

Annex I to the Technical Paper ECCU-PECK-eng-3/2015¹
Project against Economic Crime in Kosovo

This Version of the amended AML/CFT Law contains an assessment, review, comments and proposed text (for guidance purposes) for additional amendments

by
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as at 26 June 2015

Law No. 03/L-196

ON ~~THE~~ PREVENTION AND FIGHTING OF MONEY LAUNDERING AND TERRORIST FINANCING

Assembly of Republic of Kosovo,

Based on Article 65 (1) of the Constitution of the Republic of Kosovo,

Adopts:

LAW ON ~~THE~~ PREVENTION AND FIGHTING OF MONEY LAUNDERING AND TERRORIST FINANCING

CHAPTER I
GENERAL PROVISIONS

Article 1
Purpose

1. This Law ~~shall stipulate~~defines measures, competent authorities and procedures for detecting, ~~and~~ preventing and fighting money laundering and terrorist financing.
2. In order to effectively prevent and combat~~fight~~ money laundering and terrorist financing in Kosovo, this Law ~~also~~ establishes the Financial Intelligence Unit~~FIU~~ of Kosovo.

Article 2

¹ Note:

- Highlighted text in yellow is left as such by the FIU. Comments marked by ED... are made by Kosovo authorities;
- Normal strikethrough text is made by PECK Project experts.
- Any text in track change (other than this made by ED or Edmond DUNGA – authorities' changes to the basic Law) is made by PECK Project experts.
- Comments containing PPE... are those made by PECK Project experts.

Definitions

1. Terms used in this Law have the following meaning:

1.1. *Bank* - an entity defined as a bank in the Law on the Central Bank of the Republic of Kosovo.

1.2. *Beneficial owner* - the natural person who ultimately owns or controls a customer and/or a natural person or an account, the person on whose behalf a transaction or activity is being conducted, or the person who ultimately exercises effective control over a legal person or arrangement. The beneficial owner should at least include:

(a) in cases of corporate entities:

(i) the natural person who ultimately owns or controls a legal entity through direct or indirect ownership or control over a sufficient percentage of shares or voting rights in that legal entity, including through bearer share holdings, other than a company listed on a regulated market that is subject to disclosure requirements, consistent with the legislation in force or subject to equivalent international standards; a percentage of 25% plus one share shall be deemed sufficient to meet this criterion;

(ii) the natural person who otherwise exercises control over the management of a legal entity;

(b) in the case of legal entities, such as foundations, and legal arrangements, such as trusts, that administer and distribute funds:

(i) where future beneficiaries have already been determined, the natural person who is the beneficiary of 25% or more of the property of a legal arrangement or entity;

(ii) where individuals that benefit from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;

(iii) the natural person who exercises control over 25% or more of the property of a legal arrangement or entity;

1.3. ~~*Business organization*~~ *Commercial company* -- has the meaning given in Article 2 of defined under the relevant Law on ~~Business Organizations~~ *Commercial Companies* (02/L-123).

1.4. *Business relationship* - a business, professional or commercial relationship, which is connected with the professional activities of a reporting subject, with another person or entity and which is expected, at the time when the contract is established, to have an element of duration

1.5. *BPK Regulation* - UNMIK Regulation No. 1999/20 of 15 November 1999, as amended, on the Banking and Payments Authority of Kosovo.

1.6. *Casino* -- any licensed facility that houses and accommodates certain types of casino games most commonly built near or combined with hotels, restaurants and other tourist attractions in accordance with the applicable law on Games of Chance in Kosovo ~~a premise destined for organizing the games of chance, which shall be organized in tables for play with balls, cubes or cards;~~

1.7. *CBK* - the Central Bank of the Republic of Kosovo;

1.8. *Certified accountant* - an accountant certified by a licensed professional accounting and auditing association and continues to be a member of a professional accounting and auditing association with regular status in accordance with the Law No. 04/L-014 on Accounting, Financial Reporting and Audit section 6 of UNMIK Regulation No. 2001/30 of 29 October 2001 on the Establishment of the Kosovo Board on Standards for Financial Reporting and a Regime for Financial Reporting of Business Organizations;

~~[Amended by the Law No. 04/L-178 of 11 February 2013]~~

1.9. *Client* - means any person that conducts, or attempts to conduct, a transaction ~~with~~ or use the services of a reporting ~~S~~subject as defined in Article 16, and shall include any owner or beneficiary or

Comment [ED1]: To be harmonised.

Comment [PPE2]: The definition is taken over from the EU Third Directive without consideration to the fact that Kosovo does not have any legislation for setting and registering trusts. It can only remain if Kosovo allows FIs/DNFBPs to establish business relationships or opening bank accounts with foreign trusts as such.

Comment [PPE3]: Is this Regulation still in force?

Comment [ED4]: To consult the CBK (Labinot).

Comment [ED5]: AMENDED BY PECK TEAM.

other person or entity on whose behalf the transaction is conducted or the services are received;²²

1.10. *Covered professional* - lawyers, notaries, certified accountants, ~~and~~ licensed auditors, ~~or~~ and tax advisors (fiscal representatives);

1.11. *Currency* ~~— means banknotes and coins that are in circulation as a medium of exchange. an exchange mean in form of a coin and a banknote, which circulates as a means of exchange; The amount set out in euro in this Law implies the equivalent value in other foreign currency.~~

1.12. *Entity* - a natural ~~of~~ legal entity that exists in a legally-recognized form, including but not limited to: a legal person, a business organization, an NGO, a political party, a trust, a socially-owned enterprise and a publicly-owned enterprise;

~~[Amended by the Law No. 04/L-178 of 11 February 2013]~~

“1.13. *FATF* - means the “Financial Action Task Force”, an independent intergovernmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction;²²

1.14. *FIU-K* - the Financial Intelligence Unit of Republic of Kosovo established according to Article 4 of this Law;

1.15. *Financial institution* - a person or entity that conducts one or more of the activities for or on behalf of a customer including activities shown below:

1.15.1. lending, including but not limited to consumer credit; mortgage credit; factoring (business for buying cheques, obligations etc), with or without recourse; and finance of commercial transactions, including forfeiting;

1.15.2. financial leasing, except financial leasing arrangements related to consumer products;

1.15.3. transfer of currency or monetary instruments, by any means, including by an informal money transfer system or by a network of persons or entities which facilitate the transfer of money outside of the conventional financial institutions system;

1.15.4. money and currency changing;

1.15.5. issuing and managing means of payment, including but not limited to credit and debit cards, cheques, traveler's cheques, money orders and bankers' drafts, or electronic money;

1.15.6. financial guarantees and commitments;

1.15.7. trading on behalf of other persons or entities in one or more of the following:

1.15.7.1. money market instruments, cheques, bills, certificates of deposit, derivative products (coming from another activity etc);

1.15.7.2. foreign exchange;

1.15.7.3. exchange, interest rate and index instruments;

1.15.7.4. transferable securities; and

1.15.7.5. commodity futures trading;

1.15.8. individual and/or collective portfolio management;

1.15.9. participation in securities issues and the provision of financial services related to such issues;

1.15.10. safekeeping and administration of cash or liquid securities on behalf of other;

1.15.11. otherwise investing, administering or managing funds or money on behalf of other persons;

1.15.12. acting as an insurance company, life insurance company or intermediary of life insurances as defined in Article 1 of UNMIK Regulation No. 2001/25 of 5 October 2001 on Licensing, Supervision and Regulation of Companies and Insurance Intermediaries; and

1.15.13. acting as a fiduciary as defined by the Law No. 04/L-101 on Pension Funds of Kosovo in section 1 of UNMIK Regulation No. 2001/35 of 22 December 2001 on Pensions in Kosovo;

Comment [ED6]: To review the coverage of these professionals.

Comment [ED7]: Cash

Comment [ED8]: To be reviewed.

Comment [PPE9]: The reference to “trusts” is without consideration to the fact that Kosovo does not have any legislation for setting and registering trust. It can only remain if Kosovo allows FIs/DNFBPs to establish business relationships or opening bank accounts with foreign trusts as such.

Comment [ED10]: To consider whether the acronym should be translated.

Comment [ED11]: Article 2 of the Insurance Law (it is still a draft) or relevant CBK Regulation. To consult the CBK (Labinot).

Comment [ED12]: AMENDED BY PECK TEAM.

Comment [ED13]: To consult the CBK (Labinot).

1.16. *Freezing* - prohibiting the transfer, conversion, disposition or movement of funds or other property on the basis of, and for the duration of the validity of, a decision of a judicial or other competent authority. The frozen funds or other property shall remain the property of the persons or entities that held an interest in the specific funds or other property at the time of freezing, and may continue to be administered by the financial institution²²;

Comment [ED14]: Sale, property exchange or withdrawal from an account (National Coordinator's suggestion)

1.17. *Licensed object of Games of chance* ~~is in accordance with the Law No. 04/L-080 on Games of Chance means any game physically played with cards, dices, device or machine for money, property, cheques, loans or any other equivalent value including but not limited to the games: roulette, keno, bingo, blackjack, poker, baccarat, pay gow, slot machines, or any other game or device approved by the Tax Administration of Kosovo, but does not include the games which are excluded by the applicable Law on Games of Chance in Kosovo. any premise where games of chance are organized and it can include but not limit to any hotel annex and spaces accompanied to it, retail selling points, warehouse or any other additional form of business property of or managed by the company licensed for games of chance and being a part of the general operation. This term includes also the sports bet subjects;~~

Comment [ED15]: TAK Division on Games of Chance (Bekim.Jupa@atk-ks.org)

Comment [PPE16]: It is appropriate to link the definition to that in the principal law because if the principle law changes the definition than this will have a direct effect on this definition in item 1.17.

1.18. *Immovable property* - land, buildings and apartments;

1.19. *Immovable property right* - a right pertaining to immovable property, including ownership, mortgages, servitudes and rights of use of socially owned, publicly-owned and state-owned property;

1.20. *Lawyer* - any person who is enlisted in Bar Register in accordance with the relevant Law on the Bar; (03/L-117)

1.21. *Licensed auditor* - a person licensed as an auditor in accordance with the Law No. 04/L-014 on Accounting, Financial Reporting and Audit pursuant to section 1 of UNMIK Regulation No. 2001/30 of 29 October 2001 on the Establishment of the Kosovo Board on Standards for Financial Reporting and a Regime for Financial Reporting of Business Organizations;

Comment [ED17]: To be reviewed and harmonised with the applicable law on Accounting, Financial Reporting and Audit.

Comment [ED18]: AMENDED BY PECK TEAM.

1.22. *Monetary instruments* ~~is~~ shall include currency, travellers' cheques, personal cheques, bank cheques, payment orders, money orders, cashier's cheques of any ~~D~~description, and/or investment securities or negotiable instruments, in bearer form or otherwise in such form that title thereto passes upon delivery;

Comment [PPE19]: The inclusion of the word "shall include" makes the definition open for the addition of any other instrument that carries a monetary value but which is not specifically mentioned in the definition.

1.23. *Money laundering* ~~is~~ means any of the conducts specified in Article 40 of this Law. ~~for the purpose of disguising the origin of money or other property obtained by an offence and shall include:~~

~~1.23.1. conversion or any transfer of money or other property derived from criminal activity;~~

~~1.23.2. concealment or disguise of the true nature, origin, location, movement, disposition, ownership or rights with respect to money or other property derived from criminal activity.~~

1.24. *Notary* - in accordance with article 2.2 of the Law no. 03/L-10 on Notary ~~is~~ means a professional lawyer, public official, appointed by the Ministry of Justice to perform the activities defined by the law.

1.25. *Non-Governmental Organization* - (or "NGO") means any legal person that is organised as a non-governmental organisation in Kosovo in accordance with the relevant Law on Freedom of Association in Non-Governmental Organisations ~~in accordance with article 2 of the Law No 03/L-134 on Freedom of Association in Non-Governmental Organisations means any domestic association and foundation, as defined in Article 5 of this Law, or any foreign or international organization as defined in Article 7 of this Law.~~

~~[Abrogated by the Law No. 04/L-178 of 11 February 2013]~~

1.26. *Politically Exposed Person* ~~is~~ any person who is or has been entrusted with prominent public functions in any country, as well as members of such person's family or those closely associated with him/her.

1.27. *Police* ~~is~~ Kosovo Police, Kosovo Customs and Tax Administration of Kosovo as defined by Article 19 paragraph 1.32 of the Criminal Procedure Code of Kosovo No. 04/L-123, Article 3 of the Law No. 04/L-076 on Police, Articles 302-304 of the Customs Code No 03/L-109 and Article 75 of the Law No. 03/L-222 on Tax Administration and Procedures. ~~the Kosovo Police Force; according to~~

Comment [ED20]: PECK TEAM COMMENT:

This is an attempt to include in the definition not only Kosovo Police but also Customs and TAK officials when they act in their quality of "judicial police". Current Article 36.D paragraph 1 specifies this issue:
"1. Customs officers and officials of the Tax Administration of Kosovo recognized as "Judiciary Police" according to the Criminal Procedure Code of Kosovo have the competences, responsibilities and tasks for the investigation and detection of the criminal offences of money laundering and terrorist financing and are authorized to conduct investigations of these offenses under the supervision of a prosecutor."

article 3 of the Law on Police Nr. 03/L-035.

Police - Kosovo Police as defined in Article 3 of the Law on Police and in Article 19, paragraph 1.32 of the Criminal Procedure Code of Kosovo No. 04/L-123.

For No. 04/L-076, Customs officials as defined in Articles 302-304 of the Customs Code and Tax Administration officials as defined in Article 75 of Law No. 03/L-222 on Tax Administration and Procedures and as defined in Article 19, paragraph 1.32 of the Criminal Procedure Code of Kosovo No. 04/L-123.

Police - Kosovo Police, Kosovo Customs and Tax Administration of Kosovo, as defined by Article 19, paragraph 1.32 of the Criminal Procedure Code of Kosovo No. 04/L-123, Article 3 of the Law No. 04/L-076 on Police, Articles 302 to 304 of the Customs Code No. 03/L-109 and Article 75 of the Law No. 03/L-222 on Tax Administration and Procedures.

1.28. *Predicate criminal offence* - any offence, which generates proceeds of crime.

1.29. *Proceeds of crime* - any property derived directly or indirectly from a predicate criminal offence. Property derived indirectly from a predicate criminal offence includes property into which any property directly derived from the predicate criminal offence was later converted, transformed or intermingled, as well as income, capital or other economic gains derived or realized from such property at any time since the commission of the predicate criminal offence;

1.30. ~~Property or Funds or other assets~~ - assets of every kind, whether corporeal or incorporeal, ~~tangible or intangible~~, movable or immovable, ~~however acquired~~, and legal documents or instruments in any form, including electronic or digital, evidencing title to or interest in such assets, including but not limited to bank credits, ~~bank and~~ traveler's cheques, ~~bank cheques~~, money orders, shares, securities, bonds, drafts and letters of credit, and any interest, dividends or other income on or value accruing from or generated by such assets ~~or funds~~, ~~however acquired~~;

~~1.31. Religious institutions - all religions and their communities in Kosovo according to Article 5.4 of the UNMIK Regulation 2006/48 On the Promulgation of the Law on Freedom of Religion in Kosovo adopted by the Assembly of Kosovo.~~

1.32. *Reporting subject* - means a natural or legal person ~~or entity~~ required to make reports to the FIU ~~K~~, as ~~are~~ defined in Article 16 of this Law.

1.33. *Seizing* - ~~prohibiting~~ the transfer, conversion, disposition or movement of funds or other property on the basis of, and for the duration of the validity of, a decision of a judicial or other competent authority. The seized funds or other property shall remain the property of the person or entities that held an interest in the specific funds or other property at the time of seizure, but shall be administered by the judicial or other competent authority;

1.34. *Shell bank* - a bank, or ~~an~~ institution engaged in equivalent activities, established in a Country where it has no physical presence, which makes possible to exercise an actual direction and management without being affiliated with any regulated financial group;

~~{Amended by the Law No. 04/L-178 of 11 February 2013}~~

~~"1.35. Suspicious act or transaction - means an act or transaction, or an attempted act or transaction, that generates a reasonable suspicion that the property involved in the act or transaction, or the attempted act or transaction, is proceeds of crime or is related to terrorist financing and shall be interpreted in line with any guidance issued by the FIU on suspicious acts or transactions;"~~

1.36. *Terrorist financing* - the provision or collection of funds, by any means, directly or indirectly, with the intention that they should be used or in the knowledge that they are to be used, in full or in part, or for the benefit of, by a terrorist or a terrorist organisation, or in order to carry out any of the offences within the meaning of Articles ~~142-138~~ and ~~143-143~~ of the Criminal Code of Kosovo ~~and~~

Comment [ED21]: To be examined.

Comment [PPE22]: Addressing PECK comment (para 447)

Comment [ED23]: IN THE ALBANIAN VERSION, THE TERM "CONFISCATION" IS USED.
To review it into "seizing" from the English version. To coordinate with Customs, National Coordinator and the Criminal Code (seizing).

Comment [PPE24]: Temporary confiscation is used for seizure in the Albanian version.

~~within the specific definitions provided by FATF in the Special Recommendation II.~~

1.37. *Payable through* - correspondent accounts used directly by a third party to transact business ~~on~~ their own behalf.

1.38. *Wire transfer* - 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 beneficiary person at another financial institution.

1.39. *FIU Management Board* - the board comprised of the members from different institutions as defined in this Law who shall oversee the work and ensure the independence of the FIU.

~~[Added by the Law No. 04/L-178 of 11 February 2013]~~

“1.40. Criminal activity – means any kind of criminal involvement in the commission of a criminal offense as defined under the Laws of Kosovo;

1.41. Politically exposed persons ~~– means 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. The FIU in consultation with Ministry of Finance may issue a sub-legal act to define the prominent public functions and the immediate family members of such persons.~~ means foreign or domestic natural persons who are or have been entrusted with prominent public functions that include the following:

(i) head of state, government leader, minister, deputy minister, political advisor, chief of staff;

(ii) members of parliament or members of similar bodies and elected by the parliament;

(iii) management board members of political parties;

(iv) members of the Constitutional Court, Supreme Court or any other high-level judicial or military adjudicating body whose decisions cannot be appealed except in extraordinary circumstances;

(v) members of the court of audit or the central bank board;

(vi) ambassadors or chargés d'affaires or high ranking military officials;

(vii) board members, administrators, managers or supervisors of state-owned enterprises;

(viii) directors, deputy directors and members of boards or equivalent positions in international organisations.

None of the categories specified by paragraphs (i) to (viii) would be understood to include middle ranking or low level officials in the foregoing categories.

Family members include the following: spouse, any person who is considered as spouse equivalent, children and their spouses or persons considered equivalent to spouse and parents.

A person known as close associate means:

- any natural person who is known to be joint beneficial owner of legal persons or legal arrangements, or any close business relationship with persons specified in paragraph (1.41) (i) to 1.41 (viii);

- any natural person who is the beneficial owner of a legal person or legal arrangement which is known to have been established for de facto benefit of persons specified in paragraph (1.41) (i) to (1.41) (viii).

1.42. Terrorist act – means the definition as prescribed in the Criminal Code of the Republic of Kosovo.²²

TO BE ADDED:

Comment [ED25]: To harmonise the definition.

Comment [PPE26]: It is not clear whether this is meant to cover situations of persons who are or who have been entrusted with a prominent function by an international organization in accordance with the 2012 FATF Standards Recommendation 12. If so, the enhanced due diligence provisions for PEPs should be extended also to PEPs of international organizations (as they currently apply only to foreign and domestic PEPs).

1.43. Compliance officer - Director, officer, employee or agent of any reporting subject who is appointed in writing and who prepares or transmits reports according to Article 21 and other provisions of this Law.

1.44. Sectoral supervisor - for the purposes of this Law means the competent authorities specified by the applicable laws in Kosovo that license, regulate and supervise the work of reporting subjects according to this Law under their competence for the purpose of implementing this Law.

1.45. Cash - means the currency as an exchange mean in form of a coin or banknote, circulated as cash.

1.46. Transaction - for the purposes of this Law a transaction means a business relationship or an exchange that involves two or more parties in a business relationship one of whom is a reporting subject under this Law.

1.47. Corresponding bank - is the bank that provides banking or similar services for another bank (respondent bank).

1.48. Legal arrangements – refers to trusts and other similar legal arrangements.

1.49. Trust - means an agreement in good faith in which the ownership rests with the trustee on behalf of the beneficiary.

1.50. Correspondent relationship means:

(a) provision of banking services by a bank ("correspondent") to another bank ("respondent"), including but not limited to ensuring the responsibility of current or others accounts and related services, such as administration of cash, transfers of international funds, clearing, paid through foreign exchange accounts and services;

(b) relationships through financial institutions and between financial institutions that provide similar services, including but not limited to those relationships established for the transactions of securities or fund transfers;

1.51. Occasional transaction -- means any transaction other than a transaction carried out in the exercise of a business relationship formed by a reporting subject and another person or entity.

Add specific obligations to relevant Articles.

Article 3

~~Special Prosecution Office~~ Powers of state prosecutors

[Amended by the Law No. 04/L-178 of 11 February 2013]

1. Money laundering and terrorist financing criminal offences described in **Article 40** and **41** of this Law fall within the exclusive competence of the Special Prosecution Office of the Republic of Kosovo, established by Law No. 03/L-052 on Special Prosecution Office of the Republic of Kosovo.

2. Other criminal offences described in this Law fall under the competence of state prosecutors as described in Law No. 03/L-225 on State Prosecutor and Criminal Procedure Code No. 04/L-123.

~~"The criminal offences according to this Law and basic Law fall within the exclusive competence of the Special Prosecution Office of the Republic of Kosovo established by Law No 03/L-052 on the Special Prosecution Office of the Republic of Kosovo."~~

Comment [PPE27]: Kosovo authorities are urged to ensure that this term is used consistently throughout the whole Law as it appears that at times other terms, such as supervisory competent authority, are used.

Comment [PPE28]: Clarification of what constitutes a transactions as opposed to an occasional transaction which is now being also defined.

Comment [PPE29]: the reference to "trusts" is taken from FATF definition without consideration to the fact that Kosovo does not have any legislation for setting and registering trust it can only remain if Kosovo allows FIs/DNFBPs to establish business relationships or opening bank accounts with foreign trusts as such.

Comment [ED30]: To harmonise with the CBK.

Comment [PPE31]: The reference to "trusts" is without consideration to the fact that Kosovo does not have any legislation for setting and registering trust. It can only remain if Kosovo allows FIs/DNFBPs to establish business relationships or opening bank accounts with foreign trusts as such.

Comment [PPE32]: Since the term 'occasional transaction' is used throughout the Law in relation to customer due diligence it is deemed appropriate to define the term within the context of a "business relationship" as defined.

CHAPTER II

THE FINANCIAL INTELLIGENCE UNIT

Article 4

Status of the Financial Intelligence Unit~~FIU~~

1. In order to effectively prevent and fight~~combat~~ money laundering and terrorist financing in Kosovo, this Law ~~also~~ establishes the Financial Intelligence Unit of the Republic of Kosovo (FIU-K) within the respective Ministry of Finance ~~and Economy~~ (MoF) as a central independent national institution responsible for requesting, receiving, analyzing and disseminating to the competent authorities, disclosures of information which concern potential money laundering and terrorist financing.

2. Funds for the functioning of FIU-K are provided by the Kosovo Budget in accordance with the applicable law thereof.

3. Except administrative personnel, employees of the FIU-K are public servants but not civil servants; however the legislation regulating civil service matters is applicable for the FIU-K, except cases when otherwise stipulated by this Law and other sub-legal acts which shall comply with the basic principles of civil service.

4. Internal sub-legal acts that regulate the internal administrative organisation, management, recruitment matters, and other internal administrative matters related to the FIU-K shall become final only after approved by the FIU-K Board, as stipulated in the decision making procedure of the Board under Article 8, paragraph 2 of this Law.

Comment [PPE33]: Not legally feasible as FIU is not mentioned as exception in the law.

Article 5

The Management Board

1. The Management Board (hereafter the Financial Intelligence Unit "Board") is established through promulgation of this law by the Assembly of Kosovo ~~the Management Board ("the Board") of the Financial Intelligence Unit is established~~. The Board shall oversee and ensure independence of the FIU-K. The Board has no executive or enforcement powers vis-à-vis the FIU-K.

2. The Management Board is comprised of the respective Minister of ~~Economy and~~ Finance who shall serve as the Chair of the Board. Other members of the Board shall include, ex officio, the Minister of Internal Affairs, the Chief Prosecutor of Kosovo, the Director-General of the Kosovo Police, the Director of the Tax Administration, the Director-General of the Customs of Kosovo, and the ~~Managing Director~~ Governor of the Central Bank of the Republic of Kosovo.

3. The Board shall meet at least twice a year.

Article 6

Duties and Competences of the Board

1. The Board is ~~authoriz~~sed to:

1.1. review, approve and reject the reports of the FIU-K prepared according to paragraph 1 Article 10 of this law. If the Board rejects such a report, it shall provide the Director of the FIU-K with a detailed written explanation of the reasons for such rejection and a clear indication of the deficiencies that must be corrected;

1.2. oversee and periodically assess the performance of the Director of the FIU-K;

1.3. ~~appoints and/or dismisses~~ the Director of the FIU-K;

1.4. adopt the regulation on the internal organisation of the FIU-K upon proposal of the FIU-K Director;

1.45. determine the budget of the FIU-K upon proposal of the FIU-K Director and transmit it for processing pursuant to the applicable Law on budget-FIU;

1.56. control and oversee the wealth stated by the Director of the FIU-K and the conflict of interest cases, in accordance with the rules and procedure foreseen by the Law on Prevention of Conflicts of Interest in Exercising Public Function, Law on Declaration of Assets and Gifts of the Senior Public Officials and other relevant articles-provisions of the applicable legislation in Kosovo.

Article 7 **No interference**

The Board has no right to interfere in any way in FIU-K operational ongoing cases.

Article 8 **Organization of the Board and Decision-making Procedures**

1. The Chair shall represent the Board in public and shall appoint ~~a~~ MoFE Official to serve as the Secretary of the Board.

2. The Board shall make decisions by majority vote. The Board shall have a quorum to make a decision if at least five (5) Board members are present at a duly called and noticed meeting at the time the decision is made.

3. If it becomes necessary for the Board to meet in the absence of the Chair, the Minister of Interior shall chair the meeting.

4. The Board shall prepare and adopt its own rules and procedures that are necessary for exercising its duties and competencies.

Article 9 **Competencies of the Chairman of the Board**

1. The Chairman of the Board shall be responsible for:

1.1. performing all functions vested in him/her by law and delegated in written to him/her by the Board;

1.2. conducting the ordinary business of the Board in accordance with any decisions or instructions duly adopted by the Board; and

Article 10 **Competencies and Responsibilities of the FIU-K Director ~~FIU~~-vis-à-vis the Board**

1. Fifteen (15) days prior to each Board meeting once a year, the FIU-K Director ~~of the FIU~~ shall provide each and every member of the Board with an up-to-date written report summarizing:

1.1. the administrative, executive, and regulatory activities and decisions of the FIU-K;

1.2. all aspects of the financial management, revenues and expenditures of the FIU-K. If a majority of the members of the Board determine that there are reasons to believe that the FIU-K is not complying or has not complied with one or more provisions of the present law or another normative act applicable in Kosovo, the Board shall refer the respective matter of non-compliance to the Auditor General of Kosovo and request him/her to carry out an audit, which shall be

presented to the Assembly of Kosovo;

1.3. the FIU-K director is not under any obligation to disclose any information which could jeopardize the operational side of the work of the FIU-K.

Article 11 Director of the FIU-K

1. The FIU-K is headed by a Director who is responsible for directing and managing the FIU-K.

~~[Amended by the Law No. 04/L 178 of 11 February 2013]~~

2. Director of FIU-K nominates the Deputy Director of FIU-K and delegates tasks in written form.

Comment [ED34]: To be harmonised.

3. The Director of the FIU-K shall be appointed by the Board, ~~upon proposal of the Ministry of Finance and Economy,~~ on the basis of demonstrated knowledge, professionalism and experience and ~~must~~should:

3.1. be a person with high moral integrity and professionalism;

3.2. have a university degree in a relevant field of expertise;

3.3. have at least five (5) years of substantial relevant professional experience;

3.4. ~~he/she should~~ not:

3.4.1. hold a political position in the Government of the Republic of Kosovo, the Assembly of Kosovo, a local authority, political party or a trade union;

3.4.2. have a direct or indirect interest in a "reporting subject";

3.4.3. have a conflict of interest according to the Law on Conflict of Interest.

4. The ~~Minister of Economy and Finance Board~~ shall ensure open and transparent selection process of the Director, according to the procedures set in Article 12 of this law.

5. No person may become or remain a Director if he/she has been convicted of a crime which is punishable by a sentence of imprisonment of six (6) months or more.

6. For the purpose of clarity, the Director of the FIU-K shall be an "official" in compliance with the Law on Conflict of Interests.

7. The mandate has duration of three (3) years and can be renewed.

8. Six (6) months prior to expiration of the mandate of the serving Director, the ~~respective~~ Ministry of Finance ~~and Economy in coordination with the Secretary of the FIU-K Board~~ shall initiate the procedure for the selection of new Director through an open, public, impartial and transparent selection ~~and interviewing process for candidates~~ including:

8.1. widely publicizing the vacancy with details of the position, its location, job description, salary, duration of contract, a brief description of the qualifications, skills, expertise and personal qualities required and a clear explanation of the application and selection procedures which will be followed;

8.2. ensuring that the selection procedure is open, competitive, non-discriminatory, fair, objective and transparent based upon a pre-determined set of essential qualifications and skills ~~specified in this Article~~.

9. ~~Respective Ministry of Finances in coordination with the Secretary of the FIU-K Board shall select the candidates that best meet the conditions defined in the Law this Article and shall draft the short list and forward it to the Board to interview them.~~

Comment [PPE35]: "Best" and "Law" should be kept.

Comment [PPE36]: This provision is out of place here. Should go in the following article

Article 12 Selection procedures for the Director of the FIU-K

1. ~~After receiving the short list from the Secretary of the FIU-K Board, the Board interviews the shortlisted candidates and after interviewing them selects the Director of the FIU-K. The MFE shall make a pre-selection of most suitable candidates that best meet the criteria established by the Law and shall shortlist at least two (2) candidates.~~
2. The Chairman of the Board officially publishes the selection of the FIU-K Director. ~~The MFE shall submit to Board the names of the short listed candidates with~~through a report ~~that provides detailed~~ing criteria based on which ~~criteria~~ the pre-selection took place.
3. The Board appoints the Director of the FIU among the short listed candidates by the MFE.

Comment [PPE37]: These criteria should remain in place, as they ensure the transparency of the selection process. The requirement that there must be at least two candidates must be reinstated.

Article 13

Dismissal and suspension of Director of the FIU-K

1. The Director of the FIU-K may be dismissed through the same process by which he or she was appointed.
2. The Director of the FIU-K may be dismissed:
 - 2.1. if he is convicted of a criminal act;
 - 2.2. as a result of permanent loss of the ability to perform his job for a period of more than three (3) months;
 - 2.3. if he/she is found to have exercised the duties of the office in contravention of the law or in a manner likely to bring the FIU-K into public or judicial disrepute because of serious professional misconduct or grossly improper personal behavior.
3. The Director of the FIU-K may be suspended:
 - 3.1. if he/she does not seek the prior approval of the Managing Board before joining any organization or group; failure to report may be grounds for suspension of the FIU-K Director.
 - 3.2. if he/she holds any other employment during their tenure as the FIU-K Director.
 - 3.3. if he/she is engaged in any industrial action or any other form of collective work stoppage.
 - 3.4. if he/she without the prior agreement of the Management Board, gives public statements or otherwise comments on the work of the FIU-K, or in any case provides information to unauthorized persons on data, documents, contacts, intentions, knowledge or personnel of the FIU-K.
 - 3.5. if he/she pursues or accepts any gain, benefit, monetary advantage, or illegal service for themselves or others, other than those provided by this Law.
 - 3.6. if he/she violates any of the provisions of this Article or of this Law which otherwise shall be considered grounds for suspension and/or termination of employment pursuant to this Law.

Article 14

Duties and Competencies of the FIU-K

1. The FIU-K is authorized to ~~receive and proceed:~~
 - 1.1. receive and analyze reports and information:
 - 1.1.1. made or kept under **Articles 16 to 28** of this law,
 - 1.1.2. provided to the FIU-K by bodies from FIU foreign countries with similar functions, from courts or responsible authorities for implementation of the law including intergovernmental and international organization the public or governmental bodies, and
 - 1.1.3. voluntarily provided to the FIU-K concerning suspicions of money laundering, predicate offences and or of the terrorist financing ~~of terrorist activities~~;

1.2. collect information that is relevant to money laundering activities and associated predicate offences or the financing of terrorist activities and that is publicly available (including through commercially available databases);

1.3. conduct strategic analysis of the information it collects and receives, to prevent and fight money laundering, predicate offences and terrorist financing;

~~1.3. for purposes of analyzing suspected money laundering or financing of terrorist activities, request and receive records, documents and information from public or governmental bodies or any international or intergovernmental body or organization (in Kosovo) concerning a person, entity, property or transaction;~~

~~1.4. request from reporting subjects any and requires data, documents and/or information it needs to undertake its functions under this Law. The data, documents or information shall be provided within the timeframe established by FIU-K related to specific requests of data or analyses from legal obligators, which should be offered precisely for inspection by FIU and to allow their coping and reproduction, only for the use of a unit. Legal obligators who refuse such requests should within three (3) days be informed about the request of FIU, send it in written their reasons for refusal. After this, the FIU shall decide and notify the legal obligor whether he/she is or is not in compliance with obligations foreseen in this provision.~~

1.5. request from public or government bodies data, documents and information it needs for the purpose of exercising its functions under this Law and to have access to the databases maintained by those bodies. Such information shall be provided without delay.

~~1.5. the FIU and other bodies and institutions in Kosovo shall be obliged to mutually cooperate and assist one another in performing their duties and shall coordinate activities within their competence, consistent with the applicable laws.~~

1.6. create and maintain a database of all information collected or received relating to suspected money laundering, predicate offences or financing of terrorist financing activities and such other similar materials as are relevant to the work of the FIU-K;

~~1.7. may, spontaneously or upon request, share information with any foreign counterpart agency that performs similar functions and is subject to similar confidentiality obligations, regardless of the nature of the agency, subject to reciprocity. The information provided shall be used only with the consent of the agency and only for the purposes of combating money laundering, predicate offences and financing of terrorism;~~

1.8. compile information, statistics and records-reports and based thereon make recommendations to the relevant Ministry of Economy and Finance, the Ministry of Justice, the police, the Kosovo Customs in Kosovo and/or other relevant persons or bodies regarding measures which may be taken and legislation which may be adopted to combat money laundering, predicate offences and the terrorist financing of terrorist activities;

1.9. make such reports public as will be helpful in carrying out its tasks/functions;

1.10. organize and/or conduct regular trainings, including awareness and outreach regarding the prevention of money laundering, predicate offences, the financing of terrorist financing activities and the obligations of reporting subjects;

1.11. disseminate, in accordance with provisions of this Law the outcome of its analysis, reports and any necessary report or information to the relevant authorities;

1.12. issue administrative regulations, directives, and instructions and guidance on issues related to ensuring or promoting compliance with this Law, including but not limited to:

1.12.1. the use of standardized reporting forms;

1.12.2. about suspicious acts or transactions, including the nature of suspicious acts or transactions for the purposes of this Law, and the development of lists of indicators of such acts and transactions;

1.12.3. the exemption of persons or entities or categories of persons or entities from reporting obligations under this Law and the methods of reporting such exemptions;

Comment [PPE38]: There is no sanction for noncompliance with this requirement.

Comment [PPE39]: This is not realistic. It would be better to say: "within the timeframe agreed in memorandum of understandings or other agreements".

Comment [PPE40]: Not in the Albanian version

Comment [PPE41]: The FIU should assume responsibility also for ensuring awareness throughout all categories of reporting subjects and should therefore outreach to them

Comment [PPE42]: Not sure why this is needed. Report is a type of information, is it not?

Comment [PPE43]: This provision should be complemented with a provision stating the grounds for dissemination, as well as the recipients (see comment to Art. 15)

~~1.13. request documents and information in accordance with this Law;~~

~~1.142. **issue** directives in relation to failure to perform a transaction or to demand from reporting subjects in accordance with this Law to monitor the accounts or business relationship for a period of up to three months or an additional time period as determined by the FIU-K, for the purpose of sub paragraph 1.7 of this paragraph, the FIU may enter into an agreement or arrangement with a foreign counterpart agency that perform similar functions and is subject to similar secrecy obligations;~~

~~**1.13 supervise and monitor reporting subjects on compliance with this Law and regulations, directives and instructions issued thereunder as provided for in this Law both on an on-site and off-site basis;**~~

~~1.15. issue instructions to reporting subjects in accordance with this Law including instructions not to carry out a transaction;~~

~~1.16~~**134.** perform other functions in accordance with this Law.

~~1.172. ¶~~The staff of the FIU-K shall be required to keep confidential any information obtained within the scope of their duties, even after the cessation of those duties within the FIU-K. Such information may only be used for the purposes provided for in accordance with ~~the~~is law.

3. The FIU-K and other bodies and institutions in Kosovo shall be obliged to mutually cooperate and assist one another in performing their duties and shall coordinate activities within their competence, consistent with the applicable laws. For this purpose they may enter into agreements or memoranda of understanding.

Article 15

Disclosure and Dissemination of Information and Records by the FIU-K

1. The FIU-K may ~~only disclose, at its own initiative or upon request, only~~ the following information ~~to public and governmental bodies or to reporting subjects, if such disclosure is deemed necessary by, or of assistance to the FIU-K for the performance of its functions, or records containing such information in accordance with paragraph 2 of this Article:~~

1.1. any data concerning a person or entity which is a subject **of a report held by the FIU-K** that would directly or indirectly identify the person or entity, including but limited to a name or address;

1.2. any identifying data concerning a transaction, including but not limited to the date, location, amount or type of property, account number, or transaction number; and

1.3. any other data that the FIU-K deems appropriate in order to prevent and fight money laundering, predicate offences and terrorist financing concerning a person or entity which has provided information or records to the FIU that would directly or indirectly identify the person or entity.

~~[Added by the Law No. 04/L-178 of 11 February 2013]~~

~~“1.a. The FIU is able to exchange, domestically as well as internationally, all information accessible or obtainable directly or indirectly by the FIU.”~~

~~2. The information referred to in paragraph 1 of this Article may be disclosed [Added by the Law No. 04/L-178 of 11 February 2013] “at its own initiative or upon request” by the FIU under the following circumstances:-~~

~~2.1. to the appropriate unit of the police, the Financial Investigation Unit, the Kosovo Intelligence Agency, the competent prosecutor, the Kosovo Customs, the Tax Administration Department of the Ministry of Economy and Finance or KFOR, if the information would be relevant to investigations within its competence, or to a body outside Kosovo with similar functions to the FIU;~~

~~2.2. to a public or governmental body of the Republic of Kosovo if such disclosure of information~~

Comment [PPE44]: Unclear. What does it mean “failure to perform a transaction”?

Comment [ED45]: To consult experts.

Comment [PPE46]: The proposed inclusion of paragraph 1.13 is to establish the overall supervisory responsibility of the FIU which is later defined in this Law.

Comment [PPE47]: This article should have a clearer provision concerning the dissemination of the outcome of the analysis, specifying the recipients and the grounds for dissemination. For example: “Whenever it establishes serious grounds for ML and associated predicate offences, or TF, the FIU will disseminate the outcome of its analysis to....”

~~is necessary for the FIU.~~

~~2.3. to bodies responsible for law enforcement, or performing a similar role to the FIU, outside Kosovo, if such disclosure is necessary or of assistance to the FIU in performing its functions;~~

32. All the data, information and records are disclosed by the FIU-K for intelligence purposes only, in order to provide a ground basis for investigations. They cannot be utilized as evidence before a Court unless the prior written approval of the Director, who will authorize such disclosure only in case there are no other possibilities for the law enforcement, bodies to obtain the relevant evidences elsewhere and/or in another way.

3. The FIU-K may exchange information, spontaneously or upon request, with any foreign counterpart that performs similar functions and is subject to similar confidentiality obligations, regardless of the nature of the counterpart, subject to reciprocity and within the framework of each counterpart's domestic legislation. The exchanged information shall be used only for the requested purpose, with the prior consent of the providing agency and only for the purpose of fighting money laundering, predicate offences and terrorist financing. To this purpose, the FIU-K may sign agreements or memoranda of understanding.

CHAPTER III

REPORTING SUBJECTS AND THEIR LEGAL OBLIGATIONS

Article 16

1. Reporting subjects shall mean:

1.1. Banks

1.2. Financial institutions

1.3. Casinos, including internet casinos and licensed objects of games of chance.

1.4. Real estate agents and real estate brokers.

1.5. Natural or legal persons trading in goods when receiving payment in cash in an amount of ten thousand (10, 000) ~~E~~uros or more.

1.6. Lawyers and notaries (accountants) when they prepare for carry out or engage in transactions for their client concerning the following activities:

1.6.1. buying and selling of real estate,

1.6.2. managing of client money, securities or other assets,

1.6.3. management of bank, savings or securities accounts,

1.6.4. organization of contributions for the creation, operation or management of companies, or

1.6.5. Creation, operation or management of legal persons or arrangements, and buying and selling of business entities.

1.7. Certified accountants and licensed auditors and tax advisers.

1.8. Trust and company service providers that are not covered elsewhere in this law, providing the following services to third parties on a commercial basis:

1.8.1. acting as a formation agent of legal persons;

1.8.2. acting as, or arranging for another person to act as, a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;

1.8.3. providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;

Comment [PPE48]: It is appropriate to include reference to licensed objects of games of chance in accordance with the provisions under Article 28 for consistency.

Comment [PPE49]: There is a need to clarify why the accountants category of DNFBPs is in brackets. The PECK Report has remarked that this raises concern and legal ambiguity at what level are accountants considered as reporting subject in the light of their inclusion also under item 1.7).

Comment [PPE50]: The reference to "trusts" is without consideration to the fact that Kosovo does not have any legislation for setting and registering trust. It can only remain if Kosovo allows FIs/DNFBPs to establish business relationships or opening bank accounts with foreign trusts as such.

1.8.4. acting as, or arranging for another person to act as, a trustee of an express trust;

1.8.5. acting as, or arranging for another person to act as, a nominee shareholder for another person

[Added by the Law No. 04/L-178 of 11 February 2013]

“1.9. Non-Governmental Organizations.

1.10. Political entities.

1.11. Dealers in precious metals and dealers in precious stones.

1.12. Building construction companies.”

Article 16A

Assessment and Prevention of Risk

1. The FIU-K shall periodically ensure and co-ordinate a national risk assessment of money laundering and the financing of terrorism to identify, assess and evaluate risks and make recommendations to the Government for the establishment of policies, strategies and risk management measures to mitigate the identified risks. The national risk assessment shall be undertaken at least every three years and the Ministry of Finance may issue an Administrative Instruction in accordance with Article 50 of this Law establishing the procedures to be followed.

2. All reporting subjects shall periodically determine the risk of money laundering and terrorist financing that they are exposed to through the provision of their services, products, geographic location and delivery mechanisms and channels. The risk assessment shall be provided to the FIU-K and, for banks and financial institutions also to the Central Bank of Kosovo, upon request.

3. To this effect all reporting subjects shall further identify and assess money laundering and terrorist financing risks that may arise in relation to the development of new products and new business practices, including new distribution mechanisms and channels and use of new or developing technologies for new or existing products prior to the introduction of such new products, business practices, distribution channels or use of new or developing technologies.

4. Moreover, all reporting subjects shall pay particular attention to any risk of money laundering or terrorist financing related to products or transactions which promote anonymity and take any necessary measures to prevent its use for the purpose of money laundering or terrorist financing.

5. All reporting subjects shall determine, on an ongoing basis, the risk of money laundering and terrorist financing presented by their customers and any other persons to whom they provide financial and professional services. Where reporting subjects determine that the risk of money laundering and terrorist financing is high, they shall take the measures set out in paragraph 1 of Article 18, in addition to the measures set out in this Article.

6. All reporting subjects shall apply enhanced due diligence measures in accordance with paragraph (1) of Article 18 that are effective and proportionate to the risks identified for business relationships and transactions with natural and legal persons, including financial institutions, from countries as may be stipulated by the FIU-K on the basis of international measures against such countries and the FIU-K shall determine appropriate, effective and proportional countermeasures to be applied against such countries.

Article 17 **Customer Due Diligence**

1. Customer due diligence means:-

[Amended by the Law No. 04/L-178 of 11 February 2013]

“1.1. all reporting subjects shall determine, on an ongoing basis, the risk of money laundering and

Comment [PPE51]: The reference to “trusts” is without consideration to the fact that Kosovo does not have any legislation for setting and registering trust. It can only remain if Kosovo allows FIs/DNFBPs to establish business relationships or opening bank accounts with foreign trusts as such.

Comment [PPE52]: It is proposed to have one specific Article dealing with matters related to risk. This new Article is composed of the transfer of paragraphs already existing in the Law as follows: Art 17 (2.2); Art 17 (2.6); Art 18(7); Art 19(7).

Comment [PPE53]: Paragraph (1) of the new Article 16A introduces a legal obligation for Kosovo to undertake a national risk assessment in accordance with Recommendation 1 of the FATF Standard 2012. The paragraph imposes responsibility on the FIU-K and empowers the MoF to issue instructions accordingly. This paragraph is based on practice since, indeed Kosovo has already undertaken a national risk assessment and the MoF has already issued an Administrative Instruction on procedures.

Comment [PPE54]: Paragraph (2) of the new Article 16A reflects the second part of Recommendation 1 of the FATF Standards 2012 requiring all reporting subjects to assess risks of money laundering and terrorist financing that they may be exposed to consequent to their activities and products.

Comment [PPE55]: The inclusion of paragraph (6) to the proposed Article 16A transposes the new Recommendation 19 of the 2012 FATF Standards.

~~terrorist financing presented by their customers and any other persons to whom they provide financial services. Where reporting subjects determine that the risk of money laundering and terrorism finance is elevated, they shall take the measures set out in paragraph 1 of Article 21, in addition to the measures set out in this Article.~~

~~1.2. 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. Where reporting entities consider that the risk of money laundering or terrorism finance is high, they shall take reasonable measures to verify his or her identity so that the institution or person covered by this law is satisfied that it knows who the beneficial owner is, including, as regards legal persons, trusts and similar legal arrangements, taking risk based and adequate measures to understand the ownership and control structure of the customer.~~

~~1.3. all reporting entities shall obtain information on the purpose and intended nature of the business relationship, and monitor the business relationship, including scrutiny of transactions made throughout the course of the relationship to ensure that the transactions being conducted are consistent with the reporting entity's or person's knowledge of the customer. The competent regulator may issue binding instructions in connection therewith."~~

~~[Abrogated by the Law No. 04/L 178 of 11 February 2013]~~

~~1.4. conducting ongoing monitoring of the business relationship including scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's or person's knowledge of the customer, the business and risk profile, including, where necessary, the source of funds and ensuring that the documents, data or information held are kept up to date. Competent supervisory authority may approve regulation that defined these requests in details.~~

21. All reporting subjects shall apply the customer due diligence measures in the following cases: identify their customers and verify their identities by means of reliable independent source, documents, data or information, when:

21.1. when establishing business relations;

21.2. when carrying out occasional transactions over the specified limit at the amount of ten thousand (10,000) euros or more or equivalent value in foreign currency, whether it is performed as a single transaction or several transactions that are related. If the amount of the transaction is unknown at the time of the operation, the identification shall be done as soon as the amount becomes known or the threshold is reached; when the customer wishes to carry out:

1.3 when there are suspicions about the accuracy and adequacy of the customer identification data obtained;

~~[Amended by the Law No. 04/L 178 of 11 February 2013]~~

~~"2.2.1. a transaction in currency in an amount equal to or above ten thousand (10,000) Euros whether conducted as a single transaction or several transactions that appears to be linked. If the amount of the transaction is unknown at the time of the operation, the identification shall be done as soon as the amount becomes known or the threshold is reached; or"~~

~~2.2.2. a domestic or international wire transfer of funds;~~

~~2.2.3. doubts exist about the veracity or adequacy of previously obtained customer identification data;~~

21.34. when there is a suspicion of money laundering or financing of terrorism.

2. Customer due diligence measures that should be applied by all reporting subjects include:

2.1 identifying the client and verifying the client's identity through independent sources, documents, data or credible information;

~~2.2. determining, on an ongoing basis, the risk of money laundering and terrorist financing presented by their customers and any other persons to whom they provide financial and professional services. Where reporting subjects determine that the risk of money laundering and terrorist financing is high, they shall take the measures set out in paragraph 1 of Article 2118, in~~

~~addition to the measures set out in this Article.~~

~~2.32. identifying when applicable the beneficial owner and/or natural person or persons who directly or indirectly control (20%) (25%) or more of a legal person. Where reporting subjects consider that the risk of money laundering or terrorist financing is high, they shall take reasonable measures to verify his or her identity so that the institution or person covered by this law is convinced that it knows who the beneficial owner is, including, as regards legal persons, trusts and similar legal arrangements, taking risk-based and adequate measures to understand the ownership and control structure of the customer;~~

~~2.43. understanding and obtaining information on their purpose and targeted nature of the business relationship such that reporting subjects may develop the business and risk profile of their customers, as well as monitor business relationships;~~

~~2.54 conducting continuous monitoring of the business relationship, including the supervision of transactions performed during this entire relationship to ensure that the performed transactions, are compliant to the acknowledgment from the institution or person of the client, business profile and risk, including, where necessary, source of funds and guarantee that documents, data or information are kept up to date;~~

~~2.6 identifying and assessing money laundering and terrorist financing risks that may arise in relation to the development of new products and new business practices, including new distribution mechanisms and use of new or developing technologies for new or existing products;~~

Identification and Verification of Clients

3. All reporting subjects shall identify their clients specified under item 2.1 and 2.2 of paragraph 2 of this Article as follows:

3.1 A natural person shall be identified by presentation of an original, unexpired official document that bears a photograph of such person. The person's address and date of birth shall be verified by the presentation of a document or documents capable of providing proof thereof.

43.2 The identity of a legal entity shall be verified by the presentation of:

43.2.1. a business registration certificate issued pursuant to the applicable Law on Business organizations ~~(02/L-123)~~ in the Republic of Kosovo;

43.2.2. an NGO registration certificate issued pursuant to the applicable Law on Freedom of Association in Non-Governmental Organizations in the Republic of Kosovo ~~(No 03/L-134)~~;

43.2.3. evidence proof of Registration of a political party pursuant to UNMIK Regulation No. 2004/11 of 5 May 2004 the applicable law on the Registration and Operation of Political Parties in the Republic of Kosovo;

54. Where an entity is not a business organization, NGO or political party, any other document or documents which enables the verification of the identity of the entity, legal form, address, directors, and provisions regulating the power of agents, officers or directors to bind the entity that are engaged in the relevant entity.²²

4a. For life and other investment related insurance business reporting subjects shall, in addition to the customer due diligence measures in accordance with this Article and Article 18 of this Law identify the beneficiaries and:

4a.1 where the beneficiary is identified as a named natural or legal person reporting subjects shall record the name of the person;

4a.2 where the beneficiary is designated by characteristics or by class or by other means, reporting subjects shall obtain and maintain sufficient information regarding the beneficiary such that the reporting subject will be able to establish the identity of the beneficiary at the time of payout;

4a.3 in both cases verify the identity of the beneficiaries in accordance with the provisions of this Article at the time of payout;

Comment [PPE56]: This paragraph does not form part of the CDD measures according to the FATF Standards. It is being moved to the proposed new Article 16A dealing with risk.

Comment [PPE57]: The beneficial owner should always be identified and not only "when applicable".

Comment [PPE58]: The FATF Standard (Rec 10/2012) requires that reasonable measures be taken to verify the identity of the beneficial owner. Thus the Standard is not specific that this is only done for high risk customers but that it is done consistently

Comment [PPE59]: The reference to "trusts" is without consideration to the fact that Kosovo does not have any legislation for setting and registering trust. It can only remain if Kosovo allows FIs/DNFBPs to establish business relationships or opening bank accounts with foreign trusts as such.

Comment [PPE60]: Should be amended as indicated to include the concept of the business and risk profile through the understanding of the business relationship.

Comment [PPE61]: This paragraph does not form part of the CDD measures according to the FATF Standards. It is being moved to the proposed new Article 16A dealing with risk.

Comment [PPE62]: Insert reference also to verification since the paragraph speaks of both identification and verification.

4a.4 where the identified beneficiary is a legal person or a legal arrangement and the reporting subject determines that such beneficiary presents a higher risk, then the reporting subject shall take reasonable measures to identify and verify the identity of the beneficial owner of the beneficiary at the time of payout

5. Where a reporting subject is unable to complete the customer due diligence measures of a client, the beneficial owner or the beneficiaries of life and other investment related insurance business in accordance with this Article the transaction should not be performed, any business relationship should be terminated or not commenced and any account closed with any property returned to its source. Such action is without prejudice for the reporting subject to report such circumstances as suspicious acts or transactions to the FIU-K pursuant to paragraph 1 of Article 21 of this Law and to report additional material information pursuant to paragraph 2 of Article 21 of this Law.

6. Pursuant to paragraph (2) of Article 50 of this Law, the FIU-K, the Central Bank of Kosovo or a sectoral supervisor shall specify procedures for the application of customer due diligence in accordance with this Article and Article 18 of this Law.

Article 17A

Record Keeping

65.1. Reporting subjects should keep all data for following on the information collected pursuant to this Article and should ensure that the documentation and following information are ready and available to FIU-K, and to other competent authorities:

65.1.1. copies of documents that attest the identity of a client, property holders, taken in compliance with this Article, file's accounts and business correspondence, for at least five (5) last years, upon termination of business relation; and

65.1.2. information taken received in compliance with provisions of this law, to enable reconstruction of transactions, which are executed or tried to be executed, by clients and written reports established in compliance with Article 20 of this law, for at least five (5) years after the attempt for to execution of or the execution of a transaction.

15.3 When transaction data refer to a series of interrelated repeated transactions, the five (5) year preservation period shall commence with the execution of the last transaction of the series.

1.4 When the transaction information relates to a report filed to the FIU-K in relation to a suspicious act or transaction, the five (5) year period shall commence with the date of the filing of the report in accordance with Article 21 of this Law.

2. In the case of wire transfers, banks and financial institutions carrying out this activity shall maintain a record of all relevant information on the payer and that accompany a transfer, all information that is received on the payer and all other information that accompanies a transfer when they act as originator, intermediary or beneficiary institution respectively for a period of five (5) years from the date of execution of the transaction.

63. In special cases specified by the FIU-K for the purpose of exercising its competencies, the FIU-K may extend the five (5) year period as provided under paragraph 5 of this Article with a written order to the respective reporting subjects.

47. Reporting subjects shall provide the necessary measures to protect the data from damage and to prevent unauthorised access.

58. Without being limited to the above, Pursuant to paragraph (2) of Article 50 of this Law, the FIU-K, the Central Bank of Kosovo or a sectoral supervisor may shall specify procedures for the maintenance of records in accordance with this Article including the exercise of internal control for the maintenance and protection of data, professional education and training of employees related to the obligations deriving herein.

Comment [PPE63]: The inclusion of the proposed new paragraph (4a) to Article 17 transposes the obligations under Recommendation 10 of the 2012 FATF Standards, the Interpretative Note to Recommendation 10 (section D) and the 2013 FATF Methodology – EC 10.12 and EC 10.13). It is complimentary to the proposed additions to paragraph (5) of Article 18 which is transposing the Interpretative Note to Recommendation 12 (PEPs) of the 2012 FATF Recommendations

Comment [PPE64]: A similar provision is only found under Article 19 in relation to banks and financial institutions. It is important that for the sake of consistency this provision becomes applicable to all reporting subjects since the CDD processes are applicable to all reporting subjects. The provision is being slightly amended to include references to the beneficial owner and the beneficiaries of life or other investment related insurance business in line with Recommendation 10 IN of the 2012 FATF Standards

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Comment [PPE65]: Paragraph (6) to Article 17 is being inserted to ensure that in accordance with paragraph (2) of Article 50 such procedures are mandatory to be issued by the respective authorities – but in accordance with Article 50 para (2)

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Comment [PPE66]: Insertion of new Article to separate record keeping from customer identification since record keeping here is also addressing transactions records.

Comment [PPE67]: This paragraph (1) is inserted to ensure that information related to reported suspicious transactions are retained for a period of five years from the reporting date even if the transaction itself was effected earlier.

Comment [PPE68]: New paragraph (2) highlighting the obligations for record keeping for the originator, intermediary and beneficiary institution in the case of wire transfers.

Comment [PPE69]: The reference to paragraph (5) (renumbered (1)) is removed as there are other paragraphs in Article 17A referring to the maintenance period and hence the power to the FIU-K should be extended to all instances of record retention period.

Comment [PPE70]: Unless paragraph (5) to Article 17A is specifically referring to issues concerning record keeping then the paragraph is misplaced. This paragraph appears to be superfluous due to the proposed paragraph (2) to Article 50 and may therefore need to be redrafted as indicated due to the specific requirement of record keeping.

Article 18

Enhanced due diligence

1. When the reporting subjects determine, in accordance with paragraph 2.2 5 of Article 176A of this Law, that the risk of money laundering or terrorist financing is high, they shall take reasonable measures to keep up to date the information collected pursuant to Article 17 of this Law, and apply necessary enhanced due diligence measures to monitor the business profile and risk, including the source of funds, and ensure that records and other information held are kept up to date. The competent regulator Sectoral Supervisor may issue binding instructions in this regard.

Comment [PPE71]: cross referencing

Comment [ED72]: Business relationship.

Comment [ED73]: Sectoral supervisor.

Comment [PPE74]: The definitions define the Sectoral Supervisor and not the competent regulator – could be a translation error.

Comment [PPE75]: The measures under paragraph 4 are to be applied in addition to those under paragraph (1) of Article 18.

2. When the customer is not “physically present”, the reporting subjects that are subject to this law shall take specific and adequate measures to offset the higher risk by taking one or more of the following measures in addition to the measures under paragraph (1) of this Article:

2.1. verify the identity of the customer through documents, data or information;

2.2. take additional measures to verify or certify the documents supplied, or requiring confirmatory certification by a credit or financial institution covered by this law;

2.3. ensuring that the first payment of the operations is carried out through an account opened in the customer’s name in a credit institution.

3. The requirements for identification and customer due diligence is deemed to be fulfilled, even without the physical presence of the customer, in the following cases:

3.1. whether the customer is already identified in relation to an ongoing bank relationship, provided that the existing information is updated;

3.2. whether operations are carried out by systems of night saves or ATMs, through correspondence or entities engaged in transport of valuables or through credit/debit cards; such transactions are charged to the owner of the account whom they relate to;

3.3. for customers whose identification data and other information are to be acquired by a public or private deed or authenticated by qualified certificates used to generate a digital signature associated with electronic documents;

4. In case of banking relationships with entities originating from other countries, the banks and credit institutions should, in addition to the measures under paragraph (1) of this Article:

Comment [PPE76]: The measures under paragraph 4 are to be applied in addition to those under paragraph (1) of Article 18.

4.1. gather sufficient information in order to fully understand the nature of its business and to determine, based on public registers, lists, documents or records knowable by anyone, its reputation and quality of supervision to which it is subjected;

4.2. assess the quality of controls in relation to combat money laundering or the financing of terrorism to which the corresponding entity is subjected;

4.3. obtain approval of the Director-General, to his designated person or employee performing an equivalent functions before establishing new banking relationships;

4.4. define in writing the terms of the agreement with the institution and their corresponding obligations;

4.5. ensure that the credit institution has verified the identity of customers who directly access the transitory accounts, which has consistently fulfilled the requirements of adequate verification of clients and that, upon request, the intermediary can provide the financial counterpart data obtained as a result of the performance of such obligations.

Comment [PPE77]: These requirements should be extended to PEPs of international organizations.

Comment [PPE78]: The Law is not making any distinction between domestic and foreign PEPs. The FATF Standard (Rec 12 under the 2012 – previously Rec 6) only provides for the taking of reasonable measures for domestic PEPs – although it is acknowledged that the Law is being more stringent in applying the enhanced due diligence in both cases. The Kosovo authorities may wish to review accordingly

5. Reporting subjects shall take reasonable measures to determine if their clients, beneficial owners and beneficiaries of life or other investment related insurance business or where appropriate the beneficial owner of the beneficiary (latest at time of payout) are domestic or foreign politically exposed persons, and if such determination results in a client or beneficial owner being determined to be a domestic or foreign politically exposed person, then reporting subjects shall, in addition to the take measures set out in paragraph (1) of this Article 18 paragraph 1, take the following measures in respect of such clients and their beneficial owners.

Comment [PPE79]: The measures under paragraph 5 are to be applied in addition to those under paragraph (1) of Article 18.

~~5.1. Reporting subjects shall ensure they determine whether their clients are domestic or foreign politically exposed persons, and is such determination results in a client being determined to be a domestic or foreign politically exposed person then reporting subjects shall take the following measures:~~

~~(a) 5.1.1. obtain the approval of a senior officer/manager of the reporting subject to establish or to continue the business relationship or to perform the occasional transaction;~~

~~5.1.2(b) - take adequate measures to establish the source of wealth of the customer and the origin of the assets used in the relationship or transaction; and (add 20%)~~

~~5.1.3(c) ensure continuous and strengthened monitoring of the account and the relationship.~~

~~and in the case of beneficiaries of life or other investment related insurance business or, where applicable, the beneficial owner of the beneficiary, where it is determined that they are domestic or foreign politically exposed persons and there are higher risks identified, in addition to the customer due diligence measures under this Article and Article 17, shall:~~

~~(a) inform a senior officer of the reporting subject before the payout of the policy proceeds;~~

~~(b) conduct enhanced scrutiny on the whole business relationship with the policyholder, and consider making a suspicious transaction report.~~

~~6. Financial intermediaries cannot open or maintain correspondent accounts with a shell bank or a bank which is known to allow the use of its accounts by shell banks accounts.~~

~~7. The institutions and persons subject to this law shall pay particular attention to any risk of money laundering or terrorist financing related to products or transactions which promote anonymity and take any necessary measures to prevent its use for the purpose of money laundering or terrorist financing.~~

Article 18-19

Additional obligations of banks and financial institutions Identification of Clients

~~{Amended by the Law No. 04/L 178 of 11 February 2013}~~

~~“1. Banks, credit and financial institutions are prohibited from shall not keeping anonymous accounts or anonymous passbooks/accounts under fictitious names. Banks and financial institutions shall apply the measures set out in this Act to customers and their accounts who are anonymous, and such accounts may not be used to process transactions until the owners and beneficiaries of existing anonymous accounts or anonymous passbooks are made the subject such measures as soon as possible.”~~

~~2. Banks and financial institutions shall verify the name identity and address, and, in the case of natural persons, also verify the date of birth, of all clients before when:~~

~~2.1. opening an bank account;~~

~~2.2. taking stocks, bonds, or other securities into safe custody;~~

~~2.3. granting safe-deposit facilities;~~

~~2.4. performing a domestic or international bank transfer of funds;~~

~~2.4.5. otherwise establishing a business relationship prior to performing occasional transactions; or and~~

~~{Amended by the Law No. 04/L 178 of 11 February 2013}~~

~~“2.5. engaging in any single transaction in currency of ten thousand (10,000) euros or more. Multiple currency transactions shall be treated as a single transaction if the bank or financial institution has knowledge that the transactions are conducted by or on behalf of one person or entity and total ten thousand (10,000) euros or more in a single day.”~~

~~3. A person engaging in a transaction under paragraph 32 of this Article 17 of this law shall certify in writing to the bank or financial institution, in a format specified by the CBK, the source of funds and/or that he or she is acting:~~

Comment [PPE80]: Paragraph 5.1 is a repetition of the first paragraph of Paragraph 5.

Comment [PPE81]: To clarify that the approval of senior management is continuous.

Comment [PPE82]: For better harmonization with the FATF Standards.

Comment [PPE83]: Application of enhanced measures in accordance with the 2012 FATF Recommendation 12 and its Interpretative Note.

Comment [PPE84]: The term ‘financial intermediaries’ is not defined. If this is with reference to banks and financial institutions then paragraph (6) of Article 18 – which is generic applying to all reporting subjects – should be moved under Article 19 – specific for banks and financial institutions and the term replaced by ‘banks and financial institutions’.

Comment [PPE85]: The term “shell accounts” in paragraph (6) of Article 18 is not known in international standards. Paragraph amended to indicate to the use of accounts by shell banks which is the international terminology.

Comment [PPE86]: This paragraph (7) of Article 18 does not form part of the CDD measures according to the FATF Standards. It is being moved to the proposed new Article 16A dealing with risk.

Comment [ED87]: To be harmonised.

3.1. on his/~~and~~ her own behalf as both the owner and the beneficiary of any property that is the subject of the transaction; or

3.2. as an authorized agent of one or more persons or entities identified pursuant to paragraphs ~~3.2.4~~ and ~~5.4~~ of Article 17 of this law, having taken reasonable steps to verify that each identified person or entity is the owner or the beneficiary of any property that is the subject of the transaction, and believing in good faith that each identified person or entity is the owner and/or beneficiary of any property that is the subject of the transaction.

4. Any person acting as an authorized agent shall present documents in accordance with paragraph 3 ~~and 4~~ of Article 17 of this law for him/herself and for the authorizing person or entity and shall provide a document authorizing him or her to conduct transactions on behalf of such person or entity.

5. Notwithstanding compliance with paragraph 3 ~~and 4~~ of Article 17 of this law, a bank or financial institution shall take any additional reasonable measure necessary to identify every person and entity on behalf of which a person engaging in a transaction under paragraph ~~4.3.2~~ of Article 17 of this law is acting, including the owner and beneficiary of the property.

~~6. If a bank or financial institution is unable to verify the identity of a client, the business relationship shall be terminated, any account closed and the property returned to its source. Such actions shall be without prejudice to the obligation of the bank or financial institution to report suspicious acts or transactions pursuant to [Amended by the Law No. 04/L 178 of 11 February 2013] "paragraph 2 of Article 22 of this Law" and to report additional material information pursuant to paragraph 2 of Article 21 of this law article 21.2.~~

~~[Abrogated by the Law No. 04/L 178 of 11 February 2013]~~

~~7. Banks and financial institutions shall make copies of all documents which shall be presented under paragraph 3 and 4 Article 17 of this law and shall retain them for at least five (5) years after the account has been closed or the relations with the client have ended, whichever is later. 7. Banks and financial institutions assess the risk defined under paragraph 2.6 of Article 17 of this law prior to introduction of new products, business practices or use of new or developing technologies.~~

Article 19

Wire transfers

~~[Amended by the Law No. 04/L 178 of 11 February 2013]~~

~~"4.8.~~ Banks and financial institutions whose activities include wire transfers shall obtain and verify the full name, account number, the address, or in absence of address the national identity number or date and place of birth, including when necessary the name of the financial institution, of the originator of such transfers. The information shall be included in the message or payment form accompanying the transfer. If there is no account number, a unique reference number shall accompany the transfer."

~~2.9.~~ Banks and financial institutions shall maintain all such information and transmit it when they act as intermediaries in chain of payments.

~~3.10.~~ The competent regulatory authority may issue regulations regarding ~~cross-border~~ transfers executed as batch transfers and domestic transfers.

~~[Amended by the Law No. 04/L 178 of 11 February 2013]~~

~~"4.11.~~ Paragraphs ~~4.8~~ and ~~2.9~~ of the ~~is~~ Article shall not apply to transfers executed as a result of credit card or debit card transactions, provided that the credit card or debit card number accompanies the transfer resulting from the transaction, nor shall they apply to transfers between banks and/or financial institutions where both the originator and the beneficiary are banks or financial institutions acting on their own behalf."

~~5.12.~~ If the banks or the financial institutions receive wire transfers that do not contain the complete originator information they shall take measures to obtain and verify the missing information from the ordering institution or the beneficiary, should they not obtain the missing information they shall refuse acceptance of the transfer and report it to the FIU ~~K~~.

Comment [PPE88]: Paragraphs (3) to (5) of Article 19 should be applicable to all reporting subjects under the customer due diligence procedures under Article 17.

Comment [PPE89]: In terms of international standards this obligation should be applicable to all reporting subjects and hence the introduction of a new paragraph (5) under Article 17. This provision should therefore be removed

Comment [PPE90]: This Article is superfluous as it is already reflected under paragraph 2.6 of Article 17 which is applicable to all reporting subjects. Notwithstanding part of this paragraph is being reflected in the new proposed Article 16A dealing with risk.

Comment [ED91]: Sectoral supervisor

Internal money-laundering and terrorist financing prevention programs

13. Banks and financial institutions shall promulgate written internal policies and procedures and shall set up controls for the prevention and detection of money laundering and terrorism financing and shall enforce them. Such policies and procedures shall include, but shall not be limited to, the following:

13.1. client identification procedure;

13.2. procedure for customer due diligence and enhanced due diligence;

13.3. procedure for collecting information and maintaining records in accordance with this Law, and for preventing unauthorised access;

13.4. procedure for reporting to the FIU-K in compliance with paragraph 1 to 6 of Article 21 of this law;

13.5. measures to be taken by a bank or financial institution from the moment of the detection of a suspicious act or transaction to the submission of the report to the FIU-K in accordance with paragraph 1 to 6 of Article 21 of this law;

13.6. rules for processing, or taking further action in connection with, a suspicious act or transaction, including measures to prevent further action in connection with a suspicious act or transaction without notification to the FIU-K in accordance with paragraph 5 of Article 21 of this law;

13.7. procedures for ensuring the institution and provision of an employee training program on the responsibilities set forth in this law on the prevention of money laundering and terrorist financing and audit function to test the reporting and identification system.

14. Banks and financial institutions shall submit to the FIU-K and the CBK policies and procedures set forth in paragraph 13 of this Article not later than thirty (30) days after the establishment of the bank or financial institution and not later than fifteen (15) days after the adoption of amendments to such procedures or according to the time limit specified by the FIU-K.

15. Banks and financial institutions shall ensure that natural or legal persons that act as branches, subsidiaries or agents on their behalf are included in the programs for the prevention and fighting of money laundering and terrorist financing, as well as monitor their compliance with the provisions of this law.

16. Banks and financial institutions shall implement programs within the group that cover their foreign branches and majority ownership subsidiaries, against money laundering and terrorist financing, including information exchange policies and procedures within the group for the purpose of this Law.

Compliance function for AML/CFT

17. Banks and financial institutions shall appoint one or more qualified officers with relevant experience in the compliance function for the purposes of this law. A selected senior management officer shall head the compliance function and shall be responsible for interacting and exchanging information with the FIU-K and the CBK, who is subject to reporting and record keeping obligations and confidentiality pursuant to this law. Banks and financial institutions shall notify the FIU-K and the CBK on the identity of the compliance officer within a time limit of 90 days after the establishment of the bank or financial institution, and continuously on all changes of the compliance officer.

18. The head of the compliance function shall be appointed and may be discharged only with a decision of the competent body pursuant to the respective law. In case of discharging the head of compliance function, the bank or financial institution shall immediately notify the FIU-K and CBK about the discharge decision, and specify the reasons for the discharge.

19. The compliance function for the prevention of money laundering and terrorist financing shall

Comment [PPE92]: The insertion of a reference to the financing of terrorism in paragraph (13) of Article 19 is necessary irrespective of whether the paragraph is moved to Article 19 as proposed.

Comment [PPE93]: According to the FATF Standards these obligations in paragraph (13) of Article 19 should apply to all financial institutions and DNFBPs as defined. The PECK Assessment Report identified various instances where the specific provisions for some DNFBPs do not apply these obligations. It is recommended that these obligations are put on a general footing to all reporting subjects with any specific issues identified for particular categories of reporting subjects being defined in the specific provisions for that category – for example paragraph 14 – 16 below for banks and financial institutions.

Comment [ED94]: To harmonise the acronym.

advise and assist the managing board in managing and implementing the applicable legislation on the prevention of money laundering and terrorist financing.

20. The CBK in consultation with the FIU-K may issue sub-legal acts to define the “fit and proper” criteria of qualified officers for the compliance function, competencies and responsibilities of the compliance officer and other matters related to the implementation of these obligations.

Article 20

Special monitoring of certain transactions

1. Reporting subjects shall pay special attention to all complex, unusual large transactions and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose.
2. Reporting subjects shall pay special attention to business relations and transactions with persons, including legal persons and arrangements and financial institutions, from or in countries that do not or insufficiently apply the relevant international standards to combat money laundering and financing of terrorism.
3. Reporting Subjects shall examine to the extent possible the background and purpose of such transactions and shall set forth in writing their findings and the specific information regarding transactions as referred to in paragraphs 1 and 2 of this Article and the identity of all parties involved. The report shall be maintained as specified in this Law and shall be made available if requested by the FIU-K, a sectoral supervisory authority and other competent authorities.

Article 22

~~Banks and financial institutions~~ Reporting to the FIU-K

1. ~~Banks and financial institutions~~ All reporting subjects shall report to the FIU-K, in the manner and ~~in the~~ format specified by the FIU-K:

1.1. all suspicious acts or transactions within twenty four (24) hours of the time the act or transaction was identified as suspicious;

1.2. all single transactions in currency-cash of € ten thousand (10,000) euros or more or equivalent value in foreign currency. Multiple transactions shall be treated as a single transaction if the reporting subject ~~bank or financial institution~~ has knowledge that the transactions are by or on behalf of one person or entity and total more than € ten thousand (10,000) euros or equivalent value in foreign currency in a single day.

2. ~~Banks and financial institutions~~ Reporting subjects shall continue to report to the FIU-K any all additional material important information regarding the transaction(s) that is acquired by the ~~bank or financial institution~~ reporting subjects after the report specified under in ~~[Amended by the Law No. 04/L 178 of 11 February 2013] “paragraph 1 of this Article 22 of this law”~~ as well as other information as requested by the FIU-K.

3. The FIU-K may exempt, either on-upon written application-request or on its own initiative, certain transactions or categories of transactions from the obligations under ~~sub~~ Amended by the Law No. 04/L 178 of 11 February 2013] “paragraph 1.2 of Article paragraph 221 of this law Article”, where ~~when~~ the transactions or categoryies of bank transactions are routine and serve a legitimate purpose, or are otherwise not of interest to the mandate of the FIU-K.

4. Reporting subjects, the ~~D~~irectors, officers, employees be they temporary or permanent and agents of ~~any the bank or financial institution~~ reporting subject who make or transmit reports pursuant to this Law ~~the present article~~ shall not disclose the fact that a report has been filed or is in the process of being filed, or provide the report, or communicate any information contained in the report or regarding the report, including where such information is being prepared to be filed accordingly, or that a money laundering or financing of terrorism investigation is being or may be carried out, to any

Comment [PPE95]: According to the FATF Standards these obligations under paragraphs (17) to (19) of Article 19 should apply to all financial institutions and DNFBPs as defined. The PECK Assessment Report identified various instances where the specific provisions for some DNFBPs do not apply these obligations. It is recommended that these obligations are put on a general footing to all reporting subjects with any specific issues identified for particular categories of reporting subjects being defined in the specific provisions for that category – for example paragraph 20 below for banks and financial institutions (with some redrafting).

Comment [PPE96]: The inclusion of the words “and financial institutions” in paragraph (2) to Article 20 is included for better harmonisation with the FATF Standards (Rec 21 now Rec 19).

Comment [PPE97]: As highlighted in the PECK report the present text of Article 20 does not require the examination of the background and purpose of such transactions and the documentation of the findings which is essential for record keeping.

Comment [PPE98]: In accordance with the definition

Comment [ED99]: To include and define financing of terrorism.

Comment [PPE100]: Since there is no time limit set for reporting purposes under paragraph (1.2) of Article 21 the Law sets different time frames for different categories of reporting subjects. In some instances, e.g. banks and financial institutions, no timeframe is established. This creates an inconsistency in reporting.

Comment [PPE101]: With reference to paragraph (1.2) of Article 21 the obligation to report under paragraph (1) of Article 21 is applicable to all reporting subjects and not limited to banks and financial institutions.

Comment [PPE102]: Wrong reference to relevant Article in paragraph (2) of Article 21.

Comment [ED103]: Compliance office definition.

person or entity, including any person or entity involved in the transaction which is the subject of the report, other than the FIU-K or the CBK in the case of reports filed by banks or financial institutions, unless authorized in writing by the FIU-K, a Prosecutor, or a Court.

5. A reporting subject bank or financial institution shall notify the FIU-K prior to taking any action in connection with any suspicious act or transaction, including an action under paragraph 65 of Article 1897 of this law, which would result in the release or transfer of the property subject to the transaction from the control of the reporting subject bank or financial institution. The notification may be made orally, but such notification does not abrogate the duty to file written reports pursuant to paragraph 1 and 3 of this Article.

6. After being notified, in compliance with paragraph 5 of this Article 21 of this Law, the FIU-K within a 48 hour time limit shall instruct the reporting subject bank or financial institution to permit the execution of the transaction or carry out a temporary freezing pursuant to Article 22 of this Law. When FIU-K does not respond within the stipulated time limit, the reporting subject bank or financial institution may process the execution of the transaction. Such instruction of an action pursuant to the present article shall not be communicated to any person or entity, including the client, without the consent of the FIU-K. Upon notification pursuant to [Amended by the Law No. 04/L-178 of 11 February 2013] "paragraph 5 Article 22 of this law", the FIU may instruct the bank or financial institution to suspend the taking of an action referred to in paragraph 6 Article 17 of this law in connection with a suspicious act or transaction for a maximum of forty eight (48) hours, or two (2) working days, whichever period is longer. Such suspension of an action pursuant to the present article shall not be communicated to any person or entity, including the client, without the consent of the FIU.

7. The FIU, any investigating, prosecuting, judicial or administrative authority and reporting subjects or other persons and entities who are in possession of personal information of employees and other officers of reporting subjects who report suspicions of money laundering or the financing of terrorism or who provide related information, either internally or to the FIU-K, in accordance with this Law shall protect and keep confidential such personal information.

Article 232

Temporary freezing Banks and Financial Institutions: Internal Programs

1. The FIU-K may issue a written order to reporting subjects to temporary freeze a transaction or account, if it estimates that there is reasonable ground to suspect money laundering or terrorist financing in relation to a transaction or person that performs the transaction, for which the competent authorities shall be notified so that they can undertake measures within their competencies.

2. The FIU-K Director or authorized person may, in urgent cases, give a verbal order for the temporary freezing of a transaction or account, which shall be confirmed in writing not later than the next working day.

3. The temporary freezing of the transaction or account, pursuant to paragraphs 1 and 2 of this Article may last for a maximum period of 48 hours from the moment the order to temporary freeze a transaction or account is issued. If the time limit specified in this paragraph occurs during holidays, FIU-K may issue an order to extend this time limit for an additional 24 hours.

4. During the temporary freezing period of the transaction or account, reporting subjects shall be subject to FIU-K order.

5. Competent bodies mentioned in paragraph 1 of this Article shall undertake without delay measures within their competencies for which they shall immediately notify the FIU-K.

6. If within the period mentioned under paragraph 3 of this Article the FIU-K decides that there are no reasonable grounds to suspect money laundering or terrorist financing, it shall notify the reporting subject that it may complete the transaction.

7. If the FIU-K fails to notify the reporting subject in relation to the results of its actions within the time limit specified under paragraph 3 of this Article, the reporting subject shall be considered cleared to execute the transaction.

Comment [PPE104]: Paragraph 4 of Article 21 is being amended in accordance with FATF Recommendation 14 (Rec 21 under the 2012 Standards) and as provided in the PECK Report.

Comment [PPE105]: The obligation to report under paragraph (1) of Article 21 is applicable to all reporting subjects and not limited to banks and financial institutions and hence the suspension of execution of a transaction under paragraph (5) of Article 21 should likewise be applicable to all reporting subjects in accordance with international standards and consistency.

Comment [PPE106]: The obligation to report under paragraph (1) of Article 21 is applicable to all reporting subjects and not limited to banks and financial institutions and hence the suspension of execution of a transaction under paragraph (6) of Article 21 should likewise be applicable to all reporting subjects in accordance with international standards and consistency. Indeed the temporary freezing under Article 22 is applicable to all reporting subjects and not to banks and financial institutions only.

Comment [PPE107]: Paragraph 7 in Article 21 is being added in compliance with the FATF Recommendation 14 (Rec 21 under the 2012 Standards) and in compliance with Article 27 of the EU Third AML Directive and as recommended in the PECK Report.

Comment [PPE108]: Account?

Article 23

Obligations of the natural or legal persons trading goods and receiving cash payments

1. This Article applies to natural and legal persons trading goods when receiving payments in cash in an amount of ten thousand (10,000) euros or more or the equivalent value in foreign currency.

2. A natural or legal person as provided under paragraph 1 of this Article, who is engaged in a transaction or interrelated transactions and receives cash in ten thousand (10,000) euros or more, or equivalent value in foreign currency, shall report within 30 days from the day of the execution of the reported transaction in accordance with the provisions of paragraph (1.2) of Article 21 of this Law.

3. Transactions include, but are not limited to the following: sale of goods and services; sale of immovable property; sale of intangible property; renting out personal property; exchange of cash for other monetary funds (including other currencies); payment of pre-existing debts; return of money for paid expenses and/or repayment of debt. The transaction cannot be divided in multiple transactions with the aim of avoiding to report pursuant to this Article.

4. Pursuant to this Article, the term "interrelated transactions" implies all transactions performed between the payer (or his agent) and the cash receiver for a 24-hour period or all transactions performed between the payer (or his agent) and cash receiver during a period longer than 24 hours if the receiver knows or has reasons to know that each of transactions is one of a series of interrelated transactions.

5. The form and manner of the report shall be prescribed by the FIU-K. The FIU-K may cooperate and coordinate with the sectoral supervising authorities concerning the implementation of this Article.

1. Banks and financial institutions shall appoint a ~~[Amended by the Law No. 04/L 178 of 11 February 2013]~~ "compliance officer" to be responsible for interaction and information exchange with the FIU ~~[Added by the Law No. 04/L 178 of 11 February 2013]~~ "and CBK" who shall be subject of the reporting and record keeping obligations under this Law. The Bank and financial institution shall inform the Supervision Agency and the FIU of the identity of the contact person within thirty (30) days of the promulgation of this law and, thereafter, within thirty (30) days of any change in the designated contact person.

2. Banks and financial institutions shall promulgate written internal procedures and controls for the prevention and detection of money laundering and shall enforce them. Such procedures shall include, but need not be limited to, the following:-

2.1. a client identification procedure;-

2.2. a procedure for collecting information and maintaining records in accordance with this Law, and for preventing unauthorized access;-

2.3. a procedure for reporting to the FIU in compliance with paragraph 1 to 6 Article 22 of this law;-

2.4. measures to be taken by a bank or financial institution from the moment of the detection of a suspicious act or transaction to the submission of the report to the FIU in accordance with paragraph 1 to 6 Article 22 of this law;-

2.5. rules for processing, or taking further action in connection with, a suspicious act or transaction, including measures to prevent further action in connection with a suspicious act or transaction without notification to the FIU in accordance with paragraph 5 Article 22 of this law;-

2.6. procedures for ensuring the institution and provision of an employee training program on the responsibilities set forth in the present article and the prevention of money laundering; and an audit function to test the reporting and identification system.-

3. Banks and financial institutions shall submit the procedures set forth in paragraph 2 of this Article to the FIU ~~[Added by the Law No. 04/L 178 of 11 February 2013]~~ "and CBK" not later than sixty (60) days after the entry into force of this Article or thirty (30) days after the establishment of the bank or financial institution.-

Comment [PPE109]: Excessive

Comment [PPE110]: Article 23, as an example, does not speak about internal control programmes and compliance. Hence the proposal for paragraphs 13 and 17 to 19 of Article 19 to be applicable to all reporting subjects and not just to banks and financial institutions becomes more relevant.

Comment [PPE111]: To whom?

Comment [PPE112]: Since the reporting obligation is primarily established under Article 21 of the Law and since this paragraph (2) under Article 23 is establishing the time limit for reporting it is appropriate to clarify that there is only one reporting obligation under Article 21 and which also includes reporting of suspicious acts and transactions.

Article 24

Additional Obligations of NGOs

1. All incomes and expenses of NGOs shall be executed through financial institutions licensed by the CBK, through the bank account under the name of the respective NGO. ~~Except as provided in paragraph 3 of this Article, an NGO shall not accept any contribution in currency in excess of € one thousand (1,000) from a single source in a single day.~~

~~21.1 NGOs shall not accept contributions in cash exceeding the value of (500) euros or the equivalent value in foreign currency, from a single source within one (1) single day. Except as provided in paragraph 3 of this Article, an NGO shall not disburse currency in excess of € five thousand (5,000) in a single day to any single recipient.~~

~~31.2 NGOs shall not pay to a single recipient in cash exceeding the value of (500) euros or the equivalent value in foreign currency, from a single source within one (1) single day. NGOs seeking a one time or recurring exemption from the obligations under paragraph 1 and 2 of this Article may file a written request for exemption with the FIU setting forth the nature of the exemption sought and the reasons for it. The FIU shall respond to the request in writing within thirty (30) days, and may decide to grant, conditionally grant, or deny the exemption. If the FIU decides to grant or conditionally grant an exemption, it shall provide a copy of its decision to the competent body under Law on Freedom of Association in Non-Governmental Organizations (No 03/L-134).~~

42. NGOs shall maintain accounts that document all income and disbursements. The accounts shall identify income by source, amount, and manner of payment, ~~such as currency in cash~~ or payment order, and identify disbursements by recipient, intended use of funds, and manner of payment. Account documents shall be maintained for five (5) years and shall be available ~~for inspection upon demand by request of~~ the FIU-K and the competent body under Law on Freedom of Association in Non-Governmental Organizations ~~(No 03/L-134)~~.

53. NGOs shall report any suspicious act or transaction to the FIU-K in accordance with the provisions of paragraph (1.1) Article 21 within three (3) business days and prior to taking further action in connection with any such act or transaction.

64. When filing ~~an annual~~ the report pursuant to ~~Article 18 of~~ the Law on Freedom of Association in Non-Governmental Organizations ~~(No 03/L-134)~~, an NGO shall ~~disclose in the report~~ provide the following:

64.1. each contribution in ~~currency-cash~~ during the year from a particular source, if the total value in ~~currency-cash~~ of the contributions from that source during the year is in excess of € five thousand (5,000) ~~euros~~ identifying the source, amount and date of each contribution; and

64.2. each disbursement in ~~currency-cash~~ during the year to a particular recipient if the total value in ~~currency-cash~~ of disbursements to that recipient is in excess of € ten thousand (10,000) ~~euros~~, identifying the recipient, amount and date of each disbursement, and the intended use of the money.

75. When filing an annual report pursuant to ~~Article 18 of~~ the Law on Freedom of Association in Non-Governmental Organizations ~~(No 03/L-134)~~, an NGO shall certify that it has complied with all obligations under the present article.

86. The Competent body under the Law on Freedom of Association in Non-Governmental Organisations ~~(No. 03/L-134)~~ may suspend or revoke the registration of an NGO for violation of any provision of ~~the~~ present article ~~Law~~ pursuant to ~~Article 21 of the relevant~~ Law on Freedom of Association in Non-Governmental Organizations ~~(No 03/L-134)~~. The imposition of such sanction shall be without prejudice to any criminal proceedings.

97. Notwithstanding any other provision of law, reports filed by NGOs pursuant to the relevant Law on Freedom of Association in Non-Governmental Organizations ~~(No 03/L-134)~~, shall be made available upon request to the FIU-K.

8. The authorised representative pursuant to the respective Law on Freedom of Association in Non-

Comment [PPE113]: Reference paragraph (3) of Article 24, first it is important to link the reporting obligation to the main Article 21. Notwithstanding, as highlighted, the allowance of 3 days for reporting conflicts with the main provisions of Article 21 which states 24 hours and hence an element of inconsistency and discrimination could be raised since the objective of the reporting is the same – suspicion of money laundering or the financing of terrorism. Should be revised.

Comment [PPE114]: As already indicated in the PECK Report under the Law on NGOs DRLNGO does not have the power to suspend or revoke the registration of an NGO for the purposes mentioned in this paragraph (6) of Article 24 and hence the paragraph needs to be reviewed or relevant counter provisions made in the Law on NGOs as indicated in the PECK Report – (EC SR VIII.3.2).

Governmental Organizations is in principle a contact person with the FIU-K and shall act as the compliance officer of the NGO, unless this NGO does not specify otherwise with a decision and appoints any of the directors, officers, other employees of the NGO and notifies the FIU-K.

~~[Added by the Law No. 04/L-178 of 11 February 2013]~~

~~“109. The authorised representative Directors, officers, employees and agents of an NGO who makes or transmits reports pursuant to this Law the present article shall be bound by the provisions of paragraph (4) of Article 21 of this Law, not provide the report, or communicate any information contained in the report or regarding the report, to any person or entity, including any person or entity involved in the transaction which is the subject of the report, other than the FIU-K, unless authorized in writing by the FIU-K, a Prosecutor, or a Court.”~~

10. In accordance with their obligations under this Law as reporting subjects, Upon registering the NGOs the competent authority pursuant to the relevant Law on Freedom of Association in Non-Governmental Organizations, shall apply against the founders the customer due diligence requirements specified by this Law, as well as shall notify in writing the FIU-K at any time when a suspicion for money laundering or terrorist financing arises.

11. The FIU-K and the sectoral supervising authority shall from time to time, adopt, amend, or repeal sub-legal acts consistent with the policy, objectives and purposes of this Law as applied to Non-Governmental Organisations pursuant to paragraph (2) of Article 50 of this Law.

Article 25

Additional-Specific Obligations of Political Parties and Registered Candidates

1. Political parties and registered candidates shall not accept any contribution in ~~currency-cash~~ in excess of €-one thousand (1,000) euros from a single source in a single day.

2. Political parties and registered candidates shall not disburse ~~currency-cash~~ in excess of €-five thousand (5,000) euros in a single day to any single recipient.

3. Political parties shall maintain accounting books that record all income by source, amount and manner of payment, such as by currency or payment order, and all payments made by the party to any person, the purpose of the payment and the manner in which the payment was made. Accounting books shall be maintained for seven (7) years and shall be available for inspection upon demand to the FIU-K and the Political Party Registration Office.

4. Political Parties shall report any suspicious act or transaction to the FIU-K in accordance with the provisions of paragraph (1.1) of Article 21 within three (3) working days and prior to taking further action in connection with such act or transaction.

5. ~~Bi-Annual~~ Upon filing the ~~F~~financial reports ~~filed every six (6) months~~ pursuant to ~~Article 19 of UNMIK Regulation No.2004/14~~ the applicable law in the Republic of Kosovo, political parties shall ~~include~~provide:

5.1. a record of all contributions to the registered political party from a single source if the combined value of contributions from that source has exceeded €-one hundred (100) euros during the period covered by the report which shall indicate:

5.1.1. the value of each contribution made to the political party;

5.1.2. the date on which each contribution was made; and

5.1.3. the full name, address and civil registration, passport or driver's license number of the contributor; and

5.2. a statement identifying each payment made to another person during the period covered by the report, if the total value of all payments to that person during the period exceeds €-five thousand (5,000) euros and indicating the purpose of the payment.

6. A political party shall certify in its ~~Bi-annual~~ financial report that it has complied with all

Comment [PPE115]: Reference paragraph (8) to Article 24, there is a proposal that the current proposed provisions for banks and financial institutions on compliance under the present Article 19 be made applicable to all reporting subjects in which case referring to the authorized representative of an NGO as the compliance officer of the NGO would indeed be an additional or specific requirement for NGOs. Moreover there is no obligation on NGOs to have in place internal preventive procedures for money laundering and terrorist financing. Hence the proposal for paragraphs 13 and 17 to 19 of Article 19 to be applicable to all reporting subjects becomes more relevant.

Comment [PPE116]: Reference paragraph (9) of Article 24, since there is a proposal for paragraph (4) of Article 21 to be applicable to all reporting subjects it is not necessary to repeat the provision under the specifics for NGOs except to the extent that the provisions of paragraph (4) of Article 21 are directly applicable to the “authorised representative”.

Comment [PPE117]: This obligation under the first part of paragraph (10) of Article 24 is already applicable to NGOs as reporting subjects in terms of paragraph (1) of Article 17 and Article 18 for ECDD. It is only being included here with the objective of guiding NGOs when and against whom to apply the CDD requirement because of their own nature.

Comment [PPE118]: The last part of paragraph (10) of Article 24 is not necessary as the reporting obligation for all reporting subjects is already included under Article 21 and in paragraph (3) of this Article 24.

Comment [PPE119]: It is proposed to insert a new paragraph (11) to Article 24 but to link it to the mandatory obligations under paragraph (2) to Article 50 as proposed because of the specialized nature of NGOs as reporting subjects – without prejudice to the recommendations to consider their status as reporting subjects.

Comment [ED120]: To be harmonised with standards.

Comment [PPE121]: Reference paragraph (4) of Article 25, first it is important to link the reporting obligation to the main Article 21. Notwithstanding, as highlighted, the allowance of 3 days for reporting conflicts with the main provisions of Article 21 which states 24 hours and hence an element of inconsistency and discrimination could be raised since the objective of the reporting is the same – suspicion of money laundering or the financing of terrorism. Should be revised.

obligations under this article. A candidate shall certify in his/her candidate registration form submitted to the Central Election Commission that he/she shall comply with paragraph 1 and 2 of this Article.

7. The Political Party Registration Office may ~~investigate~~ inspect a political party's compliance with the present article and may suspend the registration of a political party for a violation of any provision of the present article in accordance with ~~Article 5 of UNMIK Regulation No. 2004/11~~ the applicable legislation in the Republic of Kosovo. A sanction under the present paragraph shall be without prejudice to any criminal proceedings.

8. Notwithstanding any other provision of law, reports filed by political parties pursuant to applicable law in the Republic of Kosovo ~~UNMIK Regulation No. 2004/11~~ shall be made available upon request to the FIU-K.

~~[Added by the Law No. 04/L-178 of 11 February 2013]~~

~~9. Political Parties, their directors, officers, and employees be they temporary or permanent and agents of Political Parties and registered Candidates who make or transmit reports pursuant to the present article this Law shall be bound by the provisions of paragraph (4) of Article 21 of this Law. not provide the report, or communicate any information contained in the report or regarding the report, to any person or entity, including any person or entity involved in the transaction which is the subject of the report, other than the FIU-K."~~

10. The FIU-K and the sectoral supervising authority shall from time to time, adopt, amend, or repeal sub-legal acts consistent with the policy, objectives and purposes of this Law as applied to Political Parties and registered Candidates pursuant to paragraph (2) of Article 50 of this Law.

Comment [PPE122]: Since there is a proposal for paragraph (4) of Article 21 to be applicable to all reporting subjects it is not necessary to repeat the provision under the specifics for Political Parties under paragraph (9) of Article 25 except to the extent that the provisions of paragraph (4) of Article 21 are directly applicable also to the filing of reports under Article 25.

Comment [PPE123]: It is proposed to retain paragraph (10) of Article 25 but to link it to the mandatory obligations under paragraph (2) to Article 50 as proposed because of the specialized nature of Political Parties and registered Candidates as reporting subjects – without prejudice to the recommendations to consider their status as reporting subjects.

Article 26

Additional Obligations of Lawyers, Notaries, Certified Accountants, Licensed Auditors and Tax Advisors

Identification of Clients

1. Lawyers, notaries, certified accountants, licensed auditors and tax advisors (hereafter "covered professionals") shall verify the name and address, and, in the case of persons, date of birth, of every client before performing professional services for the client ~~in accordance with the provisions of Article 17 and paragraph 4, 5 and 6 of Article 18 of this law shall apply to verification and identification. In addition, If the covered professional is unable to identify a client or verify his or her identity, he or she shall not accept property from or on behalf of the client for any purpose.~~

Comment [PPE124]: Since the identification and verification procedures under Articles 17 and 18 are already applicable to all reporting subjects there is no need to repeat the provisions under paragraph (1) of Article 26 which is meant to cover only 'additional elements'. Thus the general provisions would be applied consistently.

Handling of Clients' property

2. When lawyers, notaries, certified accountants, licensed auditors and tax advisors (hereafter "covered professionals") a covered professional at any time comes into possession of property on behalf of a client or third party, the covered professional shall:

- 2.1. hold the property in an account of, or in the safekeeping of, a bank subject to the supervision of the CBK, unless the client explicitly agrees that the property should be dealt with otherwise, or the nature of the property does not permit;
- 2.2. indicate in the title or designation of the account that the property is held on behalf of a client or clients of the covered professional;
- 2.3. in the case of cash or liquid securities, maintain a sum in the account that at all times equals or exceeds the sum of the client's property held by the covered professional; and
- 2.4. maintain full and accurate records, available to the client upon request, showing all dealings with the client's property and distinguishing the client's property from other property held by the covered professional.

Comment [PPE125]: Consequent to the proposed removal of paragraph (1) of Article 26 paragraph (2) of the Article is being amended to retain reference to "covered professionals".

Reporting

3. In accordance with the provisions of paragraph (1.2) of Article 21 of this Law, Any covered professional who, in the course of performing services for a client, receives € ten thousand (10,000) euros or more or equivalent value in foreign currency in currency infor a transaction or related transactions from a client, shall file a report with the FIU-K within fifteen (15) working days of the reportable transaction. A transaction shall also be reported if the covered professional receives the currency as an intermediary, that is, he or she intends to transfer the currency to a third party on behalf of the client. A transaction may not be divided into multiple transactions in order to avoid reporting under this article.

4. For the purposes of paragraph 3 of this Article, a “transaction” includes, but is not limited to:

- 4.1. a sale of goods or services;
- 4.2. a sale of real property;
- 4.3. a sale of intangible property;
- 4.4. a rental of real or personal property;
- 4.5. an exchange of currency for other monetary instruments, including other currency;
- 4.6. the payment of a pre-existing debt;
- 4.7. a reimbursement of expenses paid;
- 4.8. the making or repayment of a loan; or
- 4.9. the payment of fees in currency to the covered professional for his or her services.

5. For the purposes of paragraph 3 of this Article the term “related transactions” means all transactions conducted between the client and the covered professional in a twenty four (24) hour period or all transactions conducted between the client and the covered professional during a period of more than twenty four (24) hours if the recipient knows or has reason to know that each transaction is one of a series of connected transactions. Multiple payments to a lawyer for representation in a single case are connected transactions.

6. The form and manner of the report shall be prescribed by the FIU-K, and shall include:

- 6.1. the name and address, and such other identifying information as the FIU-K may prescribe, of the person or entity from whom the currency was received and any agent on whose behalf the person or entity is acting;
- 6.2. the amount of currency received;
- 6.3. the date and nature of the transaction; and
- 6.4. such other information, including the identification of the person or entity filing the report, as the FIU-K may prescribe.

7. ~~Certified accountants and licensed auditors shall report any suspicious act or transaction to the FIU-K within three (3) working days and prior to taking further action in connection with any such act or transaction. Reports shall be made in a form and manner prescribed by the FIU-K.~~

8. Except cases as provided in paragraph 9 of this Article, and in accordance with the provisions of paragraph (1.1) of Article 21, lawyers the covered professionals engaged in specified activities shall report any suspicious act or transaction to the FIU-K within three (3) working days and prior to taking further action in connection with any such act or transaction. Specified activities include:

- 8.1. assisting or representing a client or clients in:
 - 8.1.1. buying and/or selling of immovable property or business organizations;
 - 8.1.2. handling of clients’ money, securities, or other assets;
 - 8.1.3. opening or managing bank, savings or securities accounts;
 - 8.1.4. organization of contributions necessary for the creation, operation or management of companies;
 - 8.1.5. creation, operation or management of companies, trusts or similar structures; or
- 8.2. acting on behalf of or for the client in any financial or immovable property rights transaction.

Comment [PPE126]: Reference paragraph 3 of Article 26, first it is important to link the reporting obligation to the main Article 21. Notwithstanding, as highlighted, the allowance of 15 days for reporting conflicts the timeframe of 30 days allowed to traders under Article 23 and hence an element of inconsistency and discrimination could be raised since the objective of the reporting is the same. Should be revised.

Comment [PPE127]: With the proposed amendment to paragraph (8) of Article 26 to cover all ‘covered professionals’ paragraph (7) of Article 26 becomes superfluous and should be removed to avoid duplication of obligations.

Comment [PPE128]: Reference paragraph (8) of Article 26, first it is important to link the reporting obligation to the main Article 21. Notwithstanding, as highlighted, the allowance of 3 days for reporting conflicts with the main provisions of Article 21 which states 24 hours and hence an element of inconsistency and discrimination could be raised since the objective of the reporting is the same – suspicion of money laundering or the financing of terrorism. Should be revised.

Comment [PPE129]: The reference to “trusts” is without consideration to the fact that Kosovo does not have any legislation for setting and registering trust. It can only remain if Kosovo allows FIs/DNFBPs to establish business relationships or opening bank accounts with foreign trusts as such.

Reports shall be made in a form and manner recommended by the FIU-K.

9. A lawyer shall not, without authorization from the client or by court order, provide information he or she received from a client or obtained on a client in order to represent the client in criminal or judicial proceedings, unless the lawyer reasonably believes that the client is seeking the lawyer's advice or assistance to commit a criminal offence.

10. Records collected pursuant to this Article shall be maintained in accordance with the provisions of Article 17A of this Law, for a period of five (5) years from the date that the business relationship or representation ended. Records relevant to a suspicious act or transaction shall be maintained for a period of five (5) years from the date on which the suspicious act or transaction was reported to the FIU-K. To the extent possible, records maintained pursuant to the present article shall be maintained separately from files containing information subject to lawyer-client privilege.

11. Covered professionals shall ensure the training of all staff members, employees and agents in their obligations under this Law.

12. The FIU-K, in consultation with the Kosovo Bar Association, Chamber of Notaries of Kosovo ~~the~~ and Kosovo Board on Standards for Financial Reporting and any other relevant professional association of covered professionals shall establish minimum standards, written procedures and controls for the prevention and detection of money laundering and terrorist financing to be applied by covered professionals and supervise them. These procedures shall include, but ~~need shall~~ not be limited to, the following:

12.1. ~~a~~ client identification procedure;

12.2. ~~a~~ procedure for collecting information and maintaining the records pursuant to this Law and for preventing unauthorized access;

12.3. ~~a~~ procedure for reporting to the FIU-K in compliance with [Amended by the Law No. 04/L-178 of 11 February 2013] paragraphs 3 to 9 of Article 26 of this law²²;

12.4. a detailed list of the indicators of a suspicious act or transaction, taking into account the particular crime problems of Kosovo and Kosovo's legal and business systems;

12.5. measures to be taken by the covered professional from the moment of the detection of a suspicious act or transaction to the submission of the report to the FIU-K;

12.6. procedures for ensuring the institution and provision of an employee training program on the obligations under present article and the prevention of money laundering and terrorist financing;

~~12.7. an audit function to test the reporting and identification system.~~

13. The Kosovo Bar Association, Chamber of Notaries of Kosovo, ~~the~~ Kosovo Board on Standards for Financial Reporting and any other relevant professional association of covered professionals shall inform their members of the approved procedures and other obligations and the sanctions of this Law relating to covered professionals.

[Added by the Law No. 04/L-178 of 11 February 2013]

13.a. Covered professionals, their Directors, officers, and employees and agents of the any "covered covered professionals" be they temporary or permanent who make or transmit reports pursuant to this Law shall be bound by the provisions of paragraph (4) of Article 21 of this Law. ~~the present article shall not provide the report, or communicate any information contained in the report or regarding the report, to any person or entity, including any person or entity involved in the transaction which is the subject of the report, other than the FIU-K, unless authorized in writing by the FIU-K, a Prosecutor, or a Court.~~

14. The FIU-K and sectoral supervising authorities shall from time to time, adopt, amend, or repeal sub legal acts consistent with the policy, objects and purposes of this Law.²³

Administrative sanctions imposed by supervising authorities of supervising subjects pursuant to the relevant laws do not violate any of the criminal procedures envisaged by this law.

Comment [PPE130]: With reference to paragraph (9) of Article 26 according to international standards, both the FATF and the EU, the exception of legal privilege being provided to lawyers is likewise applied to certified accountants and auditors. Authorities may wish to review.

Comment [PPE131]: Since there is a proposal to move all relevant provisions relating to record keeping under a new Article 17A which is applicable to all reporting subjects, the retention of records for covered professionals should be linked to this provision with the removal of the duplicative obligation.

Comment [PPE132]: Paragraph (12) of Article 26 should be reviewed within the context of the comments to paragraph (13) of Article 19.

Comment [PPE133]: The requirements under paragraph (12) of Article 26 should also refer to the appointment of the compliance officer – refer to comments to paragraphs (17) to (20) under Article 19.

Comment [PPE134]: The references to paragraphs (3) to (9) of Article 26 in paragraph (12.3) of Article 26 may not be correct.

Comment [PPE135]: Since there is a proposal for paragraph (4) of Article 21 to be applicable to all reporting subjects it is not necessary to repeat the provision under the specifics for covered professionals under paragraph (13a) of Article 26 except to the extent that the provisions of paragraph (4) of Article 21 are directly applicable.

Comment [PPE136]: What does this mean? From time to time?

Comment [PPE137]: It is proposed to remove paragraph (14) to Article 26 in the light of the proposed mandatory provisions under the proposed paragraph (2) to Article 50.

Comment [PPE138]: Unclear.

Review the mandate of the Ministry of Justice.

Sanctions-

~~14. A sanction imposed by the competent Bar Association, the Kosovo Board on Standards for Financial Reporting or any other relevant professional association of covered professionals for a breach of this Law shall be without prejudice to any criminal proceedings.~~

Article 27

Additional Obligations: Immovable Property Transactions

~~[Amended by the Law No. 04/L 178 of 11 February 2013]~~

~~“1. When conveyance of immovable property rights involves a transaction or transactions of a monetary ~~amount~~ value of ten thousand (10,000) euros or more or equivalent value in foreign currency unless otherwise specified by law, each transaction shall be made by payment order or bank transfer.”~~

~~2. The Municipal Cadastral Office (MCO) shall not register a transfer of immovable property rights unless it receives, in addition to the other documents that are presented in accordance with law for the registration of the transfer, a declaration, in the manner and in the format specified by the FIU-K, signed by the transferor and transferee that certifies:~~

~~2.1. the transferor and transferee of record;~~

~~2.2. the identity of any person or entity which has a financial interest in or is a beneficiary of the property being transferred, and the nature of that interest or beneficiary status;~~

~~2.3. the purchase price and the manner of payment, including, if the payment is made, in whole or in part, by transfer of property other than cash, a description and an estimate of the value of the property;~~

~~2.4. if the transfer is subject to paragraph 1 of this Article the financial account number or numbers from which the payment was or will be debited and to which it was or will be transferred, and the names in which the accounts are held.~~

~~3. The MCO shall maintain the declaration together with the other documents that are presented in accordance with law for the registration of the transfer. In addition, the MCO shall in the manner and format specified by the FIU-K forward copies of all declarations received ~~to the FIU~~ on a monthly basis.~~

~~4. A decision by the MCO to reject registration on the grounds of failure to comply with the present article, shall be made, and may be reviewed, in accordance with ~~Law No. 2002/5~~ the applicable law on the Establishment of an Immovable Property Rights Register, ~~as promulgated by UNMIK Regulation No. 2002/22 of 20 December 2002 in the Republic of Kosovo.~~~~

Article 28

Additional Obligations of ~~C~~casinos and ~~O~~ther licensed gaming objects of games of chanceHouses

~~[Amended by the Law No. 04/L 178 of 11 February 2013]~~

~~“1.1. As reporting subjects identified under Article 16 of this Law, Casinos and other licensed objects of games of chance (hereafter “Games of Chance”), are and thus subject to the anti-money laundering and anti-terrorist financing provisions of this Law, and are obligated to take specific measures to address the risk of money laundering and financing of terrorism inherent in providing gambling services as provided for under Article 16A of this Law. as provided by Article 17 and 18 of this law. Casinos and Licensed Object of Games of Chance as defined in Article 2 are subject to the anti-money laundering and anti-terrorist financing provisions of this Law and are obligated to take specific measures to address the risk of money laundering and the financing of terrorism in providing~~

~~gambling services.~~

2. ~~In accordance with the provisions of Articles 17 and 18 of this Law.~~ Casinos and ~~Licensed Object of Games of Chance~~ shall verify and record in permanent fashion the identity of a client before entering into a transaction or multiple or linked transactions to sell, purchase, transfer, or exchange gambling chips, tokens, or any other evidence of value in an amount of two thousand (2,000) euros or more or the equivalent value in foreign currency. The identity verification and recordation requirement also extends to financial transactions such as the opening of an account (including safekeeping), a wire transfer or a currency exchange in the amount of two thousand (2,000) euros or more or the equivalent value in foreign currency. If the Casino ~~and, Gaming House, or Licensed Object of Games of Chance~~ is are not able to verify the identity of a client, it shall not enter into the transaction.

3. ~~Casinos and Licensed Object of Games of Chance shall report to the FIU-K, in the manner and in the format specified by the FIU-K:~~

3.1. ~~all suspicious acts, or transactions or attempted transactions within twenty four (24) hours of the time the act, or transaction, or attempted transaction was identified as suspicious;~~

3.2. ~~all single transactions in currency cash at the value of ten thousand (10,000) euros or more or equivalent value in foreign currency. Multiple or linked cash transactions shall be treated as a single transaction if the Casino and, Gaming House and Licensed Object of Games of Chance knows, or reasonably should have known, that the transactions are by or on behalf of one person or entity and total more than ten thousand (10,000) euros or equivalent value in foreign currency in a single gaming day;~~

4. ~~Games of Chance Gaming houses~~ shall not engage in any of the following transactions:

4.1. exchange cash for cash with a client, or with another recipient on behalf of the client, in any transaction in which the amount of the exchange is two thousand (2,000) euros or more;

4.2. issue a check or other negotiable instrument to a client, or to another recipient on behalf of the client, in exchange for cash in any transaction in which the amount of the exchange is two thousand (2,000) euros or more;

4.3. transfer funds by electronic or wire transfer or other method to a client, or to another recipient on behalf of the client, in exchange for cash in any transaction in which the amount of the exchange is two thousand (2,000) euros or more.

5. These prohibitions do not restrict ~~a gaming house~~ games of chance from paying a client's winnings by check or other negotiable instrument or by electronic or wire transfer if the check, negotiable instrument, or electronic or wire transfer is made payable to the order of the client.

6. ~~The FIU-K and sectoral supervising authorities shall together determine the minimum proceedings to prevent and detect money laundering and terrorist financing, whereas Casinos, Gaming Houses and Licensed Object of Games of Chance shall: develop written procedures and internal controls to prevent and detect money laundering and financing of terrorism based on these minimum standards. These procedures shall include inter alia, but shall not be limited to, the following: develop and implement internal policies, procedures and controls, including appropriate compliance regimes, and adequate screening procedures to ensure high standards when hiring employees;~~

6.1. client identification procedure;

6.2. procedure for collecting information and maintaining the records pursuant to this Law and for preventing unauthorized access;

6.3. procedure for reporting to the FIU-K in compliance with paragraph 3 of this Article;

6.4. a detailed list of the indicators of a suspicious act or transaction, taking into account the particular crime problems of Kosovo and Kosovo's legal and business systems;

6.5. measures to be taken by the casinos and games of chance from the moment of the detection of a suspicious act or transaction to the submission of the report to the FIU-K;

6.6. procedures for ensuring an employee's training program on the obligations under present article and on the prevention of money laundering and terrorist financing;

Comment [PPE139]: There is a proposal to include "licensed objects of games of chance" under Article 16. Hence the present text of paragraph (1) of Article 28 becomes superfluous. However it may be opportune to retain it as redrafted in order to emphasize the risks inherent to the gaming sector and for which additional obligations are imposed in accordance with the proposed new Article 16A on risk.

Comment [PPE140]: Since the main identification and verification procedures are established for all reporting subjects under Articles 17 and 18 it is appropriate that the specific timing of identification and verification for Casinos and Games of Chance under paragraph (2) of Article 28 be established within this general framework.

Comment [PPE141]: This reporting obligation under paragraph (3) of Article 28 is identical to the provisions of paragraph (1) of Article 21 to which Casinos and Games of Chance, as reporting subjects, are already subjected to. Hence, this not being an "additional obligation" it should be removed.

Comment [PPE142]: Vague and ambiguous. Should be clarified

Comment [PPE143]: The requirements should also refer to the appointment of the compliance officer – refer to comments re paragraphs (17) to (20) under Article 19.

~~7. Casinos, Games of Chance, and their Directors, officers and employees being temporary or permanent of casinos and games of chance who prepare or transmit reports pursuant to this Law the present article shall be bound by the provisions of paragraph (4) of Article 21 of this Law, not provide the report, or communicate any information contained in the report or regarding the report, to any person or entity, including any person or entity involved in the transaction which is the subject of the report, other than the FIU-K, unless authorized in writing by the FIU-K, a Prosecutor, or a Court.~~

6.2. conduct ongoing employee training programs; and

6.3. implement procedures to test compliance with the Law and related sublegal acts.

7. Each Casino, Gaming House and Licensed Object of Games of Chance shall in a manner required by the FIU, create, and keep accurate, complete, legible, and permanent original records to ensure compliance with this Law and related sub legal acts within Kosovo for a minimum period of five (5) years.

~~8. The FIU-K and sectoral supervising authorities shall in close cooperation and coordination may, time from time, adopt, amend, or repeal sub legal acts with the aim of promoting and ensuring the compliance of the reporting subject pursuant to this Law.~~ 8. The FIU shall from time to time, adopt, amend, or repeal sub legal acts consistent with the policy, objects and purposes of this section of the Law as it may deem necessary or desirable in the public interest in carrying out the policy and provisions of this Law."

Comment [PPE144]: Since there is a proposal for paragraph (4) of Article 21 to be applicable to all reporting subjects it is not necessary to repeat the provision under the specifics for Casinos and Games of Chance under paragraph (7) of Article 28 except to the extent that the provisions of paragraph (4) of Article 21 are directly applicable.

Comment [PPE145]: It is proposed to remove paragraph (8) of Article 28 in the light of the mandatory provisions under the proposed paragraph (2) to Article 50

Comment [PPE146]: Same as previous comment.

Article 29

Movement of monetary instruments into and out of Kosovo - Obligation to declare

1. Every person entering or leaving Kosovo and carrying monetary instruments of a value of €-ten thousand (10,000) euros or more or equivalent value in foreign currency must declare in writing the amount of the monetary instruments and their verifiable ~~source of such monetary instruments in writing~~, in a format to be prescribed by the Kosovo Customs, to a customs officer, and, if so requested by the customs officer, shall present these monetary instruments. For the purposes of the present article, a person shall be considered to be carrying monetary instruments, if, inter alia, they are in the physical possession of such person or in a private vehicle or other conveyance being utilized by such person. The obligation to declare shall not have been fulfilled if the information provided is incorrect or incomplete.

2. Every person sending from Kosovo to a place outside Kosovo, or receiving in Kosovo from a place outside Kosovo, via post, cargo shipments or commercial courier, monetary instruments of a value of €-ten thousand (10,000) euros or more or equivalent value in foreign currency, must declare in writing the amount of the monetary instruments and their verifiable ~~source of such monetary instruments in writing~~, in a format to be prescribed by the Kosovo Customs, to an ~~authorized~~ customs officer, and, if so requested by the customs officer, shall present the monetary instruments. The person may meet his or her reporting duty obligation under the present paragraph by means of a notification of the contents of a parcel in a customs declaration or in international freight documentation. The obligation to declare shall not have been fulfilled if the information provided is incorrect or incomplete.

3. Kosovo Customs must forward to the FIU-K copies of all declarations filed pursuant to paragraph 1 or 2 of this Article ~~to the FIU~~. ~~[Added by the Law No. 04/L 178 of 11 February 2013] "The FIU-K shall be notified by Kosovo Customs of false declarations or disclosures."~~

4. Any person who fails to comply with the provisions of paragraph 1 or 2 of this Article commits a minor offence punishable by a fine of 25% of the total amount of monetary instruments in his/her possession ~~[Added by the Law No. 04/L 178 of 11 February 2013] "for which they he/she is obliged had an obligation to declare."~~

5. The ~~authorized~~ customs officer shall issue to a person who has committed such a minor offence a written notification on a standard form stating the nature of the minor offence and the fine imposed which shall be payable to Kosovo Customs immediately.

6. If the fine imposed is not paid immediately, the ~~authorized~~ customs officer shall seize and retain

25% of the monetary instruments. If the monetary instruments are not divisible in the manner that permits the seizure and retention of the exact amount of the monetary instruments to be seized and retained, the ~~authorized~~ customs officer shall seize the greater amount which shall be as close in value as possible to such amount.

7. Upon seizure under paragraph 6 of this Article, the ~~authorized~~ custom officer shall issue ~~to the concerned person~~ a written receipt stating the relevant facts and the amount of the monetary instruments seized and retained.

8. The monetary instruments seized and retained in accordance with the present article, shall, where possible, be held in the special non-interest bearing account in the name of the CBK or otherwise be held in safe custody with CBK until such time as the fine is paid in full or as otherwise ordered by a ~~competent Court of the competent jurisdiction~~ or as otherwise provided in the present article.

9. A fine imposed pursuant to this article is without prejudice to any criminal proceedings against a person.

Movement of monetary instruments into and out of Kosovo - Prevention of Money Laundering and Terrorist Financing

10. Kosovo Customs shall take all appropriate measures to prevent money laundering and terrorist financing and shall report ~~to the FIU-K~~ any suspicious ~~acts and~~ transactions ~~related to money laundering and terrorist financing or suspicious terrorist financing~~ it detects in the course of its duties ~~to the Financial Intelligence Unit~~. Kosovo Customs shall liaise with the FIU-K, prosecutors, police and other relevant bodies for the purpose of performing these duties.

11. In the course of their duties Customs officers may question and search natural persons, their baggage and means of transport and may seize and ~~retain~~ monetary instruments in accordance with this article. The ~~applicable~~ Kosovo Customs and Excise Code shall apply equally in relation to monetary instruments as in relation to goods.

12. Kosovo Customs shall seize and ~~retain~~:

12.1. any monetary instruments carried by a person entering or leaving Kosovo if they are in the value of ~~€ ten thousand (10,000) euros or more or in equivalent value in foreign currency in excess of € ten thousand (10,000)~~ and have not been declared in accordance with ~~to~~ paragraph 1 and 2 of this Article;

12.2. any monetary instruments carried by a person entering or leaving Kosovo if there is a reasonable suspicion that such monetary instruments are the proceeds of crime or were used or intended to be used to commit or facilitate money laundering or the predicate criminal offence from which the proceeds of crime were derived or are related to terrorist financing.

13. Upon seizure under paragraph 12 of this Article, Kosovo Customs shall issue to the person concerned a written receipt stating the amount of the monetary instruments seized and retained, the relevant facts, also specifying whether any fine has been deducted from the amount seized in accordance with paragraph 4 of this Article.

14. Upon seizure of monetary instruments under ~~[Amended by the Law No. 04/L 178 of 11 February 2013]~~ "paragraph 12 of this Article", Kosovo Customs, without delay, shall:

14.1. report the matter to the FIU-K;

14.2. notify the competent Prosecutor [to enable further investigations/action] and shall provide the competent Prosecutor with a copy of the written receipt given to the person concerned and with all other information required.

15. The monetary instruments seized and retained by Kosovo Customs in accordance with this article shall, ~~whereif~~ possible, be held in a special non-interest bearing account in the name of the CBK or otherwise be held in safe custody with the CBK until such time as the fine is paid in full or as otherwise ordered by a court of competent jurisdiction or as otherwise provided by this Law.

16. Where monetary instruments have been seized pursuant to paragraph 12 of this Article, within ten (10) days of notification under paragraph 14 of this Article the Prosecutor shall:

Comment [PPE147]: Paragraphs (4) to (6) of Article 29 need to be clarified in terms of paragraphs (12) to (15) of this Article 29 to avoid legal uncertainty on the powers of the Kosovo Customs.

16.1. submit a motion for confiscation of the monetary instruments;

16.2. submit a motion for a temporary measure for securing the monetary instruments ; or

16.3. in writing, notify the person concerned, Kosovo Customs ~~and the FIU-K~~ that no action will be taken in relation to the seized property ~~seized~~ and that the person concerned may apply for the return of the monetary instruments in accordance with paragraph 17 of this Article.

17. If the Prosecutor gives a notification under sub-paragraph 16.3- paragraph 16 of this Article that no action shall be taken in relation to the seized monetary instruments ~~seized~~, the Kosovo Customs shall return the monetary instruments to the person concerned ~~on application by them~~.

18. If a person concerned is unable to collect in person the monetary instruments, he or she may:

18.1. grant a power of lawyer to another person authorizing such person to collect the seized monetary instruments on his or her behalf and/or provide the competent authority with a signed written and notarized document instructing such authority to return the monetary instruments to another named individual; or

18.2. submit a request in writing, addressed to the CBK, to deposit the monetary instruments in a special Kosovo Customs account in the name of such person until such time as the monetary instruments are collected personally by the person concerned or by a person authorized to do so in accordance with sub-paragraph 18.1 of this paragraph.

19. If no application for return of monetary instruments is made in accordance with paragraph 18 of this Article or the monetary instruments are not collected within twelve (12) months from the date of closure of the procedure set forth in this article, the monetary instruments shall be forfeited to Kosovo Customs and deposited in the Kosovo ~~Consolidated~~ Budget.

20. In the course of their duties and especially when acting in accordance with sub-paragraph 12.2., paragraph 12- of this Article, Customs officers can arrest and detain a person under conditions prescribed ~~by the chapter XXIV in Article 100 of provisional the Criminal Procedure Code~~ and ~~when during arresting and detention~~ in Article 100 of provisional the Criminal Procedure Code and ~~when during arresting and detention~~ of the person they shall be recognized officially considered as officers of the “police” officers for the purposes of the ~~Provisional~~ Criminal Provisional Code.

~~{Added by the Law No. 04/L 178 of 11 February 2013}~~

~~“21. a~~Against the written notification in standard form for committing a minor offence in accordance with decision brought according to Article 29 of this law, the party has the right to submit a request for review of decision to the Customs within thirty (30) days from the date the ~~decision or customs declaration notification~~ decision or customs declaration notification is received.”~~”~~

CHAPTER IV

SUPERVISION OF COMPLIANCE

Article 30

Compliance inspections by FIU-K officials

~~{Amended by the Law No. 04/L 178 of 11 February 2013}~~

“1. For reporting ~~entities~~ subjects as determined in sub-paragraphs 1.1 to 1.14-~~2~~, paragraph 1 of Article 16 of this law, an official or officials of the FIU-K who have been authorized by the Director of the FIU-K for this purpose (hereafter an “authorized official or officials”), may, at any time during ordinary business hours, enter any premises other than a living house or residence, if there is a reasonable suspicion that it contains records which are maintained pursuant to Articles 16 to 28 of this law or documents relevant to determining whether obligations under Articles 16 to 28 of this law have been complied with. The authorized official or officials may demand and inspect the records or documents; copy or otherwise reproduce any such record or document; and ask questions in order to

locate and understand such records or documents. The authorized official or officials shall limit the inspection to that part of the premises in which the relevant records or documents are reasonably likely to be found and they shall only perform actions which are necessary for, and proportionate to, the purpose of inspection of such records.²

2. The owner or person in charge of the premises being inspected and every person present in the premises shall give the authorized officials all reasonable assistance to enable them to carry out their responsibilities, including identifying the relevant records or documents and furnishing any information requested to enable the authorized officials to locate and understand such records or documents. Such persons shall also assist the authorized officials in accessing and copying or reproducing records and documents maintained electronically, and shall permit the use of any copying equipment located on the premises.

3. A person in premises subject to an inspection pursuant to paragraph 1 and 2 of this Article may refuse to allow the inspection or copying of a record or document if he or she asserts that:

3.1. it is not maintained pursuant to Articles 16 to 28 of this law and is not relevant to determining whether obligations under Articles 16 to 28 of this law have been complied with; or

3.2. it contains information that is subject to lawyer-client privilege.

4. In the event of such refusal, an authorized official conducting the inspection shall place the disputed record or document in an envelope or other appropriate container, which shall be sealed in the presence of the person or his or her representative, and signed by the official and the person or representative. The sealed record or document shall be presented within ten (10) days to a Pre Trial Judge of the competent District Court, who shall inspect it, and determine whether it, or any part of it, is subject to inspection and copying pursuant to this article.

5. If a person considers that he or she has been the subject of actions under paragraph 1 and 2 of this Article which are unlawful, he or she may submit a complaint within thirty (30) days of the inspection to a Pre Trial Judge of the competent District Court who shall adjudicate on the lawfulness of the actions referred to in the complaint and decide on compensation where appropriate. Authorized officials of the FIU-K shall provide the Investigating Judge with such documents as he or she shall request and shall, on request, provide oral testimony.

Article 31 Supervision of Compliance

1. The FIU-K, Central Bank of Republic of Kosovo and other sectoral supervisors shall supervise the compliance with the provisions of this Law during the exercise of their competencies pursuant to this Law and other laws.

2. For the purposes of putting into effect the provisions of paragraph (1) of this Article the FIU-K shall enter into individual specific written agreements with the Central Bank of Kosovo or other sectoral supervisors with the aim of establishing a supervisory remit and the respective responsibilities, procedures and cooperation.

23. The FIU-K, the Central Bank of Kosovo or other sectoral Compliance-supervisors of the reporting subject shall take into consideration the risk of money laundering and terrorist financing in the sector in which the reporting subject operates.

34. Supervision of compliance may be carried out:

a) Upon taking into consideration the adoption, renewal or rejection of the license or other necessary authorization for the reporting subject to act pursuant to this law and other laws;

b) as on-site inspection of the reporting subject; or

c) as off-site inspection of reporting subject.

5. For the purposes of undertaking off-site inspections of reporting subjects for assessing compliance

Comment [PPE148]: Paragraph (1) to Article 31 is not clear and could be subject to interpretation. First it could be interpreted that the CBK and all other sectoral supervisors are automatically appointed the supervisory authority for the purposes of the AML/CFT Law notwithstanding and inconsistent with the provisions of paragraph (1) to Article 32 and thus leading to the unusual prohibitory provisions under Article 32; second it could be interpreted that the CBK and other sectoral supervisors could undertake AML/CFT supervisory examinations in conjunction with their prudential supervisory remit. Moreover, subject to this interpretation, this will result in a confusion of who is responsible for what. Suggest to revise and clarify – see inclusion of paragraph (2).

Comment [PPE149]: In order to mitigate the concerns expressed for paragraph (1) of Article 31 it is suggested to include the proposed paragraph (2) through which the FIU-K being the primary supervisory authority for the purposes of the AML/CFT Law decides to delegate a supervisory remit.

Comment [PPE150]: It is important to refer to the FIU-K, the CBK and other sectoral supervisors for the sake of clarity, consistency and continuity in paragraph (3) of Article 31.

Comment [PPE151]: It is not clear whether this provision under paragraph (4) of Article 31 applies also to the FIU-K.

Comment [PPE152]: Item (a) of paragraph (3) of Article 31 – renumbered as paragraph (4) - needs to be clarified to better define the type of compliance supervision it is referring to as normally supervisory examinations are either onsite or offsite.

with the provisions of this Law or any rules or regulations issued there-under, the FIU-K, the Central Bank of Kosovo and other sectoral supervisors pursuant to paragraph (2) of this Article may, by notice in writing served on a reporting subject, require that reporting subject to produce, within the time and at a place as may be specified in that notice, any documents, including those related to internal procedures under this Law or any regulation, as may be required by the FIU-K, the Central Bank of Kosovo or other sectoral supervisors respectively, to fulfill their responsibilities under this Law, and the provisions of paragraphs (3), (4) and (5) of Article 30 shall apply accordingly.

6. The Central Bank of Kosovo and other sectoral supervisors with a supervisory mandate under paragraph (2) of this Article for the purposes of monitoring reporting subjects on compliance with this Law and related rules and regulations and who already have a prudential supervisory mandate conferred upon them through specific laws for such reporting subjects shall apply such prudential supervisory powers as are conferred upon them by the respective laws, and as may be applicable in fulfilling their supervisory mandate under this Article with the exception of the power to impose administrative or other sanctions and penalties contemplated by such specific laws for the infringement of these laws, and where such supervisory powers are not contemplated by the specific law the provisions of the supervisory powers of the FIU-K under Article 30 of this Law shall apply.

Article 32 Compliance Supervision Cooperation

1. FIU-K shall have primary responsibility in supervising the compliance of reporting subjects with the provisions of this Law.

2. FIU-K, Central Bank of Republic of Kosovo and other sectoral supervisors shall cooperate and coordinate their activities to supervise the compliance with the provisions of this law in relation to:

- a) Planning and implementing the compliance supervision;
- b) Carrying out joint on-site and off-site compliance supervision activities;
- c) Documenting, assessing, reporting and monitoring compliance supervision activities;
- d) Imposing administrative sanctions and other supervising measures;
- e) Assessing and following-up compliance supervision activities.

3. FIU-K, besides inspection cases as stipulated in Article 30 of this Law, shall notify the Central Bank of the Republic of Kosovo or any other sectoral supervisor before conducting any on-site or off-site inspection pursuant to this Law of the reporting subject under their supervision.

4. Central Bank of the Republic of Kosovo and other sectoral supervisors shall notify the FIU-K before conducting any on-site or off-site inspection for the purposes of supervising the compliance with this Law and shall not commence the inspection without the written approval of the FIU-K.

5. If the Central Bank of the Republic of Kosovo or other sectoral supervisors, during their prudential on-site or off-site inspection based on other laws, identify the need to expand the prudential inspection in order to cover the compliance supervision with this Law, they shall notify the FIU-K at the earliest opportunity, before expanding the on-site or off-site inspection for the compliance supervision with this Law and shall not expand the inspection without the written approval of the FIU-K.

6. The FIU-K, the Central Bank of the Republic of Kosovo and sectoral supervising authorities, may from time to time and in close cooperation and coordination, adopt, amend or repeal sub-legal acts with the aim of promoting and ensuring the compliance of the reporting subjects with this law.

Article 32A Compliance Remedial Measures

OPTION 1 – for paragraph (1)

Comment [PPE153]: As already proposed in the PECK Report there is a need to clarify the powers of the FIU-K and other competent authority to undertake off-site examinations – this is being addressed through item (c) of paragraph (3) of Article 31 – now renumbered paragraph (4). The inclusion of the proposed paragraph (5) defines the legal basis for the methodology to be applied to undertake off-site examinations under the AML/CFT Law.

Comment [PPE154]: As argued in the PECK Report there is a need for a legal basis for the CBK and other supervisory authorities to apply their prudential supervisory powers for the purposes of monitoring compliance with the AML/CFT Law – example right of entry, right of access to all documents, right of demanding information etc – for example as provided for the CBK under the Law on Banks. Paragraph (6) to Article 31 is being introduced for this purpose. The exclusion of the power to impose administrative and other sanctions is excluded as such ...

Comment [PPE155]: It is important for Kosovo authorities to ensure that the supervisory role on the FIU-K does not affect the effectiveness and efficiency of its primary role. This role is resource demanding and any supervisory structure set up should give due consideration to this issue.

Comment [PPE156]: The prohibition to initiate an inspection until authorized by the FIU-K under paragraph (4) of Article 32 is a very restrictive measures which may have implications on the effectiveness of the supervisory regime in Kosovo for the purposes of the AML/CFT Law and should be removed.

Comment [PPE157]: The prohibition to extend a prudential examination to also cover AML/CFT issues under the AML/CFT Law proposed in paragraph (5) of Article 32 is a very restrictive measures which may have implications on the effectiveness of the supervisory regime ...

Comment [PPE158]: It is proposed to remove paragraph (6) to Article 32 in the light of the mandatory provisions being proposed under paragraph (2) of Article 50.

Comment [PPE159]: Article 32A is a proposed new article inspired by the FATF Standards for sanctions to include a graduated regime of remedial non-pecuniary measures to be applied proportionately to the offence and as recommended in the PECK AML/CFT Report. Article 32A is inspired from sim ...

Comment [PPE160]: Two options are being proposed. Under the first one the FIU-K retains full responsibility to impose remedial measures which may be recommended by the sectoral supervisor.

1. Notwithstanding the provisions of Article 31 and Article 32 of this Law and without prejudice to administrative sanctions contemplated by this Law, it shall be the responsibility of the FIU-K to impose graduated remedial measures on reporting subjects for deficiencies identified in the course of on-site or off-site examinations. Such measures as defined in this Article may be recommended to the FIU-K by the relevant sectoral supervisor.

OPTION 2 – for paragraph (1)

1. Notwithstanding the provisions of Article 31 and Article 32 of this Law and without prejudice to administrative sanctions contemplated by this Law, it shall be the responsibility of the sectoral supervisors or the FIU-K to impose graduated remedial measures on reporting subjects for deficiencies identified in the course of on-site or off-site examinations.

2. The sanctions shall be applied proportionately to the severity of the offence, to individual and legal persons recognised as reporting subjects under this Law and/or their directors or senior management as the case may be:

- (i) issue written warnings;
- (ii) issue written orders requiring the reporting subject or other person or entity to take remedial action to rectify identified weaknesses within a specified period of time;
- (iii) order a reporting subject or any other person or entity to periodically report on the remedial measures being undertaken;
- (iv) requiring a reporting subject or any other person or entity not to engage in one or more of the licensed activities;
- (v) dismiss, suspend or replace a person from his or her position in the entity concerned;
- (vi) prohibit such person from serving in or engaging in activities or being employed within the same sector of business for a stated period or for life;
- (vii) restrict the powers of managers, directors or other senior officials;
- (viii) request the relevant sectoral supervisor to suspend or revoke the licence or registration of the reporting subject in accordance with the provisions of paragraph (10) of Article 34.

3. The person or entity affected by the imposition of graduated remedial measures under items (iv) to (vii) of this Article has the right to an administrative appeal under Article 35 of this Law and the *ad hoc* committee established by the FIU-K under the applicable legislation.

Article 32B
Statistical Data

1. The FIU-K, the Central Bank of Kosovo, other sectoral supervisors pursuant to paragraph (2) of Article 31 and other competent authorities with a responsibility for combating money laundering and the financing of terrorism, reporting subjects and other persons or entities with obligations or functions under this Law shall maintain comprehensive statistical data relevant to their area of responsibility.

2. In maintaining statistical data, persons, entities and authorities referred to in paragraph (1) of this Article shall liaise with the FIU-K who, in cooperation with the Central Bank of Kosovo or other relevant sectoral supervisors with a supervisory remit under this Law in terms of paragraph (2) of Article 31, as the case may be, may determine the type of statistical data that may be required.

3. To this effect the FIU-K, the Central Bank of Kosovo or a sectoral supervisory authority as referred to in paragraph (2) of Article 31 ~~may~~shall issue administrative directives, instructions or guidance on

Comment [PPE161]: Two options are being proposed. Under the second one the imposition of remedial measures shall be shared – either the sectoral supervisor for those reporting subjects under its remit or the FIU-K for others. This option could release some of the pressure on the resources of the FIU-K.

Comment [PPE162]: Notwithstanding the emphasis in the PECK AR on Compliance with International AML/CFT Standards and the importance of the maintenance of meaningful statistics for the purposes of the FATF Methodology under the 2012 Standards, and notwithstanding the obligations on the FIU-K under Article 14 of this Law to compile information, statistics and reports and based thereon make recommendations to the relevant Ministry of Finance etc, the proposed amendments to the AML/CFT Law remain silent on the matter. As proposed in the PECK AR a new Article 32B on Statistical Data is being introduced in the AML/CFT Law as the legal basis for the retention and collection of statistics. It should be acknowledged that on 31 October 2013 the FIU-K has already issued Administrative Instruction No 01/2013 on compiling statistics, reports and recommendations on Money Laundering and Terrorist Financing while, as indicated in the PECK AR, the CBK is due to issue an Administrative Directive on the retention and collection of statistics applicable to the entire financial sector.

Comment [PPE163]: In paragraph (3) of Article 32B the word 'shall' is being applied to make the obligation mandatory due to its importance under the new FATF Methodology for effectiveness and to link the paragraph to the mandatory obligation under Article 50.

the maintenance of statistics to those sectors under their supervisory remit pursuant to paragraph (2) of Article 50.

4. Statistical data maintained under this Article shall be made available to the FIU-K within time periods as the FIU-K may determine to enable it to review the effectiveness of the national system and to make recommendations accordingly as required under Article 14 of this Law.

5. The FIU-K, the Central Bank of Kosovo and other sectoral supervisors under this Article shall cooperate for the purposes of fulfilling their responsibilities under this Article.

CHAPTER IV

ADMINISTRATIVE SANCTIONS AND OFFENCES

Article 33

Administrative Sanctions

1. Administrative sanctions may be imposed to reporting subjects specified under Article 16 of this Law for their failure to comply with:

1.1 Article 17 related to costumer due diligence;

1.2 Article 18 related to enhanced due diligence;

1.3. Article 19 related to additional obligations of banks and financial institutions;

1.4 Article 20 related to special monitoring of certain transactions;

1.5 Article 21 related to reporting to the FIU-K;

1.6 Article 22 related to temporary freezing;

1.7 Article 23 related to construction companies;

1.8 Article 24 related to additional obligations of NGOs;

1.9 Article 25 related to specific obligations of political parties and registered candidates;

1.10 Article 26 related to additional obligations of lawyers, notaries, certified accountants, licensed auditors and tax advisors (covered professionals);

1.11 Article 27 related to additional obligations for immovable property transactions;

1.12 Article 28 related to additional obligations of casinos and other licensed objects of games of chance.

2. For the failures mentioned under paragraph 1 of this Article the FIU-K may impose administrative sanctions in monetary fines as specified below:

2.1. Monetary fines starting from five hundred (500) up to one million (1,000,000) euros shall be imposed to reporting subjects specified under Article 16 of this Law on the failure to comply with the provisions specified under paragraph 1 of this Article unless a heavier sanction is provided for under paragraph 4 of this Article.

2.2. Monetary fines from five hundred (500) up to five millions (5,000,000) euros or 10% of total annual turnover pursuant to latest available accounts approved by the managing body, shall be imposed to banks and financial institutions that are legal persons and reporting subjects as defined under Article 16 of this law, in case of failure to comply with the provisions specified under paragraph 1, sub-paragraphs 1.1 - 1.6 of this Article.

2.3. Monetary fines to reporting subjects under paragraph 4 of this Article that are natural persons shall be five hundred (500) up to five million (5,000,000) euros.

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Comment [PPE164]: All requirements in the law should have sanctions for noncompliance (including the requirement to provide information to the FIU-K).

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Comment [ED165]: PECK TEAM COMMENT:
This is so far an incomplete as well as a problematic provision.

Comment [PPE166]: Article 33 does not have a paragraph (4). Needs to be reviewed.

Comment [PPE167]: Article 33 does not have a paragraph (4). Needs to be reviewed.

Article 34

Administrative Sanctions Procedure

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1. The FIU-K after concluding a violation of the AML/CFT Law provisions, shall issue a written decision imposing the administrative sanction. This decision should contain all the requirements of Article 84 of Law No. 02/L-28 on Administrative Procedure.

2. Upon determining the administrative sanction pursuant to Article 33 of this Law, the FIU-K shall take into consideration all relevant circumstances, including the degree and duration of non-compliance, degree of responsibility, financial capacity of the reporting subject, losses incurred as a consequence of the violation, previous violations as well as the cooperation level of the responsible entity.

3. FIU-K shall notify to the reporting subject the failure to comply with the obligations specified in the provisions of this Law by sending the decision imposing the administrative sanction in compliance with Article 33 of this Law. The notification on imposing of an administrative sanction is done by servicing the decision in a verifiable manner by the FIU-K to the reporting subject pursuant to the requirements of the Law on Administrative Procedure.

4. Immediately after receiving the decision from the FIU-K imposing the administrative sanction, the reporting subject shall undertake all measures to ensure the compliance with this Law. The reporting subject shall undertake these measures within the time limit specified in the decision of the FIU-K.

5. For every day of non-compliance, within the time period specified in the decision of the FIU-K, the reporting subject shall be subject to a daily fine of five hundred (500) euros.

6. The compliance of the reporting subject with the provisions of this Law shall be verified by the FIU-K. FIU-K may conduct on-site inspections during the time limit specified in the decision or upon request of the reporting subject.

7. FIU-K shall render a decision that specifies the number of days during which the reporting subject was not compliant with this Law within the time period specified in the decision of the FIU-K specified under paragraph 5 of this Article. The written decision of the FIU-K shall determine the existence of the failure to comply with the provisions of this Law and the imposing of the fine pursuant to the number of con-compliance days.

8. The administrative sanction imposed pursuant to this Article may be rendered again against the reporting subject that has failed to undertake compliance actions within the time limit specified in the decision of the FIU-K. Similar procedures as specified pursuant to this Article shall be applicable again.

9. The FIU-K shall not issue new decisions on administrative sanctions related to the same non-compliance of the reporting subjects before the previous decision is finally determined by the FIU-K.

10. For reporting subjects that act on the basis of a license or other authorization, the FIU-K shall notify the competent licensing authority on the failure to comply with the Law as provided under Article 33 of the Law. The FIU-K may also recommend to the licensing or authorizing authority to initiate the process to determine whether the activity license or authorization should be suspended or revoked.

Comment [PPE168]: It needs to be clarified whether the daily sanction contemplated under paragraph (5) of Article 34 is in addition to any penalty imposed under Article 33 and how it takes into account any time frame given by the FIU-K for remedial purposes in terms of paragraph (7) and paragraph (8) of Article 34.

Article 35

Administrative appeal to the FIU-K

1. The reporting subject may appeal the administrative sanction imposed by the FIU-K by submitting a written appeal to the Director of the FIU-K within thirty (30) days from the day the decision on administrative sanction is received as a result of non-compliance with the provisions of this law. The reporting subject may seek the revoking, annulment or modification of the FIU-K decision pursuant to Article 126 and Article 127 of the Law on Administrative Procedure.

2. The Director of the FIU-K shall establish an *ad hoc* committee comprised of three (3) FIU-K officers that shall serve as a second administrative instance as specified under Article 126 of Law No. 02/L-28 on Administrative Procedure. This committee shall review the decision related to the administrative sanction, by taking into consideration all the provided relevant information as well as the provisions of this Law.

3. For the purpose of preventing conflicts of interest, FIU-K officers who took part in preparing and rendering the first instance decision, cannot be part of the *ad hoc* committee set up by the FIU-K Director pursuant to paragraph 2 of this Article.

4. Pending appeals on the basis of this Article shall suspend the payment and the enforcement of the administrative sanction until the appeal body established pursuant to paragraph 2 of this Article renders a decision in relation to the appeal.

5. FIU-K shall decide in writing on the appeal within thirty (30) days after receiving the appeal.

6. Pursuant to the provisions of the Law on Administrative Procedure the *ad hoc* committee established by the FIU-K Director may decide to:

- a) reject the appeal pursuant to Article 134 of the Law on Administrative Procedure;
- b) confirm the validity of the decision and reject the appeal;
- c) annul/revoke the decision and approve the appeal;
- d) modify the decision by partially approving the appeal;
- e) instruct the responsible authority within the FIU-K to render a decision when its issuance was rejected as illegal.

7. The decision shall be signed by the Director of the FIU-K.

Article 36 **Appeal at the court**

1. Pursuant to Article 11 (3) of Law No. 03/L-199 on Courts, imposing of administrative sanctions by the FIU-K may be challenged at the Department for Administrative Matters of the Basic Court in Pristina.

2. Pursuant to Article 27 of Law No. 03/L-202 on Administrative Conflicts, the appeal shall be filed with the Basic Court in Pristina within thirty (30) days from the day the final decisions of the FIU-K is serviced.

3. Pending appeals at the Court shall not suspend the payment of the administrative sanction specified under Article 33 of this Law.

Article 37 **Payment and execution of administrative sanctions of the FIU-K**

1. The reporting subject shall pay the administrative sanction through a bank transfer within fifteen (15) days from the day the final decision of the FIU-K is serviced. Instructions on the payment are enclosed with the decision of the FIU-K.

2. FIU-K and Ministry of Finance shall ensure the compensation of administrative sanctions in case of an executable approval of the reporting subject's appeal by the Court.

3. In case of non-payment within fifteen (15) days from the day the final decision of the FIU-K related to the administrative sanction is serviced, the FIU-K shall request its execution pursuant to the provisions of Law No. 04/L-139 on Enforcement Procedure. FIU-K shall seek from the reporting subject the compensation of procedural expenses and all other deriving expenses during the enforcement procedure.

Article 38

Impact of criminal procedure in the administrative sanction procedure

If criminal investigations take place parallel to the sanction procedure, the FIU-K shall suspend the administrative sanction procedure until the conclusion of the criminal procedure.

Article 39

Publication of Decisions on Administrative Sanctions

1. FIU-K shall publish in its official web page, the final executable decisions related to administrative sanctions by stating the type and nature of non-compliance, identity of the reporting subject and administrative sanction.

2. FIU-K may decide to not publish the administrative sanction, delay its publication or publish the administrative sanction so that the sanctioned reporting subject or natural person cannot be identified, if the publication specified under paragraph 1 of this Law:

a) Is not proportional to the gravity of the failure to comply;

b) May threaten the stability of the financial market; or

c) May threaten ongoing criminal investigations.

3. FIU-K shall keep the published information pursuant to paragraph 1 for a minimum of five years.

CHAPTER VI **CRIMINAL OFFENCES**

Article 31-

Administrative Sanctions-

{Amended by the Law No. 04/L 178 of 11 February 2013}

~~“1. A determination made by the FIU notifying the obligor of a failure to comply with this law shall constitute a violation of the obligations set under this Law which shall be subject to an administrative sanction in a form of a fine of five hundred (500) euros for each day of non-compliance following the date of notification.~~

~~2. The FIU in consultation with Minister of Finance, may issue a sub-legal act to define the administrative offence procedure.~~

~~3. The imposition of the sanction may be contested before a court of competent jurisdiction.”~~

Article 31.A

{Added by the Law No. 04/L 178 of 11 February 2013}

~~“1. A pecuniary penalty from five hundred (500) to seven thousand (7,000) euros shall be imposed on legal persons for the following infringements:~~

~~1.1. failure to develop a risk analysis, i.e. failure to make a risk assessment for individual groups or types of customers, business relationships, products or transactions or failure to make the risk analysis and assessment compliant with guidelines passed by the competent supervisory body.~~

~~1.2. failure to apply the customer due diligence measures in instances prescribed by this Law or the~~

~~Administrative Instruction.~~

- ~~1.3. establishing a business relationship with a customer without conducting a prior customer due diligence.~~
- ~~1.4. conducting transactions valued at ten thousand (10,000) euros or greater, i.e. conducting mutually linked transactions without prior conducting the prescribed measures with this Law.~~
- ~~1.5. failure to identify and verify customer's identity at customer's entry into a casino or at a point of conducting the transaction at the cashier or when the customer wants to take part in games of chance of the organizer, who conducts games of chance on Internet or through other telecommunication means, i.e. electronic communications, or for failure to obtain the prescribed customer information or failure to obtain such information in the prescribed manner.~~
- ~~1.6. if, when conducting wire transfers or cash remittances in the prescribed manner are not summarized, failure to collect or include in the form or a message accompanying a wire transfer, accurate and valid data on the sender or the issuer of the order, or if pertinent data fail to follow the transfer at all times throughout the course of the chain of payment.~~
- ~~1.7. if a payment service provider, acting as an intermediary or receiver of the transfer, on the occasion of the transfer of means which do not contain full information for the payer, fails to refuse a wire transfer which does not contain complete payee data or fails to supplement the payer data within a given deadline.~~
- ~~1.8. failure to identify a customer or verify the customer's identity, or the identity of a legal representative, a person authorized by power of attorney or the customer's beneficial owner, and failure to obtain documentation prescribed for the purposes of identification or identity verification or the power of attorney, in instances when the customer conducts transactions through the person authorized by the power of attorney.~~
- ~~1.9. failure to obtain data on the purpose and intended nature of a business relationship or a transaction and other information within the framework which should be obtained as per this Law.~~
- ~~1.10. establishing a business relationship with a customer in instances when the customer due diligence was conducted by a third person, contrary to this Law and the regulations to be issued by Ministry of Finance.~~
- ~~1.11. failure to conduct the prescribed measures and additionally obtain data, information and documentation or failure to obtain them in the prescribed manner when establishing a correspondent relationship with a bank or other credit institution seated in a third country.~~
- ~~1.12. entering into or extending a correspondent relationship with a bank or other credit institution seated in a third country, contrary to the provisions contained in this Law.~~
- ~~1.13. failure to obtain data on the source of funds and assets when entering into a business relationship with or conducting a transaction with a person who is a politically exposed person, which funds and property are or will be subject to the business relationship or the transaction, or failure to obtain such data in the prescribed manner.~~
- ~~1.14. failure to obtain the required customer data within the framework of the simplified customer due diligence or failure to obtain such data in the prescribed manner with this Law.~~
- ~~1.15. opening, issuing or keeping anonymous customer accounts, coded or bearer passbooks, i.e. accounts or passbooks in the name but containing no additional personal information or accounts registered at false names and other anonymous products.~~
- ~~1.16. entering into or extending correspondent relationships with a bank which operates or might operate as a shell bank, or with a credit institution known to enter into a relationship of account opening and keeping agreements with shell banks.~~
- ~~1.17. receiving from a customer or a third person a cash payment in an amount exceeding ten thousand (10,000) euros or in transactions with non residents with a value exceeding ten thousand (10,000) euros, respectively receiving the payment ready in several mutually linked cash transactions, which jointly exceed a total amount of the value of ten thousand (10,000) euros.~~
- ~~1.18. failure to refrain from the conducting a transaction for which the entity knows or suspects~~

~~that transaction is connected with money laundering or terrorist financing, failure to notify the FIU of such transaction before its execution, and failure to indicate in the report the reasons for suspicion of money laundering and terrorist financing, the deadline within which the transaction is to be executed and other prescribed data necessary, or failure to notify the FIU of the customer with which a business relationship was terminated or for whom they refused to conduct a transaction due to the inability to conduct the prescribed measures.~~

~~1.19. failure to supply the FIU within the prescribed period with the required data, information and documentation on a transaction or a person for which a reason exists for suspicion of money laundering or terrorist financing or failure to comply with the authorized person's request from the FIU to enable such a person exercise direct examination of the documentation at the legal person's business premises.~~

~~1.20. failure to comply with the order issued by the FIU for temporary transaction suspension or failure to comply with the instruction on the course of action in relation to persons to which the temporary transaction suspension shall pertain.~~

~~1.21. failure to comply with the order of the FIU for ongoing monitoring of a customer's financial sustainability of operations.~~

~~1.22. failure to close within the prescribed deadline set by the FIU the anonymous accounts and coded or bearer passbooks and all other anonymous products enabling the concealment of the customer identity, which were opened before the effective date of this Law being enforced or failure to conduct customer due diligence."~~

Article 31.B

[Added by the Law No. 04/L 178 of 11 February 2013]

~~"1. A pecuniary penalty from five hundred (500) to ten thousand (10,000) euros shall be imposed on legal persons for the following infringements:~~

~~1.1. failure to ensure detection and prevention measures for money laundering and terrorist financing defined in this law in its business units, subsidiaries and companies wherein he owns majority of shares and the majority of decision making rights, located in a third country.~~

~~1.2. failure to carry out the entire prescribed customer due diligence measures or failure to carry them out in compliance with the procedure defined in the sub legal acts.~~

~~1.3. failure to obtain a written statement from the customer, the customer's legal representative or a person authorized by power of attorney in instances when there is an existing suspicion of the veracity of data which serve as the foundation for identifying the customer's identity, the customer's legal representative or the person authorized by power of attorney prior to the establishment of a business relationship or conducting a transaction.~~

~~1.4. failure to apply the prescribed measures in monitoring the customer's business activities.~~

~~1.5. failure to conduct a repeated annual analysis to obtain the prescribed data and customer's due diligence for the legal entity, or the failure documents, or failure to obtain them in the prescribed manner.~~

~~1.6. conducting a transaction for a foreign legal person without checking whether or not this person meets all the requirements prescribed by this Law.~~

~~1.7. entrusting a third person to conduct the customer due diligence without checking whether or not such third person meets all the requirements prescribed by this Law.~~

~~1.8. accepting due diligence conducted by a third person as adequate, which third person conducted the customer identification and identity verification measure without the customer's prior knowledge.~~

~~1.9. entrusting a third person with conducting customer due diligence, which third person fails to meet requirements as prescribed in the Law.~~

~~1.10. failure to exercise appropriate monitoring of transactions and other business activities performed by a foreign politically exposed person with the legal person after entering into a business relationship.~~

~~1.11. establishing a business relationship with a customer who shall not be physically present during the identification process, without adopting a measure to ensure that the first payment be conducted through the account the customer has established with the credit institution before the execution of any further customer's transaction.~~

~~1.12. failure to enforce policies and procedures in place for monitoring the money laundering or terrorist financing risk which may stem from new technologies enabling anonymity or for failure to take measures aimed at preventing the use of new technologies for the money laundering and/or terrorist financing purposes.~~

~~1.13. failure to enforce policies and procedures in place for the risk associated with a business relationship or transaction with customers who are not physically present or for failure to apply these measures when the business relationship is established with a customer and during the course of conducting customer due diligence measures.~~

~~1.14. failure to supply the FIU within the prescribed period with data on a transaction being conducted in cash in an amount of ten thousand (10,000) euros or more.~~

~~1.15. failure to appoint the authorized person and one or several authorized person's deputies with the request of the FIU, with the purpose of detecting and preventing money laundering and terrorist financing, as prescribed in this Law and regulations passed on the basis of this Law.~~

~~1.16. failure to assign proper authorities for the authorized person and ensure the conditions for the performance of the authorized person's obligations and tasks.~~

~~1.17. failure to produce a list of indicators for the detection of customers and transactions for which there shall exist reasons for suspicion of money laundering or terrorist financing, or failure to produce such a list in the prescribed manner and within the timeframe.~~

~~1.18. failure to keep data and documentation for five (5) years after the transaction execution, or after the business relationship has terminated, after the entry of a customer to a casino or a safe deposit box."~~

Article 3240

Money laundering Criminal Offences-

~~[Abrogated by the Law No. 04/L-178 of 11 February 2013]~~

~~1. District Courts shall have jurisdiction for all criminal offences under this Article.~~

Money Laundering-

~~21.~~ Whoever, knowing or having cause to know that certain property is proceeds of some form of criminal activity, and which property is in fact proceeds of crime, or whoever, believing that certain property is proceeds of crime based on representations made as part of a covert measure conducted pursuant to ~~[Amended by the Law No. 04/L-178 of 11 February 2013]~~ "Chapter IX" of the Criminal Procedure Code of Kosovo:

~~21.1.~~ converts or transfers, ~~or attempts to convert or transfer,~~ the property for the purpose of concealing or disguising the nature, source, location, disposition, movement or ownership of the property;

~~21.2.~~ converts or transfers, ~~or attempts to convert or transfer,~~ the property for the purpose of assisting any person who is involved in, or purportedly involved in, the commission of the criminal offence that produced the property to evade the legal consequences, or apparent legal consequences, of his or her actions;

~~21.3.~~ converts or transfers, ~~or attempts to convert or transfer,~~ the property for the purpose of

avoiding a reporting obligation under this Law;

~~21.4. converts or transfers, or attempts to convert or transfer,~~ the property for the purpose of promoting the underlying criminal activity; or

~~21.5. acquires, possesses or uses, or attempts to acquire,~~ possess or use, the property;

~~21.6. conceals or disguises the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, or from an act of participation in such activity;~~

~~21.7. participates in, associates to commit and aids, abets, facilitates and counsels the commission of any of the actions mentioned in sub-paragraphs 21.1 to 21.6 of this paragraph,~~

~~21.8. commits a criminal offence punishable by a term of imprisonment of up to ten (10) years and a fine of up to three (3) times the value of the property which is the subject of the criminal offence.~~

~~32.~~ For purposes of paragraph ~~21~~ of this Article, representations may be a basis for the belief that certain property constitutes the proceeds of crime, even if those representations only indirectly support the belief that the property constitutes the proceeds of crime.

~~43.~~ Without prejudice to the applicable criminal law with regard to a person who has committed related criminal offences outside the scope of the present paragraph:

~~43.1. a person may be convicted of the criminal offence of money laundering, even if in the absence of a conviction for he or she has not been convicted at any time of~~ the predicate criminal offence from which the proceeds of crime in the criminal offence of money laundering were derived;

~~43.2. the same a~~ person may be prosecuted and convicted ~~in separate proceedings~~ of the criminal offences of money laundering and the predicate criminal offence from which the proceeds of crime in the criminal offence of money laundering were derived; and

~~43.3. the Courts of Kosovo may have jurisdiction over a criminal offence of money laundering, even if they do not have territorial jurisdiction over the predicate criminal offence from which the proceeds of crime in the criminal offence of money laundering were derived, since it has been committed outside Kosovo.~~

Article 41

Terrorist financing criminal offence

1. Whoever, when committed intentionally, participates as an accomplice, provides or collects funds or organises or direct others to provide or collect funds, or attempts to do so, by any means, directly or indirectly, with the intention that they should be used or in the knowledge that they are to be used in full or in part:

1.1. to carry out a terrorist act;

1.2. by a terrorist; or

1.3. by a terrorist organisation will be deemed to have committed the act of terrorist financing.

2. The offence is committed irrespective of any occurrence of a terrorist act referred to in paragraph 1, or whether the funds have actually been used to commit such act.

3. Terrorist financing shall be punishable by a fine of five hundred thousand (500,000) euros or imprisonment from five (5) to fifteen (15) years or either of these penalties.

4. An attempt to commit the offence of financing of terrorism or aiding, abetting, facilitating or counseling the commission of any such offence shall be punished as if the offence had been completed.

Article 42

Intimidation regarding Reporting Suspicious Activity or Transactions

Comment [PPE169]: Reconsider whether these two additional provisions under paragraphs (1.3) and (1.4) of Article 40 are needed, in light with PECK recommendations.

Comment [PPE170]: If this is already covered by the CC no need to have it here, as per PECK report.

Comment [PPE171]: This amendment to paragraph (3.1) of Article 40 is to address the following PECK comment (para 285):

"In fact, the formulation of paragraph (4.1) of Article 32 of the AML/CFT Law does not at all facilitate the comprehension of its actual meaning. It only provides that the perpetrator can be convicted of the ML offence even if he/she has not been convicted of the related predicate criminal offence. But this is not what is required by FATF Recommendation 1. While paragraph (4.1) is clearly restricted to the perpetrator of the ML offence (whether he/she can be convicted of ML if not convicted for the predicate crime) FATF EC 1.2.1 provides that when proving that property is the proceeds of crime it should not be necessary that a person, that is, any person and not only the one who eventually committed the ML offence, be convicted of the predicate offence. For this reason paragraph (4.1) is, from a formalistic point of view, too restrictive to meet FATF EC 1.2.1."

Comment [PPE172]: If committed in Kosovo? Or regardless whether ML is committed in Kosovo.

Comment [PPE173]: If the predicate offence has been committed outside Kosovo?

Comment [ED174]: To be defined.

Comment [PPE175]: This provision should be eliminated from the draft, as it introduces a duplicate criminalisation of TF and it is not in line with the action plan annexed to the AML/CFT strategy.

Whoever uses force or serious threat, or any other means of compulsion, or a promise of a gift or any other form of benefit to induce another person to refrain from making a report required under Article 21 of this Law, or to make a false statement or to otherwise fail to state true information to the FIU-K, CBK, investigative agencies, a prosecutor or a judge, when such information relates to the reporting obligations of Article 21 of this Law shall be punished by a fine of up to one hundred and twenty-five thousand (125,000) euros and by imprisonment of two (2) to ten (10) years.

Article ~~33~~43 **Other ~~Criminal~~ Offences**

[Abrogated by the Law No. 04/L-178 of 11 February 2013]

~~1. District Courts shall have jurisdiction for all criminal offences under this Article.~~

[Amended by the Law No. 04/L-178 of 11 February 2013]

~~“21.~~ Whoever, in providing any information, or in making reports, certifications or declarations pursuant of this Law, knowingly:

~~21.1.~~ provides a false statement or willfully omits to disclose important information;

~~21.2.~~ makes or uses any document knowing that the document contains false statement or important notes.

~~21.3.~~ commits a criminal offence punishable up to five (5) years imprisonment and a fine up to one hundred thousand (100,000) ~~E~~euros.”

~~32.~~ Whoever willfully:

[Amended by the Law No. 04/L-178 of 11 February 2013]

~~“32.1.~~ destroys or removes any record which must be maintained pursuant to paragraph 3 of Article 20, paragraph ~~43~~ of Article 24, paragraph 3 of Article 25, paragraph 10 of Article 26 or paragraph 3 of Article 27 of this law;

~~32.2.~~ fails to make a report in accordance with paragraph 1 and 2 of Article ~~22~~1, paragraph ~~54~~ of Article 24, paragraph 4 of Article 25, paragraph 3., 7 and 8 of Article 26 or paragraph 3 of Article 28 of this law;

~~32.3.~~ commits a criminal offence punishable by imprisonment of up to two (2) years and a fine of up to ~~€~~one hundred thousand (100,000) ~~euros~~. If any criminal offence provided for in this paragraph is committed with the intent to obstruct a regulatory or law enforcement function, the offender shall be punished by imprisonment of up to five (5) years and a fine of up to ~~€~~one hundred thousand (100,000) ~~euros~~.

~~43. A person acting as a bank or financial institution, Reporting subjects or an its officer, director, agent or employee of a reporting subject bank or financial institution, who willfully violates paragraph 4 Article ~~22~~ 21 of this Law commits a criminal offence punishable by imprisonment of up to two (2) years and/or a fine of up to €one hundred thousand (100,000) euros. If any criminal offence specified in this paragraph is committed with the intent to obstruct any regulatory or law enforcement function, the offender shall be punished by imprisonment of up to five (5) years and/or a fine of up to €one hundred thousand (100,000) euros.~~

~~54.~~ Whoever willfully accepts or disburses currency in violation of Article 24 or 25 of this Law commits a criminal offence punishable by imprisonment of up to two (2) years and a fine of up to € five thousand (5,000) ~~euros~~ or twice the amount of the currency accepted or disbursed, whichever is greater.

~~65.~~ An official of the FIU-K who willfully:

~~65.1.~~ reports information or discloses information pursuant to paragraph 1 ~~and 2~~ of Article 15 of this law, or discloses information to a Prosecutor or a court, knowing such information to contain a material falsehood, a material omission or a material error;

Comment [PPE176]: The imposition of a fine for breaches of paragraph (4) of Article 21 under paragraph (3) of Article 43 should be applicable to all reporting subjects as paragraph (4) of Article 21 is applicable to all reporting subjects and the Law cannot punish one category and not the other as it would be discriminatory and inconsistent.

Comment [PPE177]: Paragraph (4) of Article 22 dealing with ‘tipping off’ and which in the present Law is applicable only to directors and employees with similar provisions for other subject persons but which are not subject to this fine is now applicable to all reporting subjects under paragraph (4) of Article 21. Paragraph (3) of Article 43 therefore needs to be amended accordingly.

Comment [PPE178]: The imposition of a penalty under paragraph (4) of Article 43 for breaches of acceptance and disbursement of currency by NGOs and Political Parties under Article 24 and Article 25 respectively should be harmonised with the provisions in relevant specific laws.

~~65~~.2. destroys or removes any record which shall be collected by the FIU-~~K~~ pursuant to this Law, other than as provided for in a document retention and destruction policy established by the FIU-~~K~~; or

~~65~~.3. discloses any information described in paragraph 1 of Article 15 of this law other than as provided by paragraph 2 of Article 15 of this law, unless authorized in writing by the Director of the FIU-~~K~~,

~~56~~.4. commits a criminal offence punishable by imprisonment of up to two (2) years and a fine of up to €one hundred thousand (100,000) euros. If the criminal offence set forth in this paragraph is committed with the intent to obstruct a regulatory or law enforcement function, the offender shall be punished by imprisonment of up to ten (10) years and a fine of up to €one hundred thousand (100,000) euros.

~~76~~. Information or the failure to provide information may be material even if the recipient is not influenced or misled by it.

~~87~~. Whoever acts as a bank or financial institution as defined in ~~theis present RegulationLaw~~ without registering in accordance with section 3.1 of the Banking Regulation, commits a criminal offence punishable by imprisonment of up to one (1) year and a fine of up to €one hundred thousand (100,000) euros.

~~98~~. Whoever unlawfully refuses or obstructs an inspection lawfully undertaken pursuant to ~~paragraph 1 and 3 of Article 30 and paragraph 1 of Article 31~~ of this law, or willfully conceals records which shall be kept and presented pursuant to this Law, commits a criminal offence punishable by imprisonment of up to one year and a fine of up to €one hundred thousand (100,000) euros.

~~109~~. Whoever willfully violates ~~an ruling ordering a of~~ temporary measure for ~~securing freezing~~ property ~~[Amended by the Law No. 04/L 178 of 11 February 2013]~~ “under ~~this~~ Article” ~~22~~ of this law, commits a criminal offence punishable by imprisonment of up to five (5) years of imprisonment and a fine of up to €one hundred thousand (100,000) euros.

~~110~~. For the purposes of paragraph 2, ~~3, 4, 65, 98 and 109 of [Amended by the Law No. 04/L 178 of 11 February 2013]~~ “~~this Article 33 of this law~~”, a “willful” act is an act which is performed not only intentionally, but also deliberately and is not performed unintentionally, carelessly or accidentally.

Article ~~34-44~~

Criminal Liability of Legal Persons

1. If a legal person commits an offence under this Law, every director and other person concerning in the management of the legal person (and any person purporting to act in such capacity) commits the offence unless that person proves that:

- 1.1. the offence was committed without his or her consent or knowledge; and
- 1.2. the person took reasonable steps to prevent the commission of the offence as ought to have been exercised by that person having regard to the nature of his or her functions in that capacity.

Article ~~35-45~~

Exemption from Liability

Notwithstanding any contrary provisions of applicable law, no civil or criminal liability action may be brought nor any professional sanction taken against any person or entity ~~recognised as or a reporting subject under this Law or to any of their directors, officers and employees whether temporary or permanent~~ based solely on the good faith transmission of information, submission of reports, or other action taken pursuant to this Law, or the voluntary good faith transmission of any information concerning a suspicious act or transaction, suspected money laundering or ~~suspected financing of~~ terrorist ~~activities financing~~ to the FIU-~~K~~.

Comment [PPE179]: The offence under paragraph (7) of Article 43 should be removed as this offence is contemplated under paragraph (6) of Article 58 of the Law on Banks which is the specific law covering licensing for banking and other financial services activities.

Comment [PPE180]: It is advisable that paragraph (8) of Article 43 is drafted to refer to the whole Article 30 and Article 31 as the articles include other provisions with reference to inspections which may be both onsite or offsite.

Comment [PPE181]: The PECK notes that harmonization is required between AML/CFT Law and CC or LLP Law in terms of concept and terminology as regards –the knowledge standard applicable in case of ML offences (AML/CFT Law vs CC); the basics of corporate criminal responsibility and that of the related natural persons (Article 34 AML/CFT Law vs Article 40 CC / Article 5 LLP Law).

Comment [PPE182]: The additions to the paragraph for Article 45 are in accordance with the FATF Standards (rec 14 or Rec 21 for 2012 Standards) as recommended in the PECK Report for clarification to remove legal interpretation.

CHAPTER VII INTERNATIONAL CO-OPERATION

Article ~~36-46~~ Purpose and Scope

1. The competent authorities of Kosovo undertake to afford the widest possible measure of cooperation to the authorities of foreign jurisdictions for purposes of information exchange, investigations and court proceedings, in relation to temporary measures for securing property and orders for confiscation relating to instrumentalities of money laundering and proceeds of crime, and for purposes of prosecution of the perpetrators of money laundering and terrorist activity.

2. The procedures for affording cooperation under paragraph 1 of this Article are set forth in this Chapter and in such other relevant provisions of the applicable law as do not conflict with it.

[Amended by the Law No. 04/L 178 of 11 February 2013]

“3. A request under this Article shall be sent through diplomatic channels pursuant to laws and agreements in force, who shall forward it to the Office of International Legal Cooperation or other competent authority.”

“Article 36.A Compliance Inspection by CBK”

{Added by the Law No. 04/L 178 of 11 February 2013}

~~“The Central Bank of the Republic of Kosovo and other sectoral supervisors in accordance with their competencies stipulated herein and in other relevant laws, remain responsible to supervise the implementation of the provisions of the this law by the entity under their supervision only if the FIU delegates the right for supervisor based in written agreement.”~~

“Article 36.B Terrorist Financing Criminal Offense”

{Added by the Law No. 04/L 178 of 11 February 2013}

~~“1. Whoever, when committed intentionally, participates as an accomplice, provides or collects funds or organizes or direct others to provide or collect funds, or attempts to do so, by any means, directly or indirectly, with the intention that they should be used or in the knowledge that they are to be used in full or in part:~~

~~1.1. to carry out a terrorist act;~~

~~1.2. by a terrorist; or~~

~~1.3. by a terrorist organization will be deemed to have committed the act of terrorist financing.~~

~~2. The offence is committed irrespective of any occurrence of a terrorist act referred to in paragraph 1, or whether the funds have actually been used to commit such act.~~

~~3. Terrorist financing shall be punishable by a fine of five hundred thousand (500,000) euros or imprisonment from seven (7) to twenty (20) years or either of these penalties.~~

~~4. An attempt to commit the offence of financing of terrorism or aiding, abetting, facilitating or~~

~~counseling the commission of any such offence shall be punished as if the offence had been completed.”~~

~~“Article 36.C~~

~~Intimidation Regarding Reporting Suspicious Activity or Transactions”~~

~~{Added by the Law No. 04/L 178 of 11 February 2013}~~

~~“Whoever uses force or serious threat, or any other means of compulsion, or a promise of a gift or any other form of benefit to induce another person to refrain from making a report required under Article 13 of this Law, or to make a false statement or to otherwise fail to state true information to the FIU, CBK, investigative agencies, a prosecutor or a judge, when such information relates to the reporting obligations of Article 13 of this Law shall be punished by a fine of up to one hundred and twenty five thousand (125,000) euros and by imprisonment of two (2) to ten (10) years.”~~

~~“Article 36.D”~~

~~{Added by the Law No. 04/L 178 of 11 February 2013}~~

~~“1. Customs officers and officials of the Tax Administration of Kosovo recognized as “Judiciary Police” according to the Criminal Procedure Code of Kosovo have the competences, responsibilities and tasks for the investigation and detection of the criminal offences of money laundering and terrorist financing and are authorized to conduct investigations of these offenses under the supervision of a prosecutor.~~

~~2. TAK and Customs shall appoint a liaison officer with Special Prosecution Office and other Prosecution Offices for professional cooperation.”~~

CHAPTER VIII

PROFESSIONAL SECRECY

DATA PROTECTION AND CLASSIFICATION OF INFORMATION

Article ~~37-47~~

Professional Secrecy

1. Notwithstanding any contrary provisions of applicable law, professional secrecy may not be invoked as a ground for refusal to provide information that:

1.1. shall be disclosed pursuant to this Law; or

1.2. Is collected and maintained pursuant to this Law and is sought by either the FIU-~~K~~ or the police in connection with an investigation that relates to money laundering and terrorist financing and is ordered by, or carried out under the supervision of, a Prosecutor or Pre-Trial Judge.

~~{Amended by the Law No. 04/L 178 of 11 February 2013}~~

~~“2. This Article shall be without prejudice to paragraph 9 of Article 26 and subparagraph 3.2, paragraph 3 of Article 30 of this law.”~~

Article 48

Protection of Data

1. Financial Intelligence Unit of Kosovo is a data controller as specified under Article 2 of the Law on the Protection of Personal Data.

2. FIU-K shall process the data received and kept pursuant to this Law in compliance with the Law on the Protection of Personal Data.

Article 49

Classification of Information

Information collected and kept by the Financial Intelligence Unit of Kosovo shall be classified according to the Law on the Classification of Information and Security Verification.

CHAPTER ~~VII~~ IX FINAL PROVISIONS

Article ~~38-50~~ Implementation

1. The Ministry of Finance will issue Administrative Instructions for the National Money Laundering and Terrorist Financing Risk Assessment, to bring in force the new future EU Directive for Prevention of Money Laundering and Terrorist Financing and other provisions for implementation of this Law.

~~Ministry of Economy and Finance may issue administrative instructions for the implementation of this Law.~~

2. The FIU-K, the Central Bank of the Republic of Kosovo and sectoral supervisory authorities as the case shall be, shall from time to time and in close cooperation and coordination, adopt, amend or repeal sub-legal acts with the aim of providing policy, instructions or guidance to reporting subjects for the implementation of obligations under this Law and for promoting and ensuring the compliance of the reporting subjects with this law.

Article ~~39~~ 51 Repeal Provisions

This Law repeals and replaces UNMIK Regulation 2004/2 on the Deterrence of Money Laundering and Related Criminal Offences.

CHAPTER ~~VIII~~ X TRANSITIONAL PROVISIONS

Article ~~40-52~~

Comment [PPE183]: As suggested at the Workshop this general provision under paragraph (2) to Article 50 imposes a mandatory obligation upon the authorities to issue, amend or revoke directive, instruction etc for reporting subjects to implement their obligations under the Law. Notwithstanding in particular provisions of the Law it is proposed to retain a specific obligation but linked to Article 50

Transitional Provisions ~~from~~ EULEX to Kosovo

All data collected by FIC, according to UNMIK Regulation 2004/02 shall be transferred to FIU-~~K~~. After the transfer of responsibilities from the FIC to the FIU-~~K~~ and for the duration of its mandate, EULEX Kosovo shall have the necessary authority to effectively carry out its mandate in the field of Rule of Law as are set forth in the relevant legal instruments. Relevant aspects of the transition of responsibilities from FIC to FIU-~~K~~, EULEX Kosovo activities, cooperation and access to information shall be agreed upon in a separate arrangement between EULEX Kosovo and Ministry of Finance and Economy.

Article 41-53

Delegation of Authority

Notwithstanding any provision of this Law or any other law, the Minister of ~~Economy and~~ Finance may delegate to a third party the authority to perform functions assigned to it by this Law or any other law, subject to arrangements between M~~EoF~~ and such third party.

Comment [PPE184]: ~~Inserted title to Article 53~~

Article 53A

Transitional Provisions for Application of the Law

1. Reporting subjects shall apply the new provisions of this Law to existing customers on a materiality and risk basis ~~as part of the ongoing monitoring of accounts and business relationships.~~

2. ~~Any agreements entered into or any administrative instructions, directives or guidance that have been issued on the basis of Articles provisions of this Law that have now been either removed or amended shall remain in force until amended, revoked or terminated.~~

Comment [PPE185]: Article 53A provides for transitional provisions consequent to the amendments to the obligations and legal basis under the Law

Comment [PPE186]: It is normal that when new or revised obligations are imposed through revisions of the Law these become also applicable to existing customers and accounts. Paragraph (1) of Article 53A is providing for this case. It reflects EC 10.16 of the FATE 2013 Methodology for the 2012 Recommendation 10.

Article 42-54

Entry into Force

Except where a later effective date is expressly indicated in particular Articles, this Law shall enter into force fifteen (15) days after publication in the Official Gazette of Republic of Kosovo.

Article 55

Entry into Force

~~This law shall enter into force fifteen (15) days after publication in the Official Gazette of the Republic of Kosovo.~~

Comment [PPE187]: The objective of paragraph (2) to the proposed new Article 53A is to ensure that all agreements and administrative instructions, directive or guidance issued under the Law prior to the proposed amendments remain in force – for example the MoU for supervisory delegation between the FIU-~~K~~ and the CBK on the basis of the previous Article 36A which is now being removed.

Comment [PPE188]: The proposed Article 55 duplicate the last part of Article 54