FATF

GUIDANCE FOR A RISK-BASED APPROACH

LEGAL PROFESSIONALS

JUNE 2019

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Acronyms

AML/CFT	Anti-money laundering/Countering the financing of terrorism
CDD	Client[1] due diligence
DNFBP **FIU**	Designated non-financial businesses and professions Financial intelligence unit
INR.	Interpretive Note to Recommendation
ML	Money laundering
MLRO	Money Laundering Reporting Officer
PEP	Politically Exposed Person
R.	Recommendation
RBA	Risk-based approach
SRB **STR**	Self-regulatory body Suspicious transaction report
TCSP **TF**	Trust and company service providers Terrorist financing

[1] In some jurisdictions or professions, the term "customer" is used, which has the same meaning as "client" for the purposes of this document.

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Executive Summary

1. The risk-based approach (RBA) is central to the effective implementation of the FATF Recommendations. It means that competent authorities, supervisors and legal professionals should identify, assess, and understand the money laundering and terrorist financing (ML/TF) risks to which legal professionals are exposed, and implement appropriate mitigation measures. This approach enables allocation of resources where the risks are higher.

2. The FATF RBA Guidance aims to support the implementation of the RBA, taking into account national ML/TF risk assessments and AML/CFT legal and regulatory frameworks. It includes a general presentation of the RBA and provides specific guidance for legal professionals and for their supervisors. The Guidance was developed in partnership with the profession, to make sure it reflects expertise and good practices from within the profession.

3. The Guidance acknowledges that legal professionals operate within a wide range of business structures - from sole practitioners to large, multi-national firms and provide a variety of services in different jurisdictions. Given the diversity in scale, activities and risk profile, there is, therefore, no one-size-fits-all approach.

4. The development of the ML/TF risk assessment is a key starting point for the application of the RBA. It should be commensurate with the nature, size and complexity of the law firm. The most commonly used risk criteria are country or geographic risk, client risk and service/transaction risk. The Guidance provides examples of risk factors under these risk categories.

5. The Guidance highlights that it is the responsibility of the senior management of legal professionals to foster and promote a culture of compliance. They should ensure that legal professionals are committed to manage ML/TF risks when establishing or maintaining relationships.

6. The Guidance highlights that legal professionals should design their policies and procedures so that the level of initial and ongoing CDD measures addresses the ML/TF risks to which they are exposed. The Guidance thus explains the obligations for legal professionals regarding identification and verification of beneficial ownership information and provides examples of standard, simplified and enhanced CDD measures based on ML/TF risk.

7. The Guidance has a section for supervisors of legal professionals and highlights the role of self-regulatory bodies (SRBs) in supervising and monitoring. It explains the RBA to supervision as well as supervision of the RBA by providing specific guidance on licensing or registration requirements for the profession, mechanisms for on-site and off-site supervision, enforcement, guidance, training and the value of information-exchange between the public and private sector.

8. The Guidance highlights the importance of supervision of beneficial ownership requirements and nominee arrangements. It underscores how supervisory frameworks can help ascertain whether accurate and up-to-date beneficial ownership information on legal persons and legal arrangements is maintained and made available in a timely manner.

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Section 1- Introduction and key concepts

This Guidance should be read in conjunction with the following, which are available on the FATF website: *www.fatf-gafi.org.*

a) The FATF Recommendations, especially Recommendations 1, 10, 11, 12, 17, 19, 20, 21, 22, 23, 24, 25 and 28 and their Interpretive Notes (INR), and the FATF Glossary

b) Other relevant FATF Guidance documents such as:

- The FATF Guidance on National Money Laundering and Terrorist Financing Risk Assessment (February 2013)
- FATF Guidance on Transparency and Beneficial Ownership (October 2014)
- FATF Guidance on the Risk-Based Approach for Trust and Company Service Providers (TCSPs) (June 2019)
- FATF Guidance on the Risk-Based Approach for Accountants (June 2019)

c) Other relevant FATF reports such as:

- FATF Report on Money Laundering and Terrorist Financing: Vulnerabilities of Legal Professionals (June 2013)
- The Joint FATF and Egmont Group Report on Concealment of Beneficial Ownership (July 2018)

Background and context

9. The RBA is central to the effective implementation of the revised FATF International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation, which were adopted in 2012[2]. The FATF has reviewed its 2008 RBA Guidance for Legal Professionals, in order to bring it in line with the new FATF requirements[3] and to reflect the experience gained by public authorities and the private sector over the years in applying the RBA. This revised version applies to legal professionals when they prepare for, or carry out, transactions for their clients concerning certain specified activities[4].

[2] FATF (2012).

[3] The FATF Standards are comprised of the FATF Recommendations, their Interpretive Notes and applicable definitions from the Glossary.

[4] The services provided by legal professionals include those provided by both lawyers and notaries, and these services are included under bullet (e) of the definition of "Designated non-financial businesses and professions" in the FATF Glossary. For details about specified activities of legal professionals under R.22 and other FATF Recommendations applicable to the legal professionals, please refer to paragraph 20 of this Guidance.

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