“RS Official Gazette” No. 46/2009 and 104/2009

Pursuant to Article 21, paragraph 1 of the Law on the National Bank of Serbia (“RS Official Gazette”, No. 72/2003 and 55/2004) and Articles 7 and 87, in relation to Article 84, paragraph 1 of the Law on the Prevention of Money Maundering and Financing of Terrorism (“RS Official Gazette”, No. 20/2009), the Governor of the National Bank of Serbia hereby issues

# DECISION
# ON THE GUIDELINES FOR ASSESSING THE RISK OF MONEY LAUNDERING AND TERRORISM FINANCING

1. The Guidelines for Assessing the Risk of Money Laundering and Terrorism Financing are hereby issued and are integral to this Decision.

For the purposes of the Guidelines from paragraph 1 hereof, obligors shall harmonise their internal regulations with the Guidelines, within 60 days from the date it becomes effective.

2. This Decision shall come into effect on the eighth day after its publication in the “RS Official Gazette”.

D. No. 47
17 June 2009
Belgrade

Governor
National Bank of Serbia
Radovan Jelašić, sign.

## GUIDELINES FOR ASSESSING THE RISK OF MONEY LAUNDERING AND TERRORISM FINANCING

1. The present Guidelines were adopted in order to eliminate the risk that the obligors may be exposed to on the grounds of inconsistency of their business operations with regulations and procedures appertaining to combating money laundering and terrorism financing, as well as inconsistency with their operating standards. The present Guidelines represent a contribution to the uniformity of interpretation and understanding of the nature of the approach to the prevention of money laundering and terrorism financing based on the assessment of the risk arising from such phenomena.

The main objective of the Guidelines is to establish the minimum standards for the action to be taken by banks, voluntary pension fund management companies, financial leasing providers, insurance companies, insurance brokerage companies, insurance agency companies, and insurance agents licensed to conduct life insurance operations (hereinafter referred to as: obligors) in the establishment and enhancement of a system for combating money laundering and terrorism financing, particularly with respect to the drafting and implementation of procedures based on risk analysis and assessment.

2. The risk of money laundering and financing of terrorism is the risk of a client abusing a business relationship, transaction or product for money laundering or terrorism financing purposes.

The approach to the prevention of money laundering and terrorism financing based on risk assessment proceeds from the assumption that different products offered by the obligors in their business operation, or the transactions that are carried out, are not equally susceptible to abuse in terms of money laundering and terrorism financing, which consequently determines the amount of attention to be devoted to each of these concerns. The risk assessment approach ensures a more appropriate allocation of resources and yields better results at the same level of their engagement, giving the obligors a possibility to pay more attention to high risk clients.

3. Risk assessment, for the purposes of these Guidelines, must include no less than four basic types of risk, namely: geographic risk, client risk, transaction risk, and product risk, and in the event other types of risk are identified, obligors, depending on the specifics of their business operation, must include such types of risk as well.

4. **Geographic risk** implies risk determined by the geographic location of the country of origin of the client, his/her owner and/or majority founder, beneficial owner or the person that otherwise controls client's operations, and/or the location of the country of origin of the person involved in a transaction with the client.

The factors determining whether a certain country or geographic location implies higher risk in terms of money laundering and terrorism financing, include:

- Countries against which sanctions, embargo or similar measures have been imposed by the UN, Council of Europe, OFAC or other international organizations;
- Countries identified by credible institutions (FATF, Council of Europe, etc) as those not implementing adequate measures for combating money laundering and terrorism financing;
- Countries identified by credible institutions as those supporting or financing terrorist activities or organizations;
- Countries identified by credible institutions as those having high corruption and crime rates (the World Bank, IMF, etc).

By virtue of the authority vested in him/her by the Law governing prevention of money laundering and terrorism financing, the Minister of Finance shall draw up a list of countries implementing international standards in combating money laundering and terrorism financing to at least the European Union level or higher (the so-called: white list of countries), as well as a list of countries not implementing the standards in the field of combating money laundering and terrorism financing (the so-called: black list of countries). Obligors shall consult these lists to assess their exposure to risk when dealing with a client, client's owner and/or majority founder, client's beneficial owner or the person that otherwise controls client's operation and the person involved in a transaction with the client, whose countries of origin are contained in these lists.

The assessment and evaluation of risk also depends on the location of the obligor or the location of its organizational units, implying different level of risk to obligors located in an area visited by many tourists compared with obligors located in a rural area, where all clients are known personally. Increased risk may occur at border checkpoints, airports, in places with high concentration of foreigners or in cases of transactions involving foreigners (e.g. fairs), in places where embassies or consular offices are situated, in the areas with high risk of corruption and crime, etc.

Increased risk related to money laundering and terrorism financing is also present in transactions executed in off-shore destinations.

Clients from the region may pose a lower risk than clients from countries outside of the region and/or countries that Serbia has no business relations with.

5. While implementing the generally adopted principles and using their own experience, obligors are autonomous in defining their approach to **client risk**. Categories of clients whose activities may be an indicator of higher risk level are the following:

1) clients carrying out business activities or transactions under unusual circumstances, such as:

– significant and unexpected geographic remoteness of the client's location from the obligor's organizational unit where the client is opening an account, establishing business relationship, or carrying out transactions;

– frequent and unexpected establishment of similar business relations with several banks, without economic consideration. An example of such activities would be opening accounts in several banks, entering into several voluntary pension fund membership agreements within a short period of time (whether with one or more management companies), or signing several financial leasing agreements with several different financial leasing providers, etc;

– frequent and unexpected transfers of funds from accounts in one bank to those in another without a clear economic rationale, particularly if banks are situated in different geographic locations; frequent fund transfers from one voluntary pension fund to another, unless in case of multinational companies operating via several accounts and frequent transfers of funds from one voluntary pension fund to another;

– insisting on payment of a higher than prescribed percentage of contribution in the procurement of a lease object, which, in line with general terms and conditions of business are required by the financial leasing provider when concluding financial lease contracts;

– amendments to the contract on membership of a voluntary pension fund for the purpose of increasing the amount of contributions;

– membership of a voluntary pension fund and/or contributions to individual accounts of persons whose age does not allow for a longer period of funds accumulation;

– cancelling contracts on pension schemes and contracts on membership of a voluntary pension fund shortly after concluding such contracts, especially in case of high amounts of contributions;

– requesting transfer of funds accumulated in the account of a voluntary pension fund member in favour of a third party, or in favour of a party located in the country where AML/CFT standards are not applied;

– signing a large number of insurance policies with different insurance companies, particularly within a short period of time, frequently altering and cancelling agreements, accepting unfavourable insurance agreement terms and conditions, insisting on transaction confidentiality;

2) clients whose real owners or persons in charge of their management are difficult to identify due to the clients' structure, legal form, or complex and unclear relations. The above refers particularly to:

– foundations, trusts, or similar entities under foreign law;

– voluntary or non-profit NGOs;

– off-shore legal entities with an unclear ownership structure and not founded by companies from the country implementing anti-money

laundering and terrorism financing standards at the statutorily prescribed level;

3) clients carrying out business operations characterized by a large turnover and sizeable cash payments, such as:

– restaurants, petrol stations, exchange offices, casinos, stores, car wash shops, florists, etc;

– high value commodity merchants (precious metals, precious stones, automobiles, art objects, etc)

– freight and passenger carriers.

4) foreign officials, in accordance with the Law,

5) foreign arms traders and producers,

6) non-residents and foreigners,

7) foreign banks or similar financial institutions from countries not implementing the standards in the field of anti-money laundering and terrorism financing, except for those established by entities from countries on the white list,

8) representatives of parties whose business involves representation (attorneys, accountants, or other professional representatives), particularly where the obligor is in contact only with the representatives,

9) betting places,

10) sports companies,

11) construction companies.

12) companies with a disproportionately small number of employees in relation to the scope of their business, companies without infrastructure or business premises, etc.

13) private investment funds,

14) persons whose business offer has been turned down by another obligor, regardless of the manner such information was obtained, and/or persons of bad reputation,

15) clients whose sources of funds are unclear or have not been identified, and/or clients whose source of funds cannot be verified,

16) clients suspected of not acting for their own account and/or implementing the instructions of a third person,

17) clients opening their accounts or establishing business cooperation without being physically present,

18) clients in respect of which customer due diligence activities are entrusted to a third party,

6. The following are considered to be **risky transactions**:

1) transactions carried out in a way which significantly deviates from the client's standard behaviour,

2) economically unjustified transactions (e.g. frequent securities trading where purchase is effected by placing cash on special-purpose accounts and undercutting the securities shortly afterwards – the so-called securities trading based on planned loss, unexpected repayment of loans before maturity, or shortly after the loan was granted, withdrawal of funds from the individual account of a member of a voluntary pension fund shortly after the contribution is made);

3) transactions carried out with a view to evading application of standard and usual supervision methods (transactions involving slightly smaller amounts than the prescribed limit below which the measures under the Law do not apply),

4) complex transactions involving several parties without a clear economic goal, several mutually related transactions performed within a short period of time, or in consecutive intervals, and in amounts below the limit for reporting to the Anti-Money Laundering Administration.

5) lending to legal entities and in particular, lending by a non-resident founder to the resident legal entity,

6) transactions where the client is evidently trying to conceal the real grounds and the reason for carrying out the transaction,

7) payment for consulting, management, marketing and other services in respect of which there is no determinable market value or market price,

8) transactions in respect of which the client refuses to submit the requested documentation,

9) transactions where the documentation does not match the client's behaviour,

10) transactions where the source of funds is unclear or no relationship with the business activity of the client can be established,

11) transactions involving a disproportionately high amount of deposits (e.g. 100%) as collateral for obtaining credits or loans,

12) announced block trading of shares at prices evidently lower than the market price, where the purchasers are unknown or newly-established companies, and especially companies registered at off-shore destinations,

13) stock exchange and OTC trading in securities that were previously used as collateral on loans approved to holders of securities – the so-called pass-through of shares on the stock exchange,

14) payment transactions for goods and services in favour of a client's partners from off-shore destinations, where it is clear from the documentation enclosed that the goods originate from our region,

15) transactions related to payment for goods or services in countries not logically expected to be producers of goods for which the payment is made, or countries not logically expected to provide that type of service (e.g. import of bananas from Siberia),

16) frequent transactions for advance payment for import of goods or provision of services without certainty that the goods will effectively be imported or that the services will effectively be provided.

7. **Product risk refers to the following high risk products**:

1) new services in the market, i.e. services not previously offered within the financial sector, which must be specially monitored in order to establish the real degree of risk attached to them,

2) international private banking i.e. providing private banking and fund management services to foreign nationals. Private banking potentially involves substantial risks because a client who may have large sums of money on disposal is handled by a single bank employee or a small group of bank employees who might have been instructed by the bank management to grant the client all requests, which, however, the client may decide to abuse.

3) e-banking in cases envisaged by the obligor in his/her procedures,

4) electronic submission of securities trading orders, in cases envisaged by the obligor in his/her procedures,

5) providing to persons with whom no business relationship has been established pursuant to the Law, those services which the obligor's employee, based on his/her experience, assessed as involving a high degree of risk,

6) providing services outside the bank's business premises (e.g. granting consumer credits at merchants' sales outlets), insurance companies or other entities in the financial sector,

7) providing the service of opening joint accounts which mobilize funds from different sources and different clients, and which are deposited on one account registered in one name,

8) repurchase or payment of cheques, or another bearer instrument or security.

8. Obligors must be vigilant in respect of money laundering and terrorism financing risk that may arise from the use of modern technologies that provide anonymity (e.g. ATMs, internet banking, telephone banking, etc).

9. Pursuant to the international standards and laws and, depending on the degree of money laundering and terrorism financing risk, obligors are allowed to implement three types of activities and measures of being informed and monitoring client operations: general, simplified and enhanced activities and measures.

*General activities and measures* include identification and verification of the identity of a client and the beneficial owner of the client, obtaining information

about the intent and purpose of the business relation or transaction and regular monitoring of the client's operations. General activities and measures must be applied to all clients, while special forms of such activities and measures may subsequently be applied to selected clients (simplified, and/or enhanced activities and measures) depending on the assessed level of risk they entail,

*Simple activities and measures* of being informed and monitoring client operations are implemented in cases and in the manner prescribed by the Law. In the case of any suspicion of money laundering and terrorism financing activity involving the client or the transaction subject to application of simple activities and measures, the obligor must carry out additional assessments and, if necessary, apply enhanced activities and measures (for instance, a local company trading in securities on the stock exchange was designated as low-risk at the time of establishing business relation, and was subject to the application of simple measures. If however the obligor becomes suspicious that money laundering and terrorism financing may be involved in carrying out of a certain transaction by that company, it is obligated to apply enhanced measures to that company).

In addition to general activities and measures, *enhanced activities and measures* also include additional activities and measures the obligor must implement in the cases prescribed by the Law and in other cases where the obligor estimates that there is or there might be a high money laundering and terrorism financing risk involved due to: the nature of the business relations, the manner of carrying out the transaction, the type of transaction, ownership structure, and/or other circumstances associated with the client or the transaction.

9a. The obligor shall establish the procedure determining whether the client or its beneficial owner is a foreign functionary, member of the foreign functionary's immediate family or foreign functionary's close associate, whereby this procedure shall also be applied to the legal entity in which the foreign functionary, member of the foreign functionary's immediate family or foreign functionary's close associate is a representative, proxy or agent. This procedure helps determine different approach to persons that are residents or domestic persons relative to persons that are non-residents or foreigners, as the latter persons are more likely to be foreign functionaries.

To obtain relevant information for identification of foreign functionaries, the obligor shall undertake the following activities:

– obtain the client's written statement on whether he/she is a foreign functionary, member of the foreign functionary's immediate family or foreign functionary's close associate;

– use electronic commercial databases containing lists of functionaries (e.g. World-Check, Factiva, LexisNexis);

– search publicly available data and information (the internet);

– create and use internal database of functionaries (e.g. larger banking groups have their own lists of functionaries).

If the client or its beneficial owner is a non-resident or foreign person, the obligor shall undertake one or more activities from paragraph 2 of this Section. If credible institutions have designated the country of origin of the non-resident or foreign person as the country with a high level of corruption and crime, the obligor shall undertake several activities from paragraph 2 of this Section.

If information obtained in relation to the client and other publicly available information indicate that the resident or domestic person can be a foreign functionary, the obligor shall undertake activities envisaged by these Guidelines for the client or its beneficial owner that is a non-resident or foreign person.

If the client's beneficial owner is a foreign functionary, member of the foreign functionary's immediate family or foreign functionary's close associate, or if these persons manage the client, the obligor shall undertake against this client reinforced due diligence actions and measures. Such actions and measures are undertaken by the beneficiary even when the physical person stops discharging public function (former foreign functionary) over as much time as necessary to conclude that this person did not abuse his/her former position.

The procedure from paragraph 1 hereof shall be undertaken even during business relationship with the client, within regular monitoring of its operations. The following factors may be important here:

– foreign functionary's country of origin (risk related to dealing with the foreign functionary is higher if the functionary comes from the country with a high degree of corruption and crime);

– foreign functionary's title, responsibility and authorisations (higher degree of title or a higher degree of responsibilities indicate a higher risk given a greater possibility of use and allocation of government funds);

– volume and complexity of the business relationship (higher degree and greater complexity of the established business relationship between the foreign functionary and the financial institution are indicative of the higher degree of risk regarding this person);

– type of product or service offered to the foreign functionary (some categories of services imply higher risk – e.g. private banking);

– third parties doing business with the foreign functionary (foreign functionaries often rely on off-shore companies and banks, i.e. on entities located in areas or countries not applying adequate ALM/CFT measures and standards).

The data and documentation obtained under the procedure from this Section shall be kept in the client's file.

10. The obligor carries out risk assessment by risk category for each client. If the client is classified into the high risk category, regardless of whether such classification is prescribed by the Law (e.g. foreign official), or the obligor has assessed that the client falls within a high risk category, enhanced measures of being informed and monitoring of the client must be implemented.

11. The nature of additional measures to be implemented by the obligor in the situation where a certain client is classified as high risk based on the obligor's risk assessment, depends on the concrete circumstances (e.g. if a client is assessed as high risk due to his/her ownership structure, the obligor may include a provision in its procedures specifying the need for additional data obtainment and further verification of the documents submitted).

12. Risk assessment is made not only at the time of establishing cooperation with a party, but also in the course of that cooperation (monitoring of the client's business operation), which means that, at the establishment of cooperation, a client may be classified as involving high-risk, while at a later stage in the course of the business relationship, the obligor may decide to apply general or simple activities and measures, or vice versa. The above does not apply to cases classified as high-risk pursuant to the Law, or those that are subject to the application of enhanced actions and measures by virtue of the Law (loro correspondent relations, foreign officials, and establishment of business relations without the client's physical presence).

13. Money laundering risk assessment may differ from terrorism financing risk assessment (for instance, money originating from a financial institution or financial system of the state is a more important risk factor in terrorism financing). The obligor must particularly monitor for terrorism financing risk those clients who operate mainly on the basis of cash, and must pay particular attention to money going to terrorists from legal revenues, although this is difficult to detect. Bulk transfers may also be particularly risky in this sense, as well as operations of voluntary non-profit organizations. In terms of terrorism financing, geographic risk is pronounced in regions where, based on data of relevant international organizations, terrorists conduct their activities.

14. In implementing these Guidelines, obligors shall make certain that their employees are adequately trained to timely recognize money laundering and terrorism financing risk. They shall also pay particular attention to their employees' awareness of risks that obligors may be exposed to in the event of their omission to detect such risk, as well as to prescribing who stands where on the responsibility ladder with respect to the implementation of obligor's internal enactments on anti-money laundering and terrorism financing.

The obligor's senior management must ensure that risk assessment and risk resolving processes are carried out in a professional manner, in line with the management's responsibility as to the obligor's legality of operations established by the Law, and in terms of qualifying non-compliance with the Law as economic offence.