistency and advise the banks and financial institutions accordingly. If banks or financial institutions identify any such inconsistency they shall bring this to the attention of the CBK at the earliest.

Comment 7 (Consultant): Once it is being established that the Directive is being issued on the basis of empowerment according to the MoU between the CBK and the FIU there should not arise situations where the FIU issues instructions that are in conflict with those of this Directive as this will pose and send negative and conflicting messages to the industry. Indeed, on the contrary, the industry should receive a positive message that this will not occur and that should it occur, even if inadvertently, the authorities commit themselves to review such conflict immediately. Arbitrarily stating that the FIU instruction will supersede this Directive is also dangerous in itself as such conflict could have direct or indirect repercussions on other provisions of the Directive – ***see similar comment in Regulation 16 for Article 21 and in Administrative Directive 01 on Training***.

Article 7
Administrative Measures

1. Non-compliance with the principles laid down in this Administrative Directive for the mandatory maintenance of statistics by banks and financial institutions shall be subject to such administrative measures as provided for under Article 22 of Regulation 16.

Comment 8 (Consultant): In order to enforce a mandatory commitment by banks and financial institutions in respecting the principles established under this Administrative Directive for maintaining comprehensive and meaningful statistics, an element of sanctioning needs to be introduced. This is being done through a link to Regulation 16. Notwithstanding that the Law on AML/CFT does not provide for specific sanctions for not maintaining statistics (See Articles 31A and 31B of the Law) by linking this Administrative Directive to Regulation 16 the CBK would be in a position to impose the graduated administrative measures therein. It remains however highly recommended that the proposed amendments to Article 31 as detailed in the Cycle 1 DAR for FATF Recommendation 17 be implemented at the earliest.

Article 8
Entry in to Force

This Administrative Directive shall enter into force 15 days after being approved by the CBK Board.

The Chairman of the CBK Board

ANNEX

Administrative Directive 02 – REPORTING OF STATISTICAL INFORMATION
Name of Bank / Financial Institution: ……. Name of contact person: …… Contact details: (Tel) …… (email)…….. Period covered: ……

Type of Statistics	**Period Covered**	**Stock**	**Amount (Euro) (Stock)**	**Remarks**
Customer Due Diligence				
Natural Persons				
of which Procedures completed				
Procedures not completed				
Legal Entities				
of which Procedures completed				
Procedures not completed				
Other Legal Arrangements				
of which Procedures completed				
Procedures not completed				
Identification of Beneficial Owner				
Relationships and Accounts				
Relationship based risk assessments				
Relationships established				
of which Residents				
Non-Residents				

Type of Statistics	**Period Covered**	**Stock**	**Amount (Euro) (Stock)**	**Remarks**
Accounts opened				
of which Residents				
Non-Residents				
Relationships established subject to standard CDD				
of which Residents				
Non-Residents				
of which Natural Persons				
Legal Entities				
Other Legal Arrangements				
Accounts opened subject to standard CDD				
of which Residents				
Non-Residents				
of which Natural Persons				
Legal Entities				
Other Legal Arrangements				
Relationships established subject to enhanced CDD				
of which Residents				
Non-Residents				
of which Natural Persons				
Legal Entities				
Other Legal Arrangements				
Accounts opened subject to enhanced CDD				

of which Residents Non-Residents				
Type of Statistics	**Period Covered**	**Stock**	**Amount (Euro) (Stock)**	**Remarks**
of which Natural Persons Legal Entities Other Legal Arrangements				
Relationships reviewed as part of the ongoing monitoring process				
of which Residents Non-Residents				
of which Natural Persons Legal Entities Other Legal Arrangements				
Relationships refused/closed for AML/CFT reasons: e.g high risk or suspicion ML/TF				
of which Residents Non-Residents				
of which Natural Persons Legal Entities Other Legal Arrangements				
Correspondent Banking Relationships				
of which Nostro Accounts Vostro Accounts				
Non-face-to-face relationships				
of which Residents				

Non-Residents				
Politically Exposed Persons				
of which Residents Non-Residents				
Type of Statistics	**Period Covered**	**Stock**	**Amount (Euro) (Stock)**	**Remarks**
of which Beneficiary owner				
Suspicious Transaction Reports				
Internal Reports				
of which Related to ML Related to FT				
Reports filed with FIU				
of which Related to ML Related to FT				
Attempted transactions				
Suspended Transactions				
Feedback requested from FIU				
Feedback received from FIU				
for which Timing				
Currency Transaction Reports				
Reports filed with FIU				
of which Single transactions Multiple transactions				
Also reported as STRs				
Compliance Assessments				
Internal examinations				
of which by				

Internal Audit Dept. Internal AML/CFT Unit				
External examinations				
of which by CBK FIU				
Amendments to procedures				
Type of Statistics	**Period Covered**	**Stock**	**Amount (Euro) (Stock)**	**Remarks**
Sanctions imposed				
of which by CBK FIU				
Resources dedicated to AML/CFT				
Internal Audit Department				
Internal AML/CFT Unit				
Training and Awareness				
Internal Sessions				
Number of Participants				
of which Board Directors Senior Management Other employees				
External Sessions				
Number of Participants				
of which Board Directors Senior Management Other employees				
Court Orders				
Freezing of funds				
Confiscation of assets				
Monitoring of accounts				

Declaration

It is hereby certified that to the best of my knowledge the statistical information being submitted is correct.

Name & Signature of reporting officer ……

Date of submission: ……..