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**Project against Money Laundering and Terrorist Financing in Serbia
MOLI Serbia**

TECHNICAL PAPER:

Expert opinion on various AML/CFT laws, bylaws, regulations and guidance papers in the Republic of Serbia and the Proposal of concrete recommendations to bring the laws, bylaws and guidance into conformity with the relevant international standards in the area of Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT), in particular with the 40 recommendations under the FATF Standards of February 2012

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TABLE OF CONTENTS

EXECUTIVE SUMMARY	6
LIST OF AML LAWS AND BYLAWS REVIEWED	8
1. INTRODUCTION	11
2. BASIS OF OPINION AND APPROACH ADOPTED	12
3. REVIEW OF THE LAW ON THE PREVENTION OF MONEY LAUNDERING AND THE FINANCING OF TERRORISM.	13
4. REVIEW OF THE SECTORAL FINANCIAL LEGISLATION.....	31
5. REVIEW OF BYLAWS, GUIDANCE AND REGULATIONS	32
6. CONCLUSION	33

Appendices

Appendix 1	Comparative Table of the AML Law and the FATF Recommendations
Appendix 2	Third Round Mutual Evaluation Report Legal Recommendations
Appendix 3	Provisions relevant to the prevention of money laundering and the financing of terrorism in other sectoral financial legislation
Appendix 4	Proposed amendments to Legislation_National Bank of Serbia
Appendix 5	Proposed amendments to Legislation_Securities Commission
Appendix 6	Proposed amendments to Regulations_National Bank of Serbia
Appendix 7	Proposed amendments to Regulations_Securities Commission

Annexes – Laws, bylaws, guidance and regulations as reviewed

Annex 1	Law on the Prevention of Money Laundering and the Financing of Terrorism
Annex 2	Insurance Law
Annex 3	Law on Banks
Annex 4	Law on Compulsory Traffic Insurance
Annex 5	The Law on Financial Leasing
Annex 6	Law on Foreign Exchange Operations
Annex 7	Law on Voluntary Pension Funds and Pension Schemes
Annex 8	Law on the National Bank of Serbia
Annex 9	Law on the Capital Market
Annex 10	Law on Takeovers of Joint Stock Companies
Annex 11	Decision on Agent Operations and Requirements for Performing Such Operations
Annex 12	Decision on Conditions and Manner of Opening, Maintaining and Closing Bank Accounts
Annex 13	Decision on Data that Lessor Submits to the NBS and on the Manner and Timeframe
Annex 14	Decision on Detailed Conditions And Manner of Conducting Supervision of Lessors' Operations
Annex 15	Decision of Detailed Content and Standardized Format of the Contract of Membership in Voluntary Pension Fund

- Annex 16 Decision on Internal Controls System and Risk Management in Insurance Companies
- Annex 17 Decision on Minimum Conditions for the Conclusion of the Financial Lease Agreement and the Manner of Disclosing the Lease Rental and Other Costs Arising from the Conclusion of Such Agreement
- Annex 18 Decision of Minimal Content of the "Know Your Client" Procedure
- Annex 19 Decision on Minimum Requirements Regarding Organizational and Technical Resources if Voluntary Pension Fund Management Company
- Annex 20 Decision on Implementing the Provisions of the Law on Banks Relating to Granting of a Preliminary Bank Founding Permit, Bank Operating License and Consents by the National Bank of Serbia, as well as the Provisions Relating to the Establishment of Criteria for Defining a First-Class Bank
- Annex 21 Decision on Risk Control Rules in operations of the Voluntary Pensions Fund Management Company and Voluntary Pensions Fund
- Annex 22 Decision on Terms of Opening and Manner of Maintaining Non-Resident Accounts
- Annex 23 Decision on Terms and Conditions of Identification, Monitoring and Management of Bank Compliance Risk
- Annex 24 Decision on the Conditions of Opening and Manner of Maintaining Foreign Exchange Accounts of Residents
- Annex 25 Decision on the Guidelines for Assessing the Risk of Money Laundering and Terrorism Financing
- Annex 26 Decision on the Implementation of the Provisions of the Insurance Law Relating to the Issuance of Licenses and Approvals of the National Bank of Serbia
- Annex 27 Decision on Implementation of the Provisions of the Law on Financial Leasing Pertaining to Licensing and Consents of the National Bank of Serbia
- Annex 28 Decision on the Obligation of Lessors to Maintain a Reserve Balance
- Annex 29 Guidance Paper No 6 on Preventing, Detecting and Remediating Fraud in insurance
- Annex 30 Guidelines on the Application of the Law on Prevention of Money Laundering and Financing of Terrorism for Persons Supervised by the Securities Commission
- Annex 31 Rulebook on Practices Which Might be Considered Market Abuse and on Obligation of Preventing and Detecting Market Abuse
- Annex 32 Rulebook on Conditions and Manner of Carrying Out Supervision of Financial Market Participants
- Annex 33 Rulebook on Classification of Investment Recommendations Done Explicitly or Implicitly, Additional Requirements for Recommendations, Dissemination of Recommendations Produced by Third Parties and the Disclosure of interest and Conflict of Interest
- Annex 34 Rulebook on Disclosure of Information on Acquisition and Disposals of Shares and their Values for Which Reporting is Not Required
- Article 35 Rulebook on Disclosure of inside Information Relating to Issuers and Determining Legitimate Interests for Issuers in Non Disclosure
- Article 36 Rulebook on the Content of an Application for Approving a Prospectus and the Attached Documents
- Annex 37 Rulebook on the Forma, Minimum information Contained in Prospectuses and Base Prospectuses and Advertisements

- Annex 38 Rulebook on Approval of Exempt Offering Documents
- Annex 39 Rulebook on Granting the Qualified Investor Status and the QI Register
- Annex 40 Rulebook on the Contents and Form of Takeover Bids
- Annex 41 Rulebook on the Content and Form of Financial Statements of Investment Fund Management Companies
- Annex 42 Rulebook on the Chart of Accounts and the Contents of Accounts within the Chart of Accounts for Investment Funds
- Annex 43 Rulebook on the Content and Form of Financial Statements of Investment Funds
- Annex 44 Rulebook on the Contents of the Report of External Auditor
- Annex 45 Rulebook on Custody Bank Activities

EXECUTIVE SUMMARY

This Technical Paper provides an expert opinion on the assessment of various laws, bylaws and guidance relating to the prevention of money laundering and the financing of terrorism while providing concrete recommendations concerning their conformity with the Forty Recommendations of the Financial Action Task Force (FATF) Standards, as revised and published in February 2012. However, as at the time of carrying out this review and the preparation of this Technical Paper the FATF has not published the Methodology for assessing compliance with the new Recommendations, the assessment takes into consideration those essential criteria in the previous Methodology which are still applicable under the new Standards.

It should further be mentioned that this is not an evaluation for compliance purposes within a mutual evaluation process and therefore does not mean that a proper mutual evaluation under a methodological process will find full compliance with the FATF Standards as such evaluation takes other issues in considerations.

This Technical Paper:

- (i) lays down the basis of opinion and the approach adopted;
- (ii) reviews the Law on the Prevention of Money Laundering and the Financing of Terrorism against the 40 Recommendations under the 2012 FATF Standards;
- (iii) takes into consideration recommendations made in the MONEYAVL Third Round Mutual Evaluation Report;
- (iv) reviews the provided sectoral financial legislation against the FATF Standards as applicable for issues related to, for example, licensing, ownership acquisition and confidentiality and against the Law on the Prevention of Money Laundering and the Financing of Terrorism as proposed to be amended;
- (v) is complemented by a number of Appendices and Annexes that form an integral part of the Technical Paper itself; and
- (vi) makes recommendations with comments for amendments supported by draft text while commenting on certain current provisions.

Proposed amendments with relevant comments are included in a number of Appendices and Annexes to this Paper, of which they form an integral part.

Further to the amendments proposed for the consideration of the Authorities of the Republic of Serbia as indicated in this Technical Paper including in the Appendices, and more in detail in the Annexes to this Technical Paper, the assessment identified other issues that need to be considered. These are also indicated in the side comments to the Annexes as appropriate but, for ease of reference, the main issues are included hereunder:

- (i) Treatment of Legal Profession: Under the Law on the Prevention of Money Laundering and the Financing of Terrorism the legal profession is treated differently than the other obligors under Article 4 of the Law, including with the accountancy

profession which the FATF Standards place at an equal level. As a result, the Law on the Prevention of Money Laundering and the Financing of Terrorism at times carries out repeated provisions that are applicable to the obligors and the legal profession while at other times some obligations placed on the obligors are not placed on the legal profession. Although this principle has been retained as its reason is not known to the Consultant, where appropriate amendments are made to rectify the uneven playing field or distinction created where it conflicts with the FATF Standards. The Authorities of the Republic of Serbia may wish to revisit this distinction and reassess its implications to the Law and its consistency on the obligors and the international standards.

- (ii) National Risk Assessments: Under the new FATF Standards it is now mandatory that countries undertake periodic national risk assessments to identify the money laundering and financing of terrorism vulnerabilities and risks to which the country could be exposed and which should lead to reassessments of policies, systems and infra-structures to prevent such risks. This concept is being proposed for inclusion in the Law on the Prevention of Money Laundering and the Financing of Terrorism, with the co-ordination responsibility being initially placed on the Administration for the Prevention of Money Laundering. The Authorities of the Republic of Serbia may wish to assess the role of the *Standing Co-ordination Group for Monitoring the Implementation of the National Strategy against Money Laundering and Terrorism Financing* in this new national responsibility.
- (iii) Sanctions: The Law on the Prevention of Money Laundering and the Financing of Terrorism provides for pecuniary sanctions for breaches of the Law. There are however no provisions for administrative sanctions that are of a financial or non-financial nature for breaches of the Law on the Prevention of Money Laundering and the Financing of Terrorism or for breaches of any of the bylaws and regulations. This is leading to conflicts in the application of sanctions. As identified under the Third Round Mutual Evaluation Report administrative sanctions that are meant for prudential purposes under the sectoral specific laws are arbitrarily applied to breaches under the Law on the Prevention of Money Laundering and the Financing of Terrorism. Similarly, pecuniary sanctions under the sectoral specific laws are at times also applied to breaches of the Law on the Prevention of Money Laundering and the Financing of Terrorism when this Law itself provides for such pecuniary sanctions – although they do not appear to be of an administrative nature. Where appropriate amendments are proposed to the Law on the Prevention of Money Laundering and the Financing of Terrorism to rectify this situation. However changes that are felt are further required are not being proposed due to the lack of information on the sanctioning regime and system in Serbia. The Authorities of the Republic of Serbia may therefore wish to:
- Clarify in the Law on the Prevention of Money Laundering and the Financing of Terrorism whether the sanctions contemplated under the Penal Provisions are applicable by the Courts and if not nominate an authority responsible to impose and collect such fines;
 - Clarify that the fines under the Law are applicable to natural persons as obligors under Article 4 – unless the term ‘entrepreneurs’ is meant to include natural persons, although this would still exclude for examples ‘licensed auditors’ as sole practitioners;

- Further to indent (1) above, provide for administrative financial sanctions in the Law on the Prevention of Money Laundering and the Financing of Terrorism and nominate an authority responsible to impose and collect such fines;
 - Although an amendment is proposed (Article 87A) ensure that administrative fines contemplated under the sectoral specific laws for prudential purposes are not also applied for breaches under the Law on the Prevention of Money Laundering and the Financing of Terrorism thus jeopardizing the effectiveness and the legality of the application of sanctions.
- (iv) *Acquisition of Shareholdings*: Recommendation 26 of the FATF Standards, as its predecessor Recommendation 23, emphasis on the obligations of domestic authorities to ensure that criminals do not own financial institutions. There are currently various provisions in the licensing requirements under the respective sectoral laws of the financial sector that require due diligence procedures to be applied by the relevant authorities before approving such acquisitions. In September 2007 the European Union published Directive 2007/44/EC which is referred to as the Directive on Mergers and Acquisitions¹ and which establishes criteria that have to be all met in full for the acceptance by the relevant competent authorities of applications for the acquisition of shareholding in financial institutions. One of the established criteria impacts on the prevention of money laundering and the financing of terrorism. The Law on Capital Markets recognizes these criteria under Article 102. These criteria are being proposed for inclusion in other financial legislation which provide for licensing and share acquisition procedures. The Authorities of the Republic of Serbia are urged to positively consider these amendments and to include similar provisions in other legislation for the financial sector that provide for licensing and share acquisition in financial institutions and which do not form part of the review pack under this Technical Paper.

LIST OF AML LAWS AND BYLAWS REVIEWED

Main AML/CFT Law

- Law on the Prevention of Money Laundering and the Financing of Terrorism

Securities Commission

Legislation:

- Law on the Capital Market
- Law on Takeovers of Joint Stock Companies

Guidelines and Rulebooks

- Guidelines on the Application of the Law on Prevention of Money Laundering and Financing of Terrorism for Persons Supervised by the Securities Commission
- Rulebook on Practices Which Might be Considered Market Abuse and on Obligation of Preventing and Detecting Market Abuse

¹ Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector – OJ L 247, 21.9.2007, pp 1-16

- Rulebook on Conditions and Manner of Carrying Out Supervision of Financial Market Participants
- Rulebook on Classification of Investment Recommendations Done Explicitly or Implicitly, Additional Requirements for Recommendations, Dissemination of Recommendations Produced by Third Parties and the Disclosure of interest and Conflict of Interest
- Rulebook on Disclosure of Information on Acquisition and Disposals of Shares and their Values for Which Reporting is Not Required
- Rulebook on Disclosure of inside Information Relating to Issuers and Determining Legitimate Interests for Issuers in Non Disclosure
- Rulebook on the Content of an Application for Approving a Prospectus and the Attached Documents
- Rulebook on the Forma, Minimum information Contained in Prospectuses and Base Prospectuses and Advertisements
- Rulebook on Approval of Exempt Offering Documents
- Rulebook on Granting the Qualified Investor Status and the QI Register
- Rulebook on the Contents and Form of Takeover Bids
- Rulebook on the Content and Form of Financial Statements of Investment Fund Management Companies
- Rulebook on the Chart of Accounts and the Contents of Accounts within the Chart of Accounts for Investment Funds
- Rulebook on the Content and Form of Financial Statements of Investment Funds
- Rulebook on the Contents of the Report of External Auditor
- Rulebook on Custody Bank Activities

National Bank of Serbia

Legislation:

- Law on the National Bank of Serbia
- Insurance Law
- Law on Banks
- Law on Compulsory Traffic Insurance
- The Law on Financial Leasing
- Law on Foreign Exchange Operations
- Law on Voluntary Pension Funds and Pension Schemes

Guidelines and Decisions

- Decision on Agent Operations and Requirements for Performing Such Operations
- Decision on Conditions and Manner of Opening, Maintaining and Closing Bank Accounts
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- Decision on Detailed Conditions And Manner of Conducting Supervision of Lessors' Operations
- Decision of Detailed Content and Standardized Format of the Contract of Membership in Voluntary Pension Fund
- Decision on Internal Controls System and Risk Management in Insurance Companies
- Decision on Minimum Conditions for the Conclusion of the Financial Lease Agreement and the Manner of Disclosing the Lease Rental and Other Costs Arising from the Conclusion of Such Agreement
- Decision of Minimal Content of the "Know Your Client" Procedure

- Decision on Minimum Requirements Regarding Organizational and Technical Resources if Voluntary Pension Fund Management Company
- Decision on Implementing the Provisions of the Law on Banks Relating to Granting of a Preliminary Bank Founding Permit, Bank Operating License and Consents by the National Bank of Serbia, as well as the Provisions Relating to the Establishment of Criteria for Defining a First-Class Bank
- Decision on Risk Control Rules in operations of the Voluntary Pensions Fund Management Company and Voluntary Pensions Fund
- Decision on Terms of Opening and Manner of Maintaining Non-Resident Accounts
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- Decision on the Conditions of Opening and Manner of Maintaining Foreign Exchange Accounts of Residents
- Decision on the Guidelines for Assessing the Risk of Money Laundering and Terrorism Financing
- Decision on the Implementation of the Provisions of the insurance Law Relating to the Issuance of Licenses and Approvals of the National Bank of Serbia
- Decision on Implementation of the Provisions of the Law on Financial Leasing Pertaining to Licensing and Consents of the National Bank of Serbia
- Decision on the Obligation of Lessors to Maintain a Reserve Balance
- Guidance Paper No 6 on Preventing, Detecting and Remediating Fraud in insurance

Expert opinion on the various laws, bylaws and guidance for the prevention of money laundering and the financing of terrorism in the Republic of Serbia in conformity with the 40 Recommendations of the Financial Action Task Force of February 2012.

1. INTRODUCTION

This expert opinion is being provided in accordance with the provisions of Contract DGI/CE/AA/IN/IY/TL/tne/ds drawn up under the 2274 / Project against Money Laundering and Terrorist Financing in Serbia (MOLI Serbia). Under this agreement the Consultant undertakes to prepare an expert opinion, in the format of a Technical Paper, on various laws, bylaws and guidance relating to the prevention of money laundering and the financing of terrorism as listed in this Paper. The Technical Paper should make an assessment and concrete recommendations concerning their conformity with the Forty Recommendations of the Financial Action Task Force (FATF).

Since in February 2012 the FATF published its revised Recommendations under the new FATF Standards, this Technical Paper takes into consideration the new Recommendations. As at the time of carrying out this review and the preparation of this Technical Paper, however, the FATF has not published the Methodology for assessing compliance with the new Recommendations. Therefore where appropriate the Essential Criteria in the previous Methodology has been taken into consideration as appropriate.

It should be mentioned at the outset that this is not an evaluation for compliance purposes within a mutual evaluation process. This Technical Paper is an assessment of the prevention of money laundering and the financing of terrorism conformity of the domestic legislative provisions, bylaws and guidance for the Republic of Serbia with the relevant FATF Recommendations and includes proposed amendments with draft text accordingly. A compliance assessment for the purposes of a mutual evaluation process takes other considerations into account and therefore may not necessarily reach a full compliance conclusion for rating purposes consequent to this Technical Paper.

This Technical Paper is drawn up as follows. It first lays down the basis of opinion and the approach adopted. Next it presents a review of the Law on the Prevention of Money Laundering and the Financing of Terrorism with recommendations and draft text proposals for amendments following an evaluation and assessment against the relevant FATF Recommendations and the relevant legislative recommendations in the MONEYVAL Third Round Mutual Evaluation Report.² The Paper then assesses other relevant financial legislation taking account of provisions relevant for the prevention of money laundering and the financing of terrorism and likewise providing recommendations and draft amending text as appropriate. Similarly, in the next section, the Paper reviews various bylaws and guidance issued by the National Bank of Serbia and the Securities Commission within their supervisory responsibilities remit under the Law on the Prevention of Money Laundering and the Financing of Terrorism. Likewise the Paper provides recommendations and draft amending

² The MONEYVAL Third Round Report has been used as a Fourth Round Report is not available on the MONEYVAL web-site as at the time of this Review. The Third Round Report was adopted by MONEYVAL at its 31 Plenary in December 2009.

text as necessary. Finally the Paper concludes with some overall recommendations to the Authorities of the Republic of Serbia.

To this effect the Paper is complemented by seven (7) Appendices and forty five (45) Annexes which form an integral part of the expert opinion and the Technical Paper. The Appendices provide tables indicating conformity with the relevant FATF Recommendations for the respective assessments of the Law on the Prevention of Money Laundering and the Financing of Terrorism as aforementioned, together with summary review tables with the relevant draft amending text for the main laws and bylaws. The Annexes to the Paper provide a revised version of the laws and bylaws reviewed which include the proposed amending text with side comments explaining the rationale for the inclusion of the suggested amendments.

2. BASIS OF OPINION AND APPROACH ADOPTED

The opinion is provided on the basis of the English version of the laws, bylaws and guidance as provided by the Council of Europe and as afore-listed in this Paper.

The approach adopted for the assessment of the laws, bylaws and guidance involved the insertion of proposed amendments or additions thereto for the respective documents. The entire documents have been evaluated against the 2012 FATF Recommendations first through a review and assessment of the Law on the Prevention of Money Laundering and the Financing of Terrorism followed by a review of the respective financial legislation and bylaws to ensure consistency. The approach included an evaluation of the recommendations of the MONEYVAL Third Round Mutual Evaluation Report, ensuring that the revision of the relevant documents addresses these recommendations, where not already addressed by the Serbia Authorities.

The proposed amending text is provided through a restructured revised version of the documents, with relevant comments in this Paper – see the Appendices and Annexes. The Technical Paper includes other comments and observations as appropriate where the required amendments go beyond the provisions of the laws under review and should be governed by other legislation.

The principle that the main obligations for the prevention of money laundering and the financing of terrorism should be included in the Law on the Prevention of Money Laundering and the Financing of Terrorism complemented by bylaws or regulations issued by the respective competent supervisory authorities has been respected throughout to ensure consistency of obligations for all sectors. Other requirements that are or could also be related to the prevention of money laundering and the financing of terrorism are covered through the other financial legislation as these may be specific to a particular sector – for example licensing requirements and acquisitions of shareholdings in financial institutions in relation to Recommendation 26³ and confidentiality issues in relation to Recommendation 9 – but links to the main Law on the Prevention of Money Laundering and the Financing of Terrorism is often retained.

³ References made to specific Recommendations are those of the new Recommendations

3. REVIEW OF THE LAW ON THE PREVENTION OF MONEY LAUNDERING AND THE FINANCING OF TERRORISM.

The Law on the Prevention of Money Laundering and the Financing of Terrorism⁴ has first been reviewed against the 2012 FATF Recommendations, mainly those related to preventive measures – although comments and proposed amendments are included for other elements of the Recommendations as appropriate. As at the time of carrying out this review and the preparation of this Technical Paper, however, the FATF has not published the Methodology for assessing compliance with the new Recommendations. To this effect the review of the Law on the Prevention of Money Laundering and the Financing of Terrorism has taken into consideration the Methodology for the previous Recommendations, most of which are still valid. Indeed a number of the previous Essential Criteria in the previous Methodology have now been incorporated into the 2012 Recommendations and have therefore been assessed directly with the relevant Recommendation. The assessment against the FATF 40 has also taken into account the relevant Interpretative Notes and the definitions in the Glossary to the Recommendations which together constitute the new FATF Standards.

Appendix 1 provides a conformity table indicating the respective FATF Recommendations against the relevant provisions of the Law on the Prevention of Money Laundering and the Financing of Terrorism and includes comments concerning proposed changes. More detailed information on the rationale for the proposed changes is included hereunder and in the proposed revised version of the Law on the Prevention of Money Laundering and the Financing of Terrorism in Annex 1.

The AML Law was next reviewed against recommendations made in the Third Round Mutual Evaluation Report dated 8 December 2009 adopted by MONEYVAL at its 31st Plenary held in December 2009. Although most of the recommendations made therein had already been addressed by the Serbia Authorities, all recommendations that are of a legal nature have been addressed and amendments to the Law on the Prevention of Money Laundering and the Financing of Terrorism are made accordingly as appropriate and as necessary.

Appendix 2 provides a summary of the recommendations made in the Mutual Evaluation Report referenced against the relevant or proposed provisions in the Law on the Prevention of Money Laundering and the Financing of Terrorism.

The paragraphs that follow provide information on the proposed changes to the Law on the Prevention of Money Laundering and the Financing of Terrorism consequent to the aforementioned assessments, but exclude minor changes which at times may either be of an editorial nature or for consistency and continuity and which can be found in Annex 1.

Some of the main amendments proposed in the Law on the Prevention of Money Laundering and the Financing of Terrorism relate to those provisions allowing for a declaration from the customer itself for verification purposes when the obligor is unable to do so; those related to the imposition of administrative non-pecuniary sanctions; the application of supervisory powers to the bodies identified under Article 82; the introduction of an obligation to undertake a national risk assessment; and the requirement to maintain statistics.

⁴ In the Appendices the Law on the Prevention of Money Laundering and Financing of Terrorism is referred to as the 'AML Law'.

Moreover, for some reason, the Law on the Prevention of Money Laundering and the Financing of Terrorism makes a distinction for the legal profession from other obligors under Article 4. For example the lawyer is not required to appoint a compliance officer or at least to take that role himself; nor is the lawyer required to develop internal controls to prevent money laundering and the financing of terrorism. Consequently the Law carries repeated provisions as applicable to the obligors and lawyers with the consequence that these may not be considered on equal levels, and in particular in relation to the accountancy profession. Although this principle has been retained – its background reasons not being available – certain proposed amendments try to rectify this situation where this conflicts with the FATF Standards. The Serbia Authorities may wish to visit the rationale behind this treatment in the Law on the Prevention of Money Laundering and the Financing of Terrorism.

The paragraphs that follow should therefore be read in conjunction with the text and the side comments (at times not necessarily related to a proposed amendment) provided in Annex 1.

Article 1 – Subject Matter

No proposed changes.

Article 2 - Money laundering and terrorism financing

- (i) The Vienna Convention, from where the definition of money laundering is extracted, includes (Article 3(1)(c)), subject to a country's constitution and legal system, the attempt or acting as accomplice in committing the mentioned offences. The FATF Methodology requires countries to define money laundering within the Vienna Convention and in particular Article 3(1)(b) & (c). To this effect a new indent (4) to paragraph (1) of Article 2 is being proposed.

Article 3 – Terms

- (i) In indent (1) of paragraph (1) of Article 3, the definition of 'property' is being extended in line with the FATF definition to include '(assets) of every kind, nature and description whether movable or immovable, tangible or intangible and any interest thereon...' further to the present text.
- (ii) In indent (11) of paragraph (1) of Article 3, as defined 'beneficial owner' excludes the situation where a person is acting on behalf of a third part as is defined in the FATF definition in the Glossary. It is being proposed to broaden the definition in the Law on the Prevention of Money Laundering and the Financing of Terrorism accordingly by adding the words at the end of the current definition 'and/or the natural person or persons on whose behalf a transaction is being conducted'.
- (iii) In indent (24) of paragraph (1) of Article 3 the words 'excluding middle ranking and junior positions in office, but (including):' are proposed to be added in conformity with the definition of politically exposed persons in the FATF Glossary to the revised Recommendations.
- (iv) The new FATF Glossary now provides a definition of 'domestic PEP' for the purposes of the new Recommendation 12 (previous Recommendation 6). Recommendation 12 now requires that financial institutions identify whether a customer or a beneficial owner is a domestic PEP and to apply the enhanced customer due diligence

measures in the case of higher risk business relationships with such persons. To this effect a new indent (27) with a definition of 'domestic official' is being included – refer further to the proposed new Article 30A.

- (v) In referring to domestic PEPS under the new Recommendation 12 the FATF further refers to 'a person who is or has been entrusted with a prominent function by an international organisation' – note in the definition of a foreign PEP the reference is to a 'foreign country'. The Glossary provides a definition as is being proposed in the new indent (27A) to paragraph (1) of Article 3. However since the Law on the Prevention of Money Laundering and the Financing of Terrorism already provides a definition of 'top management' it may be appropriate to refer accordingly – hence two options for the new indent (27A) are being proposed.

Article 4 - Obligors

- (i) It is proposed to amend indent (2) to paragraph (2) of Article 4 to read '(Provision of accounting services) including, where provided, activities as listed under Article 46;'. As currently drafted the reference to the 'accountancy profession' is in accordance with the EU Third Directive⁵ but not with the FATF Recommendations. In terms of the FATF Recommendation the accountancy profession is related to those activities reserved for the legal profession. Hence the proposed change is establishing this link in the Law on the Prevention of Money Laundering and the Financing of Terrorism. In this regard reference should be made to Section III on Actions and Measures Taken by Lawyers and other related proposed amendments in the Law.
- (ii) A new indent (8) to paragraph (2) of Article 4 is proposed with a definition and the inclusion of 'Trust and Company service Providers' as obliged persons. According to the Third Round Mutual Evaluation Report, Trust and Company service Providers are not recognized as legal forms of legal persons or legal arrangement under the laws of Serbia (MER paragraph 1003). However it is not excluded that these services may be given by lawyers or accountants. For the sake of completeness in compliance therefore these are being included and in particular for the purposes of the addition of the proposed paragraph (3) to Article 46 and references accordingly in indent (1) of paragraph (2) of Article 4. Serbia Authorities may wish to look into the proposed text if applicable.

Article 5 – Lawyers and Lawyer Partnerships

No proposed changes.

Article 6 – Actions and measures taken by obligors

- (i) A new paragraph (1a) is being proposed with an overall obligation on obligors to '...develop, establish and maintain adequate internal policies and procedures with effective control to prevent money laundering and terrorist financing activities through the use of their products and services...' in compliance with the requirements under Recommendation 18.

⁵ Directive 2009/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purposes of money laundering and terrorist financing, *OJ L 309,25.11.2005, pp15-36*.

- (ii) A new paragraph (3) to Article 6 is proposed requiring obligors to maintain comprehensive statistics in relation to their respective responsibilities or as may be established by the Administration for the Prevention of Money Laundering (a new paragraph 52B is proposed to this effect) but that are relevant for an assessment of the prevention of money laundering and terrorism financing policies in accordance with the national requirements under Recommendation 33.
- (iii) A new paragraph (4) to Article 6 is further proposed indicating to obligors the type of statistical information they are to maintain, but not limited to what is stated.

Article 7 – Risk Analysis

- (i) The new Recommendation 1 and its Interpretative Note (Article 8) require that financial institutions and DNFBPs conduct a business related risk assessment which should include risks related to customers; countries or geographical locations; products and services; transactions and delivery channels. Although the Law on the Prevention of Money Laundering and the Financing of Terrorism at times makes references to what could be interpreted to be a business-based risk assessment there are no direct specific obligations. Moreover any instructions or guidance issued to the obligors do not define the obligation to undertake a business-based risk assessment. To this effect it is proposed to amend paragraph (2) to Article 7 requiring obligors to undertake ‘an assessment of the business related risks of money laundering and financing of terrorism that the obligor could be exposed to and...’ further to the already required customer-based risk assessments.
- (ii) A new paragraph (4) to Article 7 is proposed requiring obligors to ‘document these risk assessments, update them periodically, and be able to demonstrate such risk assessment information to the relevant body referred to in Article 82 of this Law.’ in accordance with the requirements under the new Recommendation 1.

Article 8 - Customer due diligence actions and measures

Article 9 - Application of due diligence actions and measures

Article 10 - Customer due diligence during the establishment of a business relationship

Article 11 - Customer due diligence when carrying-out a transaction

Article 12 - Exemption from customer due diligence in relation to certain services

No proposed changes to any of the above listed Articles.

Article 12A

- (i) It is proposed to provide a title to Article 12A consistent with all Articles in the Law on the Prevention of Money Laundering and the Financing of Terrorism. Serbia Authorities may wish to consider the proposed title: ‘Payment and collection service provider: Originator Data’ or similar.

Article 12B

- (i) It is proposed to provide a title to Article 12B consistent with all Article in the Law on the Prevention of Money Laundering and the Financing of Terrorism. Serbia Authorities may wish to consider the proposed title: ‘Actions and measures taken by the payment and collection service provider’ or similar.

- (ii) Paragraph (6) to Article 12B guides payment and collection service providers on actions to be taken where information as required is lacking. Article 21 of the Interpretative Note to Recommendation 16 (Wire Transfers) requires payment and collection service providers, more specifically beneficiary financial institutions, to have in place risk-based policies accordingly. To this effect, it is proposed to amend paragraph (6) by the following addition: 'To this effect payment and collection service providers shall have risk-based policies and procedures for determining when to execute, reject or suspend a wire transfer lacking the required information and for follow up action.'

Article 12C - Exemptions from the requirement to obtain data on the wire transfer originator

No proposed changes.

Article 12D – Money or value transfer services

- (i) The new Article 12D requiring obligors who provide money and value transfer services to maintain lists of agents, include them in their prevention of money laundering and financing of terrorism programmes and provide same lists to the relevant authorities under Article 82 of the Law on the Prevention of Money Laundering and the Financing of Terrorism, is suggested for inclusion to meet the provisions for Recommendation 14 (previously SR VI – EC V1.4) in the new FATF Standards and the relevant recommendation in the Third Mutual Evaluation Report. Although normally such provisions, including registration, would be covered by the sector specific laws and therefore no information is available as to whether MVT providers can appoint agents, Article 12D is proposed on the assumption that they can. If not it should be removed and include instead a direct prohibition.

Article 13 - Identification and verification of identity of a natural person, legal representative and empowered representative, and entrepreneur

- (i) According to the new Recommendation 10 the identification documents may be obtained from the customer (see Interpretative Note Item C) but verification of identity has to be done against reliable independent source documents, data and information. This is adequately reflected in the Law on the Prevention of Money Laundering and the Financing of Terrorism. Moreover Article 8 of this Law, which reflects the FATF requirements, requires that where the customer due diligence actions and measures cannot be satisfactorily done, the obligor is to terminate or refuse the relationship, or not carry out the transaction. In conflict to all this, as drafted paragraph (5) of Article 13 allows the obligor, where it has doubts, to obtain a statement from the customer on the veracity and credibility of the obtained data and documents. This principle is further applied in various instances throughout the Law on the Prevention of Money Laundering and the Financing of Terrorism. It is proposed to amend all these contradictory provisions. To this effect, paragraph (5) of Article 13 is proposed to be amended as follows:

(5) If the obligor, during the identification and verification of identity of the customer in accordance with this Article, has any doubts about the veracity of the obtained data or the credibility of the documents from which the data was obtained, *it shall obtain a written statement on the veracity and credibility of the data and documents from a reliable third party or it shall apply the provisions of*

~~Article 8(2) and Article 8(3) of this Law. it shall obtain from the customer a written statement on the veracity and credibility of the data and documents.~~

Article 14 - Identifying and verifying the identity of a natural person using a qualified electronic certificate

- (i) For the same reasons as for Article 13 above, paragraph (5) of Article 14 is proposed to be amended accordingly.

Article 15 - Identifying and verifying the identity of a legal person

- (i) For the same reasons as for Article 13 above, paragraph (6) of Article 15 is proposed to be amended accordingly.

Article 16 - Identifying and verifying the identity of the representative of a legal person

- (i) Paragraph (2) to Article 16 similarly provides as in paragraph (5) of Article 13 but with regards to the representative of a legal person. Since the representative of the legal person is not the account holder, obtaining a written statement from the representative can be acceptable. However it is proposed to add the following provision at the end of paragraph (2): 'with an obligation to keep the obligor updated on any changes accordingly.'

Article 17 - Identifying and verifying the identity of a procura holder and empowered representative of a legal person

- (i) For the same reasons as for Article 16 above, paragraph (3) of Article 17 is proposed to be amended accordingly.

Article 18 - Establishing and verifying the identity of other persons under civil law

- (i) For the same reasons as for Article 16 above, paragraph (4) of Article 18 is proposed to be amended accordingly.

Article 19 - Special cases of identifying and verifying the identity of a customer

No proposed changes.

Article 20 - Identification of the beneficial owner of a legal person and person under foreign law

- (i) A new paragraph (1a) to Article 20 is proposed requiring an obligor to determine the mind and management of a legal person or a person under foreign law in accordance with the previous Methodology as reflected in the Interpretative Note to Recommendation 10.
- (ii) Two amendments are proposed to paragraph (3) of Article 20. First by the addition of the word 'and the mind and management' in the first line in accordance with the proposed paragraph (1a) above. Second to the effect that any statement taken from the representative or procura holder in exceptional circumstances should include an obligation that the representative or procura holder keeps the obligor informed on any changes in the information provided.
- (iii) In accordance with the specific references to trusts in the Interpretative Note for Recommendation 10, and in order to clarify the identification procedures required

thereto, it is proposed to insert a new paragraph (5) to Article 20 requiring that 'Where the person under foreign law is in the form of a trust the obligor shall identify the settlor, the trustee(s) and the beneficiaries or class of beneficiaries, including any other natural person exercising effective ultimate control over the trust.'

Article 20A - Identification of the beneficiaries of life insurance policies

- (i) The Interpretative Note to the new Recommendation 10 defines the customer due diligence measures required for beneficiaries of life insurance policies (see Section D of the Interpretative Note). These requirements are being reflected in a proposed new Article 20A.

Article 21 - Data to be obtained

Article 22 - Monitoring customer business transactions with special care

No proposed changes to any of the above listed Articles.

Article 23 - Relying on a third party to perform certain customer due diligence actions and measures

- (i) Recommendation 17 makes a distinction between reliance on third parties to carry some elements of the customer due diligence and the acceptance of business introduced by a third party. Notwithstanding Recommendation 17 places both instance on equal level as to the conditions applying to the obligor and the third party. The Law on the Prevention of Money Laundering and the Financing of Terrorism as currently drafted does not provide for acceptance of business introduced by a third party. To this effect and subject that Serbia authorities wish to allow introduced business under these conditions, a new paragraph (1a) to Article 23 is proposed providing that 'The obligor, under the conditions laid down in this Law and in accordance with paragraph (1) of this Article, may accept business introduced by a third party.'
- (ii) Indent (3) to paragraph (2) of Article 23 is being amended to better reflect the conditions for accepting a third party for customer due diligence reliance or for introduced business in accordance with Recommendation 17 and its Interpretative Note.
- (iii) It is proposed to slightly amend paragraph (3) to Article 23 referencing it to the new proposed paragraph (1a) to Article 23.
- (iv) Paragraph (4) to Article 23 is likewise proposed to be amended to reference it also to introduced business.
- (v) The current text in paragraph (6) to Article 23 is subject to interpretation. First because in the light of paragraph (2) indents (1) and (2) the third party would be a domestic institution subject to the Law on the Prevention of Money Laundering and the Financing of Terrorism. Second because if the third party is a foreign institution these provisions are already covered under indent (3) to paragraph (2) as conditions for accepting that third party. Third because this could be interpreted contrary to what is indicated in the current paragraph (5) to Article 23. Indeed the current text under paragraphs (5) and (6) is not clear and may be subject to interpretation - see for example the AML Guidelines issued by the Securities Commission Section 15 paragraph 3. Recommendation 17 requires that irrespective of the third party

reliance (which is only limited to certain parts of the customer due diligence) and irrespective that business is introduced, the obligor should retain full responsibility for all measures and obligations under the Law. Within this context it is proposed to delete both current paragraphs (5) and (6) and replace them with a proposed new paragraph (5). The revised paragraph (5) reflects the requirements under Recommendation 17 and its Interpretative Note.

Article 24 - Prohibition of relying

- (i) Consequent to the introduction of paragraph (1a) to Article 23 it is proposed to amend the title to Article 24 by adding the words: 'or accepting introduced business'.
- (ii) It is proposed to add the words 'or introduced business' to paragraphs (1) and (2) to Article 24 creating a reference linked to the introduction of the proposed paragraph (1a) to the Article.

Article 25 - Obtaining data and documentation from a third party

- (i) Through paragraphs (1) and (2) to Article 25 the Law on the Prevention of Money Laundering and the Financing of Terroris is imposing an obligation on the third party. However, in accordance with Article 23 the third party, apart from being a domestic institution, could be a resident of another country and hence not bound by the Serbia Law. It is therefore proposed that the obligation in both paragraphs should be imposed on the obligor to whom the Law on the Prevention of Money Laundering and the Financing of Terrorism applies.
- (ii) As drafted, paragraph (3) of Article 25 allows an obligor who doubts the reliance process with a particular third party to obtain a statement from that third party on the credibility of the whole process. This is contradictory to the very principle of third party reliance. If the obligor doubts the process then that obligor should be required to refrain from relying on that third party. This is consistent with the proposed amendments to Article 13 and others and the obligation under Article 8 of the Law on the Prevention of Money Laundering and the Financing of Terrorism when the customer due diligence process cannot be satisfactorily completed. To this effect it is proposed to amend paragraph (3) of Article 25:

(3) If the obligor doubts the credibility of the applied customer due diligence or of the identification documentation, or the veracity of data obtained about a customer, *it shall refrain from relying on that third party and shall keep an official note in writing accordingly and retain such note in accordance with the Law. It shall request from the third party to submit a written statement on the credibility of the applied customer due diligence action or measure and the veracity of the data held about a customer.*

Article 26 - Prohibition of establishing a business relationship

- (i) Consequent to the proposed amendment to paragraph (3) of Article 25, it is proposed to amend paragraph (5) of Article 26 for consistency as follows indicating that if at any point in time the obligor doubted the credibility of the customer due diligence by the third party it should no longer consider that third party as reliable:

5) if it *has previously* doubted the credibility of the conducted customer due diligence or the veracity of the obtained customer data *by the third party*, and ~~has not obtained the required written statement referred to in Article 25, paragraph 3 of this Law.~~

Article 26A - Reliance within the same group

- (i) Article 26A is being introduced in accordance with similar provisions in Recommendation 17. This Article will meet the requirements of financial institutions that are subsidiaries of larger international institutions and that are operating in Serbia. The part of the Recommendation 17 whereby in determining the country risk such institutions can rely on group policies is not being included as Serbia has its own list issued by the Ministry of Finance and this could bring such institutions at an uneven level with others that are not subsidiaries of a larger group or vice-versa. The Serbia authorities may wish to consider this accordingly.

Article 27 - Special forms of customer due diligence actions and measures

Article 28 - General provision

Article 29 - Loro correspondent relationship with banks and other similar institutions from foreign countries

No proposed changes to any of the above listed Articles

Article 29A - New Technologies

- (i) It is proposed to change the title by adding the words 'and Products' since as amended Article 29A now covers both new technologies and new products in accordance with the new provisions of Recommendation 15.
- (ii) Paragraph (1) to Article 29A is proposed to be amended to reflect Recommendation 15 and require obligors to pay special attention not only to new technologies but also to 'the development of new products and new business practices, including delivery mechanisms,'
- (iii) Paragraph (2) to Article 29A is also consequently proposed to be amended imposing new obligations on the obligor:

(2) The obligor shall introduce *and apply risk assessment* procedures and take additional measures to *manage and mitigate* ~~eliminate~~ the risks of *money laundering or financing of terrorism as identified under paragraph (1) of this Article prior to the launch of new products and new business practices or the use of new or developing technologies.* ~~posed by and prevent the misuse of new technologies for the purposes of money laundering or financing of terrorism.~~

Article 29B - Unusual transactions

No proposed changes.

Article 30 - Foreign official

- (i) A new paragraph (3) to Article 30 is proposed, in compliance with Recommendation 12, requiring obligors to apply the additional measures under paragraph (2) of Article 30 also to family members and close associates of a foreign official.

Article 30A - Domestic Official

- (i) Further to the inclusion of a definition of a 'domestic official' in Article 3 of the Law on the Prevention of Money Laundering and the Financing of Terrorism, a new Article 30A is being added dealing with 'Domestic Official' in accordance with Recommendation 12 and its Interpretative Note. The new Article, which is structured under three paragraphs, requires obligors first to identify if a customer falls within the category of a 'domestic official', if so to identify whether such relationship poses higher risks in which case the enhanced measures for a 'foreign official' are applied to the 'domestic official' and finally to consequently apply the higher measures to family members and close associate of the 'domestic official'.

Article 31 - Identification and verification of identity without the customer's physical presence (non-face-to-face customer)

Article 32 - General provisions

Article 33 - Customer data obtained and verified

Article 34 - Prohibition of provision of services allowing for concealment of the customer's identity

Article 35 - Prohibition of business transactions with shell banks

Article 36 - Restriction of cash transactions

No proposed changes to any of the above listed Articles

Article 37 - Reporting obligation and deadlines

- (i) The reporting obligation as detailed in paragraph (2) of Article 37 is only applicable before the transaction is carried out. There could be situations where, even after the transaction is carried out, that the obligor becomes suspicious about a transaction or a customer upon which the obligor did not previously have suspicion. Notwithstanding the provisions in paragraph (5) of Article 37 it is deemed appropriate to make specific provisions for the reporting obligation even in such circumstances. To this effect an amendment is proposed to paragraph (3) of Article 37 requiring the application of the reporting obligation 'and to situations where, after the transaction has been carried out, the obligor becomes suspicious at a later stage that that transaction or customer may have been related to money laundering or the financing of terrorism.'
- (ii) A new paragraph (4a) is proposed to Article 37. The FATF Recommendations consider the accountancy profession at the same level as the legal profession when carrying out the listed activities. The proposal to amend indent (2) to paragraph (2) of Article 4 meant to align the accountancy with the legal profession, entails various changes in the current version of the Law on the Prevention of Money Laundering and the Financing of Terrorism. One such change is the proposed new paragraph (4a) to Article 37 whereby the accountancy profession is not required to report in circumstances when ascertaining the legal position or when representing the customer in court proceedings, or in relation to court proceedings....'. This new paragraph (4a) is copied from Article 49(1) to bring the accountancy profession and the legal profession on the same level in accordance with the Interpretative Note of the new Recommendation 23.

- (iii) Consequent to the proposed paragraph (4a) another paragraph (4b) to Article 37 is proposed whereby the accountancy profession is exempted from filing other data and information required under the Law on the Prevention of Money Laundering and the Financing of Terrorism in the circumstances defined in the proposed paragraph (4a). Again this new paragraph (4b) is copied from Article 49(2) to bring the accountancy profession and the legal profession on the same level in accordance with the Interpretative Note of the new Recommendation 23.

Article 38 - Obligation to apply actions and measures in foreign countries

- (i) Paragraph (1) to Article 38 is being amended for three reasons. First because the provisions of the Law on the Prevention of Money Laundering and the Financing of Terrorism cannot be applied to foreign entities – hence it should be ensured that *equivalent* measures are applied. Second to ensure that the obligor implements its own internal procedures for its overseas branches and majority owned subsidiaries in accordance with Recommendation 18 and its Interpretative Note. Third to introduce the concept of applying group wide programmes and procedures, including the sharing of information within the group, for the prevention of money laundering and the financing of terrorism, where this is applicable, reflecting the new requirements under Recommendation 18.
- (ii) A new paragraph 2(a) to Article 38 is proposed reflecting the requirement under the second paragraph of Clause 5 of the Interpretative Note to Recommendation 18. The new requirements oblige the Administration for the Prevention of Money Laundering to consider additional supervisory measures, including placing additional controls on the obligor, and, as appropriate, considering requiring the obligor to close down its operations in that country where the appropriate measures further adopted under Article 38 are not sufficient.

Article 39 - Appointment of the compliance officer and his deputy

- (i) A minor amendment is proposed to paragraph (1) of Article 39 reflecting the proposed paragraph (4) to Article 46 allowing an obligor who is a sole practitioner to him/herself act as the compliance officer. This is consistent with the removal of the previous paragraph (2) to Article 39

Article 40 - Requirements to be fulfilled by the compliance officer

No proposed changes

Article 41 - Responsibilities of the compliance officer

- (i) It is proposed to amend indent (1) to paragraph (1) of Article 41 to include references to the internal reporting of suspicious transactions, activities or persons and the reporting thereof to the Administration for the Prevention of Money Laundering. This addition emphasises more the reporting obligation and the responsibilities of the Compliance Officer thereto in accordance with the Interpretative Note to Recommendation 18.

Article 42 - Responsibilities of the obligor

Article 43 - Regular training obligation

No proposed changes to any of the above listed Articles

Article 44 - Obligation of regular internal controls

- (i) A new paragraph (2) is proposed to Article 44 requiring obligors to ensure that the implementation of internal controls and procedures are periodically examined. Recommendation 18 requires the presence of an independent audit function. Although in most instances, particularly in the financial sector, financial institutions are required by their specific laws to have an internal audit function, this may not be the case in most DNFBPs. The proposed amendment provides the legal obligation for the internal system to be examined but the extent and structure shall depend on the size of the institution.

Article 44A - Integrity of employees

Article 45 - Methodology for execution of tasks in the obligor

No proposed changes to any of the above listed Articles

Article 46 - Actions and measures taken by lawyers

- (i) A new indent (3) to paragraph (1) of Article 46 is proposed requiring the lawyer to undertake the established measures and actions also when providing trust and company services as is proposed to be defined under Article 4 of the Law on the Prevention of Money Laundering and the Financing of Terrorism. The inclusion of this paragraph depends whether TCSP exist in Serbia in the form of services that can be provided by the legal and accountancy professions.
- (ii) A new paragraph (2) to Article 46 is proposed imposing an obligation on the lawyer to maintain comprehensive statistics and to make these available to the Administration for the Prevention of Money Laundering. This proposed paragraph is consistent with the proposed paragraph (3) to Article 6 and in accordance with Recommendation 33.
- (iii) A new paragraph (3) to Article 46 is proposed requiring the lawyer to 'develop, establish and maintain adequate internal policies and procedures with effective control to prevent money laundering and terrorist financing activities through the use of the services provided.' This is an overall obligation over the lawyer and is consistent with the proposed paragraph (1a) to Article 6 for the other obligors and to further support compliance with Recommendation 18.
- (iv) Currently the lawyer is not required to appoint a Compliance Officer since the obligation under Article 39 is applicable only to 'obligors'. The FATF Standards do not allow for this outright exemption, but that such requirements are applied proportionately and commensurate with the size of the obliged entity/person. For this purpose a new paragraph (4) to Article 46 is proposed requiring 'the lawyer' to appoint a Compliance Officer in accordance with the requirements in the Law on the Prevention of Money Laundering and the Financing of Terrorism or to act as the Compliance Officer him/herself if 'the lawyer' is a sole practitioner.

Article 47 - Customer due diligence

- (i) A minor amendment is proposed by changing the reference to 'the obligor' in the first line of paragraph (4) to Article 47 to read 'the lawyer' since Article 47 is addressing responsibilities of 'the lawyer'.

Article 48 - Reporting to the APML on persons and transactions with respect to which there are reasons for suspicion of money laundering or terrorism financing

- (i) The reporting obligation as detailed in paragraph (1) of Article 48 is only applicable before the transaction is carried out. There could be situations where, even after the transaction is carried out, that the obligor becomes suspicious about a transaction or a customer upon which the lawyer did not previously have suspicion. Notwithstanding the provisions in paragraph (3) of Article 48 it is deemed appropriate to make specific provisions for the reporting obligation even in such circumstances. To this effect an amendment is proposed to paragraph (2) of Article 48 requiring the application of the reporting obligation 'and to situations where, after the transaction has been carried out, the lawyer becomes suspicious at a later stage that that transaction or customer may have been related to money laundering or the financing of terrorism.'. This is consistent with the proposed amendment to paragraph (3) of Article 37 for all obligors.

Article 49 – Exemptions

Article 50 - Obligation to develop and apply a list of indicators

Article 51 - Cooperation in the development of a list of indicators

Article 52 - General provisions

No proposed changes to any of the above listed Articles

Article 52A - Assessing risks at national level

- (i) The new Recommendation 1 of the FATF Standards has now made it mandatory for countries to undertake a national risk assessment and to allocate resources and develop policies and systems to effectively prevent or mitigate the identified money laundering or financing of terrorism risks. To this effect a new Article 52A is proposed. The proposed Article 52A is indicative of what should be included in the Law on the Prevention of Money Laundering and the Financing of Terrorism but Serbia Authorities may wish to consider this obligation within the remit of the *Standing Co-ordination Group for Monitoring the Implementation of the National Strategy against Money Laundering and Terrorism Financing* if this Standing Co-ordination Group is still active,

Article 52B - Measuring effectiveness of national systems

- (i) A new Article 52B on measuring the effectiveness of the national systems is being suggested to meet the requirements of Recommendation 33 for the collection of statistics and at the same time to provide mechanisms for the Administration for the Prevention of Money Laundering to measure the effectiveness of the system complementary to its new responsibilities under the proposed Article 52A. It is suggested to retain flexibility for the Administration for the Prevention of Money Laundering to determine the type of statistics it requires and at the same time

provide indication to the obligors, the lawyer and other authorities in the Law on the Prevention of Money Laundering and the Financing of Terrorism the categories under which such statistics could be collected – this without prejudice to the provisions of Articles 70 – 72 which already determine certain information that has to be provided to the Administration for the Prevention of Money Laundering.

Article 53 - Requesting data from the obligor

Article 54 - Requesting data from the lawyer

Article 55 - Requesting data from the competent State bodies and public authority holders

Article 56 - Temporary suspension of transaction

Article 57 - Monitoring of customer financial transactions

Article 58 - The initiative to commence procedure in the APMML

Article 59 - Dissemination of data to competent bodies

Article 60 - Feedback

No proposed changes to any of the above listed Articles

Article 60A - Higher Risk Countries

- (i) The proposed new Article 60A meets the requirements under the new FATF Recommendation 19 on Higher Risk Countries which replaces the previous Recommendation 21.
- (ii) Paragraph (1) to the proposed new Article 60A meets the requirements under the first part of the new FATF Recommendation 19 on Higher Risk Countries. The paragraph requires obligors and the lawyer to take action on public statements issued by the FATF or other FATF Style Regional Bodies (FSRBs) such as MONEVAL through the application of enhanced due diligence measures.
- (iii) Paragraph (2) to the proposed new Article 60A provides guidance on the type of enhanced due diligence measures that are expected to be applied as in paragraph (1) of Article 60A, The provided enhanced due diligence measures are faithful to the FATF Interpretative Note to Recommendation 10 (paragraph 20) as applied through the Interpretative Note to Recommendation 19. The enhanced due diligence measures provided are not exhaustive and are to be applied further to those already contemplated by the Law on the Prevention of Money Laundering and the Financing of Terrorism for higher risk situations.
- (iv) Paragraph (3) to the proposed new Article 60A meets the requirements under the second part of the new FATF Recommendation 19 on Higher Risk Countries. The paragraph requires the Administration for the Prevention of Money Laundering to take action by imposing countermeasures in situations derived through public statements issued by the FATF or other FSRBs such as MONEVAL.
- (v) Paragraph (4) to the proposed new Article 60A provides indicative countermeasures that the Administration for the Prevention of Money Laundering could consider applying in terms of paragraph (3) to the same Article. The countermeasures are faithful to the FATF Interpretative Note to Recommendation 19 but are without prejudice to measures that are already contemplated under the Law on the Prevention of Money Laundering and the Financing of Terrorism – see for example prohibited reliance on third parties.

Article 61 - Requesting data from foreign countries

Article 62 - Dissemination of data to the competent State bodies of foreign countries

Article 63 - Temporary suspension of a transaction at the request of the competent body of a foreign country

Article 64 - Requesting a temporary suspension of a transaction from the competent body of a foreign country

Article 65 - Prevention of money laundering and terrorism financing

Article 66 - Work reports

Article 67 - Declaring bearer negotiable instruments

Article 68 - Customs control

Article 69 - Reasons for suspicion of money laundering or terrorism financing

Article 70 - Competent customs bodies

Article 71 - Securities market organizers and the securities Central Register, depository and clearing

Article 72 - Courts, public prosecutors' offices and other State bodies

Article 73 - Prohibition of disclosure ('no tipping off')

No proposed changes to any of the above listed Articles

Article 74 - Data confidentiality

- (i) A new paragraph (4) is proposed to Article 74 providing that 'Notwithstanding anything else contained in any other law, the obligor shall not use professional secrecy as a reason for not complying with any of the provisions of this Law.' The proposed paragraph (4) reflects Recommendation 9 on professional secrecy and is meant to override any inhibiting provision in any sector specific law. As indicated in the review of the financial laws under this review package, some laws include specific confidentiality provisions with no specific gateways, others include gateways, while others do not include any confidentiality measures at all. Serbia authorities however are requested to ensure that such an overriding provision is acceptable under Serbia legislative system and procedures.

Article 75 - Exemption from responsibility

Article 76 - Use of data, information and documentation

Article 77 - Period for keeping the data in the obligor and lawyer

Article 78 - Period for keeping data in the competent customs body

Article 79 - Period for keeping data in the APML

Article 80 - Record keeping

Article 81 - Content of records

No proposed changes to any of the above listed Articles

Article 82 - Bodies competent for supervision and their powers

- (i) Recommendation 26 on the regulation and supervision of financial institutions expects competent supervisory authorities to apply a risk based approach to supervision. To this effect a new paragraph (3) is proposed to Article 82. The proposed paragraph requires the bodies referred to in Article 82 to adopt a risk based approach in their conduct of supervision to give a higher coverage to those areas perceived to present a higher risk of money laundering and terrorism financing and which should be applied to both off-site and on-site examinations.

- (ii) A new paragraph (4) is proposed to Article 82 providing for the powers of the bodies competent for supervision the necessary powers to enter the premises of the obligor and the lawyer to carry out on-site examinations, and to demand information and documentation and to take copies as may be necessary for the purposes of the examination, This addition is in accordance with the requirements under Recommendation 27 on supervisory powers of competent authorities.
- (iii) A new paragraph (5) to Article 82 is proposed. Competent supervisory authorities established under Article 82 are not provided with the necessary supervisory powers such that they automatically apply their prudential supervisory powers under the specific financial legislation (e.g The Law on Banks) when fulfilling their supervisory remit under the Law on the Prevention of Money Laundering and the Financing of Terrorism. Although this may be considered logical and indeed is not specifically prohibited by any law, it is deemed appropriate for the sake of legal clarity that these powers are provided for under the law. To this effect the new paragraph (5) is partly intended to provide legal clarity in the application of the prudential powers to supervising obligors under the Law on the Prevention of Money Laundering and the Financing of Terrorism.

Moreover, the new paragraph (5) to Article 82 provides for the application of administrative non-pecuniary sanctions contemplated under other legislation for infringes under the Law on the Prevention of Money Laundering and the Financing of Terrorism. The application of such sanctions under the sectoral laws for offences under the anti-money laundering laws is common in most countries but has often been held as not legally correct in mutual evaluations. Indeed, in its Third Round Mutual Evaluation Report, MONEYVAL commented as follows (paragraph number refers to that in the Report:

856. Administrative sanctions are, although indirectly and not clearly in all cases, available under various sectoral laws governing activities of financial institutions and businesses; usually, they include supervisory measures such as:

- Send a written warning;
- Send an ordering letter;
- Declare orders and measures to remove irregularities;
- Issue an order for temporary prohibition on performing all or particular activities specified in the working license, for a certain period;
- Propose measures against management members, members of the supervisory board, key functionaries (in some cases, against qualified stakeholders);
- Institute proceedings before a competent authority;
- Introduce receivership;
- Revoke operating license of institution¹³⁴;
- Other measures

To this effect the proposed paragraph (5) to Article 82 will provide legal clarity for the application of administrative non-pecuniary sanctions under the sectoral laws for

infringements under the Law on the Prevention of Money Laundering and the Financing of Terrorism.⁶

- (iv) A new paragraph (6) to Article 82 is proposed providing for supervisory authorities under the Article to maintain statistics and to make such statistics available to the Administration for the Prevention of Money Laundering. This is consistent with the proposed paragraph (3) to Article 6 for obligors and paragraph (2) to Article 46 for the lawyer and is in accordance with the requirements for compliance with Recommendation 33.

Article 83 - APML competence in supervision

- (i) As drafted paragraph (1) to Article 83 seems to provide only for off-site supervision undertaken by the Administration for the Prevention of Money Laundering. This is not in compliance with the requirements under Recommendation 27 for competent authorities to conduct both on-site and off-site examinations and indeed with the powers of other supervisory authorities under Article 84. Moreover there are no provisions for applying supervision on a risk based approach. To this effect, it is proposed to amend paragraph (1) to Article 83 first to provide for the application of a supervisory risk based approach and second to provide for the undertaking of on-site examinations.
- (ii) Consequently it is proposed to amend paragraph (3) to Article 86 providing for the supervisory powers of the employees of the Administration for the Prevention of Money Laundering, upon proper identification, to 'have the right to enter the premises of the obligor and the lawyer, to demand information and documentation, to take copies thereof as may be necessary, and to do and take all other measures relevant to the supervisory task.' in accordance with Recommendation 27.
- (iii) It is proposed to slightly amend paragraph (4) to Article 83 through the addition of the words 'under paragraph (1) hereof' to ensure that documents and information demanded during on-site visits under paragraph (3) of Article 83 are provided immediately.

Article 84 - Other bodies competent for supervision

Article 85 - Information on the supervision measures taken

No proposed changes to any of the above listed Articles

Article 86 - Informing APML of the facts linked to money laundering and terrorism financing

- (i) A new paragraph (2) is proposed to Article 86 creating an obligation on the supervisory authorities under Article 84, on the basis of reciprocity, and in consultation with the APML, to extend all cooperation possible and as appropriate to their foreign counterparts on matters related to the prevention of money laundering and the financing of terrorism. The proposed paragraph (2) to Article 86 meets the requirements under Recommendation 40 and as proposed by the evaluators in the Third Round MER. It ensures that the APML, as the main authority for the implementation of the Law on the Prevention of Money Laundering and the Financing of Terrorism, is consulted in the process.

⁶ For further comments on sanctions please refer to comments for the proposed Article 87A

Article 87 - Issuing recommendations and guidelines

No proposed changes.

Article 87A - Application of pecuniary sanctions

- (i) In its Third Round Mutual Evaluation Report MONEYVAL had commented as follows regarding the imposition of fines under the Law on the Prevention of Money Laundering and the Financing of Terrorism and fines contemplated under the sectoral financial and other laws (references to paragraph numbers are those of the Report:

857. In addition, some sectoral laws also provide for imposing pecuniary sanctions on obligors. For example, Article 113 of the Law on Banks establishes that, independently from administrative measures taken in respect of the bank, the National Bank may declare a fine to the bank, as well as to the members of its management. The authorities advised that the practice has been to impose a sum total of fines for all irregularities – including those related to AML/CFT – discovered due to inspections of banks.

858. However, the legal and practical problem with the pecuniary sanctions under the AML/CFT Law and various sectoral laws is that the AML/CFT Law is very specific about the pecuniary sanctions imposed for the failure to adhere to the requirements of the Law. Articles 88-91 prescribe on a case-by-case (or Article-by-Article, requirement-by-requirement) basis the sanctions to be applied for the breach of the Law. That is, should a National Bank based on Article 113 of the Law on Banks, wish to impose a fine to a bank for the breach of a specific requirement of the AML/CFT Law, it will not be able to do so, because the bank has already been (or is expected to be) sanctioned by the court based on the penal provisions of the AML/CFT Law, and the institution objectively cannot be sanctioned twice for the same act (failure to act).

859. Hence, the availability of pecuniary sanctions both under the AML/CFT Law and under various sectoral laws is likely to compromise overall effectiveness of the sanctioning regime.

Confusing fines for prudential purposes under the sectoral laws with fines for breaches of the prevention of money laundering laws under the relevant laws for the prevention of money laundering and the financing of terrorism has been an issue in most evaluations. It is however a fact that, as concluded in the Third Round Evaluation Report for the Republic of Serbia, this creates confusion, conflicts and compromises for the overall effectiveness.

To this effect a new Article 87A is proposed requiring that fines for breaches of the Law on the Prevention of Money Laundering and the Financing of Terrorism imposed upon obligors and the lawyer are to be in accordance with the penal provision provided by this Law itself. Thus, the addition of the new Article 87A is intended to ensure that pecuniary penalties are applied in accordance with the Law on the Prevention of Money Laundering and the Financing of Terrorism and not in accordance with the sectoral laws that provide for fines that are meant for prudential purposes.

Article 88 - Economic offences

Article 89

Article 90 - Minor offences

Article 91 - Minor offences for which a lawyer may be held liable

- (i) Although no amendments are being proposed to the above listed Articles all dealing with penalties for economic offences, the Authorities of the Republic of Serbia may wish to consider the following:
- No authority is designated to impose and collect the fines under Article 88 – 91 unless it automatically means that fines are imposed by the courts – in which case competent authorities do not have the power to impose administrative financial penalties thus leading to the confusion of them applying administrative financial penalties under the specific sectoral financial laws which are however meant to be applied for prudential purposes – see comments to the proposed new Article 87A above. This is also not in compliance with Recommendation 35 on Sanctions.
 - The fines in Article 88 and Article 89 seem to be applicable to legal persons only and to entrepreneurs through paragraph (1) of Article 90 but not to natural persons recognized as obligors under Article 4 the Law on the Prevention of Money Laundering and the Financing of Terrorism – unless the term ‘entrepreneurs’ includes natural persons, although this would still exclude for example ‘licensed auditors’ as sole practitioners.

Articles 92 to 98 - Transitional and final provisions

No proposed changes to any of the above listed Articles,

4. REVIEW OF THE SECTORAL FINANCIAL LEGISLATION

As explained earlier in this Technical Paper, the principle that the main provisions for the prevention of money laundering and the financing of terrorism applicable to all sectors of obligors as identified under the Law have been retained in the main Law on the Prevention of Money Laundering and the Financing of Terrorism. This ensures consistency and level playing field in the application and implementation of the legislative obligations. However certain provisions, such as licensing and acquisition of ownership, remain particular to specific financial laws and to specific sectors. To this effect, the methodology applied for the review of the various sectoral financial legislation forming part of the review pack has resulted in an overall review of the legislation identifying those provisions in the respective laws that could have an impact on preventive measures for money laundering and the financing of terrorism and that are better placed in the sectoral laws. Thus provisions relating to Licensing, Ownership, Management and Compliance, Confidentiality, Supervision and Non-pecuniary Sanctions have been identified and assessed against the requirements under the relevant recommendations of the FATF Standards and their adequacy in meeting compliance.

Appendix 3 provides a summary of the provisions as identified. Articles of the respective legislation indicated do not necessarily cover the requirements under the FATF Recommendations, and may relate only to prudential matters, but they contribute for the

overall compliance complementary to the Law on the Prevention of Money Laundering and the Financing of Terrorism.

Appendix 4 provides a summary of the proposed amendments to sectoral legislation that falls within the remit of the National Bank of Serbia (Annexes 02 – 08) while Appendix 5 likewise provides for proposed amendments to sectoral legislation falling within the remit of the Securities Commission (Annexes 09 – 10).

It should be emphasised that the Appendices aforementioned do not replace a full reading and assessment of the proposed amendments and changes, including side comments, in the Annexes as mentioned above.

Overall, the laws reviewed provide adequately for those measures that could impact on the compliance of Serbia with the relevant parts of the Recommendations under the FATF Standards. Two main proposed amendments to the various legislations refer to:

- (i) Confidentiality and professional secrecy. As indicated earlier an overall blanket provision for obligors not to use professional secrecy as a reason for not complying with the provisions of the Law on the Prevention of Money Laundering and the Financing of Terrorism. Where confidentiality provisions in the respective sectoral laws do not provide adequate gateways accordingly, amendments to the confidentiality clauses have been proposed. Some sectoral legislation, for example the Insurance Law, do not include any confidentiality provisions at all. The Serbia authorities may wish to look into this.
- (ii) In September 2007 the European Union published Directive 2007/44/EC which is referred to as the Directive on Mergers and Acquisitions⁷ and which establishes criteria that have to be all met in full for the acceptance by the relevant competent authorities of applications for the acquisition of shareholding in financial and other institutions. One of the criteria refers to the prevention of money laundering and the financing of terrorism. Only the Law on Capital Markets for Serbia has introduced these criteria under its Article 102. It is being proposed that these provisions be likewise introduced in other legislations, such as the Law on Banks, the Insurance Law and the Law on Voluntary Pension Funds and Pension Schemes. It is highly recommended that the Serbia Authorities consider including similar provisions in other financial legislation that provides for the licensing of financial institutions (e.g. leasing companies).

5. REVIEW OF BYLAWS, GUIDANCE AND REGULATIONS

All bylaws, guidance or regulations issued by the National Bank of Serbia and the Securities Commission have been reviewed primarily against the Law on the Prevention of Money Laundering and the Financing of Terrorism as proposed to be amended and against those

⁷ Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector – OJ L 247, 21.9.2007, pp 1-16

elements of the Recommendations of the FATF Standards that are not necessarily provided for through legislative provisions.

Appendix 6 provides a summary of the proposed amendments to the Decisions and Guidance issued by the National Bank of Serbia (Annexes 11 – 29) while Appendix 7 provides a summary of the proposed amendments to the Rulebooks and Guidance issued by the Securities Commission (Annexes 30 – 45).

It should be highlighted that the Appendices aforementioned do not replace a full reading and review of the proposed amendments and changes, including side comments, in the Annexes as mentioned above.

Some of the bylaws, guidance or regulations reviewed do not have a bearing on the prevention of money laundering or the financing of terrorism because of the nature of the contents (e.g. chart of accounts). No amendments are proposed to such documents. Others are purely prudential in nature and also therefore require no amendments. Other documents however are very much related either totally or in part to the prevention of money laundering and the financing of terrorism and hence, where necessary, amendments are proposed to these documents. Some of these are;

- ‘Decision on minimal content of the "Know Your Client" procedure’ issued by the National Bank of Serbia which now requires obligors to develop a customer acceptance policy.
- ‘Decision on the guidelines for assessing the risk of money laundering and terrorism financing’ issued by the National Bank of Serbia and which now includes guidance on undertaking a business-based risk assessment.
- ‘Guidelines on the application of the Law on Prevention of Money Laundering and the Financing of Terrorism for persons supervised by the Securities Commission’ issued by the Securities Commission and which now includes a requirement for obligors to have in place a customer acceptance policy; to undertake a business-based risk assessment; and to maintain statistics.
- ‘Rulebook on practices which might be considered market abuse and on obligation of preventing and detecting market abuse’ issued by the Securities Commission and which now includes an obligation on market participants to file a report with the Administration for the Prevention of Money Laundering if they suspect insider dealing or market manipulation simultaneously when reporting to the Securities Commission.

6. CONCLUSION

The comprehensive assessment of the Law on the Prevention of Money Laundering and the Financing of Terrorism, together with other sectoral financial legislation, bylaws, guidance and regulations issued by the National Bank of Serbia and the Securities Commission has resulted in various amendments being proposed. This is mainly due to the fact that none of these documents had been yet reviewed against the new FATF Standards as published in February 2012 – although the new Methodology with the relevant essential criteria has not yet been published by the FATF. The assessment however finds that the Law on the Prevention of Money Laundering and the Financing of Terrorism carries some recent amendments

resulting from the recommendations made in the MONEYVAL Third Round Mutual Evaluation Report.

In brief, the assessment of the entire package of documents has been carried out against:

- (i) The new FATF Standards as published in February 2012;
- (ii) The Law on the Prevention of Money Laundering and the Financing of Terrorism for the other documents;
- (iii) Relevant Directives of the European Union; and
- (iv) The recommendations made in the MONEYVAL Third Round Mutual Evaluation Report for the Republic of Serbia

Proposed amendments with relevant comments are included in a number of Appendices and Annexes to this Paper of which they form an integral part.

Further to the amendments proposed for the consideration of the Authorities of the Republic of Serbia as indicated in this Technical Paper including the Appendices, and more in detail in the Annexes to this Technical Paper, the assessment identified other issues that need to be considered. These are also indicated in the side comments to the Annexes as appropriate but, for ease of reference, the main issues are included hereunder:

- (v) Treatment of Legal Profession: Under the Law on the Prevention of Money Laundering and the Financing of Terrorism the legal profession is treated differently than the other obligors under Article 4 of the Law, including with the accountancy profession which the FATF Standards place at an equal level. As a result, the Law on the Prevention of Money Laundering and the Financing of Terrorism at times carries out repeated provisions that are applicable to the obligors and the legal profession while at other times some obligations placed on the obligors are not placed on the legal profession. Although this principle has been retained as its reason is not known to the Consultant, where appropriate amendments are made to rectify the uneven playing field or distinction created where it conflicts with the FATF Standards. The Authorities of the Republic of Serbia may wish to revisit this distinction and reassess its implications to the Law and its consistency on the obligors and the international standards.
- (vi) National Risk Assessments: Under the new FATF Standards it is now mandatory that countries undertake periodic national risk assessments to identify the money laundering and financing of terrorism vulnerabilities and risks to which the country could be exposed and which should lead to reassessments of policies, systems and infra-structures to mitigate or prevent such vulnerabilities and risks. This concept is being proposed for inclusion in the Law on the Prevention of Money Laundering and the Financing of Terrorism, with the co-ordination responsibility being initially placed on the Administration for the Prevention of Money Laundering. The Authorities of the Republic of Serbia may wish to assess the role of the *Standing Co-ordination Group for Monitoring the Implementation of the National Strategy against Money Laundering and Terrorism Financing* in this new national responsibility.
- (vii) Sanctions: The Law on the Prevention of Money Laundering and the Financing of Terrorism provides for pecuniary sanction for breaches of the Law. There are

however no provisions for administrative sanctions that are of a financial or non-financial nature for breaches of the Law on the Prevention of Money Laundering and the Financing of Terrorism or for breaches of any of the bylaws and regulations. This is leading to conflicts in the application of sanctions. As identified under the Third Round Mutual Evaluation Report administrative sanctions that are meant for prudential purposes under the sectoral specific laws are arbitrarily applied to breaches under the Law on the Prevention of Money Laundering and the Financing of Terrorism. Similarly, pecuniary sanction under the sectoral specific laws are at times also applied to breaches of the Law on the Prevention of Money Laundering and the Financing of Terrorism when this Law itself provides for such pecuniary sanction – although they do not appear to be of an administrative nature. Where appropriate amendments are proposed to the Law on the Prevention of Money Laundering and the Financing of Terrorism to rectify this situation. However changes that are felt are further required are not being proposed due to the lack of information on the sanctioning regime and system in Serbia. The Authorities of the Republic of Serbia may therefore wish to:

- Clarify in the Law on the Prevention of Money Laundering and the Financing of Terrorism whether the sanctions contemplated under the Penal Provisions are applicable by the Courts and if not nominate an authority responsible to impose and collect such fines;
- Clarify that the fines under the Law are applicable to natural persons as obligors under Article 4 – unless the term ‘entrepreneurs’ is meant to include natural persons, although this would still exclude for examples ‘licensed auditors’ as sole practitioners;
- Further the indent (1) above, provide for administrative financial sanctions in the Law on the Prevention of Money Laundering and the Financing of Terrorism and nominate an authority responsible to impose and collect such fines;
- Although an amendment is proposed (Article 87A) ensure that administrative fines contemplated under the sectoral specific laws for prudential purposes are not also applied for breaches under the Law on the Prevention of Money Laundering and the Financing of Terrorism thus jeopardizing the effectiveness and the legality of the application of sanctions.

(viii) Acquisition of Shareholdings: Recommendation 26 of the FATF Standards, as its predecessor Recommendation 23, emphasis on the obligations of domestic authorities to ensure that criminals do not own financial institutions. There are currently various provision in the licensing requirements under the respective sectoral laws of the financial sector that require due diligence procedures to be applied by the relevant authorities before approving such acquisitions. In September 2007 the European Union published Directive 2007/44/EC which is referred to as the Directive on Mergers and Acquisitions⁸ and which establishes criteria that have to be all met in full for the acceptance by the relevant competent authorities of applications for the acquisition of shareholding in financial institutions. One of the established criteria impacts on the prevention of money laundering and the financing of terrorism. The

⁸ Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector – OJ L 247, 21.9.2007, pp 1-16

Law on Capital Markets recognizes these criteria under Article 102. These criteria are being proposed for inclusion in other financial legislation which provides for licensing and share acquisition procedures. The Authorities of the Republic of Serbia are urged to positively consider these amendments and to include similar provisions in other legislation for the financial sector that provide for licensing and share acquisition in financial institutions and which do not form part of the review pack under this Technical Paper.

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Consultant

November 2012

APPENDICES

Comparative Table for the FATF new Recommendations and the Law on the Prevention of Money Laundering and the Financing of Terrorism of the Republic of Serbia.

In February 2012 the FATF published the revised Recommendations which have integrated the FATF40+9 into one set of recommendations now referred to as “International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation”. According to the FATF “The revisions address new and emerging threats, clarify and strengthen many of the existing obligations, while maintaining the necessary stability and rigour in the Recommendations”. The following Table identifies and compares the new Recommendations with the relevant provisions of the AML/CFT Law of the Republic of Serbia.

New Rec	Old Recs	Reference	Serbia AML/CFT Law	Comments
		A - AML/CFT Policies and Coordination		
1	-	Assessing risks and applying a risk based approach	Article 7. Article 52A	As amended - in relation to business related risk assessments by obliged entities – amendments to paragraph 2 and insertion of new paragraph 4. Article 52A is a new proposed article that sets the obligation for the APML – or other body as may be decided by Serbia authorities – to undertake a national risk assessment as now required under the new Recommendation 1
2	R.31	National cooperation and coordination	Article 85 Article 86	No further changes needed if the <i>Standing Co-ordination Group for Monitoring the Implementation of the National Strategy against Money Laundering and Terrorism Financing</i> at national level is still active.
		B - Money Laundering and		

		Confiscation		
3	R.1 & R.2	Money laundering offence	Article 2(1)	An amendment to Article 2 is proposed to harmonise the definition better with that in the Vienna Convention under Article 3
4	R.3	Confiscation and provisional measures	n.a	Governed by other laws
		C - Terrorist Financing and Financing of Proliferation		
5	SR II	Terrorist financing offence	Article 2(2) – (5)	No changes are proposed
6	SR III	Targeted financial sanctions related to terrorism and terrorism financing	n.a	Governed by other laws
7	-	Targeted financial sanction related to proliferation	n.a	New concept. Should be governed by other laws
8	SR VIII	Non profit organisations	n.a	Governed by other laws. Notwithstanding, the new Recommendation retains the previous SR VIII in total
		D - Preventive Measures		
9	R.4	Financial institution secrecy laws	Article 74(4)	A slight amendment is being proposed to Article 74 by the addition of a new paragraph (4) overriding any other secrecy provisions held in some of the sector specific legislation.
		<i>Customer due diligence and record keeping</i>		
10	R.5	Customer due diligence	Articles 6 – 22 Articles 27 - 28 Articles 31 - 34 Articles 47 Article 92	(i) Various articles in the Law allow the obligor to take a written statement from the customer in verification of documents obtained. It is proposed to remove these as they could be contradictory with other provisions and the Recommendations; (ii) new paragraph (1a) in Article 20 to determine

				<p>the mind and management of a legal person;</p> <p>(iii) new paragraph (5) to Article 20 regarding the identification for foreign trusts in accordance with the Interpretative Note to Recommendation 10</p> <p>(iv) new Article 20A on the identification of beneficiaries of life insurance policies in accordance with Item D of the Interpretative Note.</p>
11	R.10	Record keeping	Articles 77 - 81	No changes are proposed
		<i>Additional measures for special customers and activities</i>		
12	R.6	Politically exposed persons	Article 3 Article 30 Article 30A	<p>Notable change in the Recommendations is the new obligation for identification of PEPs and application of ECDD applicable to both foreign and domestic PEPs, the latter in case of higher risk .</p> <p>(i) a new definition of 'Domestic Official' within the context of 'Foreign Official' is being included</p> <p>(ii) a new paragraph (3) is being included under Article 70 re family members and close associates</p> <p>(iii) a new Article 30A is being added dealing with 'Domestic Official' in accordance with Recommendation 12 and its Interpretative Note.</p>
13	R.7	Correspondent banking	Article 29 Article 35	No changes are proposed
14	SR VI	Money or value transfer services	Article 12D	<p>The Recommendations require that :</p> <p>(i) agents of MVT providers should either be licensed or the MVT providers should keep a</p>

				<p>list of agents</p> <p>(ii) Countries should take measures to ensure that MVTS providers that use agents include them in their AML/CFT programmes and monitor them for compliance with these programmes.</p> <p><i>The new Article 12D is proposed to be included in the Law on the assumption that MVT providers are authorised under the respective laws or regulations to appoint agents.</i></p>
15	R.8	New technologies	Article 29A	<p>Article 29A is being amended in accordance with the provisions of the new Recommendation 15 replacing the previous Recommendation 8.</p>
16	SR VII	Wire transfers	Articles 12A – 12C	<p>(i) Article 12B(6) to apply risk based procedures in accordance with paragraph 21 of the Interpretative Note to Recommendation 16.</p> <p>(ii) Paragraph (3) of Recommendation 16 requires that countries should ensure that, in the context of processing wire transfers, financial institutions take freezing action and should prohibit conducting transactions with designated persons and entities, as per the obligations set out in the relevant United Nations Security Council resolutions, such as resolution 1267 (1999) and its successor resolutions, and resolution 1373(2001), relating to the prevention and suppression of terrorism and terrorist financing.</p> <p><i>No amendments are proposed at this stage as this new inclusion calls</i></p>

				<p>for a considered assessment by the Serbia Authorities to empower financial institutions to take freezing actions – freezing powers are not provided by the AML Law to any competent authority as these are presumably governed by other legislation. Moreover the prohibition to conduct transactions with designated persons and entities is also presumably covered by other legislation transposing the relevant UNSCRs.</p>
		Reliance, Controls and Financial Groups		
17	R.9	Reliance on third parties	Articles 23 - 26	<p>(i) A new paragraph 1a in Article 23 is proposed allowing obligors to accept introduced business under the same condition of reliance. This reflects the provisions of the new Recommendation 17</p> <p>(ii) Paragraph (6) of Article 23 is being amended in line with the requirements of the new Recommendation 17, item (c), imposing an obligation on the obligor to ensure that the third party is regulated</p> <p>(iii) Paragraphs (1) and (2) are being amended to impose the obligation on the obligor rather the third party who could be a party in another country as the Serbia Law cannot be applied outside the country.</p> <p>(iv) Paragraph (3) of Article 25 is being amended as it is contradictory to the very principle of third party reliance.</p> <p>(v) Paragraph (6) of</p>

				<p>Article 26 is being amended in accordance with the proposed amendment to Article 25(3).</p> <p>Notable change:</p> <p>(i) A new Article 26A is being introduced to cover the provisions of the new Recommendation 17 for reliance on a third party that is part of the same financial group as the obligor, but under certain conditions.</p>
18	R.15 & R.22	Internal controls and foreign branches and subsidiaries	<p>Article 6(1a)</p> <p>Article 38 – 45</p>	<p>(i) A new paragraph (1a) to Article 6 obliging obliged persons to develop effective internal policies and procedures to prevent money laundering and terrorism financing.</p> <p>(ii) Paragraph (1) to Article 38 is being slightly amended to provide for an obligor to establish group programmes, as appropriate, for the prevention of money laundering and terrorism financing where and as applicable</p> <p>(iii) A new paragraph (2a) to Article 38 is being introduced. The proposed addition, empowering the APML to take counter measures should the measures taken prove not effective. The proposed addition reflects the second paragraph of clause 5 of the Interpretative Note to Recommendation 18</p> <p>(iv) Sub-paragraph (1) to paragraph (1) of Article 41 is being amended to emphasize the responsibilities of the Compliance Officer in the reporting obligation in accordance with the</p>

			<p>Article 46(3)</p> <p>Article 46(4)</p>	<p>Interpretative Note to Recommendation 18.</p> <p>(v) A new paragraph (2) to Article 44 is being proposed. The new Recommendation 18 requires the presence of an independent audit function. The proposed amendment provides the legal obligation for obligors to ensure that the internal system be examined but the extent shall depend on the size of the institution. Financial Institutions are usually expected to have an internal audit function but smaller institutions and DNFBPs may not have such an obligation elsewhere in any other law.</p> <p>The new proposed paragraph (3) to Article 46 requires lawyers to develop and have in place adequate internal policies and procedures for the prevention of money laundering and terrorism financing.</p> <p>The new proposed paragraph (4) to Article 46 requires the lawyer to appoint a compliance officer and where the lawyer is a sole practitioner to act him/herself as the compliance officer.</p>
19	R.21	Higher risk countries	Article 60A	Article 60A is a new proposed Article. The Article empowers the APML to take action on public statements issued by the FATF or other FSRBs such as MONEYVAL as is now required under the new revised Recommendation
		Reporting of suspicious transactions		

20	R.13 & SR IV	Reporting of suspicious transactions	Article 37 Articles 48 – 49 Article 86	<p>(i) Paragraph (3) of Article 37 is being amended to reflect situations where the suspicion of money laundering or terrorism financing arises after the transaction is carried out or the relationship established.</p> <p>(ii) A new paragraph (4a) is proposed inspired by Article 49(1) in order to bring the accountancy profession at level with the legal profession as is required by item (d) of Recommendation 22</p> <p>(iii) A new paragraph (4b) is proposed inspired by Article 49(2) in order to bring the accountancy profession at level with the legal profession as is required by item (d) of Recommendation 22</p> <p>(iv) Paragraph (2) of Article 48 is being amended in accordance with the proposed amendment to paragraph (3) to Article 37.</p>
21	R.14	Tipping off and confidentiality	Articles 73 - 75	No changes are proposed
		Designated non-financial businesses and professions (DNFBPs)		
22	R.12	DNFBPs: Customer due diligence	(Refer to Recommendation 10) Article 19 Article 5 Article 46 - 47	(See proposed changes under Recommendation 10)
23	R.16	DNFBPs: Other measures	Article 37 Articles 48 - 49	(i) Paragraph (2) of Article 48 is being amended to reflect situations where the suspicion of money laundering or terrorism financing arises after the transaction is carried out or the relationship

				established.
		E - Transparency and legal ownership of legal persons and legal arrangements		
24	R.33	Transparency and beneficial ownership of legal persons	n.a	Governed by other laws
25	R.34	Transparency and beneficial ownership of legal arrangements	n.a	Governed by other laws
		F - Powers & Responsibilities of Competent Authorities and other institutional measures		
		<i>Regulation and Supervision</i>		
26	R.23	Regulation and supervision of financial institutions	Articles 82 - 86	<p>(i) A new paragraph (3) to Article 82 is being proposed introducing the risk based approach for supervisory purposes</p> <p>(ii) Paragraph (1) to Article 83 is proposed to be amended to provide for the risk based approach and on-site supervision by the APML.</p> <p><i>Other provisions may be found in sector specific legislation</i></p>
27	R.29	Powers of Supervisors	Article 82 - 86	<p>(i) A new paragraph (4) to Article 82 is being proposed providing for the powers of bodies competent for supervision</p> <p>(ii) A new paragraph (5) to Article 82 is being proposed empowering supervisory bodies to apply their powers under the specific laws when acting under the AML Law.</p> <p>(iii) Paragraph (3) to Article 83 is proposed to be amended providing the powers to the APML employed to enter the premises of the obligor or the lawyer to carry out on-site examinations and to demand documents</p>

				and other information and to take copies as may be necessary.
28	R.24	Regulation and supervision of DNFBPs	Article 82 - 86	(See Recommendations 26 and 27)
		Operational and Law Enforcement		
29	R.26	Financial Intelligence Units	Article 52 -66	<p>(i) Recommendation 1 has now made it mandatory for countries to undertake a national risk assessment and to allocate resources and systems to prevent or mitigate effectively identified AML/CFT risks. Article 52A is being proposed to meet this new obligations</p> <p>(ii) Proposed new Article 52B requiring the APML to periodically review the effectiveness of national systems and empowering the APML to collect statistics accordingly in terms of Rec 33.</p> <p>(iii) The proposed new Article 60A meets the requirements under the new Recommendation 19 on Higher Risk Countries which replaces the old Recommendation 21. The Article empowers the APML to take action on public statements issued by the FATF or other FSRBs such as MONEYVAL</p>
30	R.27	Responsibilities of law enforcement and investigative authorities	n.a	Governed by other laws
31	R.28	Powers of law enforcement and investigative authorities	n.a	Governed by other laws
32	SR IX	Cash couriers	Article 67 - 69	No changes are proposed
		General Requirements		
33	R.32	Statistics	Article 6(3)(4)	(i) Proposed new paragraphs (3) and (4) to Article 6 imposing an

			<p>Article 46(2)</p> <p>Article 52B</p> <p>Article 70 - 73</p> <p>Article 80</p> <p>Article 82(6)</p>	<p>obligation on obligors to maintain statistics.</p> <p>(ii) Proposed new paragraph (2) to Article 46 imposing an obligation on lawyers to maintain statistics</p> <p>(iii) Proposed new Article 52B requiring the APML to periodically review the effectiveness of national systems and empowering the APML to collect statistics accordingly.</p> <p>(iv) New paragraph (6) to Article 82 imposing an obligation on supervisory competent bodies to maintain statistics.</p>
34	R.25	Guidance and feedback	<p>Article 60</p> <p>Article 87</p>	No changes proposed
		Sanctions		
35	R.17	Sanctions	Articles 88 - 91	<p>A new Article 87A is proposed to ensure that financial penalties are imposed in accordance with the AML Law and not in accordance with the sectoral legislation. But Serbia authorities are requested to review the Penal Provisions under the AML Law in relation to the designation of an authority and their application to natural persons. The Serbia authorities may also wish to consider introducing administrative financial penalties that may be imposed by the respective competent authority. Reference should also be made to the proposed paragraph (5) to Article 74 as regards non-pecuniary sanctions</p>
		G – International Cooperation		

36	R.35 SR I	International instruments	n.a	Governed by other laws
37	R.36 SR V	Mutual legal assistance	n.a	Governed by other laws
38	R.38	Mutual legal assistance: freezing and extradition	n.a	Governed by other laws
39	R.39	Extradition	n.a	Governed by other laws
40*	R.40	Other forms of international cooperation	Article 61 – 64 Article 86(2)	The proposed new paragraph (2) to Article 86 empowers the bodies under Article 84 to cooperate with their foreign counterparts, in consultation with the APML

Comparative Table for Recommendations in the Third Round Mutual Evaluation Report and the Law on the Prevention of Money Laundering and the Financing of Terrorism of the Republic of Serbia.

The Third Round Mutual Evaluation Report (MER) dated 8 December 2009 for the Republic of Serbia was adopted by MONEYVAL at its 31st Plenary held from 7 – 11 December 2009. A Fourth Round Mutual Evaluation Report is not available as at the time of carrying out this Review. The following Table identifies and compares the recommendations of a legal nature made in the MER with the relevant provisions of the AML/CFT Law of the Republic of Serbia.

FATF 40 Recommendations – references are to old Recommendations with references to new Recommendations in brackets

A. Legal Systems

Recommendation 1 – Money Laundering Offence (New Recommendation 3)

Rec.	Details	AML Law	Comments
1	Clarify that the offence of ML extends to any type of property, regardless of its value, that directly or indirectly represents the proceeds of crime	Article 3(1)(1)	The definition of 'property' in the AML Law is being amended in line with the FATF definition. <i>The point raised in the MER would best be addressed through the Criminal Code – which is not part of this review pack.</i>
2	Criminalise insider trading and market manipulation,	n.a.	Should be best addressed through the Criminal Code – which is not part of this review pack.

Recommendation 2 – Money Laundering Offence (New Recommendation 3)

Rec.	Details	AML Law	Comments
	(no recommendations of a legal nature are made)	n.a.	

Recommendation 3 – Money Laundering Offence (New Recommendation 4)

Rec.	Details	AML Law	Comments
1	To amend the legislation as necessary to: <ul style="list-style-type: none"> - Clarify the scope of property subject to confiscation - Ensure that value based confiscation can be applied in the case of instrumentalities used in and intended for use in the commission of ML, FT or other predicate offences - Ensure that the legislation provides for the 	n.a	The AML Law does not provide for confiscation or freezing procedures. The Recommendation in the MER would be better addressed through the Criminal Code or other relevant

	confiscation of instrumentalities when it is held by a third party (legal entity or natural person) - Remove the limitation to offences punishable by at least 4 years imprisonment under article 234.		legislation – which is not part of this review pack.
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B. Measures to be taken by financial institutions and non-financial businesses and professions to prevent money laundering and terrorist financing

Recommendation 4 - Professional Secrecy (New Recommendation 9)

Rec.	Details	AML Law	Comments
1	While Serbian financial institutions are able to share information with foreign financial institutions per obligations under requirements of SR.VII, Serbian authorities should amend the AML/CFT Law to also ensure that financial institutions are able to share information with foreign financial institutions, where it is required by R.7 and R.9.	Article 74(3)	

Recommendation 5 – Customer Due Diligence (New Recommendation 10)

Rec.	Details	AML Law	Comments
1	Serbian authorities should require obligors to consider filing an STR if they have refused to establish a business relationship, carry out a transaction, or terminate an existing business relationship.	Article 8	

Recommendation 6 – Politically Exposed Persons (New Recommendation 12)

Rec.	Details	AML Law	Comments
	(no recommendations of a legal nature are made)	n.a.	

Recommendation 7 – Cross border Correspondent Banking (New Recommendation 13)

Rec.	Details	AML Law	Comments
1	Serbian authorities should require financial institutions to document respective AML/CFT responsibilities for each party in the correspondent relationship so that there is no confusion between the financial institution and respondent bank about which one will carry out AML/CFT requirements.	Article 29(5)	
2	While use of payable-through accounts appears not to be common in Serbia, this practice should either be prohibited by law or should have obligations attached to it to ensure that appropriate CDD is conducted and institutions share relevant information should the practice become established in the future.	Article 29(6)	

Recommendation 8 – New technologies and non face-to-face relationships

(New Recommendation 15)

Rec.	Details	AML Law	Comments
1	Serbian authorities should adopt requirements for licensed bureaux de change, investment fund management companies, persons dealing with postal communications, and broker-dealer companies to develop policies and procedures to consider technological developments in ML and FT when conducting risk assessments.	Article 29A	Article 29A as drafted and as proposed to be amended is applicable to all 'obligors' under Article 4

Recommendation 9 – Reliance on third parties (New Recommendation 17)

Rec.	Details	AML Law	Comments
	(no recommendations of a legal nature are made)	n.a.	

Recommendation 10 – Record Keeping (New Recommendation 11)

Rec.	Details	AML Law	Comments
	(no recommendations of a legal nature are made)	n.a.	

Recommendation 11 – Large complex transactions (New Recommendations –removed)⁹

Rec.	Details	AML Law	Comments
1	Serbian authorities should ensure that capital market participants, bureaux de change, persons dealing with postal communications, money remitters, and foreign exchange operators are required to pay special attention to unusual transactions, examine the background and purpose of transactions and set forth those findings in writing.	Article 29B	As drafted Article 29B applies to all 'obligors' under Article 4

Recommendation 12¹⁰ – CDD and record keeping requirements for DNFBPs

(New Recommendation 22)

Rec.	Details	AML Law	Comments
1	The new requirement in the AML/CFT Law prohibiting any economic entity, including dealers in high value goods from conducting cash transaction in excess of EUR 15,000 should be amended to extend the prohibition to transactions that are "equal to" EUR 15,000.	Article 36(1)	

Recommendation 13 – Suspicious Transactions Reporting (New Recommendation 20)

⁹ In the new standards the previous Recommendation 11 is included as paragraph 20 to the Interpretative Note to the new Recommendation 10.

¹⁰ Recommendations as made for the various Recommendations as applicable to financial institutions are also applicable to DNFBPs under Recommendation 12. These are not repeated under Recommendation 12 as the AML Law is applicable to all obligors and lawyers. Only Recommendations specific to DNFBPs, if any, are included.

Rec.	Details	AML Law	Comments
	(no recommendations of a legal nature are made)	n.a.	

Recommendation 14 – Confidentiality, protection and tipping off (New Recommendation 21)

Rec.	Details	AML Law	Comments
1	It is recommended to the Serbian authorities to make the necessary legal amendments to ensure that: (a) financial institutions are protected from criminal liability for breach of any restriction on disclosure of information if they report their suspicions in good faith to the APML; (b) expand the tipping-off provisions to include not only those cases where a STR or related information has been reported but also when it is in the process of being reported to the APML.	Article 75 Article 73	

Recommendation 15 – Internal compliance procedures (New Recommendation 18)

Rec.	Details	AML Law	Comments
1	Article 39 of the AML/CFT Law exempts obligors with less than four employees from designating an AML/CFT compliance officer, imposing different obligations on small and large obligors. The evaluation team has concerns that this discrepancy poses a risk to the efficiency and integrity of the entire Serbian AML/CFT system. Serbian authorities should amend the law to remove this exemption.	Article 39	Paragraph (2) to Article 39 has been removed.
2	While there is no blanket requirement for financial institutions to utilize a set procedure for screening employees to ensure a high standard, sectoral laws have set specific requirements for hiring employees within the sector. Serbian authorities should require a set procedure for all financial institutions to screen employees to ensure a high standard across all institutions.	Article 44A	

Recommendation 16¹¹ – Reporting and compliance obligations of DNFBPs

(New Recommendation 23)

Rec.	Details	AML Law	Comments
1	Provide for adequate implementation of the requirement to conduct an internal audit of AML/CFT compliance.	Article 44	New paragraph (2) to Article 44 is proposed requiring 'obligors' to ensure that the implementation of the internal controls and the internal procedures are periodically examined. The

¹¹ Recommendations made for the various Recommendations as applicable to financial institutions are also applicable to DNFBPs under Recommendation 16. These are not repeated under Recommendation 16 as the AML Law is applicable to all obligors and lawyers. Only Recommendations specific to DNFBPs, if any, are included.

			procedures applied are to be proportionate and in accordance with the size of the institution.
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Recommendation 17 – Sanctions (New Recommendation 35)

Rec.	Details	AML Law	Comments
1	Eliminate the grounds for uncertainty about applicability of pecuniary sanctions under the AML/CFT Law and respective various sectoral laws.	Article 87A	New proposed Article 87A to ensure that financial penalties are imposed according to the AML Law.
2	Provide for a full-scale applicability of administrative sanctions available for prudential purposes in case of AML/CFT incompliance (for example, revocation of license of pension funds, broker/dealer companies, investment funds, etc).	Article 82(5)	A new paragraph (5) to Article 82 is being proposed empowering the competent authorities under this Article to apply prudential administrative non-pecuniary sanctions under their sectoral laws when carrying out their supervisory remit under the AML Law.
3	Provide the missing elements of legislatively defined supervisory power for application of sanctions with respect to voluntary pension funds management companies, as well as of the directors/senior management of voluntary pension funds management companies and broker-dealer companies for AML/CFT incompliance.	Article 82(5)	As explained under item (2) above a new paragraph (5) is proposed for Article 82. This paragraph will apply to all competent supervisory authorities under Article 82 for all 'obligors' under their respective remit in accordance with Article 84.
4	Provide for effective functioning of the AML/CFT enforcement mechanism enabling application of proportionate and dissuasive sanctions under the AML/CFT Law and respective sectoral laws.	Article 82(5)	A new paragraph (5) to Article 82 is being proposed empowering the competent authorities under this Article to apply prudential administrative non-pecuniary sanctions under their sectoral laws when carrying out their supervisory remit under the AML Law.

Recommendation 18 – Shell banks (New Recommendations – removed)

Rec.	Details	AML Law	Comments
	(no recommendations of a legal nature are made)	n.a.	

Recommendation 19 – Cash Transactions Reporting (New Recommendations – removed)

Rec.	Details	AML Law	Comments
	(no recommendations of a legal nature are made)	n.a.	

**Recommendation 20 – Extending the standards to other business and professions
(New Recommendations – removed)**

Rec.	Details	AML Law	Comments
	(no recommendations of a legal nature are made)	n.a.	

Recommendation 21 – Countries with insufficient AML/CFT standards

(New Recommendation 19)

Rec.	Details	AML Law	Comments
1	Serbian authorities should extend the Decision on KYC Procedure requirements to examine the background and purpose of unusual transactions and set forth those finding in writing to capital market participants, bureaux de change, persons dealing with postal communications, money remitters, and foreign exchange operators.	Article 29B	The obligation referred to in the Decision on KYC Procedures arises out of Article 89B of the AML Law. As drafted Article 29B applies to all 'obligors' under Article 4

Recommendation 22 – Application to branches and subsidiaries (New Recommendation 18)

Rec.	Details	AML Law	Comments
1	(no recommendations of a legal nature are made)	n.a.	

Recommendation 23 – Regulation and supervision of financial institutions

(New Recommendation 26)

Rec.	Details	AML Law	Comments
1	Amend the legislation to include a definite requirement for banning market entry – as owners and significant/controlling interest holders of leasing companies – of persons with criminal background.	n.a.	No changes are proposed to the AML Law as licensing procedures for the financial sector are found in the sectoral legislation. Provisions for licensing and shareholding acquisition are found in the 'Decision on implementation of the provisions of the Law on Financial Leasing pertaining to licensing and consents of the National Bank of Serbia'. To this effect

			amending provisions are proposed to Section 7.
2	Define legislative provisions establishing the powers of the National Bank to regulate and supervise for AML/CFT purposes activities of voluntary pension fund management companies.	Article 84(1)	
3	Define legislative provisions establishing the powers of the Ministry of Finance to regulate and supervise for AML/CFT purposes activities of persons dealing with postal communications [with respect to domestic payment operations] and of persons involved in professional activities of intermediation in credit transactions and provision of loans, factoring and forfeiting, provision of guarantees, and provision of money transfer services.	Article 83(2)	According to Article 83(2) this supervisory responsibility has been vested upon the APML
4	Define legislative provisions establishing the powers of the Ministry of Telecommunications and Information Society to regulate and supervise for AML/CFT purposes activities of persons dealing with postal communications [with respect to valuable mail operations].	Article 84(5)	According to Article 84(5) this responsibility is vested within the Ministry competent for Postal Communication
5	Define legislative provisions establishing the powers of Foreign Currency Inspectorate to regulate and supervise for AML/CFT purposes activities of persons involved in professional activities of factoring and forfeiting, and provision of money transfer services [with respect to international payment transactions]	Article 84(11)	According to Article 84(11) this responsibility is vested within the Foreign Currency Inspectorate.

Recommendation 24 – Regulation and supervision of DNFBPs (New Recommendation 28)

Rec.	Details	AML Law	Comments
1	Eliminate the grounds for uncertainty about applicability of pecuniary sanctions under the AML/CFT Law and the Law on Games of Chance.	Article 87A	The addition of the new Article 87A is intended to ensure that pecuniary penalties are applied in accordance with this law and not in accordance with the sectoral laws meant for prudential purposes
2	Provide for administrative sanctions in case of casinos' incompliance with the national AML/CFT requirements (such as written warnings, orders to comply with specific instructions, barring individuals from employment within the sector, replacing or restricting powers of managers, directors, or controlling owners, or withdrawal of license).	Article 82(5)	A new paragraph (5) to Article 82 is being proposed empowering the competent authorities under this Article to apply prudential administrative non-pecuniary sanctions under their sectoral laws when carrying out their supervisory remit under the AML Law.
3	Take legal or regulatory measures to prevent individuals with criminal background from acquiring or	n.a.	As for other sectors this recommendation is

	becoming the beneficial owner of a significant or controlling interest, holding a management function, in or being/becoming an operator of a casino.		better addressed through licensing and acquisition of ownership provisions through the specific sectoral legislation – which is not part of this review pack..
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Recommendation 25 – Guidance and Feedback (New Recommendation 34)

Rec.	Details	AML Law	Comments
1	(no recommendations of a legal nature are made)	n.a.	

C. Institutional and other measures necessary in systems for combating money laundering and terrorist financing.

Recommendation 26 – The Financial Intelligence Unit (New Recommendation 29)

Rec.	Details	AML Law	Comments
1	The Serbian authorities should: - clarify through relevant amendments article 102 of the Criminal Code;	n.a.	This recommendation is to be addressed through amendments to the Criminal Code – which is not part of this review pack.

Recommendation 27 – Responsibilities of Law Enforcement (New Recommendation 30)

Rec.	Details	AML Law	Comments
1	Analyse the current legal framework and take legislative or other measures in order to establish an effective and functional cooperation, communication and coordination mechanisms between competent law enforcement and prosecution services responsible for investigating and prosecuting ML, FT and underlying predicate offences;	n.a.	This recommendation should be better addressed through other relevant specific legislation – which is not part of this review pack.
2	Consideration should be given to amend the existing provisions so as to provide competent authorities with the legal basis to use a wide range of special investigative techniques when conducting ML or FT and underlying predicate offences;	n.a.	This recommendation should be better addressed through other relevant specific legislation – which is not part of this review pack.

Recommendation 28 – Powers of Law Enforcement (New Recommendation 31)

Rec.	Details	AML Law	Comments
	(no recommendations of a legal nature are made)	n.a.	

Recommendation 29 – Powers of supervisory authorities (New Recommendation 27)

Rec.	Details	AML Law	Comments
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1	Define legislative provisions establishing the powers of the National Bank to take the following measures while supervising for AML/CFT purposes activities of voluntary pension fund management companies – conduct (on-site) inspections, obtain access to all records and information relevant to monitoring compliance, enforce and sanction both the institutions/businesses and their directors/senior management for incompliance with AML/CFT requirements.	Article 82(3), (4), (5)	The proposed three new paragraphs to Article 82 empower all competent supervisory authorities identified under Article 82 to enter the premises of a supervised entity, demand documents and take copies for supervisory purpose as may be necessary. Moreover, the identified supervisory authorities may apply their prudential supervisory powers under their respective laws when carrying out their supervisory responsibilities under the AML Law.
2	Provide for application of sanctions with respect of directors/senior management of broker-dealer companies for their failure to comply with the legislative requirements (including those related to the AML/CFT framework).	Article 82(5) Article 88(2)(3) Article 89(2)(3) Article 90 Article 91	Paragraph (5) to Article 82 is a new proposed addition empowering supervisory authorities identified under Article 82 to apply their non-financial sanctions as applicable under their specific laws.

Recommendation 30 – Resourcest (New Recommendation - removed)

Rec.	Details	AML Law	Comments
1	Review the existing legal framework and amend it, in the light of the issues of concern highlighted in the report, to ensure that adequate requirements are set out clearly for law enforcement and prosecution services, including specialised services, enabling them to maintain high professional standards, including high integrity and that the staff are appropriately skilled;	n.a.	This recommendation should be better addressed through other relevant specific legislation – which is not part of this review pack.

Recommendation 31 – National cooperation (New Recommendation 2)

Rec.	Details	AML Law	Comments
	(no recommendations of a legal nature are made)		

Recommendation 32 – Effectiveness and Statistics(New Recommendation 33)

Rec.	Details	AML Law	Comments
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1	Though there are no statistics due to the absence of relevant proceedings, Serbia should ensure that there is a requirement for competent authorities to maintain comprehensive annual statistics on FT investigations, prosecutions and convictions, should there be such cases.	Article 6(3)(4) Article 52B Articles 70 - 73 Article 82(6)	Two new paragraphs are proposed to Article 6 compelling all obligors to develop and retain relevant statistics and statistics as may be required by the APML. .The proposed new Article 52B empowers the APML to determine type of statistics it requires from obligors and to itself maintain statistics. The new proposed paragraph (6) to Article 82 required identified competent supervisory authorities to maintain relevant statistics
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Recommendation 33 – Transparency legal persons (New Recommendation 24)

Rec.	Details	AML Law	Comments
1	The Serbian authorities should review the existing registration mechanisms in place and take legislative and other measures to ensure that registered information includes accurate and up to date details on beneficial ownership and control, as defined under the FATF Recommendations, for all legal persons and that such information is available to competent authorities in a timely fashion;	n.a.	The AML Law does not address issues specific to the registration of legal persons. This recommendation is better addressed through the laws governing legal persons and commercial entities.

Recommendation 34 – Transparency legal arrangements (New Recommendation 25)

Rec.	Details	AML Law	Comments
1	(no recommendations of a legal nature are made)	n.a.	

Recommendation 35 – International instruments (New Recommendation 36)

Rec.	Details	AML Law	Comments
1	(no recommendations of a legal nature are made)	n.a.	

Recommendation 36 – Mutual Legal Assistance: extradition (New Recommendation 37)

Rec.	Details	AML Law	Comments

1	(no recommendations of a legal nature are made)	n.a.	
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Recommendation 37 – Mutual Legal Assistance: dual criminality (New Recommendation 25)

Rec.	Details	AML Law	Comments
1	Serbia should consider lifting the dual criminality requirement for less intrusive and non-compulsory measures.	n.a.	The AML Law does not cover such procedures which are better addressed through other relevant legislation

Recommendation 38 – Mutual Legal Assistance: freezing and confiscation (New Recommendation 37)

Rec.	Details	AML Law	Comments
	(no recommendations of a legal nature are made)	n.a.	

Recommendation 39 – Extradition (New Recommendation 39)

Rec.	Details	AML Law	Comments
1	Eliminate the ground for refusal of an extradition request set out in article 7(5) of the MLA Law	n.a.	As indicated this is to be addressed through the MLA Law.

D. International Co-operation

Recommendation 40 – Other forms of international cooperation¹²

Rec.	Details	AML Law	Comments
1	The authorities should undertake a thorough review of the legal framework which governs international co-operation and information exchange and amend the existing laws governing the scope of action of all competent financial sector and non financial sector supervisory authorities to ensure that they allow the widest range of co-operation and that these bodies can exchange information both spontaneously and upon request in line with the FATF standards under Recommendation 40;	Articles 61 – 64 Article 86(2)	The proposed new paragraph (2) to Article 86 while empowering the identified bodies under Article 84 to cooperate with their foreign counterparts, ensures that this is done in consultation with the APML

¹²

The Recommendation is examined in relation to the Responsible Authority (as the FIU) only.

FATF 9 Special Recommendations - references are to old Recommendations with references to new Recommendations in brackets

Special Recommendation I – International Instruments (New Recommendation 36)

Rec.	Details	AML Law	Comments
1	Define the FT offense in line with the definition of the offense in the FT Convention;	Article 2 (2) – (5)	Serbia authorities to confirm with other relevant legislation

Special Recommendation II – Criminalisation of Terrorist Financing (New Recommendation 5)

Rec.	Details	AML Law	Comments
1	Extend the criminalisation of FT in all instances envisaged in SR.II with reference to the financing of terrorist organisations and the individual terrorists	Article 2 (2) – (5)	Serbia authorities to confirm with other relevant legislation
2	Extend the criminalisation to the whole range of activities envisaged by Article 2(1) (a) and (b) of the FT convention;	Article 2 (2) – (5)	Serbia authorities to confirm with other relevant legislation
3	Define “funds” so as to cover “assets of every kind, whether 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, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit”	Article 3(1)(1)	‘Property’ is proposed to be given a much broader definition in the AML Law which is more in harmony with the FATF one. The term ‘funds’ is not defined in the AML Law and hence it should be defined in the appropriate specific law.
4	Amend the FT offence as it should not require that funds are linked to a specific terrorist act.	Article 2 (2) – (5)	Serbia authorities to confirm with other relevant legislation

Special Recommendation III – Freezing of Funds Used for Terrorist Financing (New Recommendation 6)

Rec.	Details	AML Law	Comments
1	The current legal framework does not enable the Serbian authorities to take the necessary preventive and punitive measures to freeze and if appropriate, seize terrorist related funds or other assets without delay, in accordance with the relevant United Nations resolutions.	n.a.	The AML Law does not cover freezing and seizure. This recommendation is to be addressed through the specific governing laws.

Special Recommendation IV – Reporting of transactions related to financing of terrorism (New Recommendation 20)

Rec.	Details	AML Law	Comments
	(no recommendations of a legal nature are made)	n.a.	

Special Recommendation V – International Co-operation (New Recommendation 37)

Rec.	Details	AML Law	Comments
1	(no recommendations of a legal nature are made)	n.a.	

Special Recommendation VI – Alternative remittances (New Recommendation 14)

Rec.	Details	AML Law	Comments
1	Requirements should be introduced for MVT service operators to maintain a current list of agents and to make it available to the designated competent authority.	Article 12D	Although normally such provisions, including registration, would be covered by the sector specific laws and no information is available as to whether MVT providers can appoint agents, Article 12D is proposed on the assumption that they can. If not it should be removed and include instead a direct prohibition.

Special Recommendation VII – Wire Transfers (New Recommendation 16)

Rec.	Details	AML Law	Comments
1	Provide in legislation for obtaining full originator information in the case domestic payment transactions, and for including such information in the message or payment order accompanying the transfer.	Article 12B(7)	
2	Provide in legislation for verifying the identity of the originator in accordance with Recommendation 5, at least for all wire transfers of EUR 1.000 and more.	Article 12B(2)	
3	Legislatively provide for sanctions applicable to money transfer businesses for their failure to meet the requirements of SR VII.	Article 88(1) (indents 5a to 5d)	

Special Recommendation VIII – Non Profit Organisations (New Recommendation 8)

Rec.	Details	AML Law	Comments
1	Authorities should review the legal framework to ensure that: a) NPO-s maintain information on purpose and objective of their stated activities and on the identity of the persons who own, control or direct their activities, including senior officers, board members and trustees and that such information is publicly available b) all NPO-s are adequately registered and that information is available to competent authorities c) record keeping requirements for NPO-s include records of domestic and international transactions sufficiently detailed to verify that funds have been spent consistently with the purpose and objectives of	n.a.	Governed by other laws. Notwithstanding, the new Recommendation retains the previous SR VIII in total

	<p>the organisation and keep such data for a period of at least 5 years</p> <p>d) there are measures in place to sanction violations of oversight measures or rules by NPO-s or persons acting on behalf of NPO-s</p>		
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Special Recommendation IX – Cash couriers (New Recommendation 32)

Rec.	Details	AML Law	Comments
1	Introduce freezing requirements envisaged by SR.III and the UNSCR in the case of persons who are carrying out a physical cross-border transportation of currency or bearer negotiable instruments that are related to FT,	n.a	The AML Law does not provide for freezing procedures. This recommendation should be addressed through other legislation – not being part of this review pack
2	Increase the level of sanctions to ensure that they are dissuasive	n.a.	Governed by other laws not within this review pack.

APPENDIX 3 - REFERENCES RELATED TO THE PREVENTION OF MONEY LAUNDERING AND FINANCING OF TERRORISM IN OTHER SECTORAL FINANCIAL LEGISLATION

Articles indicated do not necessarily cover the requirements under the FATF Recommendations, and may relate only to prudential matters, but they contribute for compliance complementary to the Law on the Prevention of Money Laundering and the Financing of Terrorism

Law	Licensing, Ownership, Management & Compliance	Confidentiality	Supervision	Non-Pecuniary Sanctions	Comments
Law on Banks (Annex 02)	Article 15 – 18 Article 71 – 72 Article 75 Article 85 - 87 Article 94 - 101	Articles 46 - 48	Article 9 Articles 102 –109 Articles 122 - 123	Article 112	Adequately covered by present provisions and the related provisions in the AML Law. No specific amendments required. Side comment to Article 94 is however relevant.
Insurance Law (Annex 03)	Article 18 Article 32 Article 34 -35 Article 39 Article 49 Article 65 Article 78 Article 93 - 94 Article 103 Article 135 Article 179	<no provisions>	Articles 148 - 155	Article 161	The Insurance Law does not include any provisions on confidentiality. Hence the specific law will not impact on the AML Law. Moreover, although it includes non-pecuniary sanctions imposed during the supervisory process, it does not include an escalation of non-pecuniary sanctions as included in the Law on Banks under Article 112 and which, with the proposed amendments to the AML Law under Article 74, would become applicable under the AML Law. Moreover it is being proposed that Article 32, in relation to the acquisition of holdings in an insurance

Law	Licensing, Ownership, Management & Compliance	Confidentiality	Supervision	Non-Pecuniary Sanctions	Comments
					company, be amended to retain consistency with the provisions of Article 102 of the Law on the Capital Market and which reflects the requirements under the EU Directive 2007/44/EC on mergers and acquisitions. Consequent to this proposed addition, further amendments are proposed for Articles 34 and 35.
Law on Compulsory Traffic Insurance (Annex 04)	Article 85	<no provisions>	Article 88	Article 67	In terms of Article 4 of the AML Law only life insurance business is captured. Hence this Law may not be captured under the AML regime. Notwithstanding the Law has been reviewed but no changes are necessary
Law on Financial Leasing (Annex 05)	n.a.	n.a.	n.a.	n.a.	As stated in the Law itself its objective is to govern financial leasing transactions, financial leasing agreements, the rights and obligations of the parties to a financial leasing transaction and the Register of Financial Leases. It does not govern the licensing and operations of financial leasing providers. Hence no amendments are necessary.

Law	Licensing, Ownership, Management & Compliance	Confidentiality	Supervision	Non-Pecuniary Sanctions	Comments
Law on Foreign Exchange Operations (Annex 06)	Article 8(a) Article 31(a)	<no provisions>	Articles 44 – 48 Articles 50 - 55	Article 39a	The Law governs transactions and operations undertaken by persons and entities authorised for such activities. The Law does not provide for licensing but it does provide for the supervision of the activity. Some provisions are relevant for AML/CFT purposes - no changes are necessary.
Law on Voluntary Pension Funds and Pension Schemes (Annex 07)	Article 9 – 13 Article 14 - 15	Article 18	Articles 67 - 69	Article 69a Article 70 Article 70a Article 71	Adequately covered by present provisions and the related provisions in the AML Law. It is being proposed that Article 14, in relation to the acquisition of holdings in a management company, be amended to retain consistency with the provisions of Article 102 of the Law on the Capital Market and which reflects the requirements under the EU Directive 2007/44/EC on mergers and acquisitions.
Law on the National Bank of Serbia (Annex 08)	n.a.	Article 86a	Article 21a Articles 63 – 64	n.a.	Adequately covered by present provisions and the related provisions in the AML Law. One amendment is being proposed to Article 86a regarding confidentiality in line with the proposed paragraph (4) to Article 74 of the AML Law.

Law	Licensing, Ownership, Management & Compliance	Confidentiality	Supervision	Non-Pecuniary Sanctions	Comments
Law on the Capital Market (Annex 09)	Article 2 (48) Article 57 Article 100 – 105 Article 107 Article 153 Article 155	Article 256	Articles 42 – 44 Article 49 Article 71 Articles 93 – 94 Article 146 Articles 264 - 266	Article 132 Article 205 Article 207 Article 272	Adequately covered by present provisions and the related provisions in the AML Law. The Law on the Capital Market includes various provisions that relate to AML/CFT issues which are not in conflict with but complementary to the relevant provisions in the AML Law. One amendment is being proposed to Article 256 regarding confidentiality in line with the proposed paragraph (4) to Article 74 of the AML Law.
Law on take-overs of Joint Stock Companies (Annex 10)	Article 13	<no provisions>	Articles 41a	Article 41a	As stated the objective of this Law is to establish conditions and procedures for takeovers of joint stock companies with registered offices in the Republic of Serbia, rights and obligations of participants in takeover procedures and supervision proceedings over the implementation of joint stock company takeover procedures. It does not govern the licensing and operations of market operators in this activity. According to paragraph (2) of Article 84 of the AML Law, the Securities Commission has supervisory competence over banks with respect to custody and broker-dealer

Law	Licensing, Ownership, Management & Compliance	Confidentiality	Supervision	Non-Pecuniary Sanctions	Comments
					<p>business; over Investment fund management companies; and over broker-dealer companies. It is not clear whether the Commission has supervisory competence for money laundering and terrorism financing in terms of the AML Law over take-over bids procedures in accordance with this Law.</p>

APPENDIX 4 - PREVENTION OF MONEY LAUNDERING AND FINANCING OF TERRORISM REVIEW OF FINANCIAL LAWS WITHIN THE REMIT OF THE NATIONAL BANK OF SERBIA – PROPOSED AMENDMENTS.

Side comments included in the relevant Laws themselves are not included in this Appendix. Refer to Annexes

Law	Proposed Amendment	Comment
<p>The Law on Banks (Annex 02)</p>	<p>Insertion of new paragraph (4) to Article 94:</p> <p><i>In assessing the application referred to in paragraph 1 of this Article, in order to ensure the sound and prudent management of the bank in which an acquisition is proposed, and having regard to the likely influence of the proposed acquirer on the bank, the National Bank of Serbia shall appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following criteria:</i></p> <ol style="list-style-type: none"> <i>1) the reputation of the proposed acquirer;</i> <i>2) the financial soundness of the proposed acquirer;</i> <i>3) whether the bank will be able to comply with the requirements regarding the capital and other terms and conditions envisaged by provisions of this Law and, in particular, whether the group of which the bank may become a part has a structure that makes it possible to exercise effective supervision;</i> <i>4) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing, within the meaning of the regulations</i> 	<p>It is advisable that in prescribing detailed terms and conditions for granting its consent to the acquisition of ownership in a bank as required under paragraph (3) of Article 94, the National Bank of Serbia takes into account the provisions of Article 102 of the Law on the Capital Market which is modelled on the requisites of the EU Directive 2007/44/EC on Mergers and Acquisitions and in particular criterion (4) which is very relevant for AML/CFT purposes.</p> <p>Within this context it is recommended to retain the proposed text in the Law on Banks as paragraph (4) to Article 94 and clarify further in any Decision issued by the NBS in terms of the fore-mentioned paragraph (3) – unless already included therein</p>

Law	Proposed Amendment	Comment
	<p><i>governing money laundering and terrorist financing, has been committed or attempted, or could be committed;</i></p> <p><i>5) whether a person possessing or proposing to acquire a qualifying or significant participation is subject to a statutory disqualification.</i></p> <p><i>The National Bank of Serbia shall regulate in detail criteria of eligibility and reliability of a person acquiring a qualifying or significant participation.</i></p> <p>Insertion of new item (1) to Article 96:</p> <p><i>The proposed acquirer failed to meet the all the criteria set in provisions of paragraph (4) of Article 94 of this Law</i></p>	<p>The proposed new item (1) replaces the previous items (1) and (2) and ensures that ALL requirements in the proposed paragraph (4) to Article 94 are met – inspired from Article 103 item (2) of the Law on Capital Market.</p>
<p>The Insurance Law (Annex 03)</p>	<p>Insertion of new paragraph (4) to Article 32:</p> <p><i>In assessing the application referred to in paragraph 1 and paragraph 2 of this Article, in order to ensure the sound and prudent management of the insurance company in which an acquisition is proposed and having regard to the likely influence of the proposed acquirer on the insurance company, the National Bank of Serbia shall appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following criteria:</i></p> <p><i>1) the reputation of the proposed acquirer;</i></p> <p><i>2) the financial soundness of the proposed</i></p>	<p>These provisions are in line with the most recent requirement under the EU legislation (Directive 2007/44/EC of September 2007 on mergers and acquisitions). Indeed it is inspired from Article 102 of the Law on Capital Market thus providing consistency.</p>

Law	Proposed Amendment	Comment
	<p><i>acquirer;</i></p> <p><i>3) whether the insurance company will be able to comply with the requirements regarding the capital and other terms and conditions envisaged by provisions of this Law and, in particular, whether the group of which the insurance company may become a part has a structure that makes it possible to exercise effective supervision;</i></p> <p><i>4) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing, within the meaning of the regulations governing money laundering and terrorist financing, has been committed or attempted, or could be committed;</i></p> <p><i>5) whether a person possessing or proposing to acquire a qualifying stake is subject to a statutory disqualification.</i></p> <p><i>The National Bank of Serbia shall regulate in detail criteria of eligibility and reliability of a person acquiring qualified stakes.</i></p> <p>Addition to paragraph (3) of Article 34:</p> <p><i>.... taking account of the relevant provisions of Article 32 of this Law.</i></p> <p>Insertion of new item (1) to Article 35:</p> <p><i>1) That, the proposed acquirer failed to meet the all the criteria set in provisions of paragraph</i></p>	<p>In particular item (4) is of importance for the purposes of Recommendation 26</p> <p>The proposed addition links the decision under Article 34 to the proposed conditions under Article 32 of the Insurance Law</p> <p>The proposed new item (1) ensures that ALL requirements in the proposed paragraph (4) to Article 32 are met – inspired</p>

Law	Proposed Amendment	Comment
	(4) of Article 94 of this Law.	from Article 103 item (2) of the Law on Capital Market.
Law on compulsory traffic insurance (Annex 04)	No amendments proposed	In terms of Article 4 of the AML Law only life insurance business is captured. Hence this Law may not be captured under the AML regime. Notwithstanding the Law has been reviewed but no changes are necessary.
Law on Financial Leasing (Annex 05)	No amendments proposed	As stated in the Law itself its objective is to govern financial leasing transactions, financial leasing agreements, the rights and obligations of the parties to a financial leasing transaction and the Register of Financial Leases. It does not govern the licensing and operations of financial leasing providers. Hence no amendments are necessary.
Law on Foreign Exchange Operations (Annex 06)	No amendments proposed	The Law provides for the operational aspect and procedures for foreign exchange.
Law on Voluntary Pension Funds and Pension Schemes. (Annex 07)	<p>Insertion of new paragraph (4) to Article 14:</p> <p><i>In assessing the application referred to in paragraph 1 and paragraph 2 of this Article, in order to ensure the sound and prudent management of the management company in which an acquisition is proposed, and having regard to the likely influence of the proposed acquirer on the management company, the National Bank of Serbia shall appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following criteria:</i></p> <p>1) <i>the reputation of the proposed acquirer;</i></p>	These provisions are in line with the most recent requirements under the EU legislation (Directive 2007/44/EC of September 2007 on mergers and acquisitions). Indeed it is inspired from Article 102 of the Law on the Capital Market thus providing consistency. In particular item (4) is of importance for the purposes of Recommendation 26

Law	Proposed Amendment	Comment
	<p>2) <i>the financial soundness of the proposed acquirer;</i></p> <p>3) <i>whether the management company will be able to comply with the requirements regarding the capital and other terms and conditions envisaged by provisions of this Law and, in particular, whether the</i></p> <p><i>group of which the management company may become a part has a structure that makes it possible to exercise effective supervision;</i></p> <p>4) <i>whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing, within the meaning of the regulations governing money laundering and terrorist financing, has been committed or attempted, or could be committed;</i></p> <p>5) <i>whether a person possessing or proposing to acquire a qualifying or a significant stake is subject to a statutory disqualification.</i></p> <p><i>The National Bank of Serbia shall regulate in detail criteria of eligibility and reliability of a person acquiring a qualified or a significant stake.</i></p> <p>Addition to previous paragraph (4) Article 14:</p> <p>The National Bank of Serbia shall issue the approval once it determines that the conditions referred to <i>in paragraph 4) of this Article and in Article 12, paragraph 1, indents 1) - 3) and 5) - 7) hereof are fulfilled.</i></p>	<p>The proposed addition is to ensure that all the criteria in the proposed paragraph (4) have to be met before an approval is issued.</p>

Law	Proposed Amendment	Comment
<p>Law on the National Bank of Serbia (Annex 08)</p>	<p>Addition to paragraph (4) of Article 86a: Officials and employees of the National Bank of Serbia shall be obliged to keep secret data irrespective of the manner in which they have learned such data, <i>unless otherwise required by other laws.</i></p>	<p>Paragraphs (4) and (5) of Article 86a deal with confidentiality and could impact on the provisions of Recommendation 9 on financial institutions secrecy laws – even though this Recommendation does not specifically refer to Central Banks.</p> <p>Notwithstanding, as a supervisory authority under the AML Law (Article 82) the NBS has to provide information to the APML – for example under Article 55 and Article 86 of the AML Law. Notwithstanding that confidentiality under these paragraphs is intended to be lifted through the proposed paragraph (4) to Article 74 of the AML Law, Serbia authorities may wish to consider whether some amendments are necessary as indicated in accordance with the legislative system of the Republic of Serbia. This is also consistent with proposed amendments re confidentiality in other financial laws</p>

APPENDIX 5 - PREVENTION OF MONEY LAUNDERING AND FINANCING OF TERRORISM REVIEW OF FINANCIAL LAWS WITHIN THE REMIT OF THE SECURITIES COMMISSION OF SERBIA – PROPOSED AMENDMENTS.

Side comments included in the relevant Laws themselves are not included in this Appendix. Refer to Annexes

Law	Proposed Amendment	Comment
<p>Law on the Capital Market (Annex 09)</p>	<p>Addition to paragraph (2) of Article 256: The information referred to in Para. 1 above, with the exception of publicly available information, shall be considered as business secret, <i>and may be disclosed only as provided for under this or any other law.</i></p>	<p>Although the lifting of secrecy provisions in terms of Recommendation 9 relates to financial institutions, the provisions under Article 256 contribute to higher compliance with Recommendation 9</p> <p>Notwithstanding, as a supervisory authority under the AML Law (Article 82) the Securities Commission has to provide information to the APML – for example under Article 55 and Article 86 of the AML Law. Notwithstanding that confidentiality under these paragraphs is intended to be lifted through the proposed paragraph (4) to Article 74 of the AML Law, Serbia authorities may wish to consider whether some amendments are necessary as indicated in accordance with the legislative system of the Republic of Serbia.</p>
<p>Law on take-overs of Joint Stock Companies (Annex 10)</p>	<p>No amendments proposed</p>	<p>As stated the objective of this Law is to establish conditions and procedures for takeovers of joint stock companies with registered offices in the Republic of Serbia, rights and obligations of participants in takeover procedures and supervision proceedings over the implementation of joint stock company takeover procedures. It does not govern the licensing and operations of market operators in this activity.</p> <p>According to paragraph (2) of Article 84 of the AML Law, the Securities Commission has supervisory competence over banks with respect to custody and broker-dealer business; over Investment fund management companies; and over</p>

Law	Proposed Amendment	Comment
		broker-dealer companies. It is not clear whether the Commission has supervisory competence for money laundering and terrorism financing in terms of the AML Law over take-over bids procedures in accordance with this Law.

APPENDIX 6 - REVIEW OF DECISIONS AND REGULATIONS FOR THE PREVENTION OF MONEY LAUNDERING AND FINANCING OF TERRORISM ISSUED BY THE NATIONAL BANK OF SERBIA – PROPOSED AMENDMENTS.

Side comments included in the Decisions themselves are not included in this Appendix. Refer to Annexes Proposed amendments, additions or deletions are indicated in italic print

Regulation	Proposed Amendment	Comment
<p>Decision on agent operations and requirements for performing such operations (Annex 11)</p>	<p>Addition to Section 6: <i>The agreement shall further cover the responsibilities of the agent to apply the customer due diligence measures for the prevention of money laundering and the financing of terrorism in accordance with the internal procedures of the delegating bank and the responsibilities of the delegating bank in monitoring the effective implementation of these procedures by the agent.</i></p>	<p>In terms of Recommendation 17 an outsourcing agency agreement does not fall under the principle of reliance on third parties. Under a contractual agreement the agent is synonymous with the bank and the procedures it applies should be those of the bank. This amendment is proposed on the assumption that the agent will have direct contact with the clients and not only to effect the technical part of the payment on behalf of the bank who retains contact with the client.</p>
<p>Decision on conditions and manner of opening, maintaining and closing bank accounts. (Annex 12)</p>	<p>Addition of new Section 11a: <i>11a. When opening, maintaining and closing accounts within the meaning hereof, banks shall undertake measures and actions envisaged by the Law on the Prevention of Money Laundering and the Financing of Terrorism and any relevant regulations and any documents required under this Decision shall be without prejudice to any additional documents required by the Law on the Prevention of Money Laundering and the Financing of Terrorism.</i></p> <p>Insertion to Section 22a: <i>.... and terrorism financing</i></p>	<p>The addition of the proposed new Section 11a is a caution to banks to ensure that they comply with the main AML/CFT requirement under the law when opening accounts and requesting information under this Decision. The proposed Article is also consistent with the provisions of the Decision on terms of opening and manner of maintaining non-resident accounts</p> <p>For clarification purposes</p>

Regulation	Proposed Amendment	Comment
Decision on data to be reported by lessors to the National Bank of Serbia and the reporting manner and timeframe (Annex 13)	No proposed amendments	Decision is of a prudential nature for reporting purposes.
Decision on detailed conditions and manner of conducting supervision of lessors' operations (Annex 14)	Insertion of item (5) to Section 14: <i>5) the lessor is or has been involved in money laundering or terrorism financing.</i>	Since with the inclusion of the proposed paragraph (5) to Article 82 of the AML Law the non-pecuniary sanctions contemplated under Section 6 of this law become applicable also under the AML Law. Section 14 of this Law should therefore recognize one of the reasons for revoking a licence to be related to money laundering and terrorist financing – Recommendation 35.
Decision on detailed content and standardized format of the contract of membership in voluntary pension fund (Annex 15)	Addition of new Article 3a: <i>3a When establishing the contract of membership in accordance with Section 2 of this Decision, the management company shall undertake actions and measures stipulated by the law governing anti-money laundering and the financing of terrorism activities.</i>	The addition of the proposed Section 3a is consistent with Section 22a of the Decision on conditions and manner of opening, maintaining and closing bank accounts, ensuring that the CDD obligations under the AML Law are not substituted by the contract of membership – Recommendation 10.
Decision on internal controls system and risk management in insurance companies. (Annex 16)	Amendment item (1) paragraph (1) Section 19: <i>.....company operations involving an increased probability of money laundering and terrorist financing through a periodic business-based risk assessment of its products, services, delivery channels and the geographic location in which the company undertakes its business operations to identify money laundering and financing of terrorism risks that the company may be exposed to;</i>	This proposed addition to Section 19 complements the proposed amendment to Article 7(2) of the AML Law requiring obligors to undertake a risk assessment of the risks the institutions may be exposed to, - and ensures compliance with Recommendation 1.

Regulation	Proposed Amendment	Comment
	<p>Addition to item (3) paragraph (1) Section 19:</p> <p><i>.....and to this effect the company shall specify a list of suspicious transactions indicators;</i></p> <p>Amendment to paragraph (1) of Section 20:</p> <p>20. The company shall define detailed <i>risk sensitivity</i> criteria for the application of a <i>relationships-based risk assessment of its clients, their categorization according to the risk exposure and the identification of high risk clients.</i> and specify a list of suspicious transactions indicators.</p>	<p>This addition to item (3) of paragraph (1) of Section 19 is transferred from the current Section 20 as, consequent to the proposed amendment to Section 20, it is more appropriately placed here.</p> <p>Section 20 is being amended to define clearer its reference to the application of a risk based approach in accordance with Recommendation 10. The last part of the last sentence has been moved to item (3) of paragraph (1) of Section 19</p>
<p>Decision on minimum conditions for the conclusion of the financial lease agreement and the manner of disclosing the lease rental and other costs arising from the conclusion of such agreement <i>(Annex 17)</i></p>	<p>No proposed amendments</p>	<p>Decision is of procedural nature for the conclusion of contracts on financial leasing</p>
<p>Decision on minimal content of the "Know Your Client" procedure <i>(Annex 18)</i></p>	<p>Amendment to paragraph (2) of Section 2:</p> <p>2) <i>Risk factors</i> are those circumstances and characteristics of a client, product, service, <i>country</i> or transaction</p> <p>Addition of paragraph (7) to Section 2:</p> <p>7) <i>'Customer Acceptance Policy'</i> is a <i>risk sensitive framework within which customers are accepted, maintained, monitored and managed through</i></p>	<p>The country risk is being included in compliance with the type of risks identified by the FATF Recommendations under Recommendation 10</p> <p>The definition of a Customer Acceptance Policy is proposed to be included in the light of proposed references in this Decision, as part of the RBA, and in compliance with the Basle</p>

Regulation	Proposed Amendment	Comment
	<p><i>adequate risk based procedures.</i></p> <p>Addition to Section 3:</p> <p>— <i>and to this effect the Procedures shall require the obligor to undertake periodic business-based risk assessments of its products, services, delivery channels and country in which the obligor undertakes its business operations, to identify money laundering and financing of terrorism risks that the obligor may be exposed to.</i></p> <p>Amendment to paragraph (1) of Section 4:</p> <p>1) <i>Determination of client acceptability in terms of the degree of AML/CTF risk through the development of a Customer Acceptance Policy;</i></p> <p>Amendment to paragraph (2) of Section 4:</p> <p>2) <i>Classification of clients by risk factors through the development of risk sensitive criteria for the application of a relationships-based risk assessment of clients and the identification of the level of customer risk exposure in accordance with the Customer Acceptance Policy</i></p> <p>Amendment to paragraph (3) of Section 4:</p> <p>3) <i>Customer due diligence, applying simplified or enhanced measures as appropriate;</i></p>	<p>Document on Customer Due Diligence and Recommendation 10</p> <p>This addition to Section 3 complements the proposed amendment to Article 7(2) of the AML Law requiring obligors to undertake a risk assessment of the risks the institution itself may be exposed to, - and ensures compliance with Recommendation 1</p> <p>Developing a Customer Acceptance Policy is part of the risk based approach for determining the level of customer risk acceptable to an institution in its risk appetite.</p> <p>Paragraph (2) of Section 4 is being amended to define clearer its reference to the application of a risk based approach in accordance with Recommendation 10. Clients can only be classified by risk factors once the obligor carries out a risk assessment of the client through a risk scoring procedure to establish the level of risk posed by that customer.</p> <p>The addition to paragraph (3) of Section 4 is to ensure that the Procedure defines under which circumstances, further to those required by Law, SCDD or ECDD is to be applied</p>

Regulation	Proposed Amendment	Comment
	<p>Amendment to paragraph (1) of Section 5:</p> <p>The obligor shall determine client acceptability in terms of the level of AML/CTF risk attached to the client in accordance with the Law and Decision on Guidelines <i>as reflected in the obligor's Customer Acceptance Policy</i></p> <p>Amendment to paragraph (2) of Section 5:</p> <p>To determine client acceptability, the obligor shall in its Procedure <i>require the development of a Customer Acceptance Policy to regulate in particular:</i></p> <p>Amendment to indent(3) paragraph(1) Section 8</p> <p><i>including the name of named beneficiaries, being natural or legal persons or legal arrangements, in the case of life or other investment-related insurance business</i></p>	<p>The proposed addition to the paragraph is being proposed to ensure that the Customer Acceptance Policy reflects the provisions of the Law and the Decision within the risk appetite of the obligor</p> <p>The Customer Acceptance Policy covers all the obligations under paragraph (2) within its definition. Moreover the amendment imposes an obligation on obligors to develop a Customer Acceptance Policy – Recommendation 10.</p> <p>This addition reflects the provisions of the proposed Article 20A under the AML Law in accordance with the new provisions in the Interpretative Note to Recommendation 10 regarding life insurance policies re beneficiary owner – Item D of the Interpretative Note.</p>
Decision on minimum requirements regarding organizational and technical resources of Voluntary Pension Fund Management Company	No proposed amendments (Annex 19)	The Decision is of a prudential nature.
Decision on implementing the provisions of the Law on Banks relating to granting of a preliminary bank founding permit, bank operating license and consents by the National Bank of Serbia, as well as the provisions relating to the establishment of criteria for defining a first-class bank (Annex 20)	<p>Addition of paragraph (12a) to Section 2:</p> <p>12a) details on the internal control and mechanisms to be applied in order to prevent money laundering and the financing of terrorism;</p>	This new paragraph 12a will complement both the last paragraph of Section 3 and the proposed amendments to the Law on Banks in accordance with the EU Directive 2007/44/EC on mergers and acquisition.

Regulation	Proposed Amendment	Comment
<p>Decision on risk control rules in operations of the Voluntary Pension Fund Management Company and Voluntary Pension Fund (Annex 21)</p>	<p>Amendment to paragraph (2) of Section 6: and they shall also include the recognition and prevention of money laundering <i>and financing of terrorism, and the identification of money laundering and financing of terrorism business risks that the fund management company or the fund may be exposed to.</i></p> <p>Amendment to paragraph (3) of Section 6: Procedures for money laundering <i>and financing of terrorism</i> recognition and prevention shall particularly imply the establishment of rules of conduct of employees regarding money laundering <i>and financing of terrorism</i> recognition and prevention in operations of the fund management company or the fund, in line with operations that these employees perform and the function they discharge, as well as the regulation of the procedure <i>for customer due diligence and ongoing monitoring on a risk sensitivity basis and</i> of reporting to the competent body the transactions with regard to which there are reasons for suspicion that money laundering <i>or financing of terrorism</i> has taken, <i>is taking or may take</i> place, i.e. the regulation of the procedure of denouncing persons who perform these transactions, in line with regulations that govern money laundering <i>and financing of terrorism</i> prevention.</p>	<p>The additions to paragraph (2) of Section 6 imply that the management company and the fund must have procedures in place to undertake business related risk assessments (Recommendation 1 as transposed in the AML Law).</p> <p>The words 'and terrorism financing' are added as appropriate for completeness.</p> <p>The references to Customer Due Diligence is important to indicate that customer risk is managed through the customer due diligence process on a risk sensitivity basis – Recommendation 10</p> <p>The proposed insertion of the words 'is taking or may take (place)' give continuity of identified possible money laundering or terrorism financing activities in line with the proposed amendments to the AML Law.</p>
<p>Decision on terms of opening and manner of maintaining non-resident accounts (Annex 22)</p>	<p>Amendment to Section 8: 8. When opening, maintaining and closing non-resident accounts within the meaning hereof, banks shall undertake measures and actions envisaged by the law</p>	<p>A minor amendment proposed for Section 8 to ensure that the requirements under the AML Law are also observed together with those under the relevant regulations.</p>

Regulation	Proposed Amendment	Comment
	<p>on foreign exchange operations and <i>the anti-money laundering and financing of terrorism law and regulations.</i></p> <p>Amendment to paragraph (2) of Section 9:</p> <p>In support of the application referred to in paragraph 1 hereof, <i>and without prejudice to other documents that are required in terms of the Law on the Prevention of Money Laundering and the Financing of Terrorism</i>, the following documents shall be submitted:</p> <p>Amendment to Section 16:</p> <p>16. Persons from Sections 13, 14 and 15 hereof shall submit to the bank copies of documents prescribed thereunder, <i>and any other documents required in terms of the Law on the Prevention of Money Laundering and the Financing of Terrorism,</i></p>	<p>Although the generality of Section 8 as amended should suffice for banks to collect and verify all documents in terms of the AML Law, it may be prudent to specifically draw the attention of banks on the requirements under the AML Law for the purposes of Recommendation 10</p> <p>Although the generality of Section 8 as amended should suffice for banks to collect and verify all documents in terms of the AML Law, it may be prudent to specifically draw the attention of banks on the requirements under the AML Law for the purposes of Recommendation 10</p>
<p>Decision on terms and conditions of identification, monitoring and management of bank compliance risk.</p> <p>(Annex 23)</p>	<p>No proposed amendments</p>	<p>The Decision is generic in nature and does not specify any particular units or operations of a bank as falling within the competence of the Organizational Unit. It is therefore opined that as drafted the Decision would apply to compliance risk within the context of the prevention of money laundering and terrorism financing.</p>
<p>Decision on the conditions of opening and manner of maintaining foreign exchange accounts of residents</p> <p>(Annex 24)</p>	<p>Amendment to Section 5:</p> <p>At the time of opening, maintaining and closing foreign exchange accounts, within the meaning hereof, banks shall be required to take actions and measures stipulated in the <i>law and relevant regulations governing</i></p>	<p>A minor amendment proposed for Section 6 to ensure that the requirements under the AML Law are observed together with those under the relevant regulations and consistent with other relevant Decisions amended as proposed.</p>

Regulation	Proposed Amendment	Comment
	<p>on the prevention of money laundering <i>and the financing of terrorism.</i></p> <p>Amendment to paragraph (2) of Section 8:</p> <p>Along with the request from paragraph 1 hereof, <i>and without prejudice to other documents that are required in terms of the Law on the Prevention of Money Laundering and the Financing of Terrorism</i>, the following documentation shall also be submitted:</p> <p>Amendment to paragraph (4) of Section 13:</p> <p>The persons from this Section shall also submit documents to the bank based on which the identity of the foreign exchange account holder can be verified, <i>and any other documents required in terms of the Law on the Prevention of Money Laundering and the Financing of Terrorism,</i></p>	<p>Although the generality of Section 5 should suffice for banks to collect and verify all documents in terms of the AML Law, it may be prudent to specifically draw the attention of banks on the requirements under the AML Law for the purposes of Recommendation 10 – and consistent with other similar Decisions amended as proposed.</p> <p>Although the generality of Section 5 should suffice for banks to collect and verify all documents in terms of the AML Law, it may be prudent to specifically draw the attention of banks on the requirements under the AML Law for the purposes of Recommendation 10 - – and consistent with other similar Decisions amended as proposed</p>
<p>Decision on the guidelines for assessing the risk of money laundering and terrorism financing. (Annex 25)</p>	<p>Addition of new Section 2a:</p> <p><i>2a. Consequently there are two types of risk assessments that obligors are expected to undertake. These risk assessments are a business-based one to identify the money laundering and financing of terrorism risks that the obligor could be exposed to and a relationship-based risk assessment to categorize and identify the level of risk that a client presents to the obligor.</i></p>	<p>The introduction of the proposed Section 2a is consistent with the requirements under the AML Law amended as is being proposed and reflect the requirements under Recommendation 1 (business –based) and Recommendation 10 (relationship-based or customer)</p>

Regulation	Proposed Amendment	Comment
	<p>Addition of new Section 2b:</p> <p><i>2b. A business based risk assessment of the obligor's products, services, delivery channels and the geographic location in which the obligor undertakes its business operations presupposes a good knowledge of the obligor's business operations and the exercise of sound judgment such that the risks for money laundering and financing of terrorism can be weighed according to each individual factor as well as a combination of them. To this effect obligors are expected to develop methodologies and tools using the hereunder guidance as appropriate to the obligor.</i></p> <p>Addition of new Section 2c:</p> <p><i>2c A business-based risk assessment matrix should be developed requiring the obligor to identify and indicate a 'yes', 'no' or 'not applicable' reply to operations, products and services which, further to those indicated under Section 17 of these Guidelines, are offered by the obligor and include the following. The list is not exhaustive and obligors are required to adapt these instances and include others according to their activities and operations. For the sake of completeness the list includes products and activities that are already considered by Law as posing a higher risk.</i></p> <p><i>1) Identification of products, services and delivery channels which could pose a higher risk:</i></p>	<p>The inclusion of the proposed Section 2b is complementary to Section 2a defining the business-based risk assessment and requiring obligors to develop mechanisms accordingly.</p> <p>The proposed Section 2c, in addition to Section 17, provides guidance for the development of a methodology for a business-based risk assessment</p>

Regulation	Proposed Amendment	Comment
	<ul style="list-style-type: none"> - <i>Services that make it difficult to fully identify the customer(s)?</i> - <i>Services that make it difficult to fully identify the ultimate beneficial owner or beneficiary where applicable?</i> - <i>Services to and business relationships with foreign and domestic officials (PEPs)?</i> - <i>Services to and business relationships with Non-Profit Organisations (NPOs)?</i> - <i>Electronic funds payment services?</i> - <i>Any of the following services:</i> <ul style="list-style-type: none"> ▪ <i>Electronic cash (for example stored value cards – e-money)?</i> ▪ <i>Funds transfers (domestic and international):</i> <ul style="list-style-type: none"> - <i>Inwards?</i> - <i>Outwards?</i> ▪ <i>Automated Teller Machines (ATMs)?</i> ▪ <i>Currency Exchange Machines?</i> - <i>Services involving the use of carriers or couriers for international transport of cash, monetary instruments or other financial documents of value?</i> - <i>Services involving banknote and/or precious metal trading and delivery?</i> 	

Regulation	Proposed Amendment	Comment
	<ul style="list-style-type: none"> - <i>Services, business relationships or transactions on a non face-to-face basis, such as Internet services, by mail or by telephone?</i> - <i>Private banking facilities to domestic individuals?:</i> - <i>Trade finance activities, such as letters of credit?</i> - <i>Lending activities, particularly for these purposes loans secured by cash collateral and/or marketable securities?</i> - <i>Non-deposit account services (for example, non-deposit investment products and insurance)?</i> - <i>Correspondent banking relationships?</i> - <i>International correspondent banking services involving transactions such as commercial payments to non-customers of the obligor (for example acting as an intermediary body)?</i> - <i>Correspondent banking accounts through which cheque or bank draft writing privileges are extended to the customers of other institutions – pass through or payable through type accounts?</i> <p>2) <i>Identification whether the obligor operates with customers from or provides products or services in, the following geographic locations:</i></p> <ul style="list-style-type: none"> - <i>Are any of the customers of the obligor located in a known high crime area or jurisdiction?</i> - <i>Does the obligor or any of its customers operate or undertake activities in any country or jurisdiction that is not included in the list issued by the</i> 	

Regulation	Proposed Amendment	Comment
	<p style="text-align: center;"><i>Ministry of Finance in accordance with Section 4 of these Guidelines and the Law?</i></p> <p>Addition of new Section 2d:</p> <p><i>2d A 'yes' reply to any question in paragraphs (1) and (2) of Section 2c hereof shall prima facie be considered as posing a higher risk for money laundering or financing of terrorism in that particular product or service provided or country. Where appropriate therefore obligors are to apply risk mitigating measures.</i></p> <p>Amendment to paragraph (4) of Section 5:</p> <p>4) foreign officials <i>and domestic officials</i>, in accordance with the Law,</p> <p>Amendment to paragraph (1) of Section 9a:</p> <p>9a. The obligor shall establish the procedure determining whether the client or its beneficial owner is a foreign functionary, member of the foreign functionary's immediate family or foreign functionary's close associate, <i>or is a domestic official, member of the domestic official's immediate family or domestic official's close associate</i> whereby this procedure shall also be applied to the legal entity in which the foreign functionary, member of the foreign functionary's immediate family or foreign functionary's close associate <i>or the domestic official, member of the domestic official's immediate family or domestic official's close associate</i> is a representative, proxy or agent. This procedure helps determine different</p>	<p>Section 2d provides guidance on how a methodology built in accordance with Section 2c operates.</p> <p>The inclusion of domestic officials is consistent with the proposed relevant amendments to the AML Law reflecting the new obligations and requirements under Recommendation 12 on Politically Exposed Persons</p> <p>The AML Law refers to a 'foreign official' and not to a 'foreign functionary'. It is advisable to retain the same terms throughout the Guidelines as the AML Law for consistency and avoid ambiguities. Indeed in Section 10 reference is made to 'foreign official' hence there may not be consistency even within this Decision itself.</p> <p>The inclusion of references to domestic officials is consistent with the proposed relevant amendments to the AML Law reflecting the new obligations and requirements under Recommendation 12 on Politically Exposed Persons.</p>

Regulation	Proposed Amendment	Comment
	<p>approach to persons that are residents or domestic persons relative to persons that are non-residents or foreigners, as the latter persons are more likely to be foreign functionaries.</p> <p>Amendment to paragraph (2) of Section 9a: To obtain relevant information for identification of foreign functionaries <i>and domestic officials</i>, the obligor shall undertake the following activities:</p> <p>Amendment to paragraph (4) of Section 9a:that the resident or domestic person can be a foreign functionary <i>or a domestic official</i>, the obligor shall undertake.....</p> <p>Amendment to paragraph (5) of Section 9a: If the client's beneficial owner is a foreign functionary, member of the foreign functionary's immediate family or foreign functionary's close associate, <i>or is a domestic official, member of the domestic official's immediate family or domestic official's close associate</i>, or if these persons manage the client, the obligor shall undertake against this client reinforced due diligence actions and measures <i>in accordance with the Law on the Prevention of Money Laundering and the Financing of Terrorism</i>. Such actions and measures are undertaken by the beneficiary even when the physical person stops discharging public function (former foreign functionary <i>or domestic official</i>) over as much time as</p>	<p>The inclusion of references to domestic officials is consistent with the proposed relevant amendments to the AML Law reflecting the new obligations and requirements under Recommendation 12 on Politically Exposed Persons.</p> <p>The inclusion of references to domestic officials is consistent with the proposed relevant amendments to the AML Law reflecting the new obligations and requirements under Recommendation 12 on Politically Exposed Persons.</p> <p>The inclusion of references to domestic officials , and their family members and close associates is consistent with the proposed relevant amendments to the AML Law reflecting the new obligations and requirements under Recommendation 12 on Politically Exposed Persons</p> <p>Direct reference to the AML Law to direct obligors to the mandatory requirements under the Law for enhanced diligence and monitoring</p> <p>Should this reference be to the 'beneficiary' or to the 'obligor' –</p>

Regulation	Proposed Amendment	Comment
	<p>necessary to conclude that this person did not abuse his/her former position.</p> <p>Amendment to paragraph (6) of Section 9a:</p> <p>The procedure from paragraph 1 hereof shall be undertaken even during business relationship with the client, within regular monitoring of its operations. The following factors, <i>as applicable to foreign functionary or domestic official</i>, may be important here:</p> <ul style="list-style-type: none"> - foreign functionary's <i>or domestic official's</i> country of origin (risk related to dealing with the foreign functionary is higher if the functionary comes from the country with a high degree of corruption and crime); - foreign functionary's <i>or domestic official's</i> title, responsibility and authorisations (higher degree of title or a higher degree of responsibilities indicate a higher risk given a greater possibility of use and allocation of government funds); - volume and complexity of the business relationship (higher degree and greater complexity of the established business relationship between the foreign functionary <i>or the domestic official</i> and the financial institution are indicative of the higher degree of risk regarding this person); - type of product or service offered to the foreign functionary <i>or domestic official</i> (some categories of services imply higher risk - e.g. private banking); 	<p>likely the latter as this is a continuation of the previous sentence.</p> <p>The words 'as applicable' are being inserted because some points may not be relevant to a 'domestic official'. The words 'foreign functionary' are used for consistency but as advised these words throughout the Decision should be changed to 'foreign official' consistent with the AML Law.</p>

Regulation	Proposed Amendment	Comment
	<p>- third parties doing business with the foreign functionary (foreign functionaries often rely on off-shore companies and banks, i.e. on entities located in areas or countries not applying adequate ALM/CFT measures and standards) <i>or with the domestic official.</i></p> <p>Amendments to Section 12:</p> <p>..... The above does not apply to cases classified as high-risk pursuant to the Law, or those that are subject to the application of enhanced actions and measures by virtue of the Law (loro correspondent relations, foreign officials, domestic officials as appropriate, and establishment of business relations without the client's physical presence).</p>	<p>Reference to 'Domestic Official' with the words 'as appropriate' is being included here as Recommendation 12 and the proposed amendment to the AML Law accordingly require enhanced customer due diligence to be applied to domestic officials only if they are identified and perceived to present a higher risk.</p>
<p>Decision on the implementation of the provisions of the Insurance Law relating to the issuance of licenses and approvals of the National Bank of Serbia</p> <p>(Annex 26)</p>	<p>Addition of new paragraph 6a to Section 3:</p> <p><i>6a) details on the internal control and mechanisms to be applied in order to prevent money laundering and the financing of terrorism;</i></p> <p>Addition of new Section 3a</p> <p><i>3a Should the National Bank of Serbia obtain data pointing to facts which are or could be connected with money laundering or terrorism financing, within the meaning of the Law on the Prevention of Money Laundering and the Financing of Terrorism, it shall notify in writing thereof the administration for the prevention of money laundering.</i></p>	<p>This new paragraph 6a will complement the proposed amendments to Article 32 of the Insurance Law and in particular item (4) of the proposed paragraph (4) in accordance with the EU Directive 2007/44/EC on mergers and acquisition.</p> <p>The proposed new Section 3a is inspired from Section 3 of the 'Decision on preliminary bank founding permit' The proposed addition also contributes to the required domestic cooperation under Recommendation 2</p>

Regulation	Proposed Amendment	Comment
	<p>Amendment to Section 18:</p> <p>..... the applicant's activities and doings might possibly jeopardize the company's activities and their supervision <i>in accordance with the criteria established under Article 32 of the Insurance Law.</i></p>	<p>The addition of the proposed text (in italics) to Section 18 provides for consistency with the proposed changes to the Law pursuant to the EU Directive 2007/44/EC on mergers and acquisitions as proposed to be transposed in the Insurance Law under Article 32.</p>
<p>Decision on implementation of the provisions of the Law on Financial Leasing pertaining to licensing and consents of the National Bank of Serbia</p> <p>(Annex 27)</p>	<p>Addition of new paragraph (5a) to Section 3:</p> <p><i>5a) details on the internal control and mechanisms to be applied in order to prevent money laundering and the financing of terrorism;</i></p> <p>Addition of new Section 3a:</p> <p><i>3a Should the National Bank of Serbia obtain data pointing to facts which are or could be connected with money laundering or the financing of terrorism, within the meaning of the Law on the Prevention of Money Laundering and the Financing of Terrorism, it shall notify in writing thereof the Administration for the Prevention of Money Laundering.</i></p> <p>Addition of new paragraph (2) to Section 7:</p> <p><i>In assessing the application referred to in Section 5 of this Decision, in order to ensure the sound and prudent management of the lessor in which an acquisition is proposed, and having regard to the likely influence of the proposed acquirer on the</i></p>	<p>This new paragraph (5a) is consistent with similar provisions in other relevant Decisions and will complement the proposed paragraph (2) to Section 7 - and in particular item (4)) - in accordance with the EU Directive 2007/44/EC on mergers and acquisition.</p> <p>Inspired from Section 3 of the 'Decision on preliminary bank founding permit' as further proposed in the 'Decision on the implementation of the provisions of the Insurance Law relating to the issuance of licenses and approvals of the National Bank of Serbia'. The proposed addition also contributes to the required domestic cooperation under Recommendation 2</p> <p>These provisions are in line with the most recent requirement under the EU legislation (Directive 2007/44/EC of September 2007 on mergers and acquisitions). Indeed it is inspired from Article 102 of the Law on the Capital Market – and as proposed for the Law on Banks, the Insurance Law and the Law on Voluntary Pension Funds and Pension Schemes., thus</p>

Regulation	Proposed Amendment	Comment
	<p><i>lessor the National Bank of Serbia shall appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition for the purposes of this Section against all of the following criteria:</i></p> <ol style="list-style-type: none"> <i>1) the reputation of the proposed acquirer;</i> <i>2) the financial soundness of the proposed acquirer;</i> <i>3) whether the lessor will be able to comply with the requirements regarding the capital and other terms and conditions envisaged by provisions of this Law and, in particular, whether the group of which the lessor may become a part has a structure that makes it possible to exercise effective supervision;</i> <i>4) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing, within the meaning of the regulations governing money laundering and terrorist financing has been committed or attempted, or could be committed;</i> <i>5) whether a person possessing or proposing to acquire a qualifying stake is subject to a statutory disqualification.</i> 	<p>providing consistency. In particular item (4) is of importance for the purposes of Recommendation 26.</p> <p>These provisions should be better placed directly in the Law on Financial Leasing – which is not included in this review pack – for consistency with the aforementioned laws.</p> <p>Serbia authorities please note.</p>
<p>Decision on the obligation of lessors to maintain a reserve balance (Annex 28)</p>	<p>No proposed amendments</p>	<p>Decision is of a prudential nature..</p>

Regulation	Proposed Amendment	Comment
Guidance Paper no. 6 on Preventing, detecting and remedying fraud in insurance. <i>(Annex 29)</i>	No proposed amendments	Guidance is specific for detecting fraud

APPENDIX 7 - REVIEW OF RULEBOOKS AND REGULATIONS FOR THE PREVENTION OF MONEY LAUNDERING AND FINANCING OF TERRORISM ISSUED BY THE SECURITIES COMMISSION OF SERBIA – PROPOSED AMENDMENTS.

Side comments included in the Decisions themselves are not included in this Appendix. Refer to Annexes Proposed amendments, additions or deletions are indicated in italic print

Regulation	Proposed Amendment	Comment
<p>Guidelines on the application of the Law on Prevention of Money Laundering and Financing of Terrorism for persons supervised by the Securities Commission</p> <p>(Annex 30)</p>	<p>Amendment to ‘What is a suspicious Transaction’</p> <p>Lists of Indicators <i>are not exhaustive and</i> represent a starting point for employees/authorized persons when recognizing suspicious circumstances with respect to a customer, transactions of the customer or business relations it concludes. Therefore <i>all obligors are expected to periodically review and update Lists of Indicators according to their activities. Hence, all employees.....</i></p> <p>Deletion of paragraph (2) ‘Regular professional education of employees’</p> <p><i>An obligor who has less than four employees has no obligation to appoint a compliance officer and carry out internal control in accordance with the Law (Article 39, paragraph 2 of the Law).</i></p> <p>Amendment to paragraph (1) to Section 1:</p> <p>Pursuant to the Law, the risk of money laundering or terrorism financing is <i>twofold. First there are money laundering and financing of terrorism risks that the obligor could be exposed to through its products, services, delivery channels and country exposure – business-based analysis. Second a risk that the</i></p>	<p>It is important to emphasise throughout the Guidelines that Lists of Indicators are never exhaustive and final and that employees should use reasoned judgement on the circumstances of each case individually beyond the lists.</p> <p>Paragraph (2) of Article 39 of the previous AML Law has been removed in the version of the AML Law under review and therefore this paragraph should be removed – also because it goes against the principles of Recommendation 18 and its Interpretative Note.</p> <p>There is a proposal to amend the AML Law to include an obligation on obligors to undertake a business-based risk assessment in conformity with the new requirements under Recommendation 1. This amendment to paragraph (1) of Section 1 is meant to introduce this process within the Guidelines.</p>

Regulation	Proposed Amendment	Comment
	<p>customer will abuse the securities market of the Republic of Serbia to launder money or finance terrorism i.e., that a business relation, a service an obligor provides or a transaction will be used directly or indirectly for money laundering and terrorism financing – <i>relationships-based analysis</i></p> <p>Amendment to paragraph (2) of Section 1:</p> <p>In order to prevent exposure to adverse effects of money laundering and terrorism financing, an obligor must <i>therefore</i> carry out a <i>business-based risk analysis and a risk analysis</i>.....</p> <p>Amendment to paragraph (3) of Section 1:</p> <p>The risk analysis determines the level of exposure (risk assessment) <i>that the obligor could be exposed to in its activities and that</i> for each group.....</p> <p>Amendment to paragraph (4) of Section 1:</p> <p>The preparation of the risk analysis is a precondition for the implementation of <i>internal controls to mitigate business related risk and the implementation</i> of the customer due diligence.</p> <p>Amendment to paragraph (1) of Section 2:</p> <p>The primary goal of such policy is to set the areas of business which pose less or more risk considering the potential for money laundering and terrorism financing <i>through the business-based risk assessment</i>,.....</p>	<p>The proposed amendment to paragraph (2) of Section 1 is in conformity with Article 7 of the AML Law which is proposed to be amended accordingly reflecting the new provisions of Recommendations 1.</p> <p>This addition to paragraph (3) of Section 1 in the the determination of risk analysis complements the introduction of the obligation to undertake a business based risk assessment in conformity with the proposed amendments to the Law and the requirements of the new FATF Recommendation 1.</p> <p>This addition to paragraph (4) of Section 1 for the preparation for the risk analysis complements the introduction of the obligation to undertake a business based risk assessment.</p> <p>Although the concept of a business based risk analysis is already recognized to an extent under Section 2 the Guidelens, the provisions of Recommendation 1 now requires this to be given more prominence.</p>

Regulation	Proposed Amendment	Comment
	<p>Addition of new paragraph (2) to Section 2:</p> <p>As part of the risk management policy obligors should have in place a Customer Acceptance Policy. A Customer Acceptance Policy is defined as a risk sensitive framework within which customers are accepted, maintained, monitored and managed through adequate risk based procedures. A Customer Acceptance Policy should reflect the risk appetite of the obligor in accepting or refusing customers following their risk analysis and risk classification.</p> <p>Amendment to paragraph (18) of Section 5:</p> <p>A customer that is a foreign official, i.e. a person who has been discharging a public function in a foreign state or international organization, <i>or that is a domestic official i.e a person who holds or who held in the past year a senior public office domestically or a person who is or has been entrusted with a prominent function by an international organisation</i>, the function including:.....</p> <p>Amendment to indent (7) of paragraph (18) to Section 5:</p> <p>,,,customer that is an immediate family member of a foreign <i>or a domestic official</i>:,,,</p> <p>Amendment to indent (8) or paragraph (18) to Section 5:</p> <p>A customer that is a close associate of a foreign or</p>	<p>Reference to a requirement for obligors to develop a customer acceptance policy is included in the light of the RBA, and in compliance with the Basle Document on Customer Due Diligence and Recommendation 10. Moreover this is consistent with proposals to include similar obligations in the Decisions of the National Bank of Serbia for obligors under its remit.</p> <p>The reference to 'domestic official' is being included consequent to the proposed amendments to the AML Law reflecting the new requirements under Recommendation 12 (PEPs).</p> <p>The reference to 'domestic official' in indent (7) is being included consequent to the proposed amendments to the AML Law reflecting the new requirements under Recommendation 12 (PEPs).</p> <p>The reference to 'domestic official' in indent (8) to paragraph (18) to Section 5 is being included consequent to the proposed</p>

Regulation	Proposed Amendment	Comment
	<p>domestic official, and/or any natural person that has profited from the property/assets or established a business relation or has any other close business relations with the foreign or domestic official</p> <p>Addition of new Section 7a:</p> <p><i>A business based risk assessment of the obligor's products, services, delivery channels and the geographic location in which the obligor undertakes its business operations presupposes a good knowledge of the obligor's business operations and the exercise of sound judgment such that the risks for money laundering and the financing of terrorism can be weighed according to each individual factor as well as a combination of them. To this effect obligors are expected to develop methodologies and tools using the hereunder as guidance as appropriate to the obligor.</i></p> <p><i>A business-based risk assessment matrix should be developed requiring the obligor to identify and indicate a 'yes', 'no' or 'not applicable' reply to operations, products and services which, further to those indicated under Section 7 of these Guidelines, are offered by the obligor and include the following. The list is not exhaustive and obligors are required to adapt these instances and include others according to their activities and operations. For the sake of completeness the list includes products and activities that are already considered by Law as posing a higher risk.</i></p>	<p>amendments to the AML Law reflecting the new requirements under Recommendation 12 (PEPs) for the identification of domestic PEPs and the application of ECDD if they represent a higher risk of money laundering and terrorism financing.</p> <p>The inclusion of the proposed paragraph (1) to the proposed Section 7a is complementary to the proposed amendment to paragraph (1) of Section 1 defining the business-based risk assessment and requiring obligors to develop mechanisms accordingly.</p> <p>The proposed paragraph (2) to the new Section 7a, in addition to Section 7 of these Guidelines, provides guidance for the development of a methodology for a business-based risk assessment.</p>

Regulation	Proposed Amendment	Comment
	<p>1) <i>Identification of products, services and delivery channels which could pose a higher risk:</i></p> <ul style="list-style-type: none"> - <i>Services that make it difficult to fully identify the customer(s)?</i> - <i>Services that make it difficult to fully identify the ultimate beneficial owner or beneficiary where applicable?</i> - <i>Services to and business relationships with foreign and domestic officials (PEPs)?</i> - <i>Services to and business relationships with Non-Profit Organisations (NPOs)?</i> - <i>Electronic funds payment services?</i> - <i>Any of the following services:</i> <ul style="list-style-type: none"> ▪ <i>Electronic cash (for example stored value cards – e-money)?</i> ▪ <i>Funds transfers (domestic and international):</i> <ul style="list-style-type: none"> - <i>Inwards?</i> - <i>Outwards?</i> ▪ <i>Currency Exchange Machines?</i> - <i>Services involving the use of carriers or couriers for international transport of cash, monetary instruments or other financial documents of value?</i> - <i>Services involving banknote and/or precious metal trading and delivery?</i> - <i>Services, business relationships or transactions on a non face-to-face basis, such as Internet services, by mail or by telephone?</i> 	

Regulation	Proposed Amendment	Comment
	<ul style="list-style-type: none"> - <i>Private investment services and facilities to individuals?:</i> - <i>Lending activities, particularly for these purposes loans secured by cash collateral and/or marketable securities for investment services?</i> - <i>Non-deposit account services (for example, non-deposit investment products and insurance)?</i> <p>2) <i>Identification whether the obligor operates with customers from or provides products or services in, the following geographic locations:</i></p> <ul style="list-style-type: none"> - <i>Are any of the customers of the obligor located in a known high crime area or jurisdiction?</i> - <i>Does the obligor or any of its customers operate or undertake activities in any country or jurisdiction that is not included in the list issued by the Ministry of Finance in accordance with Section 4 of these Guidelines and the Law?</i> <p><i>A 'yes' reply to any question in paragraphs (1) and (2) of Section 2c hereof shall prima facie be considered as posing a higher risk for money laundering or financing of terrorism in that particular product or service provided or country. Where appropriate therefore obligors are to apply risk mitigating measures.</i></p>	<p>Paragraph (3) to proposed Section 7a provides guidance on how a methodology built in accordance with paragraph (2) hereof operates.</p>

Regulation	Proposed Amendment	Comment
	<p>Deletion in paragraph (1) to Section 10:</p> <p>When carrying out transactions above the applicable designated threshold of EUR 15000 or more in RSD equivalent, irrespective of whether the transaction is single or there are multiple transactions which appear connected</p> <p>Amendment to paragraph (1) to Section 12:</p> <p>Pursuant to the Law, a foreign official as a politically exposed person represents a high risk customer. Therefore, obligors must apply enhanced due diligence in all cases when such a person is a customer or a <i>beneficial owner</i> defined as the politically exposed person, prior to establishing a business relation or executing a transaction.</p> <p>Deletion of paragraph (6) to Section 12:</p> <p>As opposed to the establishment of a business relationship with customers domiciled abroad, when establishing a business relationship with customers domiciled in the Republic of Serbia, an obligor is not under the obligation to obtain a special statement of political exposure. However, the obligor determines independently based on the obtained information and publicly available information whether a customer is a politically exposed person.</p> <p>Addition of new Section 12A:</p> <p><i>Pursuant to the Law, a domestic official is a person who carries the same definition as a foreign official but who</i></p>	<p>Sentence to be deleted as appears to be duplicate of previous sentence</p> <p>The law requires that similar procedures are applied when the beneficial owner is a politically exposed person.</p> <p>Unless there is a specific reason for this exemption, it is advisable to review this paragraph in the light of the requirements on domestic PEPs under the new Recommendation 12 as proposed to be transposed under the AML Law – preferably with the intention to delete the whole paragraph. If there is a specific reason for retaining this paragraph then it should be moved as paragraph (3) to the proposed new Section 12A.</p> <p>The inclusion of Section 12A is being proposed consistent with the proposed amendments to the AML Law through the proposed Article 30A introducing obligations in accordance</p>

Regulation	Proposed Amendment	Comment
	<p><i>holds or who held in the past year a senior public office domestically or a person who is or has been entrusted with a prominent function by an international organisation. The latter being a person who occupies a senior top position in an institution.</i></p> <p><i>Article 30A requires obligors to identify whether the customer or the beneficiary owner is a domestic official and, if so, to determine through a risk sensitive process whether that person presents a higher risk. If that person, identified as a domestic official, presents a higher risk, then Article 30A requires obligors to apply enhanced ongoing due diligence in accordance with Article 30. Consequently, the measures under Section 12 of these Guidelines become likewise applicable to domestic officials who are identified as presenting a higher risk.</i></p> <p>Amendment to paragraph (1) to Section 15:</p> <p><i>When establishing a business relation, under the conditions laid down by the Law an obligor may delegate the due diligence measures referred to in Article 8, paragraph 1, items 1 to 4, to third persons whereby it must check first whether the third person meets the conditions (Article 25 of the Law). In accordance with the provisions of the Law, an obligor may also accept business introduced by a third party (Article 23).</i></p>	<p>with the new Recommendation 12 (PEPs) and its Interpretative Note.</p> <p>According to the AML Law reliance on third parties can be made for items 1 – 4 of paragraph (1) to Article 8.</p> <p>The inclusion of the last sentence is consistent with the proposed paragraph (1a) to Article 23 of the AML Law which will allow obligors to accept introduced business in accordance with Recommendation 17 and under the same conditions as reliance on third parties. Paragraph (1a) to the Law is to be inserted only if Serbia authorities wish to allow introduced business under these conditions.</p>

Regulation	Proposed Amendment	Comment
	<p>Amendment to paragraph (2) to Section 15:</p> <p>A third person shall promptly deliver to the obligor <i>all data required by the obligor to establish the business relationship and</i>, at its request, the copies.....</p> <p>Amendment to paragraph (3) to Section 15:</p> <p>If a third person has conducted customer due diligence on behalf of an obligor, <i>or if the obligor has accepted a customer introduced by a third party, the obligor shall still be liable for the applied customer due diligence measures and, further it shall remain the responsibility of the obligor to apply all the requirements and measures under the AML Law to the that business relationship. be responsible for adhering to the Law, including the obligation of suspicious transaction reporting and the obligation to keep the information and documents.</i></p> <p>Addition of new paragraph (4) to Section 15:</p> <p><i>An obligor may rely upon or accept introduced business from a third party that forms part of the same group as the obligor in accordance with the provisions of Article 26A. That obligor may fulfil parts of its obligations under the Law for ensuring the adequacy of a third party in a foreign country and for the collection of relevant documents through the group measures and programmes if these are adequately applied and supervised at a group level.</i></p>	<p>The proposed addition to paragraph (2) reflects paragraph (1) to Article 25 of the Law. As currently drafted it is only reflecting paragraph (2) of Article 25.</p> <p>In terms of Recommendation 17 the persons relying on a third party or accepting introduced business from a third party retains full responsibility both for the CDD and for applying all other measures with regard to such relationship. The relevant articles in the Law are being amended accordingly for better clarification. As drafted this paragraph is contradictory to paragraph (5) of this Section which is now being incorporated in the redrafted text.</p> <p>Paragraph (4) to Section 15 is being proposed in the light of the proposed Article 26A to the AML Law in accordance with similar provisions in Recommendation 17. This article will meet the requirements of financial institutions that are subsidiaries of larger international institutions operating in Serbia.</p>

Regulation	Proposed Amendment	Comment
	<p>Amendment to current paragraph (4) to Section 15:</p> <p>If an obligor suspects the authenticity of applied customer due diligence measures or identification documents or veracity of obtained customer information <i>it shall refrain from relying on that third part and shall keep an official note in writing accordingly and retain such note in accordance with the Law. It shall request from the third person to submit a written statement on the authenticity of applied customer due diligence and obtained information.</i></p> <p>Deletion of current paragraph (5) to Section 15:</p> <p>If a third person conducts customer due diligence instead of an obligor, the obligor shall still be liable for the applied customer due diligence measures.</p> <p>Addition of new indent (3) to paragraph (2) to Section 20:</p> <p><i>- the obligation of reporting applies also to situations where, after the transaction has been carried out, the obligor becomes suspicious at a later stage that that transaction or customer may have been related to money laundering or the financing of terrorism.</i></p>	<p>It is being proposed that paragraph (3) to Article 25 of the AML Law, which is the basis of the current drafting of paragraph (4) to Section 16, be amended as reflected in the proposed amendment to the current paragraph (4). The reason is that this is in contradiction with the obligation under paragraph (2) of Article 8 of the Law – as reflected under paragraph (5) to Section 8 of these Guidelines.</p> <p>Paragraph (5) is being removed as it is proposed to incorporate it with the redrafted paragraph (3).</p> <p>There is a proposal to amend the AML Law to cover reporting of past transactions that may later indicate to possibly having been related to money laundering or terrorism financing. The reporting obligation as detailed in paragraph (2) of Article 37 of the Law, - and as reflected in indent (1) to paragraph (2) of Section 20 in these Guidelines - is only applicable before the transaction is carried out. There could be situations where, even after the transaction is carried out, that the obligor becomes suspicious about a transaction or a customer upon which the obligor did not previously have suspicion. Notwithstanding the provisions in paragraph (5) of Article 37 of the Law – as reflected in the current third indent of this Section - it is deemed appropriate to make specific provisions for the reporting obligation even in such circumstances.</p>

Regulation	Proposed Amendment	Comment
	<p>Amendment to paragraph (3) to Section 22:</p> <p>When determining whether there is reasonable doubt about money laundering or terrorism financing, obligors must apply their list of indicators. <i>As already indicated earlier under the 'Definition of Suspicious Transaction', lists of indicators are not exhaustive and all obligors are expected to periodically review and update their Lists of Indicators according to their activities.</i></p> <p>Addition of new paragraph 3 to Section 24:</p> <p><i>The implementation of internal controls and procedures shall be periodically examined and reported upon to top management.</i></p> <p>Addition of new paragraph (5) to Section 25:</p> <p><i>The Law further states that notwithstanding anything else contained in any other law, the obligor shall not use professional secrecy as a reason for not complying with any of the provisions of the Law on the Prevention of Money Laundering and the Financing of Terrorism and is meant to cover instances where the specific law imposes inhibitions on disclosures that could render the Law on the Prevention of Money Laundering and the Financing of Terrorism ineffective. .</i></p>	<p>It is important to emphasise throughout the Guidelines that Lists of Indicators are never exhaustive and final and that employees should use reasoned judgement on the circumstances of each case individually beyond the lists.</p> <p>There is a proposed new paragraph (2) to Article 44 of the AML Law reflecting Recommendation 18 which requires the presence of an independent audit function. Such function is however expected to be commensurate with and proportionate to the size of the obligor.</p> <p>There is a proposal to insert a new paragraph (4) to Article 74 of the AML Law that reflects Recommendation 9 on professional secrecy. The proposed drafting is meant to override any inhibiting provision in any sector specific law. Serbia authorities please ensure such provision is acceptable under Serbia legislative system.</p>

Regulation	Proposed Amendment	Comment
	<p>Addition of new Section 27A:</p> <p>27A. Maintenance of Statistics</p> <p><i>The obligor shall develop and maintain comprehensive statistics in relation to its activities that are relevant for the prevention of money laundering and terrorism financing and make such statistics available to the Administration for the Prevention of Money Laundering upon its request.</i></p> <p><i>Comprehensive statistics under paragraph (1) hereof shall include, but not be limited to, those related to training and reports and other information submitted to the Administration for the Prevention of Money Laundering,</i></p> <p><i>The Administration for the Prevention of Money Laundering may, in accordance with the Law and as specified therein, require obligors to maintain other type of statistics that are however relevant to its work under the Law.</i></p>	<p>Two new paragraphs imposing an obligation on obligors to maintain statistics in accordance with Recommendation 33 as provided for under Article 6 of the AML Law.</p> <p>The third paragraph is only intended to give an indication to obligors that the APML may determine the type of statistics it may require to fulfil its obligations under the Law and in meeting its obligations in terms of Recommendation 33</p>
<p>Rulebook on practices which might be considered market abuse and on obligation of preventing and detecting market abuse.</p> <p>(Annex 31)</p>	<p>Addition of new paragraph (5) to Article 4:</p> <p><i>(5) Authorised market participants shall simultaneously report the transaction to the Administration for the Prevention of Money Laundering through their internal reporting procedures in accordance with the obligations under the Law on the Prevention of Money Laundering and the Financing of Terrorism and any regulations issued thereunder.</i></p> <p style="text-align: center;">OR</p>	<p>According to the Glossary of the FATF Recommendations the crimes of insider dealing and of market manipulation are included under the 'Designated categories of Offences' – which is mandatory as a minimum. It is presumed that this is the case in Serbia. Under this premise therefore a suspicion of a designated criminal offence raises a suspicion of money laundering or terrorism financing. In the circumstances it is being recommended to include a new paragraph (5) to Article 4 drawing the attention of 'Authorised market participants' of their obligations under the AML Law. Notwithstanding it is not</p>

Regulation	Proposed Amendment	Comment
	<p><i>(5) Authorised market participants subject to the Law on the Prevention of Money Laundering and the Financing of Terrorism shall simultaneously report the transaction to the Administration for the Prevention of Money Laundering through their internal reporting procedures in accordance with their obligations under the Law and where the authorised market participant is not subject to the Law on the Prevention of Money Laundering and the Financing of Terrorism that person shall so draw the attention of the Securities Commission in its notification under paragraph (3) hereof. The Securities Commission shall then itself report to the Administration for the Prevention of Money Laundering in accordance with the Law on the Prevention of Money Laundering and the Financing of Terrorism.</i></p>	<p>clear whether all participants indicated in paragraph (1) hereof are considered as ‘obliged persons or entities’ under Article 4 of the AML Law (see comment to Article 4 in the AML Law) –in which case their reporting could be <i>ultra vires</i>. If this is the case, the alternative would be for the Securities Commission itself to report to the APML in accordance with Article 86 of the AML Law – in which case an alternative text is provided. Serbia authorities are kindly requested to consider this proposal within the provisions of other laws which do not form part of this review pack.</p>
<p>Rulebook on conditions and manner of carrying out supervision of financial market participants <i>(Annex 32)</i></p>	<p>Amendment to paragraph (2) of Article 3:</p> <p>(2) With the exception of paragraph (4) to Article 19 and Article 52 of this Rulebook, § in accordance with paragraph (5) to Article 82 of the Law on the Prevention of Money Laundering and the Financing of Terrorism, supervision of operations within the meaning of this Rulebook shall also understand supervision over the application of the Law on the Prevention of Money Laundering and the Financing of Terrorism by obligors referred to in Article 4, paragraph 1, points 3 and 8 of this Law and regulations adopted pursuant to the Law on the Prevention of Money Laundering and the Financing of Terrorism.</p>	<p>This paragraph (2) is important for the application of the prudential supervisory powers when undertaking AML/CFT supervision in terms of the AML Law. It is also consistent with the proposed amendment through the addition of a new paragraph (5) to Article 82 of the AML Law to which reference is made – in recognition of the obligations under Recommendation 27. However there are two exceptions – Paragraph (4) to Article 19 for the purposes of supervision under the AML Law could lead the Commission to ‘tipping off’. Paragraph 52 would create a conflict with the pecuniary sanctions applicable under the AML Law – indeed the latter is already excluded through the proposed new paragraph (5) to Article 82 of the AML Law.</p>

Regulation	Proposed Amendment	Comment
Rulebook on classification of investment recommendations done explicitly or implicitly, additional requirements for recommendations, dissemination of recommendations produced by third parties and the disclosure of interest and conflicts of interest (Annex 33)	No proposed amendments	Rulebook is of a prudential nature for integrity purposes.
Rulebook on disclosure of information on acquisition and disposals of shares and their values for which reporting is not required (Annex 34)	No proposed amendments	Rulebook is of a prudential nature for integrity purposes.
Rulebook on disclosure of inside information relating to issuers and determining legitimate interests for issuers in non-disclosures (Annex 35)	No proposed amendments	Rulebook is of a prudential nature for integrity purposes.
Rulebook on the content of an application for approving a prospectus and the attached documents. (Annex 36)	No proposed amendments	Rulebook is of a prudential nature.
Rulebook on the format, minimum information contained in prospectuses and base prospectuses, and advertisements (Annex 37)	No proposed amendments	The Rulebook is prudential and procedural in nature and already contains provisions enabling the issuer to include any references to the prevention of money laundering or terrorism financing should it is required to do so.

Regulation	Proposed Amendment	Comment
Rulebook on approval of exempt offering documents (Annex 38)	No proposed amendments	The Rulebook is of a prudential nature and procedural for the filing of documents with the Securities Commission.
Rulebook on granting the qualified investor status and the qualified investor register (Annex 39)	No proposed amendments	The Rulebook is of a prudential and procedural nature.
Rulebook on the contents and form of takeover bids (Annex 40)	Amendment to paragraph (4) of Article 13: By way of exception to paragraph 2 of this Article, when the Commission works together with the authorities controlling monopoly and preventing money laundering <i>and financing of terrorism</i> , and.....	The addition is minor and only for the sake of completion. This paragraph indicates cooperation between the authorities (Recommendation 2) in ensuring that take over bids do not involve money laundering or the financing of terrorism.
Rulebook on the content and form of financial statements of investment fund management companies (Annex 41)	No proposed amendments	Rulebook is prudential and procedural in nature for the structure and content of financial statements of IFMCs.
Rulebook on the chart of accounts and the contents of accounts within the chart of accounts for investment funds (Annex 42)	No proposed amendments	Rulebook is prudential and procedural in nature for the structure of chart of accounts Investment Funds.
Rulebook on the content and form of financial statements of investment funds (Annex 43)	No proposed amendments	Rulebook is prudential and procedural in nature for the structure and content of financial statements of Investment Funds.

Regulation	Proposed Amendment	Comment
<p>Rulebook on the contents of the report of external auditor (Annex 44)</p>	<p>No proposed amendments</p>	<p>The Rulebook is prudential and procedural in establishing content of audit report.</p>
<p>Rulebook on custody bank activities (Annex 45)</p>	<p>Addition of new indent (4a) to paragraph (1) of Article 5:</p> <p><i>4a) details on the internal control and mechanisms to be applied in order to prevent money laundering and the financing of terrorism;</i></p> <p>Addition of new paragraph (4) to Article 8:</p> <p><i>Should the Commission obtain data pointing to facts which are or could be connected with money laundering or the financing of terrorism, within the meaning of the Law on the Prevention of Money Laundering and the Financing of Terrorism, it shall notify in writing thereof the Administration for the Prevention of Money Laundering.</i></p>	<p>Although a custody bank is expected to already be licensed as a bank by the NBS, this new paragraph (4a) will complement the provisions of Article 102 of the Law on Capital Markets and in particular item (4) of paragraph (1) thereof in accordance with the EU Directive 2007/44/EC on mergers and acquisition. The proposed paragraph is also consistent with item (5) of paragraph (2) of this Article 5.</p> <p>Inspired from Section 3 of the 'Decision on preliminary bank founding permit' and as further proposed for inclusion in the 'Decision on the implementation of the provisions of the Insurance Law relating to the issuance of licenses and approvals of the National Bank of Serbia' and other similar Decisions, the proposed addition also contributes to the required domestic cooperation under Recommendation 2 and is consistent with Article 86 of the AML Law.</p>