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GUIDANCE

for

Attorneys, Sole Practitioner Lawyers and Firms Providing Legal Services

on

Minimal Requirements for Assessing and Preventing Money Laundering and Terrorism Financing Risks

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Introduction

1. This Guidance is presented based on Part 2, Article 11 of the Republic of Armenia Law on Combating Money Laundering and Terrorism Financing (hereinafter referred to as the Law) and is applicable to reporting entities such as attorneys, sole practitioner lawyers and firms providing legal services (hereinafter referred to as legal professionals) as defined by Article 3 of the Law. The Guidance presents specific criteria of money laundering and terrorism financing (hereinafter also referred to as ML/TF) risks inherent to legal professionals, and the prevention mechanisms thereof.

2. The purposes of identifying and assessing ML/TF inherent risks and taking commensurate preventive measures by legal professionals are the following:

1) Legal professionals would safeguard their high rating and reputation in the view of the clients and the public, with the reasoning that in practice they are engaged exceptionally in legitimate activities.
2) The mechanisms prescribed by the Guidance would enable legal professionals to discern their higher risk clients and to take actions which would not impede their own activities aimed at making profit on one hand and would prevent possible risks arising from such clients on the other hand.
3) Legal professionals would be safeguarded from possible future allegations of being involved in or facilitating different money laundering schemes, with the reasoning that they have effective systems in place for assessing and preventing ML/TF risks.

3. The Guidance also defines a comprehensive set of measures for legal professionals, which, when realized, would ensure compliance of their practices with requirements of the Law. At that, as prescribed by the Law, provisions set forth under the Guidance are applicable to legal professionals only in terms of services involving the following transactions prepared or carried out for the client:

1) Buying and selling of real estate,
2) Managing of client money, securities or other assets,
3) Managing of bank and securities accounts,
4) Provision of funds or other assets for the establishment, operation, or management of legal persons,
5) Provision of services for the establishment, operation, or management of legal persons, as well as for the alienation (acquisition) of stocks (equities, shares and the like) in the statutory (equity and the like) capital of legal persons, or for the alienation (acquisition) of stock issues (stocks, shares and the like) of legal persons at a nominal or market value;

4. Concepts referred to in the Guidance are used in accordance with the concepts and formulations defined by the Law.

Section 1: Risks

Chapter 1: Importance of Categorizing and Managing Risks

5. ML/TF risks faced by legal professionals vary depending on many factors including the professional activity of legal professionals, the type and identity of clients, the nature of relationships with clients, and the methods for providing services (for the purposes of this Guidance, the concept of service corresponds to that of business relationship as defined by the Law). The minimal comprehensive set of risks and their prevention mechanisms are defined by the Law.

6. Legal professionals should precisely identify the ML/TF risks and their prevention measures, which may be relevant in the course of their activities. Concurrently, every practical case or

situation may give rise to new risks; therefore, the prevention measures must be dynamically developing ones.

7. In comparison to, for example, financial institutions, the following reasons are behind the distinctiveness of ML/TF risk management by legal professionals:

1) As part of their operations, financial institutions upon the instruction of customers manage their funds (attract deposits, make transfers, etc); hence, they have the objective to ensure that there is a reasonable and legitimate flow of funds in the course of providing such financial services. For the purpose of their practices, legal professionals have the objective to understand the true purpose behind the behavior of their clients, and the factual logic and legitimacy of the services offered or provided.
2) Due to the large number of customers and the significant amount of funds under transactions, financial institutions exploit not only professional and human resources but also automated software systems for the purpose of preventing ML/TF risks. In practice, legal professionals exclusively rely on their own professional and personal skills.

8. Legal professionals may face higher or lower risk criteria.

9. Higher risk criteria, in turn, are classified into country or geographic, client, and transaction risk categories. These risk categories should not be considered separately, in isolation from one another, as for the presence of a higher risk criterion in one of the categories can lead to the presence of a higher risk criterion in another risk category or affect the possibility of the emergence of such. Besides, the same service provided by a legal professional is possibly to simultaneously comprise more than one risk criterion pertaining to one or several risk categories.

10. Based on own knowledge and experience, legal professionals should be able to identify existent ML/TF risks, assess each one of them and aggregate a comprehensive risk assessment for the services offered or provided.

11. Different categories of risks are presented under this Guidance with the following purposes:

1) To illustrate a minimal set of risks and, based on that, propose a model package of risk prevention measures;
2) To precisely identify ML/TF risks inherent to legal professionals by means of evaluating risks specified under the Guidance from the standpoint of their own practices.

Chapter 2: Country or Geographic Risk

12. There is no research conducted by any international organization that would designate a particular country or geographic area as undoubtedly and unconditionally presenting higher ML/TF risk for legal professionals. Nevertheless, the following countries and territories are considered to pose higher risk in terms of ML/TF:

Countries and territories subject to sanctions, embargoes, or similar restrictive measures issued by the UN[1];

1) Countries and territories publicized by the FATF and FATF-style regional bodies as lacking or having inefficient AML/CFT systems[2].
2) Countries and territories publicized by international structures as having significant levels of corruption[3].
3) Countries and territories included in the list of off-shore jurisdictions as approved by the Central Bank of the Republic of Armenia[4].

[1] The FMC official web-site contains links to documents issued by the UN Security Council Sanctions Committee (www.cba.am/Financial Monitoring Center). Documents are available at www.un.org/sc/committees.

[2] The FMC official web-site contains links to FATF and MONEYVAL publications (www.cba.am/Financial Monitoring Center). The publications are available at www.fatf-gafi.org, www.coe.int/moneyval.

[3] See, for example, at www.transparency.org. The FMC official web-site contains links to data issued by Transparency International (www.cba.am/Financial Monitoring Center).

13. Legal professionals should consider the above-listed countries and territories as posing higher risk if:

1) Clients, authorized persons, beneficial owners are residing or located in these countries and territories, or clients that have business relationships with them,
2) The source of income and (or) wealth of clients is in these countries or territories,
3) These countries and territories are the place for the conduction of the business relationship and (or) transaction.

14. Besides the above, legal professionals may, based on own experience and practices, classify/consider any country or geographic area as posing higher risk, even if it is not listed under the above-specified criteria.

Chapter 3: Client Risk

15. Every legal professional should have a clear understanding of which category of clients or which particular client poses higher ML/TF risk. In this sense, clients posing higher risk include:

1) Politically exposed persons[5];
2) Corporate clients with unnecessarily complex control structure of management bodies or beneficial owners that are impossible to identify;
3) Clients that are cash intensive businesses (e.g. casinos, gas stations, hotels, etc.);
4) Resident or non-resident non-profit organizations (including charities), where there is:
   a. No apparent corporate structure resulting in considerable divergence from the requirements specified under the applicable legislation; and (or)
   b. No authorized supervisory body entitled to examine financial and business operations of these organizations and impose responsibility measures for the violations disclosed;
5) Clients convicted for willfully committed crimes, if this circumstance becomes known to the legal professional in the course of conducting professional activities;
6) Clients having numerously changed the address of their permanent living (registration), location, or business;
7) Legal persons having factually conducted no activity during a considerable period of time;
8) Shell companies having state registration but no factual address of location or any activity conducted.

Chapter 4: Transaction Risk

16. Certain transactions (subjects of legal advisory) conducted by legal professionals for their clients may pose higher ML/TF risks. These include cases when:

1) A transaction is offered to carry out with the purpose of concealing beneficial owners of the client (e.g. arranging a creation contract of a legal person, where the beneficial owner acts in a mediated way – by means of being the founder of the founding legal person);
2) A transaction is offered, where the price is apparently lower or higher than the real/market price of the subject of transaction (e.g. arranging a real estate buying and selling contract at an apparently low price);

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[4] See Republic of Armenia Central Bank Board Decision No 28, of July 28, 2009.

[5] The definition of politically exposed persons is stipulated by the Law, while relevant information can be found from various public sources, such as the search engine of www.google.am, the official web-site of the US Central Intelligence Agency (www.cia.gov/library/publications/the-world-factbook), web-sites of relevant governmental bodies of different countries, etc. Besides these, there are also different paid information databases (e.g. World-Check, Factiva, Accuity), which provide most comprehensive information on politically exposed persons. The FMC official web-site contains links to the stated information resources (www.cba.am/Financial Monitoring Center).

3) Payment to legal professionals for completing a transaction, or payment to clients against a transaction, is unreasonably made by a party un-associated with the client;
4) Corporate clients provide for making payments to legal professionals in cash;
5) Clients provide apparently fake or incomplete information about the real objectives, nature, and subject of the transactions carried out;
6) Clients promise to pay unreasonably high fees for transactions carried out, except for the cases of wealthy clients promising bonuses for successful completion of transactions;
7) Transactions offered or carried out are apparently not commensurate to the business profile of the client (e.g. an individual entrepreneur providing tourism services requests advisory on contracts for importing precious stones);
8) A transaction is offered, where parties (to be) involved (would) maintain their anonymity (e.g. an offer is placed for a service to establish a company with nominal founders and directors in an off-shore jurisdiction).

Chapter 5: Lower Risk Criteria

17. Legal professionals can consider only the following clients as characterized by lower risk criteria (except for the clients residing or located in countries and territories lacking or having inefficient AML/CFT systems):
1) Financial institutions effectively supervised in terms of combating money laundering and terrorism financing,
2) Governmental bodies,
3) Local self-government bodies,
4) State-owned non commercial organizations,
5) Public administration institutions.

Chapter 6: Variables That May Impact Risk Criteria

18. ML/TF risks inherent to practices of legal professionals and resources in place for their mitigation are all dependant on the size, sphere, expertise and other conditions of their activities. For example, ML/TF risks and mitigation resources for a sole practitioner attorney will be different from that of a large firm providing legal advisory services. Therefore, every legal professional should precisely identify the circumstances having impact on the formation of ML/TF risk criteria in the course of his practices. Typical examples of such circumstances are:
1) Nature (one-time or recurrent), duration, regularity, and periodicity of services offered or provided;
2) Robustness of the legal regime (e.g. licensing, registration rules) applicable to the clients,
3) Rating and business reputation of the client;
4) Nature of the legal advisory services (non- or face to face communication);
5) Client residency and, in case of foreign clients, the nature of their relation with the Republic of Armenia;
6) Circumstances related to introducing the client (whether the client has been recommended to the legal professional by another reputable or familiar party, or has applied without prior appointment);
7) Presence of more than one higher or lower risk criterion within the service provided to the client.

Section 2: Risk Prevention Measures

Chapter 7: Internal Monitoring Function for Prevention of Risk

19. For the purpose of effective prevention of ML/TF risks specified under Section 1 of this Guidance, legal professionals should introduce an internal monitoring function. At that, in order to appropriately realize this function, in accordance with Article 22 of the Law, legal professionals shall be obligated to have an internal monitoring unit or an employee responsible for dealing with the prevention of ML/TF, or otherwise outsource this function to relevant specialized entities (hereinafter referred to as internal monitoring unit).

20. Taking into consideration that the size of activities and human resources of legal professionals are significantly inferior to the relevant characteristics of financial institutions and that, in addition, there are profound differences in terms of activities and human resources amongst legal professionals (from a sole practitioner attorney to a large firm providing legal advisory services), Article 22 of the Law shall be applicable to legal professionals with the following differences:

1) In case of sole practitioner lawyers, the internal monitoring function of ML/TF prevention should be performed by the sole practitioner lawyers themselves;
2) In case there is specialized staff available, the function may be assigned to an individual employee or a structural unit. In this case, the autonomy and direct accountability of the internal monitoring unit to the senior management of the legal professional should be ensured.

21. The unit performing internal monitoring functions of a legal professional should at least undertake the following measures:

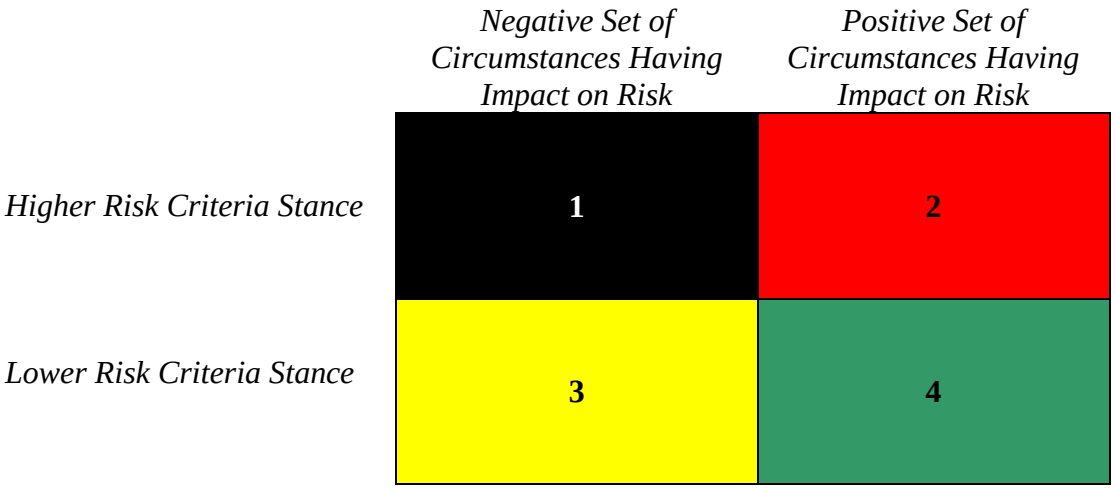
1) Develop AML/CFT internal legal acts (in case of having more than 10 employees); present proposals on enhancing effectiveness of such acts;
2) Categorize clients and services provided to them in terms of ML/TF risk exposure in accordance with the Law, this Guidance, and internal legal acts of the legal professional; build up awareness among employees of the legal professional about specific categories of risks, and higher risk clients and services;
3) Provide for regulation and effectiveness of client due diligence processes, including enhanced and simplified due diligence, as well as for the ongoing monitoring of clients and of the business profile thereof, information recording, maintenance, and updating processes;
4) Conduct analysis in relation to recognizing a transaction or business relationship as suspicious;
5) Make the final decision with regard to recognizing a transaction or business relationship as suspicious, to rejecting or suspending them, as well as to freezing of funds or other assets associated to terrorism;
6) Ensure the filing of suspicious transaction or business relationship reports with the Financial Monitoring Center of the Central Bank of the Republic of Armenia (hereinafter referred to as the Financial Monitoring Center);
7) Undertake other measures of risk prevention as prescribed under this Section.

22. The structural unit of legal professionals performing the functions of internal monitoring should have direct and timely access to any document or information in relation to services provided by legal professionals.

Chapter 8: Risk Assessment Methods

23. Before providing services to clients and during the entire duration of in-progress contractual services, legal professionals should assess the aggregate ML/TF risk exposure in relation to them. In the course of assessing client and transaction risk, the following matrix is

recommended as a guide in order to consider risk criteria and circumstances having impact on them, as specified under Section 1 of this Guidance.



1) Situation 1 suggests that the service offered or provided poses higher risk. For the purpose of determining risk exposure, it is also important to consider what the higher risk criteria are and how many of such criteria are present. In this case, the question of filing a suspicious transaction or business relationship report with the Financial Monitoring Center should also be considered and, regardless of the decision made, the outcomes of such consideration should be documented and maintained.
2) Situation 2 suggests that the service offered or provided may pose a higher risk, although circumstances having impact on it are of positive nature within the given set of risks. In this case, again, for the purpose of determining risk exposure both the number and nature of higher risk criteria and the impact of the positive set of circumstances should be considered.
3) Situation 3 suggests that the service offered or provided poses medium risk, although certain circumstances are present, which may in future transform it into higher risk. In this case, it is important to establish enhanced ongoing monitoring over the service, as well as to conduct enhanced due diligence with the purpose of effectively controlling possible fluctuations in risk exposure.
4) Situation 4 suggests that the service offered or provided poses lower risk, and there is no material circumstance implying the possible presence of high risk criteria.

24. At that, if the service offered or provided comprises both higher and lower risk criteria, the aggregate risk exposure should be determined through assessing the nature and materiality of each risk criterion involved, as well as of the set of circumstances having impact on risk.

Chapter 9: General Rules for Client Due Diligence

25. Client due diligence or the principle "Know Your Client" is intended to ensure that legal professionals have adequate and comprehensive awareness of the real identity of their clients. This applies to identifying not only the clients, but also the authorized persons acting on behalf of them and the beneficial owners (if any).

26. Client due diligence should be conducted in each and every case of offering or providing a service, whether such service involves higher, medium, or lower risk. Client due diligence shall be required for both new and existing clients within the scope of services provided to them.

27. Article 15 of the Law defines the cases, the procedures, and the required minimum documentation for conducting client due diligence by legal professionals. Client due diligence shall comprise the following measures (Articles 15, 16 and 20 specify the requirements within the scope of each measure):

1) In accordance with Article 15 of the Law, obtain information on the identity (identification) of clients (including the authorized person acting on behalf of the client and the beneficial owner) and verifying the accuracy of the information obtained;
2) In accordance with Article 16 of the Law and Chapter 10 of this Guidance, perform ongoing monitoring of the business relationship (service);
3) In accordance with Article 15 of the Law and Chapters 11 and 12 of this Guidance, undertake measures based on risk-based approach for client due diligence.

28. At that, measures specified by Sub-Clause 1, Clause 27 of this Guidance shall be undertaken by legal professionals before providing services to clients. In exceptional circumstances, when the ML/TF risk is effectively prevented, and where it is essential not to impair the normal course of services provided to clients, measures towards obtaining information on the identity of the client and verification of such information may be undertaken after the service is actually provided, within a reasonable timeframe of not more than seven days.

Chapter 10: Ongoing Monitoring of Business Relationship (Service)

29. An essential constituent of client due diligence is the ongoing monitoring of clients and their business profile in the whole course of business relationships (services) provided by legal professionals, so as to form a complete and clear understanding of the purpose and the expected nature of the services provided. For this purpose, depending on the ML/TF risk exposure of the service provided by legal professionals, the following measures shall be undertaken by them during the whole course of providing the service:

1) Verify the interconnection between transactions carried out within the scope of the service provided, detect possible schemes for these connections, as well as determine the objective of the transactions;
2) Verify whether the nature of the transactions is commensurate to the type of business activities of the client;
3) Check the categories, periodicity, and chronology of transactions carried out in a standard unit of time;
4) Verify possible interrelations between the parties of transactions, the authorized persons, as well as the beneficial owners;
5) Verify the existence of transactions by means of which clients pursue to avoid being reported to the Financial Monitoring Center by reporting entities;
6) Obtain possibly complete information, as necessary, on the sources of income and (or) wealth of clients, and on the changes thereof;
7) Compare the sources, turnover, and amounts of funds of the client subject to different transactions;
8) Assess possible ML/TF risks in services offered or provided, by means of comparison with the criteria and typologies of suspicious transactions and business relationships.

30. Information obtained within the scope of conducted client due diligence (including enhanced and simplified due diligence) should be updated by legal professionals at a periodicity set by them, but not less than once a year, to ensure that it is up-to-date and relevant.

Chapter 11: Enhanced Client Due Diligence

31. In case the service offered or provided poses higher risk, legal professionals should, in addition to client due diligence measures prescribed under Chapter 9 of this Guidance, conduct enhanced client due diligence.

1) Enhanced client due diligence should include the following measures:

a. Obtain senior management approval before establishing and for continuing business relationships with such clients, as well as in cases when later on it is found out that clients and (or) the beneficial owners pose higher risk, or that the transactions or business relationships comprise such criteria;
b. Undertake necessary actions for verifying the source of income and (or) wealth of clients;
c. Scrutinize, record in writing, and maintain the grounds and conditions for the following transactions, so as to permit reconstruction of transaction details in future and, of necessary, dissemination of those to authorized bodies. Such transactions include:
   - All complex and unusually large transactions, as well as unusual patterns of transactions with no apparent economic or legitimate purpose;
   - Transactions involving persons residing (located) in foreign countries or territories, where international requirements for combating money laundering and terrorism financing are absent or ineffectively implemented;
d. Conduct enhanced ongoing monitoring of business relationships.

2) Enhanced client due diligence may include the following measures:
   a. Scrutinize the required documents (information), stipulated in case of offering and providing services, in a more comprehensive and thorough manner;
   b. Make requests to authorized government bodies with the purpose of verifying the accuracy of information on clients, transactions with and services provided to them.

32. By means of enhanced client due diligence, legal professionals should obtain reasonable clarifications and explanations, so as to form a complete and clear understanding of the clients and the services offered or provided in relation to them.

Chapter 12: Simplified Client Due Diligence

33. In case of lower risk criteria, legal professionals may perform simplified client due diligence.
34. Simplified client due diligence shall be the limited implementation of client due diligence measures performed by legal professionals, whereby the following information shall be obtained as part of the identification and verification of identity:
1) For natural persons - forename, surname and identification document information;
2) For legal persons – company name and state registration certificate number;
3) For government bodies and local self-government bodies - name.

Chapter 13: Minimal Requirements for Recording and Maintaining Information

35. Legal professionals should record and maintain the information specified under Chapters 9-12 of this Guidance in a manner sufficient to permit reconstruction of individual transactions so as to provide, if necessary, procedural evidence.
36. Information may be maintained in documentary form, on computers, or other electronic means.
37. Legal professionals should ensure the security and secrecy of the information recorded and maintained, and should prevent it from unauthorized use or control.
38. Legal professionals should maintain the information specified under Article 20 of the Law, including the process of review (conducted analysis) for recognizing a transaction or business relationship as suspicious as specified under Clause 43 of this Guidance.

Chapter 14: Obligation in Relation to Suspicious Transaction or Business Relationship

39. From the moment of recognizing a transaction or business relationship as suspicious, legal professionals shall be obligated to file a suspicious transaction or business relationship report with the Financial Monitoring Center.
40. To recognize a transaction or a business relationship as suspicious, legal professionals should consider the criteria and (or) typologies of suspicious transactions or business relationships.
41. Legislative requirements in relation to suspicious transaction or business relationship reports are specified:

1) Under Articles 4-7 of the Law establishing that legal professionals shall be obligated to file a report with the Financial Monitoring Center in case of a suspicious transaction or business relationship;
2) Under Decision No16-N, of January 27, 2009 of the Board of the Central Bank of the Republic of Armenia establishing the Form No 020 for reporting suspicious transaction or business relationship by legal professionals, the rules and deadlines for its submission, as well as the rules for the registration of legal professionals,
3) Under Decision No1/886A, of September 3, 2008 of the Chairman of the Central Bank of the Republic of Armenia defining suspicious transaction criteria for all reporting entities, including legal professionals.

42. Legal professionals may also recognize a transaction or business relationship as suspicious, when such suspicion does not arise from any specific criteria and (or) typology of a suspicious transaction or business relationship, but its logic or pattern (dynamics) of implementation give the grounds to suspect that it is being carried out or established for the purpose of money laundering or terrorism financing.
43. In the presence of a criteria or typology of suspicious transaction or business relationship, as well as in the cases specified under Clause 42 of this Guidance, legal professionals should consider recognizing the transaction or business relationship as suspicious. If, due to such consideration, the transaction or business relationship is not recognized as suspicious, the process of review (conducted analysis) and the findings shall be documented and maintained in the manner and timeframe established by the Law and this Guidance.

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