



BAR ASSOCIATION OF SERBIA

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Pursuant to Article 66 of the Legal Profession Act (*Official Gazette of the Republic of Serbia* No. 31/2011, 24/2012 – Decision of the Constitutional Court), Article 9 and Article 33, paragraph 1, item 26, of the Statute of the Bar Association of Serbia (*Official Gazette of the Republic of Serbia* No. 85/2011, 78/2012, 86/2013), and Article 114, in relation to Article 104, paragraph 1, item 6, of the Law on the Prevention of Money Laundering and the Financing of Terrorism (*Official Gazette of the Republic of Serbia* No. 113/17),

Considering Rule 16.3 of the Code of Professional Ethics of Attorneys-at-Law (*Official Gazette of the Republic of Serbia* No. 27/2012) and the duty of attorneys-at-law to warn their clients of their legal obligation to record, in certain cases provided for by the law, specific information and submit it to the competent state body, before the client confided such information to the attorney-at-law;

Noting the relevant provisions of the Law on the Prevention of Money Laundering and the Financing of Terrorism; and

Affirming that advocacy is a liberal profession within the public order, and that an attorney-at-law as a separate factor of the judicial system is, in his/her capacity as a representative of and counsel to a client in legal matters, equally obliged to act in the best interest of the client and to contribute to the rule of law, legality and fairness through his/her professional conduct and other public engagement;

The Management Board of the Bar Association of Serbia adopted, on this 20th day of April 2018, the following:

GUIDELINES FOR ASSESSING THE RISK OF MONEY LAUNDERING AND TERRORISM FINANCING CONCERNING ATTORNEYS-AT-LAW

1. The Bar Association as the supervisory body charged with adopting the guidelines

By way of the Law on the Prevention of Money Laundering and the Financing of Terrorism (hereinafter referred to as: „the Law“), the Republic of Serbia has harmonised its legislation with the international standards relevant to combating money laundering and terrorism financing. The Law provides that the Bar Association of Serbia (hereinafter: „the Bar“), as the body in charge of the supervision of the implementation of the Law, may independently adopt recommendations and/or guidelines for the implementation of the provisions thereof. In this manner, the Bar has been entrusted to regulate and supervise the implementation of the Law by attorneys-at-law, bearing in mind the principles of independence and self-regulation of advocacy as a profession.

2. Attorneys-at-law as obliged entities

The entities obliged by the provisions of the Law are listed exhaustively in Article 4, paragraph 1 thereof, while paragraph 2 of the same Article prescribes that the provisions of the Law shall be applicable to attorneys-at-law only exceptionally, in situations where:

- 1) they assist in the planning or execution of transactions for a client concerning:
 - (a) buying or selling real property or a company,
 - (b) managing of client's assets,
 - (c) opening or disposing of an account with a bank (current, savings, or securities account),
 - (d) collecting contributions necessary for the creation, operation or management of companies,
 - (e) creation, operation or management of a company or entity under a foreign law,
- 2) they carry out any financial or real property transaction on behalf or for the account of a client.

3. Actions and measures taken by attorneys-at-law

As opposed to the actions and measures taken by the entities obliged by the Law, which are provided for in Chapter 2 thereof (Articles 5 to 56), the actions and measures to be taken by attorneys-at-law are envisaged by Chapter 3 of the Law (Articles 57 to 62), which means that attorneys-at-law are obliged to take only the following actions and measures:

3.1 Establishing and verifying the identity of a client (Article 57)

a) When establishing a professional relationship with a client, an attorney-at-law is obliged to obtain the following information:

- 1) name and surname, date and place of birth, domicile or residence, unique personal identification number (UPIN), type, number, place and date of issue of a personal identification document of the natural person, or the business name, address, seat, registry number and TIN of the legal person or entrepreneur to whom the attorney-at-law provides services;
- 2) name and surname, date and place of birth, domicile or residence, UPIN, type, number, place and date of issue of a personal identification document of the representative of the legal person or legal representative or empowered representative of the natural person who establishes a business relationship or carries out a transaction for and on behalf of such legal or natural person;
- 3) name and surname, date and place of birth, and domicile or residence of the beneficial owner of the legal entity to whom the attorney-at-law renders services;
- 4) purpose and intended nature of a business relationship, as well as information on the type of business activities of the client;
- 5) date of establishing the business relationship;

b) When carrying out a transaction amounting to the RSD equivalent of EUR 15,000 or more, irrespective of whether the transaction is carried out in one or more than one interrelated operations, the attorney-at-law is obliged to obtain the following information:

1) name and surname, date and place of birth, domicile or residence, unique personal identification number (UPIN), type, number, place and date of issue of a personal identification document of the natural person, or the business name, address, seat, registry number and TIN of the legal person or entrepreneur to whom the attorney-at-law provides services;

2) name and surname, date and place of birth, domicile or residence, UPIN, type, number, place and date of issue of a personal identification document of the representative of the legal person or legal representative or empowered representative of the natural person who establishes a business relationship or carries out a transaction for and on behalf of such legal or natural person;

3) name and surname, date and place of birth, and domicile or residence of the beneficial owner of the legal entity to whom the attorney-at-law renders services;

4) date of carrying out the transaction;

5) amount and currency of the transaction;

6) the intended purpose of the transaction; name and surname and domicile or residence, and/or the business name and registered office of the beneficiary of the transaction;

7) manner in which the transaction is conducted;

c) Where there are reasons for suspicion of money laundering or terrorism financing in relation with a client or transaction, or where there are doubts as to veracity of the obtained data about a client or beneficial owner, the attorney-at-law is obliged to obtain the information referred to in Article 103 of the Law:

1) name and surname, date and place of birth, domicile or residence, unique personal identification number (UPIN), type, number, place and date of issue of a personal identification document of the natural person, or the business name, address, seat, registry number and TIN of the legal person or entrepreneur to whom the attorney-at-law provides services;

2) name and surname, date and place of birth, domicile or residence, UPIN, type, number, place and date of issue of a personal identification document of the representative of the legal person or legal representative or empowered representative of the natural person who establishes a business relationship or carries out a transaction for and on behalf of such legal or natural person;

3) name and surname, date and place of birth, and domicile or residence of the beneficial owner of the legal entity to whom the attorney-at-law renders services;

4) purpose and intended nature of a business relationship, as well as information on the type of business activities of the client;

5) date of establishing the business relationship;

6) date of carrying out the transaction;

7) amount and currency of the transaction;

8) the intended purpose of the transaction, as well as the name and surname and domicile or residence, and/or the business name and registered office of the beneficiary of the transaction;

9) manner in which the transaction is conducted;

10) data and information on the origin of assets that are or that will be the subject of a business relationship or transaction;

11) name and surname, date and place of birth, domicile or residence and UPIN of the natural person or entrepreneur, or the business name, address and seat, registry number and TIN of the legal person or entrepreneur with respect to which there are reasons for suspicion of money laundering or terrorism financing;

12) data on the transaction with respect to which there are reasons for suspicion of money laundering or terrorism financing (amount and currency of transaction, date and time of transaction);

13) information on the existence of reasons for suspicion of money laundering or terrorism financing.

d) The attorney-at-law shall identify and verify the identity of a client or its representative, procura holder or empowered representative and obtain the data referred to in Article 103, items 1 and 2 of the Law by inspecting a personal identity document of such persons in their presence, or the original or certified copy of the documentation from an official public register, which may not be older than three months after the date of its issue, or by directly accessing an official public register.

e) The attorney-at-law shall identify and verify the identity of a beneficial owner of a client that is a legal person or person under foreign law in other legal form by obtaining the data referred to in Article 103, item 3 of the Law, by means of inspecting the original or certified copy of the documentation from an official public register which may not be older than six months after the date of its issue. If it is not possible to obtain the required data from such sources, the data shall be obtained by inspecting the original or certified copy of a document or other business documentation submitted by a representative, procura holder or empowered representative of the legal person.

f) The attorney-at-law shall obtain the other data referred to in Article 103 of the Law by inspecting the original or certified copy of an identity document or other business documentation.

g) The attorney-at-law shall obtain a written statement from the client concerning any missing data other than the data referred to in Article 103, items 11 to 13 of the Law.

3.2 Reporting to the Administration on persons and transactions with respect to which there are reasons for suspicion of money laundering or terrorism financing (Article 58)

If the attorney-at-law, when carrying out tasks referred to in Article 4, paragraph 2 of the Law, establishes that there are reasons for suspicion of money laundering or terrorism financing concerning a person or transaction, he/she shall act in accordance with Rule 22.5.10 of the Code of Professional Ethics of Attorneys-at-Law and refuse to provide representation if the task(s) he/she is requested to perform would result in money laundering, and shall notify the Administration for the Prevention of Money Laundering (APML) thereof before carrying out the transaction, specifying in the notification the time when the transaction is supposed to be executed. In a case of urgency, such notification may be delivered by telephone, in which case it shall consequently be submitted to the APML in writing no later than the next business day. The reporting obligation shall also apply to a planned transaction, irrespective of whether or not the transaction was later carried out. If the attorney-at-law is unable to act in the prescribed manner, either due to the nature of a transaction, or because a transaction has not been carried out, or for any other justified reasons, he/she shall submit the data to the APML as soon as possible, and shall provide a written statement explaining the reasons why he/she did not act as prescribed.

Where a client requests advice from the attorney-at-law concerning money laundering or terrorism financing, the attorney-at-law shall report it to the APML promptly and no later than three days after the day when the client requested the advice. The attorney-at-law shall submit notifications to the APML electronically, by registered mail or by courier. In case of urgency, such notification may be submitted by telephone, to be followed by a written report submitted electronically, by registered mail or by courier, on the next working day at the latest.

4. Requesting data from the attorney-at-law

If the APML assesses that there are reasons for suspicion of money laundering or terrorism financing in relation to certain transactions or persons, it may request from the attorney-at-law data, information and documentation required for detecting and proving money laundering and terrorism financing. The APML may also request from the attorney-at-law data and information referred concerning the persons who have participated or cooperated in transactions or business activities of a person with respect to which there are reasons for suspicion of money laundering or terrorism financing.

The attorney-at-law is required to provide the APML with data, information and documentation referred to in this Article without delay and no later than within eight days of receipt of the request. The APML may set in its request a shorter deadline for providing data, information and documentation if it is necessary for deciding on a temporary suspension of a transaction or in other urgent cases. The APML may, due to the size of documentation or for other justified reasons, set a longer deadline for the provision of the documentation.

5. Exemptions from the obligation to notify and provide information and documentation (Article 60)

The attorney-at-law shall not be obliged to notify the APML in accordance with the Law or provide, upon request of the APML pursuant to the Law, any data, information and documentation if they are obtained from a client or about a client when ascertaining its legal position or when representing it in court proceedings, or in relation to court proceedings, including any advice provided concerning the initiation or evasion of such proceedings, irrespective of whether such data have been obtained before, during, or after the court proceedings.

The attorney-at-law shall only be required to notify the APML in writing about the reasons why he/she did not comply with its request for data, information and documentation, without delay and no later than within 15 days following the date of receipt of such request.

6. The obligation to prepare and apply a list of indicators (Article 61)

The attorney-at-law is required to develop a list of indicators for recognising persons and transactions in respect of whom there are reasons to suspect money laundering or terrorism financing. When developing the list of indicators, the attorney-at-law considers the complexity and size of a transaction, unusual manner of conducting the transaction, value of or connection between transactions which do not have a sound economic or legal purpose, and/or are not in line with or are in disproportion to usual and/or expected business activities of the client, as well as other circumstances related to the client's status or other characteristics. When developing the list of indicators, the attorney-at-law shall also include in the list the indicators published on the official website of the APML

When establishing if there are reasons for suspicion of money laundering or terrorism financing, the attorney-at-law is required to apply the list of indicators and also

to consider other circumstances that indicate the reasons for suspicion of money laundering or terrorism financing.

7. Circumstances indicative of increased geographic, client or service risks

The following circumstances may be indicative of an increased geographic risk:: client originating from a state against which sanctions, embargoes, or similar measures have been imposed by the United Nations, Council of Europe or other international organisations; client originating from a state identified by credible sources (FATF, Council of Europe) as not applying adequate measures for the prevention of money laundering and terrorism financing; client originating from a state identified by credible sources as providing funding or support for terrorist activities or organisations; client originating from a state identified by credible sources (World Bank, IMF) as having significant levels of corruption or other criminal activity.

The following circumstances may be indicative of an increased client risk: client as a legal person under a foreign law is not allowed to conduct the business activity in the country in which it is registered; client whose complex organisational structure makes it difficult to identify the beneficial owner; client who conducts business relationships in unusual circumstances, such as frequently and unreasonably changing business partners for performing the same type of business; client with cash intensive business; client whose business activity is not profit-oriented and who perform certain transaction using large amounts of cash.

The following circumstances may be indicative of an increased service risk:: conducting business transactions in order to conceal the client's beneficial owner; conducting real property transactions between parties within unusually short periods of time and without an obvious legal, economic or other justifiable reason; payments received from unrelated or unknown third parties, or fees paid in cash where it is not a usual manner of payment.

Considering that the National Risk Assessment of Money Laundering and Risk Assessment of Terrorism Financing, as published in July 2018, identified the following sectors as the most vulnerable: real estate agents, organisers of online games of chance and casinos, in respect of whom a high exposure to money laundering and terrorism financing threats has been identified, any situation involving real estate agents and organisers of online games of chance and casinos as clients may be indicative of an increased risk.

Considering that the Administration for the Prevention of Money Laundering has posted on its official website the United Nations Sanctions search engine, which enables any interested party to easily verify whether they have business relations with persons included in any of the United Nations Security Council Sanctions Lists relative to resolutions 1267 (1999), 1989 (2011) and 2253 (2015) in relation to ISIL, Al-Qaeda and associated individuals, groups, undertakings and entities; resolution 1718 (2006) and successive resolutions in relation to the Democratic People's Republic of Korea; and resolution 1988 (2011) in relation to the Taliban and individuals, groups, undertakings and entities associated therewith; and considering that the search engine supports the printing of search results concerning each of the listed persons, any situation involving as clients any of the persons included in the United Nations Security Council Sanctions Lists may be indicative of an increased risk.

8. Record keeping (Article 62)

The attorney-at-law shall keep records of the following data:

1) details of clients, business relationships and transactions, in accordance with the Law;

2) data submitted to the APMML pursuant to the Law.

Content of the records kept by attorneys-at-law (Article 103)

Records of data on clients, business relationships and transactions maintained by the attorneys-at-law shall contain:

1) name and surname, date and place of birth, domicile or residence, unique personal identification number (UPIN), type, number, place and date of issue of a personal identification document of the natural person, or the business name, address, seat, registry number and TIN of the legal person or entrepreneur to whom the attorney-at-law provides services;

2) name and surname, date and place of birth, domicile or residence, UPIN, type, number, place and date of issue of a personal identification document of the representative of the legal person or legal representative or empowered representative of the natural person who establishes a business relationship or carries out a transaction for and on behalf of such legal or natural person;

3) name and surname, date and place of birth, and domicile or residence of the beneficial owner of the legal entity to whom the attorney-at-law renders services;

4) purpose and intended nature of a business relationship, as well as information on the type of business activities of the client;

5) date of establishing the business relationship;

6) date of carrying out the transaction;

7) amount and currency of the transaction;

8) the intended purpose of the transaction; name and surname and domicile or residence, and/or the business name and registered office of the beneficiary of the transaction;

9) manner in which the transaction is conducted;

10) data and information on the origin of assets that are or that will be the subject of a business relationship or transaction;

11) name and surname, date and place of birth, domicile or residence and UPIN of the natural person or entrepreneur, or the business name, address and seat, registry number and TIN of the legal person or entrepreneur with respect to which there are reasons for suspicion of money laundering or terrorism financing;

12) data on the transaction with respect to which there are reasons for suspicion of money laundering or terrorism financing (amount and currency of transaction, date and time of transaction);

13) information on the existence of reasons for suspicion of money laundering or terrorism financing.

Supervision of the implementation of the Law by attorneys-at-law (Article 110, paragraph 4)

The Bar Association of Serbia shall supervise the implementation of the Law by attorneys-at-law.

Misdemeanours for which attorneys-at-law may be held liable (Article 121)

The attorney-at-law shall be punished for misdemeanour with a fine amounting from RSD 10,000 to RSD 150,000 if he/she:

1) fails to notify the APML of cases where there are reasons for suspicion of money laundering or terrorism financing with respect to a transaction or client, or when a client requests advice in relation to money laundering or terrorism financing, or fails to notify it within the required deadlines and in the required manner (Article 58);

2) fails to submit to the APML, at its request, the requested data, information and documentation, or fails to send them within the set timeframes and in the specified manner (Article 59).

Data confidentiality (Article 91)

The data, information and documentation obtained by the APML pursuant to the Law are classified within the meaning of the law governing classification and protection of classified data.

The provision of data, information and documentation to the APML by the attorney-at-law shall not be considered breach of attorney-client privilege. Therefore, the attorney-at-law is obliged to implement the provisions of the Law notwithstanding the attorney-client privilege.

Interim and final provisions

These Guidelines for Assessing the Risk of Money Laundering and Terrorism Financing Concerning Attorneys-at-Law shall enter into force on the eighth day of their publication on the bulletin board and website of the Bar Association of Serbia.

The Bar Association of Serbia and its constituent bars shall notify thereof, in a suitable manner (via website, by electronic or postal mail), all the attorneys-at-law registered in their respective directories of attorneys-at-law as at the day of entry into force of these Guidelines, and any newly entered attorney-at-law at the time of taking the solemn oath and delivery of the decision on entry in the directory of attorneys-at-Law and the attorney identification card.

Ref. No. 978-5.2/2018, 18 December 2018.

Published on the bulletin board and website of the Bar Association of Serbia on 20 December 2018.

These Amended Guidelines for Assessing the Risk of Money Laundering and Terrorism Financing Concerning Attorneys-at-Law shall enter into force on 28 December 2018.

PRESIDENT
OF THE BAR ASSOCIATION OF SERBIA

Viktor Gostiljac, attorney-at-law

