Pursuatn to Article 6, paragraph 1, Article 104, paragraph 1, item 5) and Article 114 of the Law on the Prevention of Money Laundering and Terrorism Financing (Official Gazette of the Republic of Serbia, 113/17),

The Minister of Trade, Tourism and Telecommunications hereby passes the

**GUIDELINES**

FOR ASSESSING MONEY LAUNDERING AND TERRORIST FINANCING RISKS FOR REAL ESTATE AGENTS

**I Aim of the Guidelines**

The Guidelines for assessing money laundering and terrorist financing risks for real estate agents (hereinafter: Guidelines) are passed in order to set minimum standards of conduct for agents predominantly involved in real estate agency andregistered under the activity code 68.31 - activity of real estate agencies, and other companies including limited liability companies and entrepreneurs involved in real estate agency (hereinafter: obliged entity). The obliged entities use the Guidelines when developing and applying their risk-sensitive procedures with the aim of establishing an efficient AML/CFT system.

The aim of the risk assessment is to make conclusions about service beneficiaries who carry a potentially higher or lower ML/TF risks in the system of operation of real estate agents. By conducting the assessment, the obliged entity can adequately respond to the risks identified, by applying a range of measures and activities, and to make adequate decisions on the allocation of its resources in line with the assessed risks, with a view to investing more effort and resources into high-risk areas in the business of real estate agencies.

The Guidelines are intended for support uniform application of the Law on the Prevention of Money Laundering and the Financing of Terrorism (hereinafter: AML/CFT Law) and are based on the comprehensive ML/TF National Risk Assessment (NRA) that was carried out using the World Bank methodology. The Guidelines do not set out the right sequence of steps for the obliged entity as to how to conduct the internal risk assessment. Rather, **they help to better understand the risks at the level of the obliged entity and to give them an idea about certain action** that needs to be taken.

Countries must develop a national ML/TF risk assessment (NRA) and set out measures and activities to mitigate the risks identified.The findings of the NRA offer the necessary information to the obliged entities and serve as the starting and mandatory foundation to be taken into account by the obliged entity at the level of its operation.

The obliged entities must understand and apply the developed national ML/TF risk assessments.

The new national ML/TF risk assessments of 2018, was made drawing on the revised FATF Recommendations adopted in February 2012[[1]](#footnote-1) which constitute an international standard. The Recommendations call on countries to identify, assess and understand the risks of money laundering and terrorist financing which they face. Identifying, assessing and understanding the risk of money laundering is an essential part of the implementation and development of an anti-money laundering and terrorist financing system in the country. This system includes laws, other regulations, enforcement measures and other measures undertaken to mitigate the risks of money laundering and terrorist financing.

The result of the collected data for the period (2013-2017), its cross-referencing and analyses that were carried out by the state authorities on the one hand, and the private sector on the other, have led to a new, more comprehensive analysis of the current situation and a more realistic presentation of the situation in the real estate sector.

The 2018 NRA was improved because of availability of data, as certain information had been unavailable for the previous NRA, and preliminary assessments were only made based on a sample. Now the risk assessment has covered a large number of sectors, with full data.

In the 2012 National Risk Assessment, the real estate sector was rated as a medium-high risk. In the mentioned exercise, real estate agents and real estate developers (Ser. investitori) were assessed together. The new NRA separated the real estate agents who provide services from real estate developers who are engaged in the construction and sale of newly built buildings, as two separate activities. Based on an analysis of the overall situation in intermediation for sale or lease of real estate, and after the adoption of a separate law on intermediation in sale and lease of real estate (Official Gazette of the Republic of Serbia, 95/13 and 41/18), intermediation in this field has been thoroughly regulated and significant progress has been made in regulating the activity of intermediation.

The real estate sector is among the sectors that are the most exposed to the ML threat, as found by the NRA.

The real estate sector is not only vulnerable, it is also a threat to the system, since the real estate trade has been recognized in a large number of money laundering court cases, and since the money generated through illegal activities is most often invested in real estate.

Speaking of a risk assessment applied by the supervisory authority, one should bear in mind that the assessment covers the inherent risk and the residual risk. The inherent risk refers to the resultant of threats and vulnerabilities immanent to a particular sector. Different factors contribute to this level of risk, and above all the quality and effectiveness of preventive and repressive measures applied by the supervisory authority. These factors can reduce the level of risk, if there is consistent and effective law enforcement, developed supervision, adequate capacity, etc., ultimately resulting in a lower residual risk.

Using their knowledge and expertise and in line with the AML/CFT Law, the obliged entity sill develop an appropriate approach toward the client based on the risk of its business activity.

The assessment of the risk of money laundering and terrorist financing, in addition to the threat and vulnerability assessments, includes the assessment of consequences for the system[[2]](#footnote-2). They should be understood as the harm that money laundering could cause and include the impact of criminal activity on a reporting entity, the financial system, society and the economy as a whole.

Bearing in mind that threats and vulnerability are assessed as medium for the real estate sector, the consequences for the system should therefore be rated as medium.

Certainly, money laundering is a global problem to which no country is immune, including the Republic of Serbia. Money laundering is not only a consequence of a previously committed crime, but is also a stepping stone for future criminal activities and directly adversely affects the economic and political system and, depending on the magnitude, it can undermine democratic development, economic and financial stability and the transition process in Serbia.

Money laundering leads to easier and faster penetration of crime and corruption into the economy, education, health, police, judiciary, the entire government system, and thus to further criminalization of the entire society.

The largest and gravest negative effects of money laundering can be first seen in the economy, through a decline in public revenue, transparency and efficiency of the financial system, the expansion of the “grey economy".Its size in Serbia at this point is not at a satisfactorily low level, so any increase would give rise to negative effects across the entire economic and financial system. Money laundering, as a rule, leads to a decrease in budget revenues due to tax avoidance. It is one of the most common unlawful incomes that is the subject of money laundering. Such situations often further undermine the tax system as they cause an increase in tax rates and liabilities of entities that meet their obligations. Furthermore, all this puts them into an unequal market position and makes it difficult for them to operate.

Money laundering is a process of concealing or disguising the illicit nature of money or property generated through crime, and the initial property always comes as a result of illicit activities, whereas in terrorist financing the sources can be both legitimate and illegitimate. Still, the main objective of terrorist financiers does not necessarily have to be concealing the sources of their assets but concealment of the nature of the financed activity.An efficient AML/CFT system must analyse both of these risks.

Likewise, one should keep in mind that criminal structures do not care about the profitability of their investments but they tend to invest their criminal proceeds in activities that need not bring profits, such as real estate.

It is exactly such investments that are in fact targeted the most by money launderers because this method makes it possible to integrate proceeds into legal flows easily and quickly, without raising too much suspicion.

A service provider or any person delivering certain products can be abused as an instrument in a money laundering scheme. Money can be laundered through financial sector operations or through operations outside of the financial sector. Where property gain is acquired through commission of a crime, the perpetrator seeks ways to use the money so as not to attract attention of the competent authorities. Therefore they carry out a series of transactions serving to make the money appear as legitimate.

The ML/TF risk is a risk that the client will abuse the business relationship or financial transaction for ML or TF.

The advantages of using Guidelines are the following: better risk management, focusing on actual and identified dangers, efficient use and allocation of resources of the obliged entity and its flexibility to adapt to evolving risks.

The assessment of the level of suspicion posed by a client, transaction or business relationship is based on suspicion criteria, set out in the list of indicators (published on the APML website). A list of indicators is a starting point for the obliged entity’s staff and compliance officers for recognising suspicious circumstances associated with a certain client, transaction or business relationship, therefore the obliged entity’s staff must be familiar with the indicators and use them in their work.

**II Risk and types of risk**

ML and TF risks are measured using various categories. The application of risk analysis categories provides for a strategy for managing potential risks, ensuring that real estate agents subject their operations and that of their customers (buyer, seller, lessor, lessee) to proportionate CDD actions and measures.

The new legislation provides for **assessment of risk at the level of the obliged entity and at the level of customer,** to be carried out by the obliged entity**.**

This procedure sets the exposure threshold (risk assessment) of a certain obliged entity and customer for the ML or TF risk. A risk analysis contains an analysis of risk for the overall operation of the obliged entity, and a risk analysis for each group or type of customer or business relationship, or service provided by the obliged entity within their business activity, or transaction.

In a risk analysis, the key is to adopt an approach to make a difference between the levels of various risks so as to facilitate setting of priorities on which to focus attention and resources, at the national level and at the level of obliged entity and risk assessed at the level of the specific customer.

The obliged entity can if this is needed for implementing the AML/CFT Law, adopt an adequate ML/TF risk management policy before the risk analysis. The aim of adopting such a policy if first of all to ensure that the areas of obliged entity’s operations that are more or less critical from the perspective of ML/TF abuse are identified, i.e. to ensure that the obliged entity itself identifies and sets out the main risks in those areas and measures to address them.

The work methodology is such that the obliged entity at the outset identifies the techniques to be used in the analysis document, manner in which it will select and process the information, extent of information to be used and type of information to be used.

The obliged entity’s assessment document must provide a clear picture as to how the obliged entity assessed certain risks at the level of its operations, how NRA risks were implemented in the process, and be given an overview of clear measures that the obliged entity intends to implement based on the findings.

The most important thing for the obliged entity is to take into account the risk assessment at the level of the country. The obliged entity must take into account the typologies, trends, risks identified in the NRA, and try to recognise to what extent it is exposed to the risks found by the NRA.

Development of the obliged entity’s risk assessment implies having knowledge of the country’s risks. The country must for this purpose make available the NRA findings to all obliged entities and wider public.

In order to establish the exposure of an obliged entity to the ML/TF risk, the obliged entity should know every segment of their operation where Ml/TF threat can emerge, i.e. they should assess the vulnerability with regard to the threat and consequence, i.e. the harm that could be produced by ML. They need to identify in their organisational units the risks at all level of management - from operational to top management.

Threat means persons or activities with a potential of causing harm (*For instance, they could be clients recognised or suspected to be linked to illegal activities, or suspected/identified fraud, forged documents and similar situations, etc.*).

Threat serves as a point of departure for a risk analysis, which is why it is important also to asses the environment in which proceeds from crime are generated and where criminal offences are committed. An obliged entity must take into account the findings of the NRA and check how the risk crimes impact on their business, to which volume and extent was the obliged entity exposed to certain crimes. All other analyses of certain threats are useful (*e.g. typologies and trends recognised in reports of the APML or the Ministry*).

Vulnerability includes all those things that could be used in the event of threats, or parts of the system that could facilitate the effect of a threat. Vulnerability is the focus on the factors that constitute weaknesses in the system for the prevention of money laundering and financing of terrorism, and the supervision system, or on certain characteristics of the country as such.

In addition to the obliged entity segment of the system, important information used for developing a risk assessment can also have an effect, especially external information sources.

For the obliged entity, these are (*e.g. certain supervisor’s research, information obtained in the course of supervision, notifications, legislative amendments that can have a direct or indirect effect on the implementation of legislation, information of the prosecutor’s office, indictments, modi operandi recognised in indictments of obliged entities that had been exposed to operation of criminal groups and attempts to make proceeds appear as legitimate).*

FIU, i.e. APML, information are particularly important (*e.g. number of STRs, narratives submitted with the STRs, certain strategic analyses, typologies, information contained in annual reports, etc. An important source of information is the feedback given to obliged entities on the STRs.* *In addition to the information that can be obtained domestically, international research too are very important).*

A risk assessment can consist of various types of assessment and various approaches can be combined, as well as methodologies, research of the real estate sector, in order to get a risk assessment picture at the level of obliged entity. Those assessing the obliged entity’s risk can also take into account in addition to the country risks, research done by supervisors, findings of some previous inspections, analyses of regulators, results of supervision performance. By combining all available information sources, the obliged entity assesses to which risks it is exposed the most and makes a conclusion as to the factors having an effect on the vulnerability of its operations.

The obliged entity assesses the exposure to the ML/TF risk, i.e. the level of probability for a negative effect that stems from the risk, as well as the effect of the risk on the aims of its own business operation. There is not one universal risk assessment model *(For instance, the factors that can be relevant for inclusion on the list are: type of identified crimes in the previous period - likely or suspected to exist, i.e. that clients are associated to illicit activities (media, discussions, etc.), outgoing transfers to high-risk countries, incoming transfers from high-risk countries, amount of cash transactions amount of STRs, legislation, compliance of legislation, number of clients, proportion of business entities proportion of individuals, findings of supervision of obliged entities, findings of supervision for a certain region, number of STRs, feedback on STRs, system in which the sector operates, licencing, procedure for commencement of operations, communication with state authorities, effect of group procedures on the obliged entity’s operations, all NRA products, all NRA services, trends identified in the NRA, ML or FT methods identified in the NRA, types of companies, etc.).*

The nature and extent of each risk assessment should be proportionate to the country risk assessed and the size of the real estate sector, i.e. the risks researched must take into account sectoral differences and that every risk assessment should contain a proposal for measures and actions to mitigate the specific risks.

A risk assessment is made to ensure that control measures commensurate to the identified risk by applied. This allows to the obliged entities to focus on those clients, countries, products, services, transactions, way of doing business, that represent potentially highest risk.

At the beginning of the obliged entity’s risk assessment document, it is useful to describe the methodology used and how the document is produced.

**RISK ASSESSMENT**

The risk assessment procedure can be divided to a whole range of activities, but the main stages of the process are **risk identification, analysis and evaluation** and **risk management.**

Risk assessments stages are as follows:

1. identification of the areas of business that are exposed to money laundering and terrorist financing - identification;

This stage includes identification of clients, products, services, transactions and geographical areas that are specific for the obliged entity and client.

1. an analysis process with the aim of establishing the likelihood of ML or TF;

Presents the risks faced by the obliged entity in the analysis of probabilities, when certain phenomena occur in their operations, and assessment of negative effects which in such an event could cause certain harm.

1. Evaluation;

Evaluation covers the use of findings reached in the risk analysis so that the obliged entity may set priority actions.

1. risk risk management, risk monitoring and update.

Based on the risk analysis, a risk management strategy will be applied and an appropriate business policy established, i.e. an appropriate procedure will be applied an a control mechanism, so as to mitigate or eliminate the risk. Risk assessment must be periodically updated, based on the internal monitoring system, in order to establish whether risks have evolved and to what extent have the forms of obliged entity's business operations or strategies have changed.

In order to prevent exposure to negative consequences of ML/TF the **obliged entity must develop a risk analysis** that will contain an assessment of risk for every group or type of customer, business relationship, and service offered within their business. It is on such assessment and classification of customer, service or transaction in one of the risk categories, that the type of analysis of risk to be conducted by the obliged entity in line with the AML/CFT Law depends.

The Minister in charge of finance (hereinafter: the Minister), sets out the criteria based on which the obliged entity classifies its customer, business relationship, service or transaction as low money laundering or terrorism financing risk, in additio to the cases listed in the AML/CFT Law, according to the recognised international standards.

1. **Identification - risk identification**

In line with the Guidelines, the risk assessment covers the main types of risk identification:

1. Geographic risk or country risk;
2. Client risk;
3. Transaction risk and
4. Service risk.

Weight to be given to each of the risk categories (individually or jointly) when assessing the overall risk of potential ML/TF, may vary from one obliged entity to the next, depending on their specific circumstances and business operations.

**1.** **Geographic risk and country risk** entails assessment of exposure to ML/TF risk depending on the location of the territory of the country of origin of the customer or of the person, which in any other manner has a controlling influence over the managing tasks of the customer or over the management of such tasks, as well as country of origin of the person having transactions with the customer.

Various countries present various levels and types of risk with respect to cross-border trade, whether the transactions are carried out in person or through internet etc.

The following are the factors based on which it is determined whether a geographic location or a particular country poses higher ML//TF risk:

1. countries against which the United Nations, Council of Europe or other international organisations have applied sanctions, embargo or similar measures;
2. whether credible institutions (FATF, Council of Europe, etc.) designated the particular country as one that does not apply adequate AML/CFT measures;
3. whether credible institutions designated the country as having a high risk of corruption and crime;

4) whether credible institutions designated the country as one supporting or financing terrorist activities or organisations.

The minister, exercising the powers vested in him by the AML/CFT Law, establishes the list of countries applying international AML/CFT standards at the level of EU or higher (so-called white list) and list of countries that do not apply the AML/CFT countries (so-called black list).

These lists are established in the regulations passed by the APML, and the obliged entities may use them to assess risks posed by a customer which is registered or originates from black-listed countries.

Review and assessment of risk depends on the location of the obliged entity, i.e. its organsiational units. *(For instance, in obliged entities located in areas visited by diaspora or tourists the review and assessment of risk will be different than in the obliged entities located in a rural area where everyone knows each other and their customers).*

Increased risk is possible in case of:

1. Locations with high concentration of foreigners or where large numbers of transactions are carried out with foreigners;
2. Clients or their beneficial owners being domestic or foreign PEPs;
3. Purchasers/lessees showing high interest in a specific piece of real estate and location and happens not to be interested much in the price of the particular piece of real estate (so-called purchase at any cost);
4. Clients who have not seen the piece of real estate in person but purchase/rent it nevertheless through an intermediary (lawyer, representative, close person, etc.);
5. Clients who submit personal documents issued by a foreign country whose authenticity is difficult to check;
6. Where ownership of a piece of real estate is the only connection between a purchaser who is a foreign citizen and Serbia;
7. Legal persons which, for the purpose of communicating with its agent, provides an address which is actually a PO box, or of the address at which the legal person is registered does not really exist, etc.

Clients from the region are less risky than the clients from countries Serbia has no business relations or from countries outside of the region.

**2.** **An approach to be taken with respect to customer risk**, will be decided on by the agent itself based on the generally accepted principles and their own experience. The behaviour and motivation of the customer may be a source of ML/TF risk. A higher risk may also be indicated by activities performed by customers.

Customer categories whose activities may point to a higher risk may be the cases where:

1. The contracting parties do not really act in their own name and try to conceal the identity of the real purchaser or seller;
2. The purchaser/lessee does not show much interest in the characteristics of the real estate (building quality, location, date of finishing and handing over);
3. The purchaser/lessee does not show much interest in finding better offers or getting more favourable payment conditions;
4. Clients are highly interested in a quick execution of purchase and sale although there is no special reason for such behaviour, simultaneously showing no interest in finding out important details of the contract;
5. A client changes the contracting parties at the very last moment (introduces a new individual as the purchaser), just before the closing, without giving a logical explanation for such behaviour;
6. A client purchases a piece of real estate for cash and soon afterwards uses that piece of real estate as collateral for being granted a loan for the purchase of a new piece of real estate;
7. A client refuses to give data which are generally collected in practice by inspecting personal ID documents;
8. A client gives a piece of real estate as a gift to someone with whom he is not related by family or other personal or business ties;
9. With respect to construction firms, those with disproportionally small number of staff compared to the volume of business they conduct, without their own infrastructure, business premises, unclear ownership structure, may be regarded as particularly risky;
10. The client is a domestic or foreign PEP and as such poses a risk, therefore the obliged entity must conduct and analysis in all cases where such person is a client, before entering into a business relationship or before executing a transaction;
11. Persons whose offer for business relationship has already been refused by another obliged entity, if this fact becomes known in any manner, or persons known by bad reputation, etc.

**3.** **Transaction risk** concerns the factors related to the particular real estate, financing of the transaction and clients in the transaction.

When assessing the level of suspicion of a transaction, the compliance officer should provide any professional assistance to the staff. A suspicious transaction is a transaction for which the obliged entity assesses that there are reasons to suspect ML or TF with respect to such transaction or person executing it, or that the transaction involves illicit proceeds.

Transaction risk exist where:

1. The purchase and sale of a piece of real estate is carried out on the same day or in a very short time, especially when significant deviation from the market price is noticeable;
2. The client - purchaser comes with a lot of cash to buy the real estate or the payment is executed in cash;
3. The purchase of real estate to the benefit of third parties (cousins, friends, lawyers, legal entities from offshore destinations and other legal entities) without a logical reason;
4. The purchase/renting price of a piece of real estate is inconsistent with the client’s purchasing power and the client provides illogical responses about the origin of his/her assets;
5. Transactions when a client requests the payment to consist of several smaller amounts which together make for the total price of the piece of real estate (smurfing);
6. Several purchases and sales of one and the same piece of real estate by a group of interconnected natural and/or legal persons (family and business connections, persons with the same address or representatives or lawyers, etc.);
7. Transactions executed by representatives (lawyers, empowered attorneys, etc.) who act to the benefit of potentially connected natural persons (family and business connections, persons with the same address, etc.);
8. Transactions involving a newly founded legal person with small founding capital which buys or sells real estate of high value;
9. Collateral for a loan is a deposit in the amount of 100% of the amount of the requested loan;
10. Transactions which come from territories where regulations on the prevention of money laundering are not in force and where there exists a big geographic risk of money laundering, no matter if the client comes from those territories or not;
11. A client promises un unrealistically big compensation to his intermediary for the job done (purchase/renting price of real estate);
12. A client who has recently purchased a piece of real estate sells it at a price several time higher than the purchase price;
13. Rent in the amount much bigger than the rent paid for a flat of similar characteristics on the same or similar location, paid in advance for a longer period, when there is suspicion that the contract might be fictitious, etc.

Financial practices varies in different countries and cultural differences are taken into account, whereas in some markets, cash transactions in high amounts can be regarded as high risk, in other markets this might be normal, especially where the currency rates are fluctuating or where the mortgage market is not regulated well.

**4. Service risk** is the risk of operations when conducting main services, such as the purchase sale, lease and rental of real estate and other less-risky real estate services, such as the services where appraisal of real estate is made and collection and compilation of entire documentation when finalising the purchase and sale contract real estate market research, etc..

Purchase means the buyer’s obligation to pay the purchase price as set out in the real estate and take it over in a specified timeframe.

Sale means the transfer of property right and transfer of the sold real estate for consideration, i.e. for the cost price of the property as laid down in the contract.

Lease means enjoyment and use of the contracted real estate, with the obligation to pay rent and use the property until the specified time, acting with due care.

Renting means the transfer of the contracted real estate to the lessee for use in proper condition to a specified time of use, together with all pertaining parts, for consideration.

The risk is among other things related in particular to the following services:

1) services that are new on the market, i.e., that have not been previously offered in the non-financial sector and must be monitored in particular to determine the actual degree of risk;

2) electronic issuance of contracts/trade orders in the cases the obligor provides for in its procedure;

3) the provision of those services for which the obliged entity’s employee assessed on the basis of their experience that they bear a high degree of risk;

4) providing the services through opening the so-called joint accounts for transactions, mobilising funds from different sources and from different customers, which are deposited in one single account opened in one name;

5) electronic conclusion of a contract where it is not likely that the service will be completed;

6) services identified by internationally recognised sources as high-risk services in electronic operations, such as international correspondent banking services in the realisation of purchase and sale contracts (and international) private banking activities in transactions;

7) new innovative products or services that are not provided by the obliged entity directly, but uses various electronic intermediaries or other channels in the obliged entity (*for instance, in case of receiving an order for trade, there is a greater ML risk when the order is made electronically or through trading platforms or using mobile phones then when contracts/orders are made directly.* *In case of provision of services of acceptance and transfer of real estate trading orders, the likelihood that these services will be used for ML or TF are higher than in the case of the services involving the collection of the complete documentation when finalising the purchase and sale contract or portfolio management*).

The obliged entity in addition to the above criteria, should also cover other types of risk when identifying the level of risk of a client, business relationship, services or transaction, depending on the specificity of operation, such as:

* + the obliged entity's size, structure and area of business, including the volume, structure and complexity of transactions performed by the obliged entity on the market;
  + client’s status and ownership structure;
  + client’s presence, i.e. whether the client is physically present when entering into a business relationship or executing a transaction;
  + the source of funds involved in the business relationship or transaction in case of customers regarded as a PEP according to the AML/CFT Law criteria;
  + intended purpose of the business relationship, service or transaction;
  + obliged entity’s knowledge of services and experience and knowledge of the specific area;
  + other information showing that the customer, business relationship, service or transaction can present higher risk.

In order to assess risk, the obliged entity should describe all products, services, contractual relationships it makes, and to assess the likelihood of whether the clients will abuse this particular products/services for ML or TF and to assess the effect of this phenomenon in the same way as the client risk is assessed, as described above.

1. **Risk analysis**

A risk analysis is a procedure in which an obliged entity sets out the assessment of probability, criteria and consequences. Where other types of risks are identified, depending on the specificity of their business, the obliged entity should cover in their assessment the other types of risk, especially when analysing client risk.

The risk analysis stage is key for risk assessment. The risk understanding stage follows from the stages of identification and description, which is why the analysis is the core segment of risk assessment. After identifying all factors, external, internal and risk categories, factors are weighted, i.e. each factor is assessed from the ML and TF perspective. Each individual factor is assessed for the level of risk vis-a-vis other risk factor, thereby setting their influence on the overall obliged entity’s risk.

In addition to the initial (internal) list of risks, this stage should also include external factors - factors of the environment political and economic circumstances of the country, impacting on the obliged entity’s operation.

Moreover, legislation should also be taken into account, publicly available information, experiences of the obliged entity in the previous operation and experiences recognised at the level of the real estate sector itself, as well as in the NRA.

After considering all relevant factors, the obliged entity makes a conclusion on the level of risks.

Obliged entities can use a risk matrix as a risk assessment method in order to identify clients in the low-risk area, those in the area of somewhat higher risk but still an acceptable one, and those posing high or unacceptable risk of ML or TF.

*(For instance, an obliged entity can present the risk level numerically, but there must be an accurate description of how the numerical risk level was arrived at or the risk level can be expressed descriptively: high, low, medium risk or low likelihood that the factor is risky, medium likelihood, high likelihood, very high.* *Similarly, consequences can be presented as significant, minor, insignificant or exceptionally significant.* *It is up to the obliged entity to decide how they will express the risk assessed, descriptively or numerically, and which risk matrix if desired they will use in the process).*

When classifying risks, the obliged entity may taking into account its own specificities also define other ML/TF risk levels. The development of a risk matrix can also include consideration of various risk categories, such s products and services offered by the obliged entity, clients to whom such products or services were offered, size of the institution and

its organisational structure etc.

A risk matrix is not fixed, it can be changed to adapt to the obliged entity’s circumstances (*for instance, for one agent a client can be assessed as low risk, whereas this same client will be assessed as high risk by a bank, for the very reason that the effect of the type of risk and business relationship varies; a low risk service in combination with a customer from a high-risk county produces a higher risk and may be assessed as medium risk if the client then establishes a new business relationship i.e. uses a high-risk service, then the client risk will change to high risk).* The obliged entity assesses the exposure to the ML/TF risk, i.e. the level of probability for a negative effect that stems from the risk, as well as the effect of the risk to the aims of business operation. An ML/TF risk analysis starts from the assumption that various products and services offered by obliged entities in their business or various transactions they conduct, are not all equally vulnerable to misuse for ML or TF. A risk analysis is made to ensure that control measures commensurate to the identified risk by applied. This allows to the obliged entities to focus on those clients, countries, products, services, transactions, way of doing business, that represent potentially highest risk. Risks faced by the obliged entity should be analysed from the point of view of determining the likelihood that a certain phenomenon will occur and assessment of negative effects of the occurrence (*for instance, the extent of the negative effect in case criminal funds are involved, or what the fine would be in case of failure to apply legislation, what would be the reputational risk for the obliged entity or the entire real estate sector*).

The obliged entity assess the risk of every country based on a risk analysis. Where other types of risks are identified, the obliged entity should cover in their assessment the that types of risk too.

1. **Evaluation**

Evaluation entails an appropriate use of the findings reached in the risk analysis. Based on the results obtained priority action is set out *(for instance, what are the risks assessed as very important and which mitigating activities should not be put off, how present are the risks assessed at the country level at the obliged entity itself, etc.).* The methods to be applied by the obliged entity to mitigate the risk will be up to the obliged entity to decide (*for instance whether it will prohibit use of a certain product or service, wither it will pay more attention to certain transactions, to increase the level of training at the obliged entity etc.).* High risk should be addressed immediately without delay, the medium risk as soon as possible and low risks should be monitored.

A risk assessment contains all measures to be taken and a sequence and priority of implementation of the measures. They must be considered with planning the obliged entity’s business activities and the required resources for next financial year (*for instance, how much funds should be allocated for training next year, as it has been noted in most of the employees that need to have certain knowledge of ML or TF that there is a lack of understanding or inadequate level of knowledge or that the level of cooperation should be increased and improved between certain organisational units).*

1. **Risk management**

ML/TF risk assessment aims and principles should allow the obliged entities to establish appropriate business policies and procedures, including the CDD rules, promotion of ethical and professional standards or prevention of abuse of business activities of the obliged entity for criminal activities. ML/TF risk is specific for every obliged entity and it requires an appropriate approach by the management appropriate to the level and structure of risk and volume of business.

The management directs the business policies by formulating goals and making decisions on strategic choices. The management must take into account ML/TF risks when making final plans and business policies

It is essential for the decision-making process to document the way in which risks will be presented. It is for these reasons that the management from the onset should be involved in preparations and ML/TF risks and establish the appropriate system of monitoring.

*(For instance, it is important to establish a system to avoid establishing business relationships with clients on which there is not much information or previous experience of doing business.* *ML/TF risks should also be taken into account in the development stage that immediately precedes the introduction of new products or services.* *Members of the managing team should have enough powers to pass and implement the necessary decisions in practice).* In addition, the management must encourage an ethical business culture and ethical conduct. Ethical conduct means professional and individual responsibility of staff for the decisions they make and steps they take when carrying out their functions.

**RISK ASSESSMENT FINDINGS**

After going through all the stages and after risks have been identified by the obliged entity the findings should be documented. As mentioned at the very outset of the process a decision should be made on who will participate in the risk assessment, how the data will be collected, what will be used, and then translate this, after reaching the findings, into a written document that will contain in addition to definitions of main concepts and methodology, the findings and risk assessment which is the most important. It is important that **the findings can be seen and how the findings were arrived at** and in what way the country risks are reflected on the obliged entity.

After the risks are identified and analysed, an ML/TF risk management strategy is applied so as to allow the obliged entity to implement the appropriate internal policies and procedures to mitigate and eliminate the risks with the intention of eliminating the operational risks for the obliged entity risks from being fined, reputational risks and various other forms of risk. The established internal policies and procedures must be approved by the management and they apply on all obliged entity's staff. By assessing risks and developing appropriate policies and procedures the obliged entity provides for continuity of ML/TF risk management despite any changes that may occur in the management or staff, or the obliged entity’s structure. The established internal policies and procedures should allow the obliged entity to effectively manage the identified risks and to mitigate them and to focus its endeavorus to the area of business that is the most susceptible to various forms of abuse, for the purpose of preventing ML or TF. The larger the risk the more control measures must be applied (*for instance, the obliged entity can set out certain restrictive mechanisms for high-risk products, i.e. provide that the execution of a transaction must be approved by management, etc.).* Specific ML/TF policies and procedures must be introduced at the level of the obliged entity as a whole. The aim of the measures is to prevent proceeds from crime to arrive at the obliged entity, or money intended to be used to support terrorism. Mitigation measures should allow timely identification by the obliged entity of certain behaviour that may point to these phenomena which will lead to timely reporting of suspicious activities.

**III CDD actions and measures**

The AML/CFT Law allows the obliged entity to apply, depending on the ML/TF risk, three types of actions and measures for monitoring its operations and client operations normal, simplified and enhanced.

1. Normal CDD measures are applied to all customers. They entail identifying and verifying the identity of a customer, obtaining information about the purpose and intended nature of the business relationship or transaction.
2. Simplified CDD constitutes a right for the obliged entity, rather than an obligation.

In the cases and in the manner laid down in the AML/CFT Law, in case of suspicion on ML or TF in relation to a customer or transaction to which this type of CDD is applied, the obliged entity is required to carry out additional assessment and potentially apply enhanced CDD.

1. Enhanced CDD include, in addition to normal CDD, additional actions and measures to be taken by the obliged entity in the cases provided in the AML/CFT Law and other cases, when they assess that due to the nature of the business relationship, type of transaction, manner of execution of transaction, ownership structure of the customer, or other circumstances linked to the customer or transaction, there is or might be a high level of ML/TF risk.

Enhanced customer due diligence actions and measures include in particular:

* collection of data concerning the origin of funds or property that are or will be the subject-matter of business relationship or transaction from official documents and other documentation submitted by the client, and if it is not possible to obtain such data as described, the obliged entity shall obtain a written statement on the origin of the property directly from the customer;
* mandatory written consent of the supervising authorised person, before entering into a business relationship with such as client;
* monitoring transactions and other business relationships with particular attention, those conducted by the domestic or foreign PEP after entering into a business relationship.

Clients subject to application of enhanced CDD are domestic and foreign PEPs, in line with Article 3, paragraph 1, item 22) through 27 of the AML/CFT Law.

An obliged entity shall establish a procedure in line with the Guidelines for determining whether a customer or the beneficial owner of a customer is a PEP (official). The required actions are taken with respect to close family members of PEPs and close associates in line with the AML/CFT Law.

The obliged entity must provide for a procedure in its internal act to determine whether the client with which it wishes to establish a business relationship is a domestic or foreign PEP.

A PEP is a high-risk client, therefore the obliged entity must conduct an analysis in all cases where such person is a client, before entering into a business relationship or before executing a transaction.

The obliged entity can obtain separately signed *mano propria* written statements to be filled in before entering into a business relationship or executing a transaction.

The written statement should include at least the following data:

1. name and surname, permanent residence, date and place of birth of the customer entering into a business relationship or ordering a transaction, number, type and name of issuer of the valid personal document;
2. statement on whether the client according to the required criteria is a PEP;
3. data on what type of PEP this is (person that holds or has held in the past four years a prominent public office, member of PEPs family or close associate);
4. data on the time of this public office (client that has held a prominent office in the last four years);
5. data on the type of public office that the official performs or has performed;
6. data on the family relationships (client is a member of PEP’s family)
7. data on the form and manner of business cooperation (client is a close associate to the PEP);
8. data according to which the PEP allows the obliged entity for the purpose of verifying, on their own, the veracity of the data provided in the statement by accessing public or other available databases, or to check them directly with competent authorities of of another country, in a consular representation or embassy of such country in Serbia, or Ministry of Foreign Affairs of Serbia;
9. own signature of the client etc.

The obliged entity can obtain information about a PEP by accessing public and other available databases (*for instance, the obliged entity will decide to what extent it will take the publicly available information as valid and relevant for client analysis, it can also verify information and data at the Anti-Corruption Agency, competent authorities of other countries, consular representations or foreign embassies in Serbia, or at the Ministry of Foreign Affairs of Serbia, and other publicly accessible databases).*

Based on the AML/CFT Law the obliged entity should apply the appropriate measures and controls so as to mitigate potential ML risks with certain customers that are designated in regulations as high-risk, by applying a risk based approach.

These methods of control can include: increased awareness of obliged entities of existence of high risk customers and transactions within the real estate business, increased monitoring of transactions, increased levels of controls and frequency of checks of the business relationships.

Taking additional measures by the obliged entity based on the AML/CFT Law, when the client is classified as high-risk based on the risk assessment, depends on the specific situation (*For instance, if the customer has been assessed as a high-risk customer on account of its ownership structure, the obliged entity may in its procedures provide for an obligation to obtain, in addition to the above data, additional data too and the obligation to do further checks on the submitted documentation).*

Risk assessment is conducted not only when establishing a relationship with a customer but also during the cooperation itself (monitoring of client’s business), which means that one and the same customer may initially be classified as high-risk whereas later on, during the business relationship, the obliged entity may decide to apply normal and simplified CDD and vice versa.

**IV Professional qualifications and training**

The obliged entity shall provide for regular professional education, training and specialisation of employees so that they may recognise the ML/TF risks on time. The professional training means familiarising with the provisions of the AML/CFT Law and regulations passed based on the AML/CFT Law, and internal obliged entity’s acts, reference books on the prevention of ML and TF.

In applying these Guidelines, the obliged entity should pay attention in particular to the following:

* 1. level of training of staff that allows them to recognise the ML/TF risks on time,
  2. level of awareness of the risks that the obliged entity may be exposed to in case of failure to recognise them,
  3. to determining the level of responsibility in applying the internal acts governing the prevention of ML/TF.

In order for the real estate agents as obliged entities to apply an efficient risk-based approach, this process must be implemented in the agent’s internal control systems.

With respect to the obliged entity’s size, the framework of internal controls should be made so as to:

* + allow for regular review of risk management processes and risk assessment taking into account the area and market activity;
  + ensure there is an enhanced focus on obliged entity’s operations as the real estate sector is more prone to abuse by money launderers and other criminals;
  + ensure compliance with AML/CFT measures and assess the programme of measures;
  + inform management bodies of compliance initiatives, indentified compliance deficiencies, corrective action taken and STRs filed;
  + ensure continuity of the programme despite any changes in the management or staff structure of the obliged entity;
  + focus on keeping the required records and filing the required reports;
  + recommend measures to comply with AML/CFT measures;
  + ensure records are updated according to regulations;
  + implement policies, procedures and processes related to the CDD;
  + allow for a timely identification of transactions to be reported and ensure for an accurate preparation and filing of the report;
  + ensure that training and specialisation is allowed to all staff dealing with detecting and preventing ML/TF;
  + ensure an adequate supervision of staff carrying out transactions using cash;
  + check preparation of reports;
  + monitor suspicious activities;
  + become part of any activities aiming to prevent ML/TF, etc.

**V Implementing other actions and measures based on the AML/CFT Law**

The data that it obtains and handles must be treated by the obliged entity as a business secret, i.e. in line with the AML/CFT Law and the law governing secrecy of data, and as set out in APML’s acts. All employees and other persons that have access in any way to this data shall ensure that they are kept secret.

Without prejudice to the above, business secret applies to secret data according to the law (the obliged entity may not disclose it to a customer or any third party), including in particular:

1. data about the fact that there are reasons for suspicion on ML or TF in relation to a client or transaction and that the data was provided to the APML;
2. data that execution of a transaction was temporarily suspended, or any details in this respect;
3. data that the APML ordered monitoring of customer’s financial activities;
4. data that a ML or TF investigation is or may be instituted with respect to a client or third party.

The duty to keep these data secret shall not apply in the following cases: if the data are needed as evidence in court, if the delivery of the data is requested in writing or ordered by a competent court or if such data is requested from the obliged entity by the APML or Market Inspectorate for the purpose of supervision of compliance with the AML/CFT Law.

An exception to the data secrecy rule also applies in the case when the obliged entity according to the AML/CFT Law is required to deliver the APML the data, in which case the obliged entity’s staff cannot be held responsible towards clients or third parties for any damage incurred if they acted according to the APML request, i.e. as required by the AML/CFT Law.

Access to data classified as business secret or secret must be restricted. The obliged entity in its internal act must specify the conditions and manner of access to secret data.

Obliged entities must, within their statutory powers, ensure full cooperation with the Market Inspectorate and APML. Cooperation with obliged entities and APML is obligatory, especially with respect to provision of documentation requested data and information, relative to customers or transactions suspected to be involved in ML/TF.

Cooperation is required in case of reporting on any activity or circumstances that are or might be linked to ML/TF.

**VI Scope and entry into force of the guidelines**

The guidelines are mandatory for all obliged entities engaging in real estate trade and lease.

Obliged entities must harmonise their operations with these Guidelines and develop internal acts according to the AML/CFT Law.

ML/TF risk assessment guidelines for obliged entities operating the real estate business in effect as of 1 April 2018 shall be repealed on the date when these Guidelines take effect.

These Guidelines shall enter into force on the date of their signing with effect as of the eight day of their publication on the website of the Ministry.

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In Belgrade, 4 September 2018

MINISTER

Rasim Ljajić

1. FATF - Financiаl Action Task Force [↑](#footnote-ref-1)
2. FATF Guidance - National Money Laundering and Terrorist Financing Risk Assessment [↑](#footnote-ref-2)