Republic of Serbia
MINISTRY OF FINANCE
Administration for the Prevention of Money Laundering
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RECOMMENDATIONS FOR SUSPICIOUS TRANSACTION REPORTING, CUSTOMER DUE DILIGENCE, AND NO TIPPING OFF

I LEGAL GROUNDS AND REASONS FOR ENACTING

Legal grounds for adopting the Recommendations for suspicious transaction reporting, customer due diligence, and no tipping off (hereinafter referred to as: the Recommendations) are embodied in Articles 65 and 87 of the Law on the Prevention of Money Laundering and Terrorism Financing (hereinafter referred to as: the AML/CFT Law) which require from the Administration for the Prevention of Money Laundering (hereinafter referred to as: the APML) to prepare and issue recommendations for a uniform application of the AML/CFT Law, and give a possibility to the supervisory authorities to issue recommendations or guidelines, independently or in cooperation with other authorities, for the application of the AML/CFT Law.

The reason to adopt the Recommendations are, first of all, difficulties and dilemmas encountered in the application of the suspicious transaction reporting requirement, as well as implementation of customer due diligence actions and measures and client monitoring.

Another reason is the recommendation of the MoneyVal Committee given in the Report on anti-money laundering and counter-terrorism financing actions and measures undertaken by the Republic of Serbia, and which was adopted at the 31st MoneyVal Plenary held in Strasbourg, on 9 December 2009.

II RECOMMENDATIONS FOR REPORTING SUSPICIOUS TRANSACTIONS AND PERSONS

II.1. PROBLEM STATEMENT

II.1.1. ADMINISTRATION FOR THE PREVENTION OF MONEY LAUNDERING

The difficulty encountered by the APML is too large a number of received suspicious transaction reports (hereinafter referred to as: STR) which are rather superficially or not at all analyzed by the obligors, in terms of the suspicion on money laundering in the specific case. This results in an enormous number of STRs which contain no information good enough to be used by the APML in its further analyses.

Annex 1 of these Recommendations contain examples of STRs sent to the APML in 2010, as well as diagrams of STRs sent in 2009 and 2010, sorted by the codes of transactions

in question.

If we analyze the transactions shown in Annex 1, we will conclude that the most of the reported STRs in 2009 was carried out using the transaction grounds code „221", which represents the *sale of goods and services*.

II. 1.2. NATIONAL BANK OF SERBIA

In its bank compliance supervision, the National Bank of Serbia has identified a considerable number of transactions that are covered in some of the suspicious transaction indicators, and which should have been, as such, subject to the analysis of the bank's staff. The Annex 2 of these Recommendations gives examples of such transactions.

In none of the cases described in Annex 2 of these Recommendations were the supervisors of the National Bank of Serbia provided a written proof that the transactions were subject to bank staff's analysis as suspicious.

II.1.3. OBLIGORS

Difficulties faced by obligors are related mainly to assessments whether there is reason to suspect money laundering or terrorism financing in a specific case. Annex 3 of these Recommendations describes specific transactions in which there are dilemmas whether to report them to the APML or not.

II.2 RECOMMENDATIONS

Suspicious transaction is a transaction for which there are reasons for suspicion on money laundering or terrorism financing, or transaction which is performed by a person reasonably suspected to be involved in money laundering or terrorism financing. In establishing whether there are reasons to classify a transaction or person as suspicious, we should always have in mind the suspicious transaction indicators. However, if a transaction meets the conditions from one of the indicators it does not have to mean that this is a suspicious transaction and that it should be reported to the APML. We need to consider a wider framework, in line with the principle that the obligor knows its client best, and assess if a certain transaction goes beyond the line of usual, i.e. expected business operations of the client. The opposite is true as well: a transaction can be suspicious without being covered by any of the suspicious transaction indicators.

The STR recommendations aim to facilitate the detection, processing and reporting of transactions for which there are indications of their being related to money laundering or terrorism financing.

Transaction analysis

Analysis of a transaction or client, in terms of MF/TF suspicion, should include, among other things, data relating to:

- client's account history;
- frequency of transactions in client accounts;
- link between the analysed transaction and other transactions;
- client's business activity;
- code of grounds under which a transaction is carried out;
- identifying and combining more than one suspicious transaction indicators;
- information from the media (TV, radio, Internet, etc)
- information from publicly available databases (Business Registers Agency, etc);

- frequency of transactions where the originator is a particular legal/natural person;
- authorisations to use accounts of other natural persons;
- the origin of funds held in the client's account and how the funds are used.

If the analysis has lead to a suspicion on money laundering or terrorism financing, such transaction or person should be reported to the APML. The STR should include all information arrived at in the analysis.

Transactions whose analysis must be documented in a note, but which are not reported to the APML

The bank analyses a transaction which has not yet been characterised as suspicious, but meets criteria from some of the indicators, or if a transaction is considered as posing a high level of ML/TF suspicion, or if some other circumstances indicate that a specific transaction should be subject to a further adequate analysis. This analysis need not be too extensive; in some cases it will suffice to inspect the client account history, which will in itself eliminate the ML/TF suspicion.

Analysis and assessment of transactions and persons, in terms of ML/TF suspicion, should also be done when no specific suspicious indicator can apply, namely based on employees' experience, and bearing in mind the ML/TF risk assessment guidelines.

In the event that the analysis of a transaction or client does not lead to reasons for suspicion this should be reflected in a note, or there should be another written proof that the transaction had been analysed. Accompanying documentation, too, with annotations, received from the organisational unit where the transaction was carried out or business relationship established can be considered proof that a transaction or client has been analysed in terms of ML/TF suspicion. That a transaction has been analysed can be proved also by written commentaries of the compliance officer, emails containing opinions of the client's parent company, other form of correspondence concerning the transaction, printed out or electronically generated client account history, various reports with annotations, saved transaction order or supporting document related to the transaction and the similar, depending on the type of transaction and obligor's methodology.

A note must be made for any transaction which was characterised as suspicious by the bank employee while in a direct contact with the client, and transferred to the bank's compliance officer, who decided, following his own analysis, not to report it to the APML.

If a certain transaction was analysed thoroughly, and in greater detail, the analysis itself being more complex and resulting in sizeable documentation, it is useful to make a note in order to have, after a certain time, an adequate explanation of the reasons why a certain transaction had not been reported to the APML as suspicious.

The notes can also serve as a useful piece of data in later analyses of other transactions made by the same client, and should contain general data: client's name; account name and number; date of transaction analysed; short description and reasons not to report; date and signature.

Due to a large number of transactions which meet some of the criteria covered in the indicators, the bank faces organisational difficulties, i.e. the question arises of who will be required to make the not. The obligor may adopt any of the following methods:

1) A coordinator can be appointed to work with the employees who are in direct contact with the transactions and clients in the transaction analysis process; this coordinator would serve as the first "filter" of suspicion of a certain transaction. Transactions that prove to be

suspicious to the coordinator would be sent to the compliance officer accompanied with an appropriate commentary (note) for further analysis.

2) The obligor's employees who are in direct contact with transactions and persons reports the minimum level of suspicion to the compliance officer, who makes further analysis.

3) The employee who is in direct contact with the client makes a note. If the obligor should choose this model, they need to pay great attention to an adequate training of obligor's employees who are in direct contact with the client.

4) If the compliance officer, in the monitoring procedure, identifies a certain person or transaction which is suspicious according to the indicators, they should refer to the employee who works directly with the client in order to get explanation, i.e. provide proof.

In addition to the above options, the obligor may adopt, through is internal procedures, a different method that would be acceptable with respect to its organisational structure, size, human resources, etc.

Reasons to refuse business cooperation

The obligor decides freely whether to establish business cooperation with the client or not. If, based on statutory or other regulations, or internal enactments governing the admissibility of the client, the obligor finds that the client poses an unacceptably high ML/TF risk at the time of or after establishing the business cooperation, business cooperation will be refused or terminated.

Frequent transactions that should not be reported to the APML each time they occur, but which need to remain monitored and reported from time to time

If a person has already been reported to the APML as suspicious, it will suffice to make an analysis once a month, check the turnover in the account, and report suspicious transactions jointly on monthly level, except when:
- the APML requests additional documentation;
- the APML requests monitoring;
- there are other circumstances that do not make joint suspicious transaction reporting justified (circumstances learned through the media, internet, etc);
- there are circumstances indicating that the suspicious activity will end very soon (e.g. firms opened in order "to get cash through" and then closed within around 15 days).

Application of indicators

Suspicious transactions are recognised based on a list of indicators for recognising persons and transactions with respect to which there are reasons for suspicion on money laundering or terrorism financing (hereinafter referred to as: the list of indicators). Recognising certain indicators in a transaction is not in itself proof that a transaction is suspicious. This fact, however, indicates that a further analysis of such a transaction is necessary. The purpose of the list of indicators is to direct attention to relevant cases thereby enhancing the efficiency of the available resources. This means that certain transactions are high risk transactions, and they should be given attention and allocate resource immediately,

concurrently with the execution of the transaction. On the other hand, there are moderate risk transactions that need not be analysed directly when the transaction is executed but subsequently, at periodic intervals.

III CLIENT IDENTIFICATION

Identification of the beneficial owner

If it is not possible to obtain all the data from the official, public register, the missing data shall be obtained from the original or validated copy of the original document, or other business documentation delivered by the client. If the missing data is not possible to obtain in the specified manner for objective reasons, such data shall be obtained based on client's written statement. Objective reasons may include as follows: the requested data are not recorded in the country where client's headquarters are located; certificate from the official register does exist but it does not contain the requested data; business documentation containing, as a general rule, the requested data is obtained but such documentation does not contain the requested data either.

If the data is obtained from the client's statement, it is necessary to provide proof that the bank has undertaken all reasonable measures to obtain data from the registration or business documentation of the client.

In the event when the bank, even after it has undertaken activities to obtain additional documentation in order to identify client's beneficial owner, still needs, due to client' complex ownership structure, to obtain a written statement from the representative or compliance officer, it is recommended that the client should be classified as high risk, which implies enhanced customer due diligence. This will be applied in exceptional cases, especially in situations when the decision of the competent registration authority does not contain the beneficial owner, or when the ownership structure is very complex and includes a great number of foreign legal and natural persons. It is recommended that the ownership structure is considered as a possible reason to report suspicious transactions.

In case of sports organisations set up before the entry into force of the Law on Sport ('Republic of Serbia Official Gazette', No. 52/96), when identifying the beneficial owner it will suffice to obtain all data on the natural persons managing the client (Article 81, paragraph 1, under 14 of the Law on the Prevention of Money Laundering and Terrorism Financing – e.g. for Basketball Club (BC) Partizan, BC Crvena Zvezda, Football Club Partizan, etc).

In case of churches and religious organisations, so-called confessional communities whose legal status was regulated by registration under the Law on Legal Status of Religious Communities ('Official Gazette of Federal People's Republic of Yugoslavia, No. 2/1953) and Law on Legal Status of Religious Communities ('Official Gazette of Socialist Republic of Serbia', No. 44/1977), in identifying the beneficial owner it will suffice to obtain all data concerning the natural person managing the client (Article 81, paragraph 1, under 14, of the Law on the Prevention of Money Laundering and Terrorism Financing).

In case of legacies, foundations, and funds, that were founded until the entry into force of the Law on Legacies, Funds, and Foundations ('Socialist Republic of Serbia Official Gazette', No. 59/89), when identifying the beneficial owner it will suffice to obtain all data on the natural persons managing the client (Article 81, paragraph 1, under 14, of the Law on the Prevention of Money Laundering and Terrorism Financing).

In case of civil associations established until the entry into force of the Law on Social Organisations and Civil Associations ('SRS Official Gazette', No. 24/82) and Law on Association of Citizens in Associations, Social Organisations, and Political Organisations established for the Territory of Socialist Federal Republic of Yugoslavia ('SFRY Official Gazette', No. 42/90) when identifying the customer beneficial owner it will suffice to obtain all the data on natural persons managing the customer (Article 81, paragraph 1, under 14, of the Law on the Prevention of Money Laundering and Terrorism Financing).

All model contracts, where possible, should contain the possibility of a unilateral discretionary termination of contract (most banks have done that in their general terms of operation), where account should be taken of the fact that the possibility of a unilateral discretionary termination by a foreign bank can not be contracted in certain transactions, such as for instance in contract on term deposits, open credentials or approved loan or guarantee, or for instance in *ad-hoc* short-term business relationships.

Identification of beneficial owner of a legal person in bankruptcy

Under the Law on Bankruptcy, legal transactions for and on behalf of legal persons in bankruptcy or liquidation are carried out by bankruptcy manager or liquidation manager, and the business name of such legal person is complemented with the words 'in bankruptcy' („у стечају”). Having in mind that legal persons in bankruptcy, or liquidation, are fully known, and that beneficial owners of the legal person can in no way exert influence on the operations of the legal person once the bankruptcy proceedings have been instituted, we believe it will suffice to obtain a certificate from the public register for that legal person in bankruptcy and the decision on the nomination of the bankruptcy manager, or the decision of the Commercial Court regarding the institution of the bankruptcy proceedings the mandatory part of which is the decision on the nomination of the bankruptcy manager.

Can simplified due diligence be applied also in case of a company organised as limited liability company?

Simplified customer due diligence measures and actions, in line with Article 32 of the AML/CFT Law, can be applied only if the issued securities of the company are listed in the organised security market in the Republic of Serbia, or in a country where security trading standards applied are at the European Union level or higher.

Therefore, only in the situation when the client is a joint stock company meeting the above requirement can simplified customer due diligence be applied, i.e. the beneficial owner of the legal person need not be identified.

A limited liability company can in no way enter into the class of persons in relation to which simplified customer due diligence can be applied. However, if in the process of identifying the beneficial owner of such a customer (a company), it turns out that a joint stock company whose securities are listed in the organised securities market applying the above standards is the owner of 100% of the share of the limited liability company, further identification of such a joint stock company is not necessary.

Identification of guarantor as subsidiary debtor

The bank enters a business relationship with the guarantor at the moment of activation of the accessory contract of guarantee. Therefore, from the point of view of the AML/CFT Law, there are no obstacles for performing customer due diligence after the conclusion of the contract on credit, but no later than before the establishment of the business relationship with

the guarantor. However, in this case the obligor may find itself in a situation where it can not collect the debt from the subsidiary owner because it has not obtained the requested information about the debtor.

In case when the guarantor is liable jointly with the main debtor, so-called "guarantor-payer", business relationship with the guarantor is established at the moment of conclusion of the contract of credit, which means that it is then necessary to perform all the actions and measures laid down in the AML/CFT Law.

Who can be third party in terms of the AML/CFT Law, i.e. can a trading company be relied on for customer due diligence actions and measures?

Article 23 of the AML/CFT Law clearly specifies who can be relied on, in the capacity of the third party, for customer due diligence actions and measures laid down in the AML/CFT Law. A trading company can in no way be considered a third party in terms of the AML/CFT Law.

In case of specific-purpose credits used to purchase fast moving consumer goods, which are approved directly in trading companies which sell such goods, client identification is performed by the bank. However, based on the contract concluded between the trading company and the bank, employees of the trading company who performs client identification takes on the role of the 'bank employee' when issuing specific-purpose credit to purchase of a certain product and is required to perform all the actions and measures provided for in the AML/CFT Law. The bank will be held responsible for any deficiencies in terms of the requirements laid down in the AML/CFT Law, so it is necessary that the bank pays particular attention, when concluding such a contract, to the risk assessment of the trading company with which it intends to conclude the contract.

What documentation is obtained when the client is an employee of the embassy of a foreign country requesting to open an account with the bank for the embassy?

Pursuant to Article 32 of the AML/CFT Law, simplified customer due diligence actions and measures are applied when business relationship is established with a state body. As the embassy is undoubtedly a state body, data specified under Article 33, paragraph 1 of the AML/CFT Law are to be obtained when establishing business relationship with the embassy.

IV PROHIBITION OF DISCLOSURE (NO TIPPING OFF)

Tipping off means disclosure to the bank's client of information that the bank's employee has learned of while performing his business activities, directly or indirectly.

In this sense, the information includes the following:

- That the APML has been sent or that it will be sent data, information, and documentation on the client or transaction suspected to be money laundering or terrorism financing;
- That the APML has issued an order for a temporary suspension of execution of a transaction;
- That the APML has issued an order for monitoring of the financial operations of the customer;

- That a proceedings have been instituted or may be instituted against a customer or a third party in relation to money laundering or terrorism financing.

In performing customer due diligence measures and client monitoring, special attention should be given to decreasing the risk of tipping-off, by adopting clear internal procedures defining behaviour of employees in the above listed cases.

The bank should ensure that all the employees are acquainted with these procedures, giving special attention to the employees that are in direct contact with clients and their transactions. All employees should be acquainted with the consequences of non-compliance with the no-tipping off requirement, and the no-tipping-off rule should form integral part of AML/CFT training.

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