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Plenary Session

To discuss and adopt PECK Final Assessment Report
(2nd cycle) on compliance with international standards
AML/CFT area

Pristina, 2 – 3 December 2014

Mr Herbert Zammit LaFerla (Malta), member of the
PECK assessment team

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AJML/CFT Assessment Report

Section 3

Preventive Measures: Financial Institutions

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Preventive Regime for financial institutions

- **Law on the Prevention of Money Laundering and the Financing of Terrorism – *Law No 03/L – 196 of 2009* as amended.**

Supplemented by:

- **Rule X and Advisory Letter 2007-1 issued by Central Bank of Kosovo – to be replaced by CBK Regulation.**
- **Administrative Directives and Administrative Instructions issued by the Financial Intelligence Unit.**

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Strengths of Preventive Regime - financial institutions

- Main Law and supplementary documents provide for a generally overall acceptable preventive regime though not harmonised and lacking important detail.
- Legal supervisory mandate to CBK for entire financial sector
- CBK Rule X is more harmonised than the Main Law with obligations under international standards.
- Practice follows more Rule X.
- New Regulation to be issued by CBK positively received by industry

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Weaknesses of Preventive Regime – financial institutions

- **Conflicts, inconsistencies and ambiguities in the main Law itself render its application questionable.**
- **Inadequacy of reporting obligation – no mandate for reporting suspicions related to the financing of terrorism**
- **Non harmonisation of main Law and current CBK Rules create inconsistencies and ambiguities for an effective implementation.**

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Weaknesses of Preventive Regime - financial institutions

..... continued

- **Notwithstanding, certain obligations under international standards not covered by Law, Regulations or Rules.**
- **Legal validity of Rule X and some FIU Directives and Guidance.**
- **Legal AML/CFT supervisory mandate to CBK not accompanied by legal application of supervisory powers; and**
- **Inconsistencies in and lack of adequate sanctions**

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Selected identified weaknesses in Preventive Regime

- Legal ambiguity on the obligation to apply full CDD measures;
- Insufficient legal obligation to identify beneficial owner for legal arrangements and life insurance policies;
- Inconsistency in timing of verification.
- Shortcomings in the definition of PEP.
- No obligation to identify PEP status of beneficial owner.
- No definition of correspondent banking relationship.
- Legal ambiguity on the application of non-face-to-face business relationships
- Absence of clear legal provisions for third party reliance.

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Selected identified weaknesses in Preventive Regime ... continued

- Lack of legal power for the extension of the five (5) year retention period.
- No obligation to report suspicions of financing of terrorism and low number of STRs viz-a-viz CTRs.
- Shortcomings in prohibition of disclosure (tipping off).
- Absence of adequate criteria for the appointment of the compliance officer.
- Legal uncertainty on appointment of competent authority to impose administrative sanctions and inconsistencies in administrative penalties.

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Selected identified weaknesses in Preventive Regime ... continued

- **Absence of graduated administrative penalties and other sanctions to be applied proportionately to severity of offence.**
- **Absence of a legal mandate for the CBK to issue rules and regulations and to apply its prudential supervisory powers for AML/CFT purposes – *although temporarily covered by MoU.***
- **Legal uncertainty for the FIU to undertake off-site examinations.**
- **Absence of comprehensive general guidance to reporting subjects in fulfilling their obligations under the AML/CFT Law**

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QUESTIONS & DISCUSSION

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Section 4

Preventive Measures: Designated non-Financial Businesses and Professions (DNFBPs)

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Preventive Regime for DNFBPs

- **Law on the Prevention of Money Laundering and the Financing of Terrorism – *Law No 03/L – 196 of 2009* as amended.**

Supplemented by:

- **Administrative Directives and Administrative Instructions issued by the Financial Intelligence Unit.**

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Strengths of Preventive Regime for DNFBPS

- **Main Law provides for a generally overall acceptable preventive regime though not harmonised and lacking important detail.**
- **Main Law goes beyond the international scope of coverage and covers NGOs and Political Parties.**
- **Main Law provides for specific obligations of sectors of DNFBPs**

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Weaknesses of Preventive Regime for DNFBPs

- **Conflicts, inconsistencies and ambiguities in the main Law itself render its application questionable.**
- **Consequent to sectorial division of main Law inconsistencies in obligations create ambiguities for an effective overall implementation.**
- **Inadequacy of reporting obligation – no mandate for reporting suspicions related to the financing of terrorism**

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Weaknesses of Preventive Regime for DNFBPs *continued*

- **Legal uncertainties on the off-site supervisory powers of the FIU.**
- **Inadequate awareness and commitment by some sections of DNFBPs render regime ineffective.**
- **Inconsistencies and lack of adequate sanctions**

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Selected identified weaknesses in DNFBPs Regime

- Lack of clarity on who constitutes a client for certain DNFBPs such as NGOs and Political Entities;
- Lack of clarity on the status of gaming houses and licensed objects of games of chance as reporting subjects;
- Scope of AML/CFT measures for the accountancy profession does not appear to cover situations contemplated by the FATF Recommendations;
- Some DNFBPs are not subject to the reporting regime;
- There is an inconsistency in the timing for reporting - financial sector and casinos within 24 hours; all other reporting subjects with a reporting obligation within 3 working days of identifying the suspicious transaction.

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Selected identified weaknesses in DNFBPs Regime

- **Disclosure prohibition regime does not apply to directors, officers and employees of some DNFBPs;**
- **The prohibition of disclosure is not imposed on the DNFBPs entities themselves;**
- **Some DNFBPs are not required to establish and maintain internal AML/CFT procedures, policies and controls;**
- **DNFBPs are not required to appoint a compliance officer;**
- **No supervisory authority appointed for building construction companies as reporting subjects under the AML/CFT Law;**

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Section 5

Legal Persons and Legal Arrangements: Beneficial Ownership

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Legal Persons: Business Registration Regime

- **Kosovo applies an upfront system of business registration governed by the Law on Business Organisations (Law No 02/L-123) of September 2007 as amended in 2011.**
- **The KBRA, within the Ministry of Trade and Industry, is the authority responsible for implementing the Law and maintaining the business register.**

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Legal Persons:

Strengths of Business Registration Regime

- **Comprehensive legislation.**
- **Agency operates through 28 Municipal Centres - 'one stop shop' for business registration .**
- **No need for intermediaries (lawyers, accountants, etc.) to register a business organisation - registration can be done online.**
- **Availability of information to the public through electronic site of KBRA.**

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Legal Persons:

Weaknesses of Business Registration Regime

- **Maintenance, updating and timely availability of information.**
- **Lack of information relating to beneficial ownership.**
- **Accuracy of the information available.**
- **Inadequate due diligence.**
- **Easiness of registration.**

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Specific identified weaknesses: Business Registration

- **No direct obligation to immediately inform KBRA upon changes in shareholders.**
- **Lack of due diligence at least on the founders of a business organisation.**
- **Lack of mechanisms to identify whether a number of business organisations belong to the same individual.**
- **Lack of mechanisms to identify inter-connections between business organisations where, through layers of ownership, some companies might own each other.**
- **Concerns over the easiness of registration in the light of the absence of any due diligence on founders.**

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Specific Recommendations for Business Registration

- **Introduce an obligation for immediate reporting of changes to shareholding and directors.**
- **Introduce procedures and systems to identify where a person owns more than one business organisation.**
- **Introduce administrative procedure to ascertain to the extent possible the accuracy of documents and contents.**
- **Introduce procedures to identify interconnectivity between registered business organisations.**
- **Introduce measure for accuracy and validity of applications for registration to cater for the short registration period.**

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Legal Arrangements: Strengths of the Regime

- There are no specific legal provisions for the establishment of trusts and other legal arrangements
- The assessment team thus concludes that Recommendation 34 is currently not applicable to Kosovo

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Legal Arrangements: Weaknesses of the Regime

- **The circumstances relating to the establishment and registration of trusts and legal arrangements in Kosovo which consists of pointless and inapplicable legal provisions could contribute negatively to the efficiency and effectiveness of the AML/CFT preventive system due to the legal inconsistency and ambiguity.**

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Legal Arrangements:

Weaknesses of the Regime..... *continued*

- **All these characteristics thus leave the impression that the drafting of these legislative provisions as indicated above, and in particular those of the provisions of the AML/CFT Law must have consisted of the verbatim transposition of the respective FATF Standards without paying due attention to the fact that the original text refers to entities such as (express) trusts or other similar legal arrangements that do not actually exist in the law of Kosovo.**

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Section 5 continued

Non - Profit Organisations

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Governing Regime for NGOs

- **Governed by the Law on NGOs (Law 04/L-057 of 2011) which sets out the establishment, registration, internal management, activity, dissolution and removal from register of legal persons organized as NGOs.**
- **Article 24 of the AML/CFT main Law (*Law No 03/L – 196 of 2009*).**
- **The Department for Registration and Liaison with NGOs (DRLNGO) within the Ministry for Public Administration is the authority competent to implement the Law on NGOs.**

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Strengths of NGOs Regime

- **Comprehensive legislation for registration purposes.**
- **Adequate coverage of scope of registration.**
- **Due diligence on founders through checks against lists of designated persons.**
- **Full Department responsible for the implementation of the Law.**
- **NGOs recognised as reporting subjects with all obligations under AML/CFT Law including the reporting obligation.**

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Weaknesses of NGOs Regime

- **Responsibilities of the DRLNGO which needs to broaden its interpretation of its mandate under the Law.**
- **Ineffective prudential supervision.**
- **Inadequate AML/CFT supervision of the NGO sector.**
- **Ineffective application of Article 24 of the AML/CFT Law due to inconsistencies with the Law on NGOs.**
- **Inadequate sanctioning regime.**

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Specific identified weaknesses for NGOs Regime

- **No assessment of laws and regulations and on risks and vulnerabilities has been carried out as no authority assumes this responsibility.**
- **There is little outreach and no legal obligation for authorities to outreach to the NGOs sector and hence no authority assumes this responsibility.**
- **Law on NGOs does not provide for prudential sanctions for certain breaches under the Law.**
- **No empowering legal provisions to collect information for investigative purposes.**

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Specific Recommendations for NGOs Regime

- **Create legal provisions on the designation and competences of the ‘Competent Body’ in the Law on NGOs.**
- **Undertake an assessment of risks and vulnerabilities to which NGOs may be exposed or be exploited for financing of terrorism and implement an outreach programme.**
- **Undertake a strategic assessment to determine which NGOs occupy a significant portion of the financial resources under control of the sector or have a substantial share of the sector’s international activities.**

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