

UNOFFICIAL TRANSLATION

**ANNEX II to the Technical Paper ECU-PACA-5/2012
Project against Corruption in Albania (PACA)**

This version includes the changes proposed by the Republic of Albania through the proposed Amending Law and the review and changes proposed by the Council of Europe expert.

LAW

No.9917, May 19, 2008

**“ON THE PREVENTION OF MONEY LAUNDERING AND
FINANCING OF TERRORISM”**

amended by law NO. 10 391, March 03, 2011

Pursuant to Articles 78 and 83/ 1 of the Constitution, upon the proposal of the Council of Ministers,

THE ASSEMBLY OF THE REPUBLIC OF ALBANIA

DECIDED

CHAPTER I
GENERAL PRINCIPLES

Article 1

Purpose

The purpose of this law is to prevent money laundering and proceeds derived from criminal offences, as well as, the financing of terrorism.

Article 2

Definitions

The terms used in this law have the following meaning:

1 **“Responsible authority”** is the General Directorate for the Prevention of Money Laundering that reports directly to the Minister of Finances, and serves as Financial Intelligence Unit of Albania.

2 **“Shell bank”** is a bank, which does not have a physical presence, including lack of administration and management, and, which is not included in any regulated financial group.

3 **“Correspondent bank”** means a bank that provides banking services in the interests of another bank (initiating bank) or its customers, to a third bank (receiving bank) based on an agreement, or a contractual relation among them.

4 **“Financing of terrorism”** has the same meaning as provided by articles 230/a through 230/d of the Criminal Code.

5 **“Bearer’s negotiable instruments”** includes monetary instruments in bearer form where the holder of the instrument has title, such as travellers’ cheques; negotiable instruments (including but not limited to cheques, promissory notes, cambials and money orders) that are either in bearer form, endorsed without restriction of payee, made out to a fictitious payee, or otherwise in such form that title thereto passes upon simple delivery from one person to another; incomplete instruments (including but not limited to cheques, promissory notes and money orders) signed but with the payee’s name not included. ~~means unconditional payment orders or promises to pay a given sum of money, easily transferable from a person to another, that must meet a set of criteria such as bearing the signature of the issuer or the bearer, they must be guaranteed payment promises or unconditional payment orders, they must be payable to the bearer or according to the order upon request or after a specified deadline. This includes but is not limited to cheques, promissory notes, cambials, credit cards and traveler’s cheques.~~

Deleted:

Comment [HZL1]: CoE expert Note re Item 5: The Fourth Round MER had noted under SR IX that the definition of bearer negotiable instruments is not in line with the FATF definition. This appears to be so in particular since the definition appears to be more related to promissory notes and similar instrument. The FATF definition captures more the type of negotiable instruments that under bearer form can be easily transferred. It is therefore proposed to adopt the FATF definition with some changes to reflect some of the aspects in the current definition in the Albanian law.

6 “**Customer**” means every person, who is or seeks to be party in a business relation with one of the entities referred to in Article 3 of this law.

7 “**Business relation**” means any professional or commercial relationship, which is related to the activities exercised by the entities of this law and their customers, that at the moment it is established, is considered to be a continuous relation.

8 “**Cash**” means notes (banknotes and coins, national and foreign) in circulation.

9 “**Laundering of criminal offence proceeds**” has the same meaning as provided by Article 287, of the Criminal Code.

10 “**Politically exposed persons**” are the persons that are obliged to declare their properties, in accordance with law no. 9049, dated 10.04.2003 “On the declaration and audit of assets, financial obligations of the elected officials and certain public employees” excluding employees of the middle or lower management level, according to the provisions of the civil service legislation but including family members and close associates. This category also includes individuals who have had or have important functions in a government and / or in a foreign country, such as: head of state and/or government, senior politicians, senior officials of government, judiciary or the army, senior leaders of public companies, key officials of political parties.

Comment [HZL2]: CoE expert Note re Article 2(10): the inclusion of this text brings the definition of PEPs closer to the FATF and EU definition and fulfills the recommendations made to Rec 6 in the 4th Round MER.

11 “**Proceeds of Criminal offence**” has the same meaning as provided by letter ‘b’ of paragraph 1 of Article 36 of Criminal Code.

12 “**Beneficial owner**” means the natural ~~person or legal entity, which~~ person who owns or, is the last to control a customer and/or the natural or legal person on whose behalf is executed the transaction. This also includes those persons exercising the last effective control on a legal person. The last effective control is the relationship in which a person:

- a) owns through direct or indirect ownership, at least 25 percent of stocks or votes of a legal entity;
- b) by himself owns at least 25 percent of votes of a legal person, based on an agreement with the other partners or shareholders;
- c) defines *de facto* the decisions made by the legal person;
- c) controls by all means the selection, appointment or dismissal of the majority of administrators of the legal person.

In the case of other legal arrangements the beneficial owner shall also include the natural person who is the beneficiary or who controls at least 25 percent of the property of that legal arrangement.

Comment [HZL3]: CoE expert Note re Article 2(12): the objective of this addition to the definition of beneficial owner is complementary to the inclusion of the definition of the term ‘legal arrangements’ and better meets the definition as applied in the FATF 40 while fulfilling the recommendation to Rec 5 in the 4th round MER.

13. “**Property**” means rights or property interests of any kind over an asset, either movable or immovable, tangible or intangible, material or immaterial, including those identified in an electronic or digital form including, but not limited to, instruments such as bank loans, traveler’s

cheques, bank cheques, payment orders, all kinds of securities, payment orders and letters of credit, as well as any other interest, dividend, income or other value derived from them.

14 **“Entity”** is a natural or legal person, which establishes business relations with customers in the course of its regular activity or, as part of its commercial or professional activity.

15 **“Money or value transfer service”** means the performance of a business activity to accept cash and other means or instruments of the money and/or payment market (cheques, bank drafts, certificates of deposit, debit or credit cards, electronic payment cards etc.), securities, as well as any other document that substantiates the existence of a monetary obligation or any other deposited value and to pay to the beneficiary a corresponding amount in cash, or in any other form, by means of communication, message, transfer or by means of the clearing or settlement service, to which the service of the transfer of money or value belongs.

16 **“Transaction”** means a business relation or an exchange that involves two or more parties.

17 **“Linked Transactions”** means two or more transactions (including direct transfers) where each of them is smaller than the amount specified as threshold according to the article 4 of this law and when total amount of these transactions equals or exceeds the applicable threshold amount.

18. **“Direct electronic transfer”** means every transaction performed on behalf of a primary mandating person (natural or legal) through a financial institution, by means of electronic or wire transfer, with the purpose of making available a certain amount of money or other means or instruments of the money and/or payment market at the disposal of a beneficiary in another financial institution. The mandator and the beneficiary can be the same person.

19. **“Trust”** means an agreement in good faith, in which the ownership rests with the trustee on behalf of the beneficiary.

20. **“Enhanced Due Diligence”** is a deeper control process, beyond the “Know Your Customer” procedures, that aims to create sufficient certainty to confirm and evaluate the customer’s identity, to understand and test the customer’s profile, business, and the activity of its bank accounts; to identify the important information and to assess the possible risk of money laundering/terrorism financing pursuant to the decisions aiming at providing protection against financial, regulatory or reputational risks as well as compliance with legal provisions.

21. **“Know Your Customer”** procedure implies a set of rules applied by financial institutions, related to customer’s acceptance and identification policies as well as their risk management.

22. **“Person”** within the meaning of this law are individuals, natural persons and legal persons.

23. **“Payable-through account”** refers to a correspondent account that is used directly by third parties to transact business on their own behalf.

24. **“Legal arrangement”** refers to trusts or other similar arrangement that is recognised at law but is not in the form of a legal entity.

Comment [HZL4]: Item 23 - Amending Law Article 1

Comment [HZL5]: CoE expert Note re Item 24: it is proposed to define the term ‘legal arrangements’ and use this terminology throughout rather than ‘trust’ as this is a broader terminology and would apply to any such legal arrangement even if established overseas but seeks to do business in Albania.

25 “Financial Group” refers to a group of entities that are bank or non-bank financial institutions that consists of a parent company or of any other type of legal person exercising control and coordinating functions over the rest of the group for the application of group supervision together with branches and/or subsidiaries that are subject to prevention of money laundering and financing or terrorism policies and procedures at the group level.

Comment [H2L6]: CoE expert
Note re Item 25:
The proposed item 25 is inspired from the new FATF Standards of February 2012 more specifically Rec 18 (comprising previous Rec 15 and Rec 22) and which now provides for group level compliance. Inserted in definition because of the proposed changes to Article 11 – new paragraph (aa)

Article 3

Entities subject to this law

Entities of this law (hereinafter referred to as “subjects”) include:

a) banking entities, including branches in Albania of foreign banking entities, and any other entity licensed or supervised by the Bank of Albania, including, but not limited to the entities designated in letters ‘b’, ‘c’ and ‘ç’ of this article.

b) non-bank financial entities;

c) exchange offices;

ç) savings and credit companies and their unions;

d) postal services that perform payment services;

dh) repealed

e) stock exchange and any other entity (agent, broker, brokerage house etc.), which carries out activities related to issuing, counseling, intermediation, financing and any other service related to securities trading;

ë) companies involved in life insurance or re-insurance, agents and their intermediaries as well as retirement funds;

f) the Responsible State Authority for Administration and Sale of Public Property and any other public legal entity, which engages in legal transactions related to the public property alienation and granting of usufruct over it or which carries out recording, transfer or alienation of public property;

g) gambling, casinos and hippodromes, of any kind;

gj) authorized independent chartered accountants, approved independent accountants, financial consulting offices and attorneys, public notaries and other legal representatives, regulated professions that offer financial consulting services when they prepare or carry out transactions for their customers in the following activities:

i) transfer of immovable properties, administration of money, securities and other assets;

ii) administration of bank accounts;

Comment [H2L7]: CoE expert
Note re Article 3: The proposed amendments are referring to entities subject to the law as “subjects”. It is proposed to define this in the law and amend all instances to refer to “subjects” for consistency.

Comment [H2L8]: CoE expert
Note re Article 3(a): included to ensure that branches of foreign banks operating in Albania are included.

Comment [H2L9]: Item ‘gj’ - Amending Law Article 2

Comment [H2L10]: CoE expert
Note re Article 3 Item ‘gj’: are the ‘regulated professions that offer financial consulting services’ the same persons as included under item (i) below as ‘financial consulting offices?’ – if so either way there is duplication.

iii) administration of shares of capital to be used for the foundation, functioning or administration of commercial companies;

iv) foundation, functioning or administration of legal persons and legal arrangements;

v) legal agreements, sale of securities or shares of joint stock companies and the transfer of commercial activities;

h) Real estate agents in accordance with the definition specified in the albanian legislation for this category, when they are involved in transactions on behalf of their customers related to purchasing or sale of immovable property;

~~i) authorized independent public accountants, independent certified accountants, as well as, financial consulting offices;~~

(i) authorised independent public accountants, independent certified accountants, [auditors], as well as [financial consulting offices] when carrying out their professional activities including when acting in accordance with the provision of services as provided for under item 'g' of this Article.

j) the Agency for Legalization, Urbanization and Integration of Informal Areas/ Constructions;

k) any other natural or legal person, in addition to the aforementioned ones, engaged in:

i) the administration of third parties' assets/ managing the activities related to them;

ii) ~~repealed;~~ the provision of trust and company services in their foundation, formation, and administration where such activity is not already captured under item 'g' and item 'i' of this Article;

iii) Constructions;

iv) the business of precious metals and stones;

v) repealed;

vi) financial agreements and guarantees;

vii) buying and selling of pieces of art, or buying and selling in auctions of objects valued at 1,500,000 Lek or more;

viii) safekeeping and administration of cash or liquid securities in the name of other persons;

ix) repealed;

x) trade of motor vehicles;

xi) transportation and delivery activity;

xii) travel agencies.

Comment [HZL11]: CoE expert Note re Article 3 Item (g) (iv): the insertion of the words 'and other legal arrangements' completes the obligation in accordance with the FATF requirements

Comment [HZL12]: Item (i) - Amending Law Article 2

Comment [HZL13]: CoE expert Note re Article 3 Item (j): Once this is being removed and included under item 'g' there will be compliance with FATF but not with EU Directive which requires this category to be subject to all professional activities. In the 'Additional elements' for Rec 16 the FATF enquires whether the obligation (of reporting at least) is extended to all professional activities of accountants. It is advisable to leave item (i) and cross refer it to item 'g' as indicated in the new item (i) as proposed.

Moreover it is not clear if it includes 'auditors'

See also comment re Article 3 Item 'g'

Comment [HZL14]: CoE expert Note re Item (k(i)) and (k(ii)): according to the 4th Round MER Item (k(i)) captures TCSP but suggest to extend requirements to all activities defined by the standard. It is advisable to clarify better even though trusts do not exist in Albania – but subjects may be handling foreign trusts - and some company services are included under lawyers. It is therefore proposed to include the text as drafted under Item (k(ii)). Proposed to be included to the exclusion of lawyers and accountants and hence will only capture the activity if don't (... [1])

Comment [HZL15]: CoE expert Note re Article 3 Item (k)(vii): Prior to the changes to Article 4 proposed by the current amending law the highest amount for identification purposes stood at 1,500,000 Lek. This is now being proposed to go down to 1,000,000 Lek. It is advised that the amount in this item is likewise reduced for consistency.

CHAPTER II
DUE DILIGENCE

Article 3/1

Customer Due Diligence

For the purposes of this Law, customer due diligence measures, when applied by subjects, shall comprise:

- (i) The identification of the customer and the verification of that identification against reliable, independent source documents, data and other information;
- (ii) The identification of the beneficial owner, and the verification of that identification taking reasonable measures such that the obliged persons and entities are satisfied of knowing who the ultimate beneficial owner is. In the case of legal persons and other legal arrangements the measures taken include the understanding of the ownership and control structure of that legal person or legal arrangement;
- (iii) The collection of information on the purpose and intended nature of the business relationship such that a subject may be to establish the business and risk profiles of the customer;
- (iv) The conduct of ongoing monitoring of the business relationship and the ongoing scrutiny of transactions undertaken to ensure that these transactions are conducted consistent with the customer's business and risk profiles, including, where necessary, the source of funds.

Comment [HZL16]: CoE expert Note re Article 3/1 Customer due diligence :
Although the definition of the concept of CDD has been included in the Instructions 20 and 21, it is important that this is established at Law since the following articles of the law define the requirements of subjects to comply with this concept.

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Article 4

Identification of customers

1. The entities should identify their customers and verify their identities by means of identification documents:

a) Before establishing a business relationship;

b) when the customer carries out or, is willing to carry out in cases other than those referred to in letter 'a' of this paragraph, the following:

— A direct transfer inside or outside the country in an amount equal to or greater than 100,000 (a hundred thousand) Lek or its equivalent in foreign currencies;

— A transaction in an amount equal to:

(i) not less than 200,000 (two hundred thousand) Lek or its equivalent in foreign currencies to the entities specified in the letters 'c' and 'g' of the Article 3 of this law.

~~(ii) Not less than 1,500,000 (one million five hundred thousand) Lek or its equivalent in foreign currency in the case of a sole transaction or several transactions linked to each other. If the amount of the transaction is unknown at the time it is executed, the identification shall be made as soon as the amount is made known and the aforementioned limit is reached.~~

~~e) When there are doubts about the veracity of the identification data previously collected;~~

~~e) In all cases when there is reasonable doubt for money laundering or terrorism financing.~~

Comment [HZZ17]: Article 4 - Amending Law article 3

Article 4

Cases when due diligence is required

1. The subjects shall undertake customer due diligence measures:

a) before they establish a business relationship;

b) when the customer, in cases other than those specified in letter "a" of this paragraph, carries out or intends to carry out:

i. a transfer within the country or abroad or a transaction at an equal amount or exceeding 100 000 (one hundred thousand) Lek or its counter-value in foreign currencies, for the subjects specified in letters "a", "b", "c" and "g" of article 3 of this law, and other subjects which carry out transfer, foreign exchange or gambling services;

ii. a transaction at an equal amount of not less than 1 000 000 (one million) Lek or its counter-value in other foreign currencies, executed in a single transaction or in several linked transactions. If the amount of transactions is not known at the time of operation, the identification shall be made once the amount is known and the above threshold is reached;

c) if there are doubts about the veracity of the previously obtained identification data;

~~c) in all cases, notwithstanding any thresholds indicated in this Article, when there are suspicions of adequate data or doubts about money laundering or financing of terrorism.~~

~~2. Entities must identify and verify the identity of the beneficial owner.~~

Article 4/1

Due diligence measures

In the framework of the exercise of customer due diligence, the subjects shall:

Comment [HZZ18]: COE EXPERT Note re Article 4(1)(c) : suggested amendment harmonises this provision to EC 5.2 and meets the recommendation made in the 4th MER.

Comment [HZZ19]: Article 4 - Amending Law article 3

Comment [HZZ20]: COE EXPERT Note re Article 4(2): This is superfluous here as it is now included under the new Article 4/1.

Comment [HZZ21]: COE EXPERT Note re Article 4/1 Due Diligence Measures:
(1) - once the term 'legal arrangements' has been defined, and includes trusts, it is proposed to use this wider terminology throughout.
(2) . in particular for the purposes of 'legal arrangements' it is important that the broader interpretations given in Instructions 20 and 21 are retained. This applies to various obligations hereunder.

1. Identify the customer (permanent or occasional, natural person, legal entity or legal arrangements trusts) and verify his identity through documents, data or information that are received from reliable and of an independent sources.

Comment [HZL22]: COE EXPERT Note re Article 4/1(1) and (2): the reference to legal arrangements as now defined in the law is more adequate as it gives a broader spectrum than just trusts and would be more in line with the FATF 40

2. For the customers who are legal entities or legal arrangements trusts:

a) verify if any person acting on behalf of the customer is so authorized and to identify and verify his identity and

b) verify their legal status through the documents of incorporation, registration or similar evidence of their existence and provide information about the name of the customer, the name of trustees (for the trusts), legal form, address, managers (for legal entities) and provisions regulating legal relationships;

Comment [HZL23]: COE EXPERT Note re Article 4/1(1): As drafted could be interpreted that the sources who provide the information should be independent and not the documents and information itself.

3. Identify the beneficial owner and adopt reasonable measures to verify his/her identity through information or data provided from reliable sources on the basis of which the subject satisfactorily establishes his/her confirms the identity.

Comment [HZL24]: COE EXPERT Note re Article 4/1(3): The subject needs to confirm not to establish the identity as this would have already been established prior to verification. That is why the 'identification' and the 'verification' are two separate but complementary processes

4. Verify for all customers, before establishing business relationships or during the process of monitoring of such relationship, if they are acting on behalf of another person and take reasonable measures to obtain adequate data for the identification of that other person and for the verification of such identification.

5. Understand the ownership and control structure for the customers who are legal entities or legal arrangements trusts;

Comment [HZL25]: COE EXPERT Note re Article 4/1(4): according to the standard (FATF) the verification whether a person is acting on behalf of another must be done before establishing the business relationship.

6. Determine who are the individuals owning or controlling the customer, including those persons who exercise the last effective control over the legal entity or legal arrangement trust.

Comment [HZL26]: COE EXPERT Note re Article 4/1(4): In accordance with the concept of CDD identification has to be verified throughout.

7. Obtain information about the purpose and nature of the business relationship to develop the customer business and risk profile for ongoing monitoring;

Comment [HZL27]: COE EXPERT Note re Article 4/1(5): the term 'legal arrangements' as defined is broader than trusts and is more consistent with the FATF definition

8. Conduct continuous monitoring of the business relationship with the customer, including the analysis of transactions executed in the course of duration of this relationship, to ensure that they are consistent with the knowledge of the subject about the customer, nature of his/her business, risk profile and funding sources.

Comment [HZL28]: COE EXPERT Note re Article 4/1(6): the term 'legal arrangements' as defined is broader than trusts and is more consistent with the FATF definition

9. Ensure, through the examination of customers' files, that documents, data and information obtained during the process of due diligence are kept up-to-date, relevant and appropriate, especially for the customers or business relationships classified with high risk.

10. Verify the identity of the customer and beneficial owner, before or in the course of establishing of a business relationship or conducting a transaction for the occasional customers. The verification of identity of the customer and beneficial owner may be carried out after the establishment of business relationship, provided that:

Comment [HZL29]: COE EXPERT Note re Article 4/1(7): links the requirement under (7) to the obligations of ongoing monitoring under (8)

- it occurs as soon as practically possible;
- it does not interrupt the normal conduct of the business activity;
- money laundering risks are effectively managed by the subject.

Comment [HZL30]: COE EXPERT Note re Article 4/1(10):
This part is better included under Item 10 which deals with the verification process and leave Item 11 dealing with the required risk management procedures in such instances.

11. Define the risk management procedures to be applied in cases where a customer may be permitted to utilise the n they may enter into a business relationship with the customer, before or during the completion of the verification process his/her identification. These procedures shall *inter alia* include measures such as the limitation of number, type and/or amount of transactions that may be executed, as well as the monitoring of large and complex transactions carried out outside of the scope of the expected profile of the characteristics of that relationship.

Comment [HZL31]: COE EXPERT Note re Article 4/1(11):
Some amendments to clarify that the requirement for risk management procedures are for instances where the relationship is utilised prior to completion of the verification and not the identification process – two separate but complementary procedures.

The verification of identity of the customer and beneficial owner may be carried out after the establishment of business relationship, provided that:

- it occurs as soon as practically possible;
- does not interrupt the normal conduct of the business activity;
- money laundering risks are effectively managed by the subject.

Comment [HZL32]: COE EXPERT Note re Article 4/1(11):
This part is better included under Item 10 which deals with the verification process and leave Item 11 dealing with the required risk management procedures in such instances.

12. Comply with the aforementioned obligations for the existing customers based on evidence, facts and risk of exposure to money laundering and financing of terrorism.

13. When the subjects are unable to comply with the customer due diligence obligations as defined in Article 3/1 and in accordance with the relevant provisions according to articles 4, 4/1 and 5 of this law, they:

Comment [HZL33]: COE EXPERT Note re Article 4/1(13):
The inclusion of the words 'as defined in Article 3/1' reflect the change for Recommendation 5 (now Recommendation 10) in the new FATF standards of February 2012

- a) shall ~~should~~ not open accounts, perform transactions or commence a business relationship;
- b) shall ~~should interrupt~~ terminate the business relationship if it has commenced;
- c) shall send a suspicious activity report to the "Responsible Authority".

Comment [HZL34]: COE EXPERT Note re Article 4/1(13):
Since there are other provisions in the law that reflect on CDD, such as Article 7 on ECDD, it would be more appropriate ... [2]

14. Not open or keep anonymous accounts, accounts with fictitious names or identified only with a number or code, including the issue of bearer passbooks and other bearer instruments. If there are such accounts, their customers shall be identified and verified in accordance with the provisions of this article. If this is not possible, subjects shall develop procedures for the closure of such accounts, for informing the "Responsible Authority" on such closures, the account should be closed for eventual withdrawals to be made with the approval of the Compliance Officer and for a suspicious activity report should to be sent to the "Responsible Authority" for withdrawals which in full or in part exceed the identification threshold".

Comment [HZL35]: COE EXPERT Note re Article 4/1(14):
the objective of the amendment is to implement the recommendation made in the 4th Round MER.

Comment [HZL36]: COE EXPERT Note re Article 4/1(14):
Although the provisions in the last sentence are theoretically correct yet it might be difficult for subjects to apply in practice ... [3]

15. Without prejudice to the provisions of Article 8 and Article 9 of this Law, in order to implement the due diligence measures contemplated under this Article, the entities should subjects shall require the physical presence of customers and their representatives where applicable:

Comment [HZL37]: Article 4/1 - Amending Law Article 4

Comment [HZL38]: COE EXPERT Note re Article 4/1(15):
Moved from Article 7(2). Amendment proposed in the light of the comments re Article 6(2) below. This establishes th ... [4]

- a) prior to establishing a business relationship with the customer;
- b) prior to executing transactions on their behalf.

Article 5

Required documents for customer's identification

1. For the purposes of identification and verification of the identity of customers, the **subjects entities** must, **as a minimum**, register and keep the following data:

a) In the case of natural persons: first name, father's name, last name, date of birth, place of birth, place of permanent residence and of temporary residence, employment, type and number of identification document, as well as the issuing authority and all changes made at the moment of execution of the financial transaction;

b) In the case of natural persons, which carry out for-profit activity: first name, last name, number and date of registration with the National Registration Center, documents certifying the scope of activity, Taxpayer Identification Number (TIN), address and all changes made in the moment of execution of the financial transaction;

c) In the case of legal persons, that carry out for-profit activity: name, date of registration with the National Registration Center, document certifying the object of activity, Taxpayer Identification Number (TIN), address and all changes made in the moment of execution of the financial transaction;

c) In the case of legal entities, that do not carry out for-profit activity: name, number and date of court decision related to registration as a legal person, statute and the act of foundation, number and date of the issuance of the license by tax authorities, permanent location, and the type of activity;

d) In the case of legal representatives of a customer: first name, last name, date of birth, place of birth, permanent and temporary residence, type and number of identification document, as well as the issuing authority and copy of the affidavit.

2 To gather data according to the stipulations of this article, the **subjects entities** shall accept from the customer only authentic documents or their notarized photocopies. For the purposes of this Law, the **subject entity** shall keep in the customers' file copies of the documents submitted by the customer in the above form stamped with the **subject's entity's** seal, within the time limits of their validity.

3 When deemed necessary, the **subjects entities** must ask the customer to submit other identification documents to confirm the data provided by the latter.

Comment [HZL39]: COE
EXPERT Note re Article 5(1): the words 'as a minimum' are being inserted as the circumstances of each case will determine additional documents that may be necessary for customer identification and should therefore also be retained.

Article 6

Monitoring of the business relation with the customer

Comment [HZL40]: COE EXPERT Note re Article 6: now included under items (8) and (9) of the new Article 4/1

1. The entities must carry out continuous monitoring of business relations with their customers, in order to make sure that they are in conformity with the entity's information about the customers, the scope of their activity and their classification according to the level of risk they represent.

2. The entities must periodically update the customer data in accordance with paragraph 1 of this Article and immediately when they have reasons to suspect that the conditions and the actual situation of the customer have changed.

Comment [HZL41]: Article 6 - Amending Law Article 5

Article 6

Technological developments and third parties

1. The subjects shall implement policies or undertake proper measures, as the case may be, to identify and assess the money laundering and financing of terrorism risks arising from prevent:

- (a) the development misuse of new products, business practices and delivery channels; and
- (b) the use of new or developing technologies cal developments for money laundering or financing of terrorism.

Subjects shall implement such measures prior introducing new products or business practices or the use of new technologies. Subjects shall further put in place appropriate procedures to manage and mitigate identified risks

Comment [HZL42]: COE EXPERT Note re Article 6(1): the suggested changes meet the requirements of the EU Third Directive (through paragraph (a)) and better reflect the new FATF Standards under Recommendation 15 (previously Recommendation 8)

2. The subjects shall apply specific procedures and, take proper and effective measures in accordance with paragraph 6 of Article 9 of this law to prevent the risks related to transactions or business relationships, carried out without the presence of the customer.

Comment [HZL43]: COE EXPERT Note re Article 6(2): This appears to be in conflict with Article 7(2) which has been retained – but only in application to enhanced due diligence. If the concept of undertaking non-face to face business is still to be prohibited in accordance with Article 7(2) then Article 6(2) should be removed. In practice subjects will find it difficult to operate with non-resident customers if the prohibitive principle under Article 7(2) is retained. On the assumption that this is being removed but controlled, amendments have been inserted to Article 7(2) and Article 9 new paragraph 6.

3. Due diligence measures shall be applied by the subjects of this law and the reliance on third parties is prohibited.

Comment [HZL44]: Article 6 - Amending Law Article 5

CHAPTER III
ENHANCED DUE DILIGENCE

Article 7

Enhanced due diligence

~~1. In order to reduce the risks of money laundering, the entities shall specify categories of customers and transactions, in addition to those referred to in Articles 8 and 9 of this law, to whom they will apply the enhanced due diligence.~~

Comment [HZL45]: Article 7(1) - Amending Law Article 6

1. Enhanced due diligence shall include additional measures in addition to those foreseen for the due diligence concerning business relationships, high risk customers or transactions. In order to mitigate the risk of money laundering, other than the categories stipulated in this law and its bylaws issued in its application, the subjects shall identify other categories of business relationships, customers and transactions which, on a risk sensitivity basis, pose a higher risk and to which enhanced due diligence measures shall be applied, y.

Comment [HZL46]: COE EXPERT Note on Article 7(1) : the objective of the addition is to better clarify the obligation to apply a RBA reflecting the change for Recommendation 5 under the new FATF Recommendations (now Recommendation 10)

~~2. In order to implement the enhanced due diligence, the entities should require the physical presence of customers and their representatives:~~

Comment [HZL47]: Article 7(1)- Amending Law Article 6

~~a) prior to establishing a business relationship with the customer;~~

~~b) prior to executing transactions on their behalf.~~

Comment [HZL48]: COE EXPERT Note re Article 7(2) - : Moved to Article 4/1 as paragraph 15. Thus it establishes the principle that in normal due diligence the customer has to be physically present. If not then the process for due diligence is considered as being of a higher risk and addressed under Article 9 paragraph 6. Amendment proposed in the light of the comments re Article 6(2) above.

2. For the purposes of paragraph 1 of this Article, subjects shall draft and apply internal regulations and guidance policies that, on a risk sensitivity basis, shall identify and take into account the degree of money laundering and terrorism financing risk which can originate from potential customers or businesses, including but not limited to:

(i) A customer's acceptance policy, and

(ii) A policy for the application of procedures of enhanced due diligence in the case of high-risk customers and transactions.

Comment [HZL49]: COE EXPERT Note re Article 7(2): This paragraph has been transposed from the present paragraph 1(a) under Article 11 and slightly amended. Thus it becomes more complementary to paragraph 1 which is obliging subjects to identify categories of business that pose higher risks and hence become subject to enhanced diligence.

~~3. When the subjects are unable to fulfil the enhanced due diligence obligations toward the customer in accordance with articles 7, 8 and 9 of this Law, they should apply the provisions of paragraph 13 of Article 4/1.~~

Comment [HZL50]: COE EXPERT Note re Article 7(3): This paragraph has been transposed from paragraph 6 of Article 9 in order to be generally applied. To an extent this paragraph is superfluous since the obligation is already included under paragraph 13 of Article 4/1. If it is to be retained in so far as enhanced due diligence is concerned, it should be better linked to Article 4/1 paragraph 13 directly.

~~Article 8~~

~~Categories of customers subject to enhanced due diligence~~

~~1. Entities defined in letter 'a' of the Article 3 of this Law, in addition to the enhanced due diligence procedures for the customer, should:~~

~~a) design and implement effective systems of risk management to determine whether an existing or potential customer or the beneficial owner is a politically exposed person;~~

~~b) to obtain the senior managers approval for establishing business relationships with the politically exposed persons;~~

~~c) to request and receive the approval of senior managers to continue the business relationship, in cases when the business relationship with the customer is established and the entity finds out that the customer or the beneficial owner became or subsequently becomes a politically exposed person;~~

~~c) to take reasonable measures to understand the source of wealth and funds of customers and the beneficial owners, identified as politically exposed persons.~~

~~2 In cases where entities have a business relationship with politically exposed persons, they must monitor with an enhanced diligence this relationship.~~

~~3 For customers that are non-profit organizations, the entities should:~~

~~a) gather sufficient information about them, in order to completely understand the sources of financing, the nature of the activity, as well as, their manner of administration and management;~~

~~b) establish customers' reputation by using public information or other means;~~

~~c) obtain the approval of the higher instances of administration/management before establishing a business relation with them;~~

~~c) perform extended monitoring of the business relation;~~

Comment [HZL51]: Article 8 - Amending Law Article 7

Article 8

Categories of customers to which enhanced due diligence applies

1. For the politically exposed persons, the subjects shall:

a) ~~further to the requirements under paragraph 2 of Article 7, draft and implement effective risk management systems to determine if an existing or potential customer or beneficial owner is, or becomes, a politically exposed person;~~

b) obtain senior management approval for the establishment of business relationships with the politically exposed persons;

c) request and obtain senior management approval to continue the business relationship in cases when the business relationship with the customer is established and the subject ~~subsequently~~ finds that the customer or the beneficial owner ~~has become~~ is or has subsequently become a politically exposed person;

Comment [HZL52]: COE EXPERT Note re Article 8(1)(a): The first proposed amendment is to create a link between the identification of PEPs and the requirements under paragraph 2 of Article 7 which requires subjects to have systems in place to identify higher risk customers.

The second proposed amendment is for retaining text within the definitions as the Law provides the definition for 'beneficial' owner and not 'beneficiary' owner.

The third proposed change is to cover eventualities when a customer becomes a PEP after the relationship is established.

The changes to paragraph (c) and (c) are linguistic.

c) adopt reasonable measures to establish the source of wealth and the source of funds of the customers and beneficial owners, identified as politically exposed persons.

2. In cases when the subjects are in a business relationship with the politically exposed persons, they ~~shall~~ monitor such relationships with enhanced due diligence and monitoring. Enhanced monitoring shall as a minimum include more frequent assessment of the account activity, deeper scrutiny of transactions and obtaining the source funds for all transactions.

3. For the customers which are non-profit organizations, the subjects shall:

- a) obtain adequate information about them in order to fully establish the financing sources, nature of activity and their manner of administration and management;
- b) establish their reputation through public information or other means;
- c) obtain the consent from higher instances of administration/management before establishing such a business relationship with them;
- c) conduct enhanced and continuous monitoring of the business relationship in accordance with paragraph 2 of this Article.

4. The subjects shall exercise enhanced due diligence to business relationships and transactions with non-resident customers, in particular where such relationships and transactions are undertaken without the presence of the customer in accordance with paragraph 6 of Article 9 of this Law. In such circumstances subjects shall monitor such relationships with enhanced due diligence and monitoring. Enhanced monitoring shall as a minimum include more frequent assessment of the account activity, deeper scrutiny of transactions and obtaining, where necessary, the source funds for particular transactions

5. The subjects shall verify and exercise ~~enhanced due diligence~~ special attention to business relationships and transactions with all types of the customers residing in or carrying out their activity ~~in~~ from countries which do not apply or partially apply the relevant international standards, for the prevention and fight against money laundering and financing of terrorism. To the extent possible, the subjects shall ~~examine~~ maintain written records about the findings for a period of five years which shall be made available to the "Responsible Authority", other competent authorities and auditors as may be required. Where a country continues not to apply or to partially apply the relevant international standards, subjects shall apply enhanced due diligence (for identification and for examining and executing transactions and possibly reporting to the "Responsible Authority") to such business relationships and transactions, and appropriately reduce such relationships and transactions. In accordance with paragraph (f) of Article 22, the "Responsible Authority" shall advise subjects whenever it has information about or is aware of countries that do not or insufficiently apply the international standards.

6. The subjects shall exercise enhanced due diligence to business relationships and transactions with customers such as trusts and companies with nominee shareholders.

Comment [HZL53]: COE EXPERT Note re Article 8(2): Further to quoting the FATF essential criterion, the addition to paragraph 2 establishes the minimum enhanced measures that are to be applied – thus making the obligation more complete.

Comment [HZL54]: COE EXPERT Note re Article 8(3)(c): link meant to ensure the level of enhanced monitoring is applied throughout.

Comment [HZL55]: COE EXPERT Note re Article 8(4): the objective of this amendment is to continue the link for non face-to-face relationships and to meet the recommendations in this regard made in the 4th Round MER

Comment [HZL56]: COE EXPERT Note re Article 8(5): EC 21.2 allows some flexibility to the extent of the examination through the words "as far as possible". The Albanian authorities may wish to consider providing this flexibility.

Comment [HZL57]: COE EXPERT Note re Article 9(1): The insertion as indicated is proposed for better harmonisation with the FATF Rec 21 which requires information to be available to all relevant competent authorities

Comment [HZL58]: COE EXPERT Note re Article 8(5): The proposed amendments shall better harmonise this paragraph to the requirements of the essential criteria for Recommendation 21 by providing procedures to be followed where the issue persists and by placing a responsibility on the FIU to inform subjects about such countries – presumably already being done in practice re public statements made by the FATF and other FSRBs such as MONEYVAL.

Some changes are linguistic in nature

Comment [HZL59]: Article 8 - Amending Law Article 7

Article 9

Categories of transactions, subject to enhanced due diligence

1. With regard to correspondent cross border banking services provided by banks subject to this law, before establishing a business relation they should:

- a) gather sufficient information about the correspondent institution, in order to fully understand the nature of its business;
- b) determine through public information the reputation of the recipient institution and the quality of its supervision;
- c) consider whether the internal auditing procedures of the recipient institution against money laundering and financing of terrorism are sufficient and effective;
- c) to obtain the approval of the highest levels of administration /management and to document respectively for each institution the responsibilities to prevent money laundering and terrorism financing;
- d) draft special procedures for the constant monitoring of direct electronic transactions.

2. The entities shall not carry out correspondent banking services with banks, the accounts of which are used by shell banks. The entities shall terminate any business relationship and report to the responsible authority if they reckon that the accounts of the corresponding bank are used by shell banks.

The entities should take the appropriate measures in order to satisfy themselves that the foreign correspondent banks do not allow their accounts to be used by the shell banks.

3. The entities should pay particular attention to all complex and unusually large transactions, which have no apparent economic or legal purpose. The entities should analyze the background and purpose of such transactions and maintain notes for the conclusions, which must be kept for a period of five years and made available to the responsible authority and the auditors.

4. The entities must apply enhanced due diligence to business relations and transactions with non-resident customers.

5. The entities must verify and apply enhanced due diligence to business relations and transactions with customers residing or performing their activity in countries that do not apply or partially apply the relevant international standards on the prevention and fight against money laundering and financing of terrorism.

The entities should analyze the background and the purpose of such transactions and to maintain data for the conclusions, which should be made available to the responsible authority and the auditors.

~~6 — The entities must apply enhanced due diligence to business relations and transactions with trusts and joint stock companies.~~

~~7 — The entities have to determine for all customers whether they are acting on behalf of another person and shall take reasonable measures to provide sufficient information to identify that person.~~

~~8 — The entities must adopt policies or undertake the appropriate measures, according to the circumstances, in order to prevent the misuse of products and new technological developments for the purposes of money laundering or terrorism financing.~~

~~8.1 — With regard to the customers that are legal persons, the entities should take measures to understand the structure of ownership and control of the customer and also to determine who are the persons who own or control the customer. This includes those persons that exercise the ultimate effective control over a legal person.~~

~~8.2 — The entities should provide information about the purpose and the intended nature of the business relation.~~

~~8.3 — The entities should designate the procedures and the risk management means in those cases when the customer is allowed to establish and use the business relationship prior to verification of identity. These procedures should include a range of measures, like limiting the number, type and/or the amount of transactions that may be carried out.~~

~~8.4 — In cases when the entity started the business relationship and is unable to apply the enhanced due diligence obligation, described in this article, it should terminate the business relationship and send a suspicious activity report to the responsible authority.~~

~~8.5 — For the existing customers, the entities must implement measures for customer due diligence, based on evidence, facts and risk.~~

~~9. If entities can not apply the enhanced due diligence obligation described in this article:~~

~~a) they should not open an account, commence a business relation or execute the transaction;~~

~~b) they must send a report of suspicious activity to the responsible authority.~~

Article 9

Categories of transactions and business relations to which extended due diligence is implemented

1. Subjects should pay particular attention to all complex transactions, with large and unusual values, or unusual patterns of transactions, which have no apparent economic or legal purpose. To the extent possible, S subjects shall ~~and~~ examine the reasons and purpose of performing such transactions and maintain written records for the conclusions, which must be

Comment [HZL60]: Article 9 - Amending Law Article 8

Comment [HZL61]: COE EXPERT Note re Article 9(1): The suggested inclusion of the words 'or unusual patterns of transactions' renders the provision more in compliance with EC 11.1 and meets the recommendation made in the 4th Round MER.

Comment [HZL62]: COE EXPERT Note re Article 9(1): EC 11.2 allows some flexibility to the extent of the examination through the words "as far as possible". The Albanian authorities may wish to consider providing this flexibility.

kept for a period of five years and must be made available to the “Responsible Authority”, other relevant competent authorities and auditors as may be required.

2. In addition to the due diligence measures in accordance with Article 4/1 of this law, Banks subject to this law, with regard to cross-border corresponding bank services that they offer, prior to establishing a business relation shall also:

- a) collect adequate information about the respondent institution to fully understand the nature of its business;
- b) determine through public information, the reputation of the respondent institution and the quality of its supervision, including whether it has been the subject of investigations or regulatory sanctions related to money laundering or the financing of terrorism;
- c) assess the adequacy and effectiveness of the respondent institution’s internal control procedures against money laundering and financing of terrorism;
- c) receive the approval of higher instances of administration/management and document respectively for each institution the responsibilities for prevention of money laundering and financing of terrorism;
- d) draft special procedures for the ongoing monitoring of direct electronic transactions.

3. Subjects are prohibited from establishing or continuing corresponding bank relations with shell banks.

4. Subjects should undertake the necessary measures to satisfy themselves that the corresponding foreign banks do not allow the use of their accounts by shell banks. Subjects should interrupt the business relations and report to the “Responsible Authority” when they consider that the corresponding bank accounts are used by shell banks.

5. When the corresponding relation includes the maintenance of payable through accounts, the subjects should ensure that the corresponding bank:

- a) has undertaken appropriate due diligence measures for customers that have direct access to these accounts;
- b) is able, if required, to provide customer’s identification documents;

~~6. When the subjects are unable to fulfill the enhanced due diligence obligations toward the customer, in accordance with articles 7, 8 and 9 of this law, they should send a suspicious activity report to the “Responsible Authority”.~~

6. Where, for justified reasons, subjects have to enter into business relationships or undertake transactions without the presence of the customer, in addition to the due diligence measures in accordance with Article 4/1 of this Law, subjects shall apply one or more of the following additional measures to compensate for the higher risk in such situations:

Comment [HZL63]: COE EXPERT Note re Article 9(1): The insertion as indicated is proposed for better harmonisation with the FATF Rec 11 which requires information to be available to all relevant competent authorities

Comment [HZL64]: COE EXPERT Note re Article 9(1): the addition of the words ‘as may be required’ ensures that such finding are not automatically sent to the authorities but made available upon request.

Comment [HZL65]: COE EXPERT Note re Article 9(2): The proposed addition ensures that the enhance due diligence is applied in addition to the normal due diligence required by the law

Comment [HZL66]: COE EXPERT Note re Article 9(2)(b): proposed addition will better harmonise item (b) to EC 7.1 and will meet the recommendations for Rec 7 in the 4th Round MER.

Comment [HZL67]: COE EXPERT Note re Article 9(6): A similar obligation is already included more generally under paragraph 13 of Article 4/1. Notwithstanding, if left here paragraph 6 of Article 9 will be interpreted to be linked only to correspondent bank relationships. Hence it is proposed to move this paragraph to Article 7 (3) with slight amendments to link to Article 4/1

Comment [HZL68]: Article 9 - Amending Law Article 8

a) use additional documentation and information to satisfactorily establish the identity of the customer;

b) apply supplementary measures to verify or certify the documentation supplied;

c) require certified confirmation of the documentation supplied through a bank or other financial institution that is regulated and subject to equivalent obligations for the prevention of money laundering and terrorist financing;

d) ensure that the first payment or transaction into the account is carried out through an account in the name of the customer held with another bank that is regulated and subject to equivalent obligations for the prevention of money laundering and terrorist financing.

Article 10

Obligations for money or values transfer service

1 The subjects entities, the activities of which include money or value transfers, must obtain and identify in accordance with the provisions of this Law, first name, last name, permanent and temporary residence, document identification number and account number, if any, including the name of the financial institution from which the transfers is made. The information must be verified against reliable independent sources in accordance with the provisions of this Law and included in the message or payment form attached to the transfer. If there is no account number, the transfer shall be accompanied by a unique reference number.

2 The subjects entities ensure that transmit the information accompanying the transfer is transmitted together with the payment instructions, including the case when they act as intermediaries in a chain of payments or as beneficiary institution.

3 If the subject entity referred to in paragraph 1, of this article receives money or value transfers, including direct electronic transfers, which do not include the necessary information about the ordering person, the subject, as the beneficiary institution, entity must request the missing information from the sending institution or from the beneficiary. If it fails to register the missing information, it shall ~~not~~ refuse the transfer and report it to the Responsible Authority.

4 The subjects, the activities of which include money or value transfers, shall keep a list of their agents and make such list available to the relevant supervisory authorities. Such agents shall be considered as part of the subject for the purposes of this Law and subjects shall therefore include their agents in their programmes for the prevention of money laundering and financing of terrorism and ensure that they apply the same internal measures for customer due diligence, record keeping and reporting.

Comment [HZL69]: COE EXPERT Note re Article 9(6): Paragraph 6 to Article 9 is being proposed in line with the new Article 6 paragraph 2 – see note accordingly. Paragraph 6, inspired from Article 13(2) of the EU third Directive, ensures consistency of enhanced due diligence for non face-to-face situations.

Comment [HZL70]: COE EXPERT Note re Article 10(1): objective of proposed amendment to link the identification requirements for Article 10 with those established in the Law

Comment [HZL71]: COE EXPERT Note re Article 10(1): this change ensures that identification data is verified in accordance with the general obligations under this law.

Comment [HZL72]: COE EXPERT Note re Article 10(2): objective of amendment for better harmonisation with EC VII.4 for SR VII

Comment [HZL73]: COE EXPERT Note re Article 10(3): objective of amendment for better harmonisation with EC VII.5 for SR VII

Comment [HZL74]: Article 10(3) - Amending Law Article 9

Comment [HZL75]: COE EXPERT Note re Article 10(4): Article 10(4) is suggested for inclusion to meet the new provisions for SR VI (now Rec 14) in the new FATF Standards and previously EC VI.4. Although normally such provisions would be covered by the respective laws and no information is available as to whether MVT providers can appoint agents, Article 10(4) is suggested on the assumption that they can. If not it should be removed and include instead a direct prohibition.

Article 11

Other Prevention measures to be undertaken by entities

1. According to this law and its secondary legislation, the subjects entities shall have the following obligations:

~~a) draft and apply internal regulations and guidelines that take into account the money laundering and terrorism financing risk, which can originate from customers or businesses, including but not limited to:~~

~~(i) A customer's acceptance policy, and~~

~~(ii) A policy for the application of procedures of enhanced due diligence in the case of high risk customers and transactions;~~

aa) 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. As a minimum, these internal policies and procedures should cover the effective application of the customer due diligence requirements, retention of records, the detection of suspicious transactions and activities and the methods and procedures for reporting such suspicions. Where the subject is a financial institution forming part of a financial group such policies and procedures may form part of the group policies for the prevention of money laundering and financing of terrorism, including the sharing of relevant information at group level.

b) nominate a responsible person and a deputy for the prevention of money laundering, at the administrative/management level in the central office and in every representative office, branch, subsidiary or agency, to which all employees shall report all suspicious facts, which may comprise a suspicion related to money laundering or terrorism financing, and develop adequate compliance management procedures for the prevention of money laundering and financing of terrorism. Compliance persons have ongoing access to all data stipulated in Article 16 of this Law and any other information available to the subject that is relevant for the compliance person to fulfil responsibilities.

c) establish a centralized system, in charge of data collection and analysis;

cc) develop and maintain comprehensive statistics as may be determined by the "Responsible Authority" under Article 22(m) of this Law and make such statistics available to the "Responsible Authority" upon its request.

c) apply fit and proper procedures when hiring new employees, to ensure their integrity.

d) train their employees on the prevention of money laundering and terrorism financing through regular organization of training programs which should include clear explanations of this Law and any regulations issued thereunder, and the subject's internal procedures as established under item (aa) of this paragraph.

Comment [HZL76]: COE
EXPERT Note re title to Article 11:
The word 'other' is being inserted to indicate that the preventive measures under Article 11 are in addition to others throughout the law.

Comment [HZL77]: COE
EXPERT Note re Article 11(1)(a):
As this obligation is more related to the enhanced due diligence for higher risk customers, it is proposed to transpose it as paragraph 2 to Article 7

Comment [HZL78]: COE
EXPERT Note re new Article 11(1)(aa): the law lacks an obligation for subjects to develop their internal preventive policies and procedures in accordance with Rec 15. Further changes are included to reflect the new FATF Standards of February 2012 and more specifically Rec 18 which incorporates the previous Rec 15 and Rec 22

Comment [HZL79]: Article 11(1)(b) - Amending Law Article 10

Comment [HZL80]: COE
EXPERT Note re Article 11(1)(b): proposed amendment to ensure that appropriate procedures are put in place for co-ordination between respective compliance officers in subsidiaries/offices of the same institution.

Comment [HZL81]: COE
EXPERT Note re Article 11(1)(b): proposed amendment to ensure that the compliance persons have full access to all relevant information even if not included under Article 16 .

Comment [HZL82]: COE
EXPERT Note re Article 11(1)(cc): this is a new article suggested to place the responsibility on subject to maintain statistics and make them available to the Responsible Authority to fulfill its responsibilities under the Law. This will meet the requirements for the current Rec 32 and the new Rec. 33

Comment [HZL83]: COE
EXPERT Note re Article 11(1)(d): proposed amendment to ensure that the subject's internal procedures are brought to the attention of staff in accordance with Recommendation 15. ... [5]

dh) instruct the internal audit to check the compliance with the obligations of this law and of the relevant sublegal acts;

e) ensure that subsidiaries, branches, sub-branches, as well as their agencies, ~~inside or~~ outside the territory of the Republic of Albania, and in particular in territories which do not or insufficiently apply the international standards, act in compliance with preventive measures that are consistent with this law. If the preventive measures in the two countries differ, then subjects shall ensure that the highest obligations prevail. If the laws of the country where the subsidiaries, branches, sub-branches or agencies have been established foresee impediments for the implementation of the obligations, the subject shall ~~entity should~~ report about those impediments to the “Responsible Authority” and, depending on the case, to its supervising authority;

ë) submit information, data and additional documents to the responsible authority, in accordance with the provisions and time limits set forth in this law. The responsible authority may extend this time limit in writing for a period of no more than 15 days.

~~2. — The entities shall be prohibited from starting or maintaining business relations with anonymous customers or customers using fake names. The entities shall not be allowed to open or maintain accounts that may be identified only based on the account number.~~

3. If the number of the employees of the subjects ~~entities~~ referred to in this law is less than 3 persons, the obligations of this law shall be fulfilled by the administrator or by an authorized employee of the subject ~~entity~~.

Comment [HZL84]: COE EXPERT Note re Article 11(1)(dh): this provision does not oblige subjects to have an independent and adequately resourced audit function as is required under EC15.2 for Rec 15 of the FATF. It is assumed that, as is normally the case, such obligation emerges from other financial legislation. Albanian Authorities please check.

Comment [HZL85]: COE EXPERT Note re Article 11(1)(e): this paragraph should be limited to overseas branches and subsidiaries in accordance with Recommendation 22. Domestic subsidiaries and branches are already subject to this law in accordance with Article 3.

Comment [HZL86]: COE EXPERT Note re Article 11(1)(e): The proposed changes shall harmonise item (e) better with both the essential criteria for Recommendation 22 and the requirements under the EU Third Directive.

Comment [HZL87]: Article 11(2) - Amending Law Article 10

CHAPTER IV

OBLIGATION TO REPORT

Article 12

Reporting to the responsible authority

1. — Entities submit a report to the responsible authority, in which they present suspicions for the cases when they know or suspect that laundering of the proceeds of crime or terrorism financing is being committed, was committed or attempted to be committed. The reporting is to be done immediately and not later than the period specified in the secondary legislation pursuant to this law.

2. — When the entity, which is asked by the customer to carry out a transaction, suspects that the transaction may be related to money laundering or terrorism financing, it should immediately report the case to the responsible authority and ask for instructions as to whether it should execute the transaction or not. The responsible authority shall be obliged to provide a response within 48 hours.

3. The entities are required to report to the responsible authority within the time limits set forth in the secondary legislation pursuant to this law all cash transactions, equal to or greater than 1,500,000 (one million and five hundred thousand) Lek or its equivalent in other currencies, executed as a single transaction or as a series of linked transactions.

4. Entities defined in letters 'a' and 'b' of Article 3, of this Law should report to the responsible authority in accordance with the time limits set forth in the secondary legislation pursuant to this law all non-cash transactions, equal to or greater than 6,000,000 (six million) Lek or its equivalent in other currencies executed as a single transaction or as a series of linked transactions.

Article 12

Reporting to responsible authority

1. Subjects submit a report to the "Responsible Authority", in which they present suspicions for the cases when they know or suspect that laundering of the proceeds of crime or terrorism financing is being committed, was committed or attempted to be committed or funds involved derive from criminal activity. The reporting is done immediately and not later than the period specified in bylaws in application of this law.

2. When the subject upon being asked by the customer to carry out a transaction, suspects that the transaction may be related to money laundering or terrorism financing, or funds involved derive from criminal activity, it should not undertake the transaction and immediately report the case to the "Responsible Authority" specifying the period within which the transaction is to be executed, and ask for instructions as to whether it should execute the transaction or not. The "Responsible Authority" is obliged to respond within the execution period and an objection by the "Responsible Authority" shall, in accordance with paragraph (g) of Article 22 of this law, delay the execution by no longer than 48-72 hours from the time when the "Responsible Authority" was first notified, unless the execution of the transaction is specifically stopped by the "Responsible Authority". Where the "Responsible Authority" does not respond within the stipulated period the reporting subject may proceed to execute the transaction.

3. Where, in situations as indicated in paragraph (2) of this Article, it is impossible for the subject not to carry out the transaction or where not carrying out the transaction could have implications on an ongoing investigation, the subject shall carry out the transaction and immediately report the suspicion, including reasons for execution, to the "Responsible Authority".

3. 4. The subjects entities are required to report to the "Responsible Authority" within the time limits set forth in the secondary legislation pursuant to this law, all cash transactions, at an amount equal to or greater than 1 000 000 (one million) Lek or its equivalent in other currencies, performed as a single transaction or transactions related with each other within 24 hours.

Comment [HZL88]: Article 12 - Amending Law Article 11

Comment [HZL89]: COE EXPERT Note re Article 12(2): The insertion of the words 'or funds involved derive from criminal activity' retains consistency with Article 12(1) while meeting the recommendation made in the 4th Round Report.

Comment [HZL90]: COE EXPERT Note re Article 12(2): This paragraph is addressing the delaying or suspension of the execution of a suspected transaction – not specifically addressed by the FATF Recommendations but specifically addressed by Article 24 (1) of the EU Third Directive and the Council of Europe AML/CFT Convention. As drafted this paragraph can be difficult to apply in practice and may create difficult situations – particularly since it gives no time limit for the suspension. The paragraph is being amended accordingly :

(i) to set a time period when the Responsible Authority should reply that is linked to the period for execution

(ii) to set a time period for the suspension of the execution in accordance with the provisions of item (g) of Article 22

(iii) to provide that the Responsible Authority may, within the stipulated period, stop the execution totally

(iv) to provide legal ways for the subject to proceed if the Responsible Authority fails to respond within the stipulated period.

Comment [HZL91]: COE EXPERT Note re Article 12(3): Paragraph 3 is being inserted to complete the process of the suspension of execution of transactions as per paragraph 2. It is inspired by Article 24(2) of the EU Third Directive.

Comment [HZL92]: Article 12 - Amending Law Article 11

Article 13

Exemption from reporting

The entities of the law are exempted from the obligation to report to the responsible authority under paragraph 4 of article 12 of this law, for transactions:

- a) among banks, except the ones performed on behalf of their customers;
- b) among the entities of this law and the Bank of Albania;
- c) carried out on behalf of public institutions and entities;

Comment [HZL93]: Article 13
- Amending Law Article 12

Article 13

Protection of the reporting subject identity

For the suspicious activity reports received pursuant to this law the "Responsible Authority" is obliged to preserve the identity of reporting subjects and of their staff that have reported.

Comment [HZL94]: Article 13
- Amending Law Article 12

Article 14

Exemption from legal liability of reporting to the responsible authority

The entities subjects, or supervising authorities, or other persons required by this law to report information to the "Responsible Authority", their managers, officials or employees, being temporary or permanent, who report or submit information in good faith in compliance with the stipulations of this law, shall be exempted from penal, civil or administrative liability arising from the disclosure of professional or banking secrecy.

Comment [HZL95]: COE
EXPERT Note re Article 14: Since the law requires other entities, such as Customs and Tax Authorities, to report to the Responsible Authority, the exemption is being extended accordingly for consistency.

Article 15

Tipping Off Prohibition

The employees of the entity shall be prohibited from informing the customer or any other person about the verification procedures regarding suspicious cases, as well as any reporting made to the responsible authority.

Comment [HZL96]: Article 15
- Amending Law Article 13

Article 15

Requirements for non-declaration

The subjects, supervising authorities, or other persons required by this law to report information to the "Responsible Authority", their directors, officials and employees, of the subject being

temporary or permanent, are prohibited from informing the customer or any other person other than as provided by this law about the submission or the preparation for submission to the “Responsible Authority” of information about verification and reporting procedures of the suspicious activity as well as any information that is requested by the “Responsible Authority” or about an investigation that is being or may be carried out.

Article 15/1

Protection of the identity of the reporting entity

Responsible authority and any other body that receives reports, data, notifications pursuant to this law, to the extent and manner prescribed by the legislation in force, are obliged to preserve the anonymity of reporting entities and their employees who have reported or provided information and data.

Article 16

Obligations to maintain data

1. ~~Entities~~ **Subjects** must maintain the documentation concerning identification, accounts files, and business correspondence with the customer, including those specified in Article 10, for 5 years from the date of closing the account or termination of the business relationship ~~among~~ **between** the customer and the ~~subject~~ **entity**. At the request of the “~~R~~Responsible ~~a~~Authority”, the documentation is maintained for more than 5 years.

2. The ~~subjects~~ **entities** must keep data registers, reports and documents related to financial ~~or~~ **other** transactions, ~~whether domestic~~ **national** or international, including those specified in Article 10, regardless of whether the transaction has been executed in the name of the customer or of third parties, together with all supporting documentation, including account files and business correspondence, for 5 years from the date of the execution of the ~~financial~~ transaction. With the request of the “~~R~~Responsible ~~a~~Authority”, the information shall be kept longer than 5 years, even if the account or the business relation has been terminated.

3. The ~~subjects~~ **entities** must maintain the data of the transactions, including those specified in article 10, with all the necessary details to allow the ~~reestablishing~~ **reconstruction** of ~~individual and~~ the entire cycle of transactions, with the aim of providing information to the “~~R~~Responsible ~~a~~Authority” in accordance with this Law and the sub legal acts pursuant to it. This information shall be stored for 5 years from the date when the last financial transaction has been carried out. This information shall, upon the request of the “~~R~~Responsible ~~a~~Authority”, be stored longer than 5 years.

4. The ~~subjects~~ **entities** must make sure **through adequate systems and procedures** that all customer and transaction data, as well as ~~all other~~ **the** information kept according to this article, shall **be** immediately **retrieved and** be made available **on a timely basis** upon the request of the “~~R~~Responsible ~~a~~Authority” **or other competent authorities as allowed by this Law.**

Comment [HZL97]: COE EXPERT Note re Article 15: The proposed amendments harmonise the Article more to the essential criteria for the current FATF Rec 14 and Article 28(1) of the EU Third Directive and cover all reporting persons.

Comment [HZL98]: Article 15 - Amending Law Article 13

Comment [HZL99]: Article 15/1 - Amending Law Article 14

Comment [HZL100]: COE EXPERT Note re Article 16: Proposed changes in paragraphs 1 – 3 are linguistic

Comment [HZL101]: COE EXPERT Note re Article 16(1): including reference to identification under Article 10 for consistency with Article 10(3)

Comment [HZL102]: COE EXPERT Note re Article 16(2): As had been highlighted in the 4th Round MER transaction record keeping refers to financial transaction and hence creates an ambiguity on record keeping. It is being suggested to include the words ‘or other’ in the first sentence and remove the word ‘financial’ in the penultimate sentence thus create consistency throughout and be in compliance with EC 10.1 for Recommendation 10

Comment [HZL103]: COE EXPERT Note re Article 16(1): including reference to identification under Article 10 for consistency with Article 10(3)

Comment [HZL104]: COE EXPERT Note re Article 16(3) – a minor change to clarify and indicate that records kept should lead to the reconstruction of both individual and chains of transactions – in line with EC 10.1.1

Comment [HZL105]: COE EXPERT Note re Article 16(4): The changes proposed to paragraph 4 ensures that subjects have in place adequate systems for retrieving the retained data required under this Article in order to make it available to the Responsible Authority in a timely manner. Moreover it is being included that this applies for requests by other compete ... [6]

Article 17

Reporting from Customs authorities

1 Every person, Albanian or foreigner, that enters or leaves the territory of the Republic of Albania, shall be obliged to declare cash amounts, bearer negotiable instruments, precious metals or stones, valuables or antique objects, equal to or greater than 1,000,000 ALL, or the equivalent amount in foreign currency, explain the purpose for carrying them and produce supporting documents. The customs authorities shall send a copy of the declaration form and the supporting document to the “Responsible Authority”.

The customs authorities shall report immediately and no later than 72 hours to the “Responsible Authority” every suspicion, information or data related to money laundering or financing of terrorism for the activities under their jurisdiction.

2 Customs Authorities shall implement the provisions of article 11 of this law as may be applicable in consultation with the “Responsible Authority”.

3 Customs Authorities shall maintain and forward to the “Responsible Authority” comprehensive statistics on matters relevant to the prevention of money laundering and the financing of terrorism as may be determined by the “Responsible Authority” in accordance with paragraph (m) of Article 22 of this Law.

Article 18

Tax authorities reporting

1. Tax authorities identify their customers, according to procedures foreseen in article 4 of this law, and report in all cases to the Competent Responsible Authority immediately and no later than 72 hours, every suspicion, indication, notification or data related to money laundering or terrorism financing.

2. Tax authorities apply the requirements of the article 11 of this law as may be applicable in consultation with the “Responsible Authority”.

3. Tax Authorities maintain and forward to the “Responsible Authority” comprehensive statistics on matters relevant to the prevention of money laundering and the financing of terrorism as may be determined by the “Responsible Authority” in accordance with paragraph (m) of Article 22 of this Law.

Comment [HZL106]: COE EXPERT NOTE re Article 17: It is understood that Article 17 is not meant to implement FATF SR IX. It appears from the Fourth Round MER that SR IX is implemented through the Customs Code. Therefore Article 17 is being assessed against SR IX to the extent that it is covered by Law 9917.

Comment [HZL107]: COE EXPERT Note re Article 17(1): should this read LEK??

Comment [HZL108]: COE EXPERT Note re Article 17(1): According to Article 12 (1) subjects are to report **not later than the period specified in bylaws in application of this law**. It is important that the law retains consistency in reporting as the reporting obligation has the same goal whoever is reporting.

Comment [HZL109]: COE EXPERT Note re Article 17(2): Since the Customs Authorities are not considered as a ‘subject’ in terms of Article 3 and most of the requirements under Article 11 may not be applicable to the Customs Authorities, it is ... [7]

Comment [HZL110]: COE EXPERT Note re Article 17(3): this is a new subarticle. The objective is to place a responsibility on the Customs Authorities to maintain and provide statistics requ... [8]

Comment [HZL111]: COE EXPERT Note re Article 18(1): This should now also include Article 4/1. In any case in practice this obligation together with the reporting obligati... [9]

Comment [HZL112]: COE EXPERT Note re Article 18(1): see comment above re Customs Authorities in Article 17(1)

Comment [HZL113]: COE EXPERT Note re Article 18(2): Since the Tax Authorities are not considered as a ‘subject’ in terms of Article 3 and most of the requirements under Article... [10]

Comment [HZL114]: COE EXPERT Note re Article 18(3): this is a new subarticle. The objective is to place a responsibility on the Tax Authorities to maintain and provide statistics require... [11]

Article 19

Central Immovable Properties Registration Office Reporting

1 The Central Immovable Properties Registration Office shall report on the registration of contracts for the transfer of property rights for amounts equal to or more than 6,000,000 (six million) Lek or its equivalent in foreign currencies.

2 The Central Immovable Properties Registration Office shall report immediately and no later than 72 hours to the “Responsible Authority” every suspicion, information or data related to money laundering or terrorism financing for the activities under its jurisdiction.

3 The Central Immovable Properties Registration Office shall apply the provisions foreseen in the articles 5 and 11 of this law as may be applicable in consultation with the “Responsible Authority”.

4. The Central Immovable Properties Registration Office shall maintain and forward to the “Responsible Authority” comprehensive statistics on matters relevant to the prevention of money laundering and the financing of terrorism as may be determined by the “Responsible Authority” in accordance with paragraph (m) of Article 22 of this Law.

Comment [HZL115]: COE EXPERT Note re Article 19(2): see comment above re Customs Authorities in Article 17(1)

Comment [HZL116]: COE EXPERT Note re Article 19(3): It is being presumed that the Central Immovable Properties Registration Office would not be caught as a ‘subject’ under Item (f) of Article 3. Therefore, since the Central Immovable Properties Registration Office is not considered as a ‘subject’ in terms of Article 3 and most of the requirements, particularly under Article 11, may not be applicable to the Tax Authorities, it is proposed to insert the words ‘as may be applicable in consultation with the “Responsible Authority”’ who would then have the power to decide in a consistent way which requirements are to be met by the Central Immovable Properties Registration Office.

Article 20

Non-profit Organizations

1. Every authority that registers or licenses non-profit organizations shall report immediately and no later than 72 hours to the “Responsible Authority” every suspicion, information or data related to money laundering or terrorism financing.

2. Every authority that registers or licenses non-profit organizations shall maintain and forward to the “Responsible Authority” comprehensive statistics on matters relevant to the prevention of money laundering and the financing of terrorism as may be determined by the “Responsible Authority” in accordance with paragraph (m) of Article 22 of this Law.

Comment [HZL117]: COE EXPERT Note re Article 19(4): this is a new subarticle. The objective is to place a responsibility on the Central Immovable Properties Registration Office to maintain and provide statistics required by the Responsible Authority in accordance with Article 22(m).

Comment [HZL118]: COE EXPERT Note re Article 20: by inserting a timeframe for reporting the law would be consistent with the previous paragraphs – but see comment above re Customs Authorities in Article 17(1)

Comment [HZL119]: COE EXPERT Note re Article 20(2): this is a new subarticle thus dividing Article 20 into two subarticle. The objective is to place a responsibility on those authorities that register of licence NGO to provide statistics required by the Responsible Authority.

CHAPTER V

COMPETENT AND MONITORING BODIES FOR THE IMPLEMENTATION OF THE LAW

Article 21

Organization of the Responsible Authority

1 The General Directorate for the Prevention of Money Laundering, pursuant to this law, exercises the functions of the “Responsible Authority” as an institution subordinate to the Minister of Finances. This directorate, within its scope of activity, is empowered to independently

Comment [HZL120]: COE EXPERT Note re Article 21(1): the insertion of the word ‘independently’ emphasises the independence of the Directorate in its functions in accordance with EC 26.6.

determine the manner of pursuing and resolving cases related to potential money laundering and financing of potential terrorist activities.

2 Without prejudice to the provisions of this Article, T the General Directorate for the Prevention of Money Laundering, acts as an operationally independent specialized financial intelligence unit for the prevention and fight against money laundering and terrorism financing. Moreover, this directorate functions as the national center in charge of the collection, analysis and dissemination to law enforcement agencies of data regarding the potential money laundering and terrorism financing activities.

Comment [HZL121]: COE EXPERT Note re Article 21(2): suggested amendments to emphasise the operational independence of the FIU in accordance with EC 26.6 yet retaining it subject to the provisions of paragraphs 3 – 6 of this Article. Also meets the recommendations in the 4th Round MER

3 Labor relations of the staff of this Directorate shall be regulated by the law no. 8549, date November 11, 1999 “On the Civil Servant Status” and by the Labor Code for the supporting staff.

4 The organization and functioning of the Directorate shall be regulated by Council of Ministers’ Decision.

5. The General Director of the General Directorate for the Prevention of Money Laundering is appointed for a 4-year period, with the right or renomination.

6. The General Director of the General Directorate for the Prevention of Money Laundering is appointed and dismissed in accordance with the procedures of the Council of Ministers for the appointment and dismissal of directors of the institution subordinated to the Council of Ministers, the Prime Minister, or the minister.

Article 22

Duties and functions of the ~~R~~Responsible ~~A~~Authority

The General Directorate for the Prevention of Money Laundering as a financial intelligence unit, shall, pursuant to this law, have the following duties and functions:

a) collects, manages, processes, analyzes and disseminates to the competent authorities, data, reports and information regarding cases of suspected money laundering and terrorism financing.

aa) protects and keeps confidential all information it receives and disseminates such information only in accordance with this law.

b) has access to databases and any information managed by the state institutions, as well as in any other public registry within the competencies of this law;

c) for the purpose of preventing money laundering and terrorism financing, requests any kind of information from the subjects and other persons and authorities entities subject to this law;

Comment [HZL122]: COE EXPERT Note re Article 22 (a): the word ‘suspected’ is being suggest for inclusion for clarity and better harmonisation to Essential Criterion 26.1

Comment [HZL123]: COE EXPERT Note re Article 22(aa) : this is a new proposed paragraph that ensures the confidentiality of information received by the FIU except for dissemination in accordance with the law. This paragraph covers essential criterion 26.7 for FATF Recommendation 26.

Comment [HZL124]: COE EXPERT Note re Article 22(c) : amendment suggested to ensure the FIU has a right to demand information from other parties, such as Tax and Customs Authorities, which are not ‘subjects’ under Article 3 of the law but have a reporting obligation

~~c) supervises the compliance of the entities with the reporting obligations prescribed in this Law, including on site inspections alone or in collaboration with relevant supervising authorities;~~

c) supervises the activity of the reporting subjects and other persons obliged to report to the “Responsible Authority” regarding compliance with the reporting requirements of this Law laws and bylaws on prevention of money laundering and financing of terrorism, including undertaking on-site or off-site inspections, alone or in cooperation with the relevant supervisory ing authorities. In carrying out its supervisory activity the “Responsible Authority” shall have the same powers conferred upon the supervisory authorities through Article 24 of this Law. In this respect the “Responsible Authority” shall inform and cooperate with the relevant supervisory authority on non-compliance issues and shortcomings identified in the course of its supervisory activities to enforce corrective measures or to implement sanctions as necessary.

d) exchanges information related to money laundering or the financing of terrorism, on its own accord or upon request, with any foreign counterpart, subjected to similar obligations of confidentiality, in a timely, constructive and effective manner as may be possible subject to the circumstances of each case. For these purposes the “Responsible Authority” shall, further to information maintained in its records, search other databases and information as provided under paragraph (b) of this Article. The information offered exchanged should be utilized only for the purposes of prevention and fighting of money laundering and financing of terrorism and shall be subject to similar obligations of confidentiality. The information may be disseminated only upon prior consent of the parties;

dh) enter into agreements with any foreign counterpart for the exchange of information as provided for in paragraph (d) of this Article, subjected to similar obligations of confidentiality.

dh/1) may refuse to disclose information in circumstances where, in its opinion:

(i) such disclosure could negatively affect a criminal investigation that is in course in the Republic of Albania; or

(ii) disclosure of the information requested would be clearly disproportionate to the legitimate interests of a natural or legal person or the Republic of Albania; or

(iii) such disclosure would not be in accordance with fundamental principles of law in the Republic of Albania.

and where such refusal is made the “Responsible Authority” shall provide clear explanation of the reasons for refusal to the requesting foreign counterpart.

e) exchanges information with the General Prosecutor’s Office, Ministry of Interior, State Police, State Information Service and other competent law enforcement authorities on cases of laundering of proceeds of crime or financing of terrorism and may sign bilateral or multilateral memoranda of cooperation with them.

Comment [HZL125]: Article 22(c) - Amending Law Article 15

Comment [HZL126]: COE EXPERT Note re Article 22(c) : This new item replacing a previous similar one, seems to be in conflict with Article 24(2) which is giving supervisory powers to the supervisory authorities as identified for particular categories of subjects under article 3. It appears that the Law is appointing the Responsible Authority (FIU) and other supervisory authorities to undertake the same obligation – supervising subjects for compliance with the law. This situation could create issues in practice which could negatively impact on the supervisory function. The Albanian Authorities may wish to reconsider this position. ... [12]

Comment [HZL127]: Article 22(c) - Amending Law Article 15

Comment [HZL128]: COE EXPERT Note re Article 22(d) : the objective of this proposed amendment is to ensure better compliance to SR V.

Comment [HZL129]: COE EXPERT Note re Article 22(d) : the objective of this proposed amendment is to better clarify the powers of the Responsible Authority to exchange ... [13]

Comment [HZL130]: COE EXPERT Note re Article 22(d) : the objective of the proposed amendment is to harmonise the article better with FATF EC 40.1.1. It allows flexibility dependant on the circumstances. ... [14]

Comment [HZL131]: COE EXPERT Note re Article 22(d) : the objective of the proposed amendment is to ensure that the Responsible Authority can search for information in order to ... [15]

Comment [HZL132]: COE EXPERT Note re Article 22(d) : the replacing of the word (offered) by the word (exchanged) captures both receiving and providing information (could be linked to ... [16]

Comment [HZL133]: COE EXPERT Note to Article 22(dh/1) : this new paragraph is being suggested for compliance with FATF EC 40.7. It is inspired by Article 4(3) of the European Union ... [17]

e) informs, in cooperation with the prosecution office, the responsible authority on the conclusions of the registered criminal proceedings on money laundering and financing of terrorism;

Comment [HZL134]: Article 22 (è) - Amending Law Article 15

è) it is informed about registered criminal proceedings for money laundering and financing of terrorism and the manner of their conclusion;

Comment [HZL135]: Article 22 (è) - Amending Law Article 15

f) may, on the basis of public information or other information available to it, issue a list of countries in accordance with paragraph 5 of article 9 8 of this law, in order to limit and/or check the transactions or business relations of the entities with these countries;

Comment [HZL136]: COE EXPERT Note re Article 22(f): to provide a broad indication on the basis for determining that a country is not or is insufficiently applying the international standards. Also meets recommendation for guidance in the 4th Round MER

g) orders, when there are reasons based on facts and concrete circumstances for money laundering or financing of terrorism, the blocking or temporary freezing of the transaction or of the financial operation for a period not longer than 72 hours. If elements of a criminal offence are noted, the Authority shall, within this timeframe, present the denunciation to the Prosecution by submitting also a copy of the order for the temporary freezing of the transaction or of the account, according to this article as well as all the relevant documentation;

Comment [HZL137]: COE EXPERT Note re Article 22(f): minor change as the relevant paragraph 5 is now transferred to Article 8

g) maintains and administers all data and other legal documentation for 10 years from the date of receiving the information on the last transaction;

Comment [HZL138]: COE EXPERT Note re Article 22(g): see comment re Article 12(2)

h) presents its feedback on the reports that the subjects entities have filed with this authority. Feedback should as a minimum include an acknowledgement of the receipt of the report and, subject to law, information on the result once a case is closed or completed;

Comment [HZL139]: COE EXPERT Note re Article 22(h): amendment proposed for better harmonisation with Essential Criterion 25.2 and the FATF Best Practice Paper.

hh) proposes to the Minister of Finance regulations and guidance and amendments thereto to be issued in accordance with the provisions of Article 28 of this Law.

Comment [HZL140]: COE EXPERT Note re new Article 22(hh): this item is being added to recognize the responsibility of the Authority to propose regulations to the Minister of Finance in accordance with Article 28

i) organizes and participates, together with public and private institutions, in training activities related to money laundering and terrorism financing, as well as, organizes or participates in programs aimed at raising public awareness;

j) notifies the relevant supervising authority when observing that a subject an entity fails to comply with the obligations specified in this law;

k) publishes within the first quarter of each year the annual public report for the previous year, regarding the activity of the "Responsible Authority". The report should include detailed statistics on the origin of the received reports and the results of the cases disseminated to the prosecution together with information on money laundering and financing of terrorism current techniques, methods and trends observed through the suspicious transaction reports received and analysed in accordance with the relevant provisions of this Law or through other information available to the "Responsible Authority".

Comment [HZL141]: COE EXPERT Note re Article 22(k): amendments being suggested for indicative acknowledgement of 'general feedback' identified in the FATF Best Practice Paper.

l) orders, when there are reasonable grounds for money laundering and financing of terrorism, the monitoring, during a certain period of time, of bank transactions that are being made through one or more specified accounts.

Comment [HZL142]: Article 22(l) - Amending Law Article 15

m) periodically review the effectiveness and efficiency of the national systems for combating money laundering and financing of terrorism through statistics and other available information. To this effect the “Responsible Authority” shall itself maintain relevant comprehensive statistics and collect other relevant statistics from subjects, supervisory authorities and other competent authorities with a responsibility for combating money laundering and the financing of terrorism. In this respect the “Responsible Authority” shall determine the type of statistics which, as a minimum, shall include annual statistics on:

- (i) suspicious transaction reports including breakdown by reporting persons, analysis and dissemination
- (ii) sanctions imposed including breakdown by type, sector and amount
- (iii) cases investigated, persons prosecuted and persons convicted
- (iv) property frozen, seized or confiscated
- (v) mutual legal assistance and other international requests for cooperation
- (vi) on-site supervisory examinations

Comment [HZL143]: COE EXPERT Note re Article 22(m): this new article is being suggested to meet the requirements of Recommendation 32 . It is suggested to retain flexibility for the “Responsible Authority” to determine the type of statistics it requires and at the same time provide indication to subjects and other authorities in the law the categories under which such statistics could be collected

Article 22/1

Use of data

Any information or data disseminated to law enforcement bodies by the “Responsible Authority” should be used only for intelligence purpose and under no circumstances as evidence or for judicial purpose.

Comment [HZL144]: Article 22/1 - Amending Law Article 16

Article 23

Coordination Committee for the Fight against Money Laundering

1 The Coordination Committee for the Fight against Money Laundering shall be responsible for planning the directions of the general state policy in the area of the prevention and fight against money laundering and terrorism financing.

2 The Prime Minister shall chair the Committee consisting of the Minister of Finance, the Minister of Foreign Affairs, the Minister of Defense, the Minister of the Interior, the Minister of Justice, the General Prosecutor, the Governor of the Bank of Albania, the Director of the State Information Service and the General Inspector of High Inspectorate for the Assets Declaration and Auditing.

3 The Committee shall convene at least once a year to review and analyze the reports on the activities performed by the “Responsible Authority” and the reports on the documents drafted by the institutions and international organizations, which operate in the field of the fight against money laundering and terrorism financing. The general director of the “Responsible Authority”

shall provide to the Committee upon its request and act as an advisor during the meetings of this Committee.

4 Ministers, members of the parliament, directors or representatives of institutions and experts of the field of prevention and fight against money laundering and financing of terrorism may be invited to the meetings of the Committee.

5 The Committee may establish technical and/or operational working groups to assist in the performance of its functions, as well as, to study money laundering and terrorism financing typologies and techniques.

6 The operation rules of Committee shall be defined in its internal regulation to be adopted by this Committee.

Article 24

Functions of supervisory authorities and other competent authorities

1. The Supervisory Authorities are:

- a) The Bank of Albania for the entities referred to in letters 'a', 'b', 'c', 'ç' and 'd', of Article 3, of this law;
- b) The Financial Supervisory Authority for the entities referred to in letters ~~'dh'~~, 'e' and 'ë' of Article 3, of this law
- c) Respective ministries for the supervision for the entities referred to in letters 'f' and 'g' of Article 3, of this law;
- c) The National Chamber of Advocates for lawyers;
- d) The Ministry of Justice for notaries;

~~dh)~~ The relevant authorities for supervising entities defined in letters 'h', 'i', 'j' and 'k' of Article 3, of this law, |

2. The supervisory authorities supervise, through both on-site and off-site planned inspections, the compliance of the activity of the subjects entities with the obligations set down in Articles 4, ~~4/1~~, 5, 6, 7, 8, 9, 10, 11, 12 and ~~16~~ 12 of this Law. For the purposes of this paragraph and paragraph 4 item (a) of this Article, and notwithstanding any other law, supervisory authorities may demand from a subject the production of or access to information or documents related to that subject's compliance with this Law and any regulations issued in terms of Article 28. |

3. The Supervisory Authorities shall immediately and no later than 72 hours report to the ~~"Responsible a~~ Authority" every suspicion, information or data related to money laundering or financing of terrorism for the activities under their jurisdiction.

Comment [HZL145]: COE EXPERT Note re Article 24 (b): Item 'dh' to Article 3 has been repealed.

Comment [HZL146]: COE EXPERT Note re Article 24(1)(dh): As recommended in the 4th Round MER it might be more appropriate to specify the relevant supervisory authority for each category of subjects. Albanian authorities may wish to consider specifying supervisory authority for each category of subjects.

Comment [HZL147]: COE EXPERT Note re Article 24(2): The addition of the last sentence and the amendment to the first sentence reflect Essential Criteria 29.2 and 29.3 respectively.

Comment [HZL148]: COE EXPERT Note re Article 24(2): See note to Article 22(c)

Comment [HZL149]: COE EXPERT Note re Article 24(3): by inserting a timeframe for reporting the law would be consistent with the previous paragraphs – but see comment above re Customs Authorities in Article 17(1)

4. The Supervisory Authorities perform also the following duties:

a) check implementation by the ~~entities~~ **subjects** of programs against money laundering and terrorism financing as well as ensure that these programs are appropriate;

aa) inform and cooperate with the “Responsible Authority” in a timely manner on non-compliance issues and shortcomings identified in the course of their supervisory activities to enforce corrective measures or to implement sanctions as necessary;

b) take the necessary measures by applying appropriate ‘fit and proper’ criteria including those relating to expertise and integrity to prevent an ineligible person from holding, or beneficially owning or controlling a significant interest in an entity that is subject to this law and from directly or indirectly participating in the management, administration or operation of an such entity;

c) cooperate and provide expert assistance according to the field of their activity in the identification and investigation of money laundering and terrorism financing, in compliance with the requests of the ~~“Responsible Authority”~~;

c) cooperate in preparing and distribution of training programs in the field of the fight against money laundering and terrorism financing;

d) keep statistics on the actions performed, as well as, on the sanctions imposed in the field of money laundering and financing of terrorism and as may be determined by the “Responsible Authority” in terms of paragraph (m) of Article 22 and make such statistics available to the “Responsible Authority” upon its request for fulfilling its functions for the purposes of this Law.

5. The supervisory authorities are accurately defined in the secondary legislation pursuant to this law.

6. Other competent authorities with a responsibility for combating money laundering and the financing of terrorism shall maintain and make available to the “Responsible Authority” comprehensive statistics on matters relevant to the prevention of money laundering and the financing of terrorism as may be determined by the “Responsible Authority” in accordance with paragraph (m) of Article 22 of this Law.

Comment [HZL150]: COE EXPERT Note re new Article 24(4)(aa): the objective of this amendment is to create a link between the supervisory authorities and the Responsible Authority on matters of supervision, enforcement of corrective measures and sanctioning – see also comments to amendments to Article 22(c).

Comment [HZL151]: COE EXPERT Note re Article 24(4)(b): suggested amendment will bring this provision more in compliance with EC 23.3.1 and EC 24.1.3 and meets the recommendations for the shortcoming found in the 4th round MER.

Comment [HZL152]: COE EXPERT Note re Article 24(4)(d): proposed amendment links the obligation to maintain statistics with the functions of the Responsible Authority in particular, but not specifically, those under proposed new Article 22(m)

Comment [HZL153]: COE EXPERT Note re Article 24(6): this is a new subarticle with the objective to place a responsibility on those other competent authorities that have an AML/CFT responsibility – such as law enforcement agencies - to maintain and provide statistics required by the Responsible Authority.

Article 25

Prohibition of speculation with professional secrecy or its benefits

1 ~~The subjects~~ **Entities** shall not use professional secrecy or benefits deriving from it as a rationale for failing to comply with the legal provisions of this law, when information is requested or when, in accordance with this law, the release of a document, which is relevant to the information, is ordered.

2 Attorneys and notaries, ~~and independent public and certified accountants~~, shall be subject to the obligation of reporting information about the customer to the “~~R~~Responsible ~~a~~Authority”, in accordance with this law. Attorneys ~~and independent public and certified accountants~~ shall be exempted from the obligation to report with regard to the data that they have obtained from the person defended or represented by them in a court case, or from documents made available by the defendant in support of the defense requested.

Comment [H2L154]: COE EXPERT Note re Article 25(2): The inclusion of independent public and certified accounts aligns this provision closer to FATF Recommendation 16

Article 26

Revocation of the license

1. The “~~R~~Responsible ~~a~~Authority” may request the licensing/supervisory authority to restrain, suspend or revoke the license of ~~a subject an entity~~:

a) when it ascertains or has facts to believe that the ~~subject entity~~ has been involved in money laundering or terrorism financing;

b) when the ~~subject entity~~ repeatedly commits one or several of the administrative violations set down in article 27 of this law.

2. The licensing / supervisory authority shall review the application of the “~~R~~Responsible ~~a~~Authority” based on the accompanying documentation, which shall represent the suspicions or the data, based on concrete circumstances and facts, according to the paragraph 1 of this article. The licensing/supervisory authority shall make a decision to accept or refuse it in accordance with the provisions of this law and with the legal and sublegal provisions, which regulate its activity and the activity of the entities licensed and supervised by it.

3. With regard to the entities that carry out banking activity under the circumstances stipulated in letters ‘a’ and ‘b’ of paragraph 1, of this article, the “~~R~~Responsible ~~a~~Authority” may request from the Bank of Albania the enhancing of the level of supervision of the entity.

Article 27

Administrative sanctions

~~1. If they do not constitute a criminal offence, the violations committed by the entities shall be classified as administrative contraventions and the entities shall be subject to sanctions;~~

~~2. In the cases when they fail to apply identification, monitoring procedures, as well as customer due diligence on the customer and transactions according to their risk level that they present as stipulated in articles 4, 5, 6, 7, 8 and articles 9, paragraph 1 through 8, and the secondary legislation pursuant to this law, the entities shall fined;~~

a) natural persons: from 100,000 Lek up to 500,000 Lek;

b) legal persons: from 500,000 Lek up to 1,500,000 Lek;

3. In the cases of failing to collect data according to article 10 of this law:

a) natural persons: from 400,000 Lek up to 1,600,000 Lek;

b) legal persons: from 1,200,000 Lek up to 4,000,000 Lek;

4. In the cases of failing to apply the provisions of article 9, paragraph 9, and article 10, paragraph 3, entities shall be fined;

a) natural persons: from 500,000 Lek up to 2,000,000 Lek;

b) legal persons: from 2,000,000 Lek up to 5,000,000 Lek;

5. In the cases of failing to implement the preventive measures stipulated in article 11 of this law, entities shall be fined:

a) natural persons: from 300,000 Lek up to 1,500,000 Lek;

b) legal persons: from 1,000,000 Lek up to 3,000,000 Lek;

6. In cases when failing to meet the reporting obligations as stipulated in paragraphs 3 and 4 of article 12 of this law, the entities shall be fined;

a) natural persons: from 300,000 Lek up to 1,500,000 Lek;

b) legal persons: from 1,000,000 Lek up to 5,000,000 Lek;

7. For the violations of requirements prescribed in article 15 and 16 of this law, the entities shall be fined:

a) natural persons: 2,500,000 Lek;

b) legal persons: 5,000,000 Lek;

8. In addition to what is prescribed in the paragraphs 2, 3, 4, 5, 6, 7 of this article, when the entity is a legal person and the administrative violation is committed by:

a) an employee or non administrator of the entity, the person who has committed the violation shall be fined from 60,000 Lek up to 300,000 Lek;

b) an administrator or a manager of the entity, the person who has committed the violation shall be fined from 100,000 Lek up to 500,000 Lek;

9. The fines are defined and imposed by the responsible authority.

10. The responsible authority shall inform the supervising/licensing authority on the sanctions imposed.

11. The procedures of stating, considering and imposing the administrative sanctions by the responsible authority are prescribed in the Council of Ministers' decision. The appeal and execution procedures concerning sanctions imposed by the decision of the responsible authority, shall be carried out in accordance with the law "On administrative violations."

12. The right to consider the administrative violations provided in this article cannot be exercised when 2 years have elapsed from the time the administrative violation was committed.

The execution procedures of the administrative sanctions will be enforced in accordance with the articles 510 through 526/a of the Civil Procedures Code.

Comment [HZL155]: Article 27 - Amending Law Article 17

Article 27

Administrative contraventions

1. When they do not constitute criminal offences, the violations committed by subjects are classified as administrative contraventions whereupon the subjects are fined.

2. In cases when they do not meet the obligations provided for in articles 4; 4/1; 5; 6; 11; and bylaws issued in application of this law, the subjects are fined:

a) natural persons: from 100 000 Lek to 1 000 000 Lek;

b) legal persons: from 300 000 Lek to 3 000 000 Lek;

3. In cases when they do not meet the obligations provided for in articles 7,8, 9 and 10 and bylaws issued in application of this law the subjects are fined:

a) natural persons: from 200 000 Lek to 2 000 000 Lek;

b) legal persons: from 400 000 Lek to 4 000 000 Lek.

4. In cases when they do not meet the requirements for reporting of transactions over the threshold or reporting of the suspicious activity, provided for in articles 4/1, 9 and 12, and bylaws in application of this law, the subjects are fined:

a) natural persons from 300 000 Lek to 3 000 000 Lek;

b) legal persons from 500 000 Lek to 5 000 000 Lek;

5. In cases when they do not meet the obligations provided for in articles 15 and 16 of this law, the subjects are fined:

a) natural persons from 200 000 Lek to 1 500 000 Lek;

b) legal persons from 1 000 000 Lek to 4 000 000 Lek;

Comment [HZL156]: COE EXPERT Note re Article 27: Article 27 only provides for fines and not for a graduated systems of sanctions as required under FATF Recommendation 17 EC 17.4. If a graduated system of sanctions is available under the specific financial legislation (and hence applied by the supervisor as opposed to the FIU under paragraph 8 of this Article) then the Albanian authorities may wish to positively consider the proposed provisions to cross refer for the cooperation between the supervisory authorities and the Responsible Authority and ensure the effective procedures for their application.

6. In cases when they do not enforce the order of the “Responsible Authority” issued pursuant to article 22, letter “g”, the subjects are fined:

- a) natural persons from 300 000 Lek to 2 000 000 Lek;
- b) legal persons from 2 000 000 Lek to 5 000 000 Lek.

7. Except as provided for in items 2, 3, 4, 5, 6, of this article, when the subject is a legal person and the administrative contravention is committed:

- a) by an employee or non-administrator of the subject, the person who has committed the violation, is fined from 20 000 Lek to 200 000 Lek;
- b) by an administrator or manager of the subject, the person who has committed the violation is fined from 50 000 Lek to 500 000 Lek;

8. Fines are specified and determined by the “Responsible Authority” in collaboration with the respective supervisory authority as the “Responsible Authority” deems necessary in accordance with Article 24(4)(aa) of this Law.

Comment [HZL157]: COE EXPERT Note re Article 27(8): the objective of this proposed amendment is to create the counterlink to the new proposed Article 24(4)(aa)

9. The “Responsible Authority” informs the licensing and/or supervising authorities about the sanctions imposed.

10. The “Responsible Authority” is entitled to 20 per cent of the income derived from the collection of fines and 80 per cent is paid to the State Budget. The “Responsible Authority” uses 50 per cent of the income from fines for investments, process computerization and improvement of working conditions and may use 50 percent for remuneration of employees.

11. The procedures for the verification, examination, proposal and adoption of administrative measures by the “Responsible Authority” are defined by a decree of the Council of Ministers. Appeal procedures and the execution of fines, set forth in the decision of the “Responsible Authority”, are performed in accordance with the Law “On administrative contraventions”.

12. The right to examination of administrative contraventions provided for in this article may not be exercised when 2 years have elapsed from the time the administrative contravention was committed.

13. The procedures for the execution of administrative measures are implemented in accordance with article 510 to 526/a of the Civil Procedure Code.

Comment [HZL158]: Article 27 - Amending Law Article 17

Article 28

Issuance of regulations

1. The Council of Ministers, upon the proposal of the Minister of Finance, within 6 months of coming into effect of this law, shall issue detailed rules regarding the form, method and reporting procedures of the data in pursuance of this law, for the licensing and supervising authorities, the

Central Immovable Properties Registration Office, and the Agency for the Legalization, Urbanization and Integration of Informal Areas and Constructions.

2. General Inspector of High Inspectorate for the Assets Declaration and Auditing shall regularly, and not less than twice a year, present to the “~~R~~Responsible aAuthority” the complete and updated list of the politically exposed persons drafted based on the provisions set down in Law No. 9049, date April 10, 2003 “On the declaration and auditing of assets and financial obligations of the elected officials and of a number of public servants”.

3. The Minister of Finance shall, upon the proposal of the “~~R~~Responsible aAuthority” in accordance with paragraph (hh) of Article 22 of this Law, adopt, within 6 months from the publishing of this law in the Official Journal, detailed rules related to the following:

- a) methods and procedures for the reports of the subjects entities described in article 3 of this law;
- b) methods and procedures for the reports of the customs authorities;
- c) methods and procedures for the reports of the tax authorities;
- c) applicable standards or criteria and timeframes for the reporting of suspicious activities, according to the tendencies and typologies in compliance with international standards;
- d) detailed procedures for the verification of administrative violations committed by the reporting entities.

Comment [HZL159]: COE EXPERT Note re Article 28(3): the purpose of this addition is to link to the new proposed Article 22(hh).

Article 29

Transitional Provisions

Provisions of the Law No. 8610, of May 17, 2000, “On the Prevention of Money Laundering”, amended, shall be applied until this Law enters into force.

All secondary legislation issued pursuant to Law No. 8610 shall be applied as long as they do not contravene with this law and shall be effective until they are substituted by other sublegal acts to be issued pursuant to this Law.

Article 30

Repealing Provision

The Law No. 8610, May 17, .2000, “On the Prevention of Money Laundering”, as amended shall be repealed.

Article 31

Entry into force

This law shall enter into force three months following its publication in the Official Gazette.

Promulgated with decree no.5746, of June 9, 2008 of the President of the Republic of Albania, Bamir Topi.

Page 6: [1] Comment [HZL14]	Herbert Zammit LaFerla	4/26/2012 12:02:00 PM
<p>CoE expert Note re Item (k(i)) and (k(ii)): according to the 4th Round MER Item (k(i)) captures TCSP but suggest to extend requirements to all activities defined by the standard. It is advisable to clarify better even though trusts do not exist in Albania – but subjects may be handling foreign trusts - and some company services are included under lawyers. It is therefore proposed to include the text as drafted under Item (k(ii)). Proposed to be included to the exclusion of lawyers and accountants and hence will only capture the activity if done by other persons.</p>		
Page 10: [2] Comment [HZL34]	Herbert Zammit LaFerla	4/26/2012 12:03:00 PM
<p>COE EXPERT Note re Article 4/1(13): Since there are other provisions in the law that reflect on CDD, such as Article 7 on ECDD, it would be more appropriate not to be specific. Moreover, although this could be a matter of translation, using the word ‘shall’ rather than ‘should’ is more assertive.</p>		
Page 10: [3] Comment [HZL36]	Herbert Zammit LaFerla	4/26/2012 12:03:00 PM
<p>COE EXPERT Note re Article 4/1(14): Although the provisions in the last sentence are theoretically correct yet it might be difficult for subjects to apply in practice unless there is guidance. First once account is closed how are subjects to deal with the proceeds (funds) as, in banking terms they cannot take over that money. Second how can an STR be filed if there is no information on the account holder? Suggested amendments are aimed at addressing these issues.</p>		
Page 10: [4] Comment [HZL38]	Herbert Zammit LaFerla	4/26/2012 12:03:00 PM
<p>COE EXPERT Note re Article 4/1(15): Moved from Article 7(2). Amendment proposed in the light of the comments re Article 6(2) below. This establishes the generality that in all instances the presence of the customer and his representative where applicable – without prejudice to non-face-to-face businesses.</p>		
Page 20: [5] Comment [HZL83]	Herbert Zammit LaFerla	4/26/2012 12:03:00 PM
<p>COE EXPERT Note re Article 11(1)(d): proposed amendment to ensure that the subject’s internal procedures are brought to the attention of staff in accordance with Recommendation 15.1. The amendments also ensures that staff are kept aware of legislative and regulatory AML / CFT Requirements.</p>		
Page 24: [6] Comment [HZL105]	Herbert Zammit LaFerla	4/26/2012 12:03:00 PM
<p>COE EXPERT Note re Article 16(4): The changes proposed to paragraph 4 ensures that subjects have in place adequate systems for retrieving the retained data required under this Article in order to make it available to the Responsible Authority in a timely manner. Moreover it is being included that this applies for requests by other competent authorities as allowed by this law – in line with EC 10.4 for Rec 10</p>		
Page 25: [7] Comment [HZL109]	Herbert Zammit LaFerla	4/26/2012 12:03:00 PM
<p>COE EXPERT Note re Article 17(2): Since the Customs Authorities are not considered as a ‘subject’ in terms of Article 3 and most of the requirements under Article 11 may not be applicable to the Customs Authorities, it is proposed to insert the words ‘as may be applicable in consultation with the “Responsible Authority”’ who would then have the power to decide in a consistent way which requirements are to be met by the Customs Authorities.</p>		
Page 25: [8] Comment [HZL110]	Herbert Zammit LaFerla	4/26/2012 12:03:00 PM

COE EXPERT Note re Article 17(3): this is a new subarticle. The objective is to place a responsibility on the Customs Authorities to maintain and provide statistics required by the Responsible Authority in accordance with Article 22(m).

Page 25: [9] Comment [HZL111] Herbert Zammit LaFerla 4/26/2012 12:03:00 PM

COE EXPERT Note re Article 18(1): This should now also include Article 4/1. In any case in practice this obligation together with the reporting obligation under this Article basically makes the Tax Authorities a 'subject' in terms of the Law. Once the Tax Authorities are required to apply the due diligence under Article 4 it becomes debatable and arguably correct to oblige the Tax Authorities also to the enhanced due diligence under Articles 7 – 9. This may not be necessary if the Tax Authorities, similar to the Customs Authorities, are mainly obliged to report suspicions or other information related to money laundering or terrorism financing. The Albanian Authorities may wish to consider therefore removing the identification obligation - in any case the Tax Authorities will have all the information necessary on the tax payer - and leave only the reporting obligation.

Page 25: [10] Comment [HZL113] Herbert Zammit LaFerla 4/26/2012 12:03:00 PM

COE EXPERT Note re Article 18(2): Since the Tax Authorities are not considered as a 'subject' in terms of Article 3 and most of the requirements under Article 11 may not be applicable to the Tax Authorities, it is proposed to insert the words 'as may be applicable in consultation with the "Responsible Authority"' who would then have the power to decide in a consistent way which requirements are to be met by the Tax Authority.

Page 25: [11] Comment [HZL114] Herbert Zammit LaFerla 4/26/2012 12:03:00 PM

COE EXPERT Note re Article 18(3): this is a new subarticle. The objective is to place a responsibility on the Tax Authorities to maintain and provide statistics required by the Responsible Authority in accordance with Article 22(m).

Page 28: [12] Comment [HZL126] Herbert Zammit LaFerla 4/26/2012 12:03:00 PM

COE EXPERT Note re Article 22(c) : This new item replacing a previous similar one, seems to be in conflict with Article 24(2) which is giving supervisory powers to the supervisory authorities as identified for particular categories of subjects under article 3. It appears that the Law is appointing the Responsible Authority (FIU) and other supervisory authorities to undertake the same obligation – supervising subjects for compliance with the law. This situation could create issues in practice which could negatively impact on the supervisory function. The Albanian Authorities may wish to reconsider this position and place the supervisory responsibility either with the Responsible Authority or with the relevant supervisory authority or create legal clarity as is being suggested and indicate herein.

This issue was raised in the Fourth Round MER (paragraphs 845 and 846) where the FIU held that its powers are with respect to the reporting obligation. This does not appear the case as according to Article 24(2) this also lies with the supervisory authorities. The proposed amendment is not addressing this.

In the circumstances it is suggested to amend item (c) to limit the powers of the FIU to supervising compliance with reporting obligations only but to provide it with similar powers as the supervisory authorities as indicated. The proposed amendment further links the cooperation of the Responsible Authority under this Article with that of the supervising authorities under Article 24.

Page 28: [13] Comment [HZL129] Herbert Zammit LaFeria 4/26/2012 12:03:00 PM
COE EXPERT Note re Article 22(d): the objective of this proposed amendment is to better clarify the powers of the Responsible Authority to exchange information spontaneously or upon request in accordance with FATF EC 40.3

Page 28: [14] Comment [HZL130] Herbert Zammit LaFeria 4/26/2012 12:03:00 PM
COE EXPERT Note re Article 22(d): the objective of the proposed amendment is to harmonise the article better with FATF EC 40.1.1. It allows flexibility depending on the circumstances surrounding each request for information.

Page 28: [15] Comment [HZL131] Herbert Zammit LaFeria 4/26/2012 12:03:00 PM
COE EXPERT Note re Article 22(d): the objective of the proposed amendment is to ensure that the Responsible Authority can search for information in order to fulfil a request for assistance. This in compliance with FATF EC 40.4.1

Page 28: [16] Comment [HZL132] Herbert Zammit LaFeria 4/26/2012 12:03:00 PM
COE EXPERT Note re Article 22(d): the replacing of the word (offered) by the word (exchanged) captures both receiving and providing information (could be linguistic). The addition of the words "and shall be subject to similar obligations of confidentiality" ensures the protection of the exchanged information. This brings paragraph (d) in compliance with FATF EC 40.9

Page 28: [17] Comment [HZL133] Herbert Zammit LaFeria 4/26/2012 12:03:00 PM
COE EXPERT Note to Article 22(dh/1): this new paragraph is being suggest for compliance with FATF EC 40.7. It is inspired by Article 4(3) of the European Union Council Decision of 17 October 2000 concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information - *OJ L 271, 24.20.2000, p.4*