



Financial Action Task Force

Public Consultation on the Draft Risk-Based Approach Guidance for Accountants

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DRAFT RISK-BASED APPROACH GUIDANCE FOR ACCOUNTANTS

Table of acronyms

AML/CFT	Anti-money laundering/Countering the financing of terrorism
CDD	Client ¹ due diligence
DNFBP	Designated non-financial businesses and professions
FATF	Financial Action Task Force
FIU	Financial intelligence unit
INR.	Interpretive Note to Recommendation
ML	Money laundering
NRA	National Risk Assessment
PEP	Politically Exposed Person
R.	Recommendation
RBA	Risk-based approach
SRB	Self-regulatory body
STR	Suspicious transaction report
TCSP	Trust and company service providers
TF	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.

1. Section I - 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, 20, 21, 22, 23, 24, 25 and 28 and their Interpretive Notes (INR), and the 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 the Risk-Based Approach for Trust and Company Service Providers (TCSPs)
 - FATF Guidance on the Risk-Based Approach for legal professionals
 - FATF Guidance on Transparency and Beneficial Ownership (October 2014)
- c) Other relevant FATF Reports such as the Joint FATF and Egmont Group Report on Concealment of Beneficial Ownership (July 2018).

1.1. Background and context

1. The risk-based approach (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 2012². The FATF has reviewed its 2009 RBA Guidance for accountants, in order to bring it in line with the new FATF requirements³ 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 the accountancy profession.

2. The RBA Guidance for accountants was drafted by a Project group comprising FATF members and representatives of the private sector. The Project group was co-led by the UK, the United States, the Institute of Chartered Accountants in England and Wales, the International Bar Association and the Society of Trust and Estate Practitioners. Membership of the Project Group is set out in Annex 3.

3. The FATF adopted this updated RBA Guidance for accountants at its XXX Plenary.

² [FATF \(2012\)](#).

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

1.2. Purpose of the Guidance

4. The purpose of this Guidance is to:
 - a) Support a common understanding of a RBA for the accountancy profession, financial institutions and DNFPBs⁴ that maintain relationships with accountants, competent authorities and self-regulatory bodies (SRBs)⁵ responsible for monitoring the compliance of accountants with their AML/CFT obligations;
 - b) Assist countries, competent authorities and accountants in the design and implementation of a RBA to AML/CFT by providing guidelines and examples of current practice, with a particular focus on providing advice to sole practitioners and small firms;
 - c) Outline the key elements involved in applying a RBA to AML/CFT related to accountants;
 - d) Highlight that financial institutions that have accountants as customers should identify, assess and manage the ML/TF risk associated with accountants and their services;
 - e) Assist countries, competent authorities and SRBs in the implementation of the FATF Recommendations with respect to accountants, particularly Recommendations 22, 23 and 28;
 - f) Assist countries, SRBs and the private sector to meet the requirements expected of them, particularly under IO.3 and IO.4;
 - g) Support the effective implementation of action plans of NRAs conducted by countries; and
 - h) Support the effective implementation and supervision of national AML/CFT measures, by focusing on risks as well as preventive and mitigating measures.

1.3. Target audience, status and content of the Guidance

5. This Guidance is aimed at the following audience:
 - a) Practitioners in the accountancy profession;
 - b) Countries and their competent authorities, including AML/CFT supervisors of accountants, SRBs, AML/CFT supervisors of banks that rely on the CDD performed by accountants, and Financial Intelligence Units (FIU); and
 - c) Practitioners in the banking sector, other financial services sectors and DNFPBs that rely on the CDD performed by accountants.
6. The Guidance consists of four sections. Section I sets out introduction and key concepts. Section II contains key elements of the RBA and should be read in conjunction with specific guidance to accountants (Section III) and guidance to supervisors of accountants on the effective implementation of a RBA (Section IV). There are three annexes on:
 - a) Beneficial ownership information in relation to a company, trust or other legal arrangements to whom an accountant provides services (Annex 1);

⁴ see definition of the term ‘Designated Non-Financial Businesses and Professions’ in the FATF Glossary.

⁵ see definition of the term ‘Self-regulatory body’ in the FATF Glossary

- b) Glossary of terminology (Annex 2); and
- c) Members of the RBA Drafting Group (Annex 3).

7. This Guidance recognises that an effective RBA will take into account the national context, consider the legal and regulatory approach and relevant sector guidance in each country, and reflect the nature, diversity and maturity of a country's accountancy profession, the risk profile of the accountant sector, the risk profile of individual accountants operating in the sector. It sets out different elements that countries and accountants could consider when designing and implementing an effective RBA.

8. This Guidance is non-binding and does not overrule the purview of national authorities⁶, including on their local assessment and categorisation of the accountancy profession based on the prevailing ML/TF risk situation and other contextual factors. It draws on the experiences of countries and of the private sector to assist competent authorities and accountants to implement applicable FATF Recommendations effectively. DNFPBs should also refer to relevant legislation and sector guidance for the country in which an accountant is based.

1.4. Scope of the Guidance and key features of the accountancy profession

1.4.1. Terminology

9. This Guidance is for professional accountants in public practice⁷ and is aimed to help them to comply with the FATF Recommendations that apply to them. Professional accountant in public practice refers to professional accountants, irrespective of functional classification (for example, audit, tax or consulting) in a firm that provides professional services⁸. Professional accountants should also consider their obligations under the Code of Ethics applicable in their jurisdictions, including IESBA's "Responding to Non-Compliance with Laws and Regulations (NOCLAR)".

10. It is not meant to refer to professional accountants in business, which includes professional accountants employed or engaged in an executive or non-executive capacity in such areas as commerce, industry, service, the public sector, education, the not-for-profit sector, regulatory bodies or professional bodies. Such accountants should refer to their professional code of conduct or other alternative sources of Guidance, on the appropriate action to take in relation to suspected illegal activity by their employer or a third party.

11. Professional accountants in public practice may provide a very wide range of services, to a very diverse range of clients. For example, services may include (but are not limited to) the following. The FATF recommendations apply to specified activities in R.22 (see paragraph 20).

- a) Audit and assurance services;
- b) Book-keeping and the preparation of annual and periodic accounts;

⁶ National authorities should however take the Guidance into account when carrying out their supervisory functions.

⁷ The term 'accountant' is used interchangeably with 'professional accountant in public practice' throughout this guidance.

⁸ As defined in the *Code of Ethics for Professional Accountants*, International Ethical Standards Board for Accountants, 2016. <https://www.ethicsboard.org/iesba-code/%5btittle-raw%5d>

- c) Tax compliance work;
- d) Tax advice;
- e) Trust and company services;
- f) Internal audit (as a professional service), and advice on internal control and risk management;
- g) Regulatory and compliance services, including outsourced regulatory examinations and remediation services;
- h) Insolvency/receiver-managers/bankruptcy related services;
- i) Advice on the structuring of transactions;
- j) Succession advice;
- k) Advice on investments and custody of client money; and
- l) Forensic accounting.

12. In many countries, accountants are the first professionals consulted by many small businesses and individuals when seeking general business advice and a wide range of regulatory and compliance advice. Subject to the code of professional conducts in the relevant jurisdiction, where services are not within their competence, accountants must refuse the engagement. However, they may advise on an alternate professional advisor (such as a legal professional, notary or trust and company service provider, or another professional accountant).

13. Some of the functions performed by accountants that are the most susceptible to the potential launderer include:

- a) Financial and tax advice – criminals may pose as individuals hoping to minimise their tax liabilities or desiring to place assets out of reach in order to avoid future liabilities.
- b) Company and trust formation – criminals may attempt to confuse or disguise the links between the proceeds of a crime and the perpetrator through the creation of corporate vehicles or other complex legal arrangements (trusts, for example).
- c) Buying or selling of property – criminals may use property transfers to serve as either the cover for transfers of illegal funds (layering stage) or else the final investment of these proceeds after their having passed through the laundering process (integration stage).
- d) Performing financial transactions – criminals may use accountants to carry out various financial operations on their behalf (e.g. cash deposits or withdrawals on accounts, retail foreign exchange operations, issuing and cashing cheques, purchase and sale of stock, sending and receiving international funds transfers, etc.).
- e) Gaining introductions to financial institutions- criminals may use accountants as introducers or intermediaries.

1.4.2. Key features

14. Accountants provide a range of services and activities that vastly differ (e.g. in their methods of delivery and in the depth and duration of the relationships formed with clients, and the size of their operation). This Guidance is written at a high-level to cater for all, and the different levels and forms of supervision or monitoring that may apply. Each country and its national authorities should aim to establish a partnership with its designated non-

financial businesses and professions (DNFBP) sector that will be mutually beneficial to combating ML/TF.

15. The roles, and therefore risks, of the different DNFBP and/or professional constituents, including accountants are usually different. However, in some areas, there are inter-relationships between different DNFBP and/or professional sectors, and between the DNFBPs and financial institutions. For example, businesses or professionals within other DNFBP and/or professional sectors or by financial institutions that may instruct accountants. Accountants may also undertake trust and company services covered by the FATF Recommendations. For such activities, accountants should refer to the guidance on the risk-based approach for Trust and Company Service Providers (TCSPs).

1.4.3. Vulnerabilities of accounting services

Formation of companies and trusts⁹

16. In some countries, accountants are involved in the creation of a company. While in other countries members of the public are able to register a company themselves directly with the company register, an accountant's advice is sometimes sought at least in relation to initial corporate, tax and administrative matters.

17. Criminals may seek the opportunity to retain control over criminally derived assets while frustrating the ability of law enforcement to trace the origin and ownership of the assets. Companies and often trusts and other similar legal arrangements are seen by criminals as potentially useful vehicles to achieve this outcome. While shell companies¹⁰, which do not have any ongoing business activities or assets, may be used for legitimate purposes such as serving as a transaction vehicle, they may also be used to conceal beneficial ownership, or enhance the perception of legitimacy. Criminals may also seek to misuse shelf companies¹¹, which can be formed by accountants by seeking access to companies that have been 'sitting on the shelf' for a long time. This may be in an attempt to create the impression that the company is reputable and trading in the ordinary course because it has been in existence for many years. Shelf companies can also add to the overall complexity of corporate structures, further concealing the underlying beneficial ownership information.

Management of companies and trusts

18. In some cases, criminals will seek to have accountants involved in the management of companies and trusts in order to provide greater respectability and legitimacy to the company or trust and its activities. In some countries professional rules preclude an accountant from acting as a trustee or as a company director, or require a disclosure of directorship positions to ensure independence and transparency is maintained. This will affect whether any funds relating to activities by the company or trust can go through the relevant accountant's client account.

⁹ The illustrations could also apply to other legal persons and arrangements.

¹⁰ Shell company is an incorporated company with no independent operations, significant assets, ongoing business activities, or employees.

¹¹ Shelf company is an incorporated company with inactive shareholders, directors, and secretary and is left dormant for a longer period even if a customer relationship has already been established.

Acting as nominee

19. Individuals may sometimes have accountants or other persons hold their shares as a nominee, where there are legitimate privacy, safety or commercial concerns. However, criminals may also use nominee shareholders to obscure their ownership of assets. In some countries, accountants are not permitted to hold shares in entities for whom they provide advice, while in other countries accountants regularly act as nominees. Accountants should identify beneficial owners when establishing business relations in these situations. This is important to prevent the unlawful use of legal persons and arrangements, by gaining a sufficient understanding of the client to be able to properly assess and mitigate the potential ML/TF risks associated with the business relationship. Where accountants are asked to act as a nominee, they should understand the reason for this request and ensure they are able to verify the identity of the beneficial owner of the shares and that the purpose appears to be legitimate.

1.5. FATF Recommendations applicable to accountants

20. The basic intent behind the FATF Recommendations as it relates to the accounting professional is consistent with their ethical obligations as professionals, namely to avoid assisting criminals or facilitating criminal activity. The requirements of R.22 regarding customer due diligence, record-keeping, PEPs, new technologies and reliance on third parties set out in R. 10, 11, 12, 15 and 17 apply to accountants in certain circumstances. Specifically, the requirements of R.22 applies to accountants when they prepare for or carry out transactions for their clients concerning the following activities:

- a) Buying and selling of real estate;
- b) Managing of client money, securities or other assets;
- c) Management of bank, savings or securities accounts;
- d) Organisation of contributions for the creation, operation or management of companies; and
- e) Creating, operating or management of legal persons or arrangements, and buying and selling of business entities.

21. R.23 requires that R.18, 19, 20 and 21 provisions regarding internal AML/CFT controls, measures to be taken with respect to countries that do not or insufficiently comply with the FATF Recommendations, reporting of suspicious transactions and associated prohibitions on tipping-off and confidentiality apply to accountants when, on behalf of or for a client, they engage in a financial transaction in relation to the activities described in R.22 above. Section III provides further guidance on the application of R.22 and R.23 obligations to accountants.

22. Countries should identify the most appropriate regime, tailored to address relevant ML/TF risks, which takes into consideration the activities and applicable code of conduct for accountants.

1.6. Application of this Guidance

23. Many aspects of this Guidance on applying a RBA to AML/CFT may also apply in the context of predicate offences, particularly for other financial crimes such as tax crimes. The ability to apply the RBA effectively to relevant predicate offences will also reinforce

the AML/CFT obligations. Accountants may also have specific obligations in respect of identifying risks of predicate offences such as tax crimes, and supervisors may have a role to play in oversight and enforcement of those crimes. Therefore, in addition to this guidance, accountants and supervisors should have regard to other sources of guidance that may be relevant in managing the risks of predicate offences.

2. Section II – The RBA to AML/CFT

2.1. What is the risk-based approach?

24. The RBA to AML/CFT means that countries, competent authorities, DNFBPs, including accountants¹² should identify, assess and understand the ML/TF risks to which they are exposed and take reasonable and proportionate AML/CFT measures to effectively and efficiently mitigate and manage the risks.

25. For accountants, identifying and maintaining an understanding of the ML/TF risk faced by the sector as well as specific to its services, its customer base, the jurisdictions in which it operates and the effectiveness of actual and potential risk controls that are or can be put in place, will require the investment of resources and training. For supervisors, this will also require maintaining an understanding of the ML/TF risks specific to their area of supervision, and the degree to which AML/CFT measures can reasonably be expected to mitigate such risks.

26. The RBA is not a “zero failure” approach; there may be occasions where an accountancy practice has taken reasonable and proportionate AML/CFT measures to identify and mitigate risks, but is still used for ML or TF purposes in isolated instances. Although there are limits to any RBA, ML/TF is a real and serious problem that accountants must address so that they do not, unwittingly or otherwise, encourage or facilitate it.

2.2. The rationale for the new approach

27. In 2012, the FATF updated its Recommendations to keep pace with evolving risk and strengthen global safeguards. Its purposes remain to protect the integrity of the financial system by providing governments with updated tools needed to take action against financial crime.

28. There was an increased emphasis on the RBA to AML/CFT, especially in preventive measures and supervision. Though the 2003 Recommendations provided for the application of a RBA in some areas, the 2012 Recommendations considered the RBA to be an essential foundation of a country’s AML/CFT framework.¹³

29. The RBA allows countries, within the framework of the FATF requirements, to adopt a more tailored set of measures in order to target their resources more effectively and efficiently and apply preventive measures that are commensurate to the nature of risks.

¹² Including both legal and natural persons, see definition of Designated Non-Financial Businesses and Professions in the FATF Glossary.

¹³ R.1.

30. The application of a RBA is therefore essential for the effective implementation of the FATF Standards by countries and accountants.¹⁴

2.3. Application of the risk-based approach

31. The FATF Standards do not predetermine any sector as higher risk. The standards identify sectors that may be vulnerable to ML/TF. The overall risk should be determined through an assessment of the sector at a national level. Different entities within a sector will pose higher or lower risk depending on a variety of factors, including products, services, customers, geography and the strength of an entity's compliance program.

32. R.1 sets out the scope of application of the RBA as follows:

- a) Who should be subject to a country's AML/CFT regime? In addition to the sectors and activities already included in the scope of the FATF Recommendations¹⁵, countries should extend their regime to additional institutions, sectors or activities if they pose a higher risk of ML/TF. Countries could also consider exempting certain institutions, sectors or activities from some AML/CFT obligations where specified conditions are met, such as proven low risk of ML/TF and in strictly limited and justified circumstances.¹⁶
- b) How should those subject to the AML/CFT regime be supervised or monitored for compliance with this regime? Supervisors should ensure that accountants are implementing their obligations under R.1. AML/CFT supervisors should consider an accountant's own risk assessment and mitigation and acknowledge the degree of discretion allowed under the national RBA.
- c) How should those subject to the AML/CFT regime be required to comply? The general principle of a RBA is that, where there are higher risks, enhanced measures should be taken to manage and mitigate those risks. The range, degree, frequency or intensity of preventive measures and controls conducted should be stronger in higher risk scenarios. Accountants are required to apply each of the CDD measures under (a) to (d) below¹⁷: (a) identification and verification of the customer's identity; (b) identification of the beneficial owner; (c) understanding the purpose of the business relationship; and (d) on-going monitoring of the relationship. However, where the ML/TF risk is assessed as lower, the degree, frequency and/or the intensity of the controls conducted will be relatively lighter. Where risk is assessed at a standard level, the standard AML/CFT controls should apply.

¹⁴ The effectiveness of risk-based prevention and mitigation measures will be assessed as part of the mutual evaluation of the national AML/CFT regime. The effectiveness assessment will measure the extent to which a country achieves a defined set of outcomes that are central to a robust AML/CFT system and will analyse the extent to which a country's legal and institutional framework is producing the expected results. Assessors will need to take into account the risks and the flexibility allowed by the RBA when determining whether there are deficiencies in a country's AML/CFT measures, and their importance (*FATF, 2013f*).

¹⁵ See Glossary, definitions of "Designated non-financial businesses and professions" and "Financial institutions".

¹⁶ See INR.1.

¹⁷ See R.10

- d) Consideration of the engagement in customer/client relationships: Accountants are not obliged to avoid risk entirely. Even if the services they provide to their clients are considered vulnerable to the risks of ML/TF based on risk assessment, it does not mean that all accountants and all their clients/customers or services pose a higher risk when taking into account the risk mitigating measures that have been put in place.
- e) Importance of accountancy services to the overall economy: Accountants often play significant roles in the legal and economic life of a country. The role of accountants in providing objective data regarding the financial status and activity of a business is vital. The risks associated with any type of customer group is not static and the expectation is that within a customer group, based on a variety of factors, individual customers could also be classified into risk categories, such as low, medium or high risk (see section 3.1 below for a detailed description). Measures to mitigate risk should be applied accordingly.

2.4. Challenges

33. Implementing a RBA can present a number of challenges for accountants in identifying what necessary measures they need to take. A RBA requires resources and expertise, both at a country and sector level, to gather and interpret information on risks, to develop policies and procedures and to train personnel. A RBA is also reliant on individuals exercising sound and well-trained judgement when designing and implementing such policies and procedures. It will also lead to a diversity in practice, although this can result in innovative solutions to address areas of higher risk. On the other hand, accountants may be uncertain as to how to comply with the regulatory framework itself and the accountancy profession may find it difficult to apply an informed approach to RBA.

34. Accountants need to have a sound understanding of the risks and should be able to exercise sound judgement. This requires the profession, and the individuals within it, to build expertise through practice and training. If an accountant attempts to adopt a risk-based approach without sufficient expertise, or understanding and knowledge of the risks faced by the sector, they may make flawed judgements. Accountants may over-estimate risk, which could lead to wasteful use of resources, or they may under-estimate risk, and thereby creating vulnerabilities.

35. Accountants may find that some staff members are uncomfortable making risk-based judgements. This may lead to overly cautious decisions, or disproportionate time spent documenting the rationale behind a decision. It may also encourage a 'tick-box' approach to risk assessment.

36. Developing sound judgement needs good information, and intelligence sharing by designated competent authorities and SRBs. The existence of good practice guidance, training, industry studies and other available information and materials will also assist the accountants to develop methods to analyse the information in order to obtain risk based criteria. Accountants must be able to access this information and guidance easily so that they have the best possible knowledge on which to base their judgements.

37. The services and products accountants provide to their clients vary and are not wholly of financial nature. The FATF Recommendations apply equally to accountants when they are engaged in regulated activity (see paragraph 20), including obligations related to customer due diligence, reporting of suspicious transactions and associated prohibitions on tipping off, record-keeping, identification and risk management related to politically exposed persons or new technologies, and reliance on other third-party financial institutions and DNFBPs.

Box 1. Particular RBA challenges for accountants

Culture of compliance and adequate resources. Implementing a RBA requires that accountants have a sound understanding of the risks and are able to exercise judgement. Above all, management must recognise fully the importance of a culture of compliance across the organisation and ensure sufficient resources are devoted to its implementation, appropriate to the size, scale and activities of the organisation. This requires the building of expertise including for example, through training, recruitment, taking professional advice and ‘learning by doing’. It also requires the allocation of necessary resources to gather and interpret information on risks, both at the country and institutional levels, and to develop procedures and systems, including ensuring effective decision-making. The process will always benefit from information sharing by relevant competent authorities, supervisors and SRBs. The provision of good practice guidance by competent authorities, supervisors and SRBs is also valuable.

Significant variation in services and clients. Accountants may vary substantially in the breadth and nature of services provided and the clientele they serve, as well as the size, focus, and sophistication of the firm and its employees. In implementing the RBA, accounting (and related auditing) professionals should make reasonable judgements for their particular services and activities. This may mean that no two professionals and no two firms are likely to adopt the same detailed practices. Appropriate mitigation measures will also depend on the nature of the professional’s role and involvement. Circumstances may vary considerably between professionals who represent clients directly and those that are engaged for distinct purposes. Where these services involve tax laws and regulations, accounting professionals also have additional considerations related to a country or jurisdiction’s permissible means to structure transactions and entities or operations to legally avoid taxes.

Transparency of beneficial ownership on legal persons and arrangements¹⁸. Accountants may be involved in the formation, management, or administration of legal entities and arrangements, though in many countries any legal or natural person also may be able to conduct these activities. Where professionals do play this “gatekeeper” role, they may be challenged in obtaining and keeping current and accurate beneficial ownership information depending upon the nature and activities of their clientele. Other challenges may arise when taking on new clients with minimal economic activity associated with the legal entity and/or its owners or beneficial owners - such as start-up firms. Finally, whether the source is a public registry or the clientele, there is always potential risk in the correctness of the information, in particular where the underlying information has been self-reported (accountants should refer to the RBA Guidance for TCSPs in this respect). Those risks notwithstanding, from the outset the accountant should seek answers from the immediate client in determining beneficial ownership (having first determined that none of the relevant exceptions to ascertaining beneficial ownership apply, e.g., the client is a publicly listed company). The information provided by the client should then be appropriately confirmed by reference to public registers and other third party sources where possible. This may require further and clarifying questions to be put to the immediate client. The goal is to ensure that the accountant is reasonably satisfied about the identity of the beneficial owner. For more practical guidance on beneficial ownership, refer to the guidance in Box 2.

¹⁸ Reference should also be made to the Joint FATF and Egmont Group Report on Concealment of Beneficial Ownership published in July 2018.

Risk of criminality. Because of their crucial role in providing a legally required window into the financial health and operations of a firm, accountants must be particularly alert to ML/TF risks posed by the services they provide to avoid the possibility that they may unwittingly commit or become an accessory to the commission of a substantive offence of ML/TF. Accounting (and related auditing) firms must protect themselves from misuse by criminals and terrorists.

2.5. Allocating responsibility under a RBA

38. An effective risk-based regime builds on, and reflects, a country's legal and regulatory approach, the nature, diversity and maturity of its financial sector, and its risk profile. Accountants should identify and assess their own ML/TF risk taking account of the NRAs in line with R.1, as well as the national legal and regulatory framework, including any areas of prescribed significant risk and mitigation measures. Accountants are required to take appropriate steps to identify and assess their ML/TF risks and have policies, controls and procedures that enable them to manage and mitigate effectively the risks that have been identified.¹⁹ Where ML/TF risks are higher, accountants should always apply enhanced CDD, although national law or regulation might not prescribe exactly how these higher risks are to be mitigated (e.g. varying the degree of enhanced ongoing monitoring).

39. Strategies adopted by accountants to mitigate ML/TF risks has to take account of the applicable national legal, regulatory and supervisory frameworks. When deciding the extent to which accountants can decide how to mitigate risk, countries should consider the ability of the sector to effectively identify and manage ML/TF risks as well as the expertise and resources of their supervisors to adequately supervise how accountants manage ML/TF risks and take action to address any failures. Countries may also consider evidence from competent authorities on the level of compliance in the sector, and the sector's approach to dealing with ML/TF risk. Countries whose services sectors are emerging or whose legal, regulatory and supervisory frameworks are still developing, may determine that accountants are not equipped to effectively identify and manage ML/TF risk. In such cases, a more prescriptive implementation of the AML/CFT requirements may be appropriate until understanding and experience of the sector is strengthened.²⁰

40. Accountants should not be exempted from AML/CFT supervision even where their capacity and compliance is good. However, the RBA allows competent authorities to focus more supervisory resources on higher risk entities.

2.6. Identifying ML/TF risk

41. Access to accurate, timely and objective information on ML/TF risks is a prerequisite for an effective RBA. INR.1.3 requires countries to have mechanisms to provide appropriate information on the results of the risk assessments to all relevant competent authorities, SRBs, financial institutions and accountants. Where information is not readily available, for example where competent authorities have inadequate data to assess risks, are unable to share important information on ML/TF risks and threats, or where

¹⁹ R.1 and IN.1.

²⁰ This could be based on a combination of elements described in Section II, as well as objective criteria such as mutual evaluation reports, follow-up reports or FSAP.

access to information is restricted by censorship, it will be difficult for accountants to correctly identify ML/TF risk.

42. R.34 requires competent authorities, supervisors and SRBs to establish guidelines and provide feedback to financial institutions and DNFBPs. Such guidelines and feedback help institutions and businesses to assess the ML/TF risks and to adjust their risk mitigating programmes accordingly.

2.7. Assessing ML/TF risk

43. Assessing ML/TF risk requires countries, competent authorities and accountants to determine how the ML/TF threats identified will affect them. They should analyse the information obtained to understand the likelihood of these risks occurring, and the impact that these would have, on the individual accountants, the entire sector and on the national economy. ML/TF risks are often classified as low, medium and high, with possible combinations between the different categories (e.g. medium-high, low-medium). Assessing ML/TF risk therefore goes beyond the mere gathering of quantitative and qualitative information, without its proper analysis; this information forms the basis for effective ML/TF risk mitigation and should be kept up-to-date to remain relevant.²¹

44. Competent authorities should employ skilled and trusted personnel, recruited through fit and proper tests, where appropriate. They should be technically equipped commensurate with the complexity of their responsibilities. Accounting firms/ accountants that are required to routinely conduct a high volume of enquiries when on-boarding clients, e.g., because of the size and geographic footprint of the firm may also consider engaging skilled and trusted personnel who are appropriately recruited and checked. Such accounting firms are also likely to consider using the various technological options (including artificial intelligence) and software programs that are now available to assist accountants in this regard.

45. Accounting firms should develop internal policies, procedures and controls, including appropriate compliance management arrangements, and adequate screening procedures to ensure high standards when hiring employees. Accounting firms should also develop an ongoing employee training programme. They should be trained commensurate with the complexity of their responsibilities.

2.8. Mitigating and managing ML/TF risk

46. The FATF Recommendations require that, when applying a RBA, accountants, countries, competent authorities and supervisors decide on the most appropriate and effective way to mitigate and manage the ML/TF risk they have identified. They should take enhanced measures to manage and mitigate situations when the ML/TF risk is higher. In lower risk situations, less stringent measures may be applied:²²

- a) Countries seeking to exempt certain accountants, sector or activities from some of their AML/CFT obligations should assess the ML/TF risk associated with these accountants, activities and sector and be able to demonstrate that the ML/TF risk is

²¹ FATF (2013a), paragraph 10. See also Section I D for further detail on identifying and assessing ML/TF risk. Also refers to The FATF Guidance on National Money Laundering and Terrorist Financing Risk Assessment (February 2013).

²² Subject to the national legal framework providing for Simplified Due Diligence.

low, and that the specific conditions required for one of the exemptions of INR 1.6 are met. The depth and scope of the risk assessment will depend on the type of business or profession, sector or activity, product or services offered and the geographic scope of the activities that stands to benefit from the exemption.

- b) Countries and accountants looking to apply simplified measures should conduct an assessment to ascertain the lower risk connected to the category of clients or services targeted and establish a threshold for the lower level of the risks involved, and define the extent and the intensity of the required AML/CFT measures. Specific Recommendations set out in more detail how this general principle applies to particular requirements.²³

2.9. Developing a common understanding of the RBA

47. The effectiveness of a RBA depends on a common understanding by competent authorities and accountants of what the RBA entails, how it should be applied and how ML/TF risks should be addressed. In addition to a legal and regulatory framework that spells out the degree of discretion, accountants should deal with the risks they identify. Competent authorities should issue guidance to accountants on meeting their legal and regulatory AML/CFT obligations in a risk-sensitive way. Supporting ongoing and effective communication between competent authorities and the sector is essential.

48. Competent authorities should acknowledge that not all accountants will adopt identical AML/CFT controls in a risk-based regime. On the other hand, accountants should understand that a flexible RBA does not exempt them from applying effective AML/CFT controls with a RBA.

²³ For example, R.22 on Customer Due Diligence.

3. Section III: Guidance for accountants on implementing a risk-based approach

3.1. Risk assessment

49. Accountants should take appropriate steps to identify and assess the risk firm-wide on their customers that they could be used for ML/TF. They should document those assessments, keep these assessments up to date, and have appropriate mechanisms to provide risk assessment information to competent authorities and supervisors. Accountants must always understand their ML/TF risks, however, competent authorities or SRBs may determine that individual documented risk assessments are not required, if the specific risks inherent to the sector are clearly identified and understood.²⁴ The nature and extent of any assessment of ML/TF risks should be appropriate to the nature and size of the business.

50. ML/TF risks can be organised into three categories: (a) country/geographic risk, (b) client risk and (c) transaction/service risk²⁵. The risks and red flags listed in each category are not exhaustive but provide a starting point for accountants to use when designing their RBA.

51. When assessing risk, accountants should consider all the relevant risk factors before determining the level of overall risk and the appropriate level of mitigation to be applied. Such risk assessment may well be informed by findings of the NRA, the supra-national risk assessments, sectoral reports conducted by competent authorities on ML/TF risks that are inherent in accounting services/sector, risk reports in other jurisdictions where the accountant based in, and any other information which may be relevant to assess the risk level particular to their practice. For example, press articles and other widely available public information highlighting issues that may have arisen in particular jurisdictions. Accountants may well also draw references to FATF Guidance on indicators and risk factors. During the course of a client relationship, procedures for ongoing monitoring and review of the client's risk procedures are also important. Competent authorities should consider how they can best alert accountants to the findings of any national risk assessments, the supranational risk assessments and any other information which may be relevant to assess the risk level particular to an accounting practice in the relevant country.

52. The ongoing nature of the advice and services an accountant typically provides means that automated transaction monitoring systems of the type used by financial institutions will not be appropriate as the exclusive solution for most accountants. The accountant's knowledge of the client and its business will develop throughout the duration of what typically would be expected to be a longer term and interactive professional relationship (in some cases, such relationships may exist for short term clients as well, e.g. for property transactions). However, although the individual accountants are not expected to investigate their clients, they may be well positioned to identify and detect changes in the type of work or the nature of the client's activities. Accountants will also need to consider the nature of the risks presented by isolated, minor and short-term client relationships that may inherently, but not necessarily be low risk (e.g. one-off client relationship due to transfer of cases).

53. Identification of the ML/TF risks associated with certain clients or categories of clients, and certain types of work will allow accountants to determine and implement

²⁴ Paragraph 8 of INR.1

²⁵ Including products, transactions or delivery channels.

reasonable and proportionate measures and controls to mitigate such risks. The risks and appropriate measures will depend on the nature of the accountant's role and involvement. Circumstances may vary considerably between professionals who represent clients on a transaction or in a long term advisory relationship.

54. The amount and degree of ongoing monitoring and review will depend on the nature and frequency of the relationship, along with the comprehensive assessment of client/transactional risk. An accountant may also have to adjust the risk assessment of a particular client based upon information received from a designated competent authority, SRB or other credible sources (including a referring accountant).

55. Accountants may assess ML/TF risks by applying various categories. This provides a strategy for managing potential risks by enabling accountants, where required, to subject each client to reasonable and proportionate risk assessment.

56. The weight given to these risk categories (individually or in combination) in assessing the overall risk of potential ML/TF may vary given the size, sophistication, nature and scope of services provided by the accountant and/or firm. These criteria, however, should be considered holistically and not in isolation. Accountants, based on their individual practices and reasonable judgements, will need to independently assess the weight to be given to each risk factor.

57. Although there is no universally accepted set of risk categories, the examples provided in this Guidance are the most commonly identified risk categories. There is no single methodology to apply these risk categories, and the application of these risk categories is intended to provide a suggested framework for approaching the assessment and management of potential ML/TF risks. For smaller firms and sole practitioners, it is advisable to look at the services they offer (e.g. carrying out company management services may entail greater risk than other services).

58. Criminals use a range of techniques and mechanisms to obscure the beneficial ownership of assets and transactions. Many of the common mechanisms/techniques have been compiled by FATF in the previous studies, including the 2014 FATF Guidance on Transparency and Beneficial Ownership and the 2018 Joint FATF and Egmont Group Report on Concealment of Beneficial Ownership. Accountants may refer to the studies for more details on the use of obscuring techniques and relevant case studies.

59. A practical starting point for accounting firms (especially smaller firms) and accountants (especially sole practitioners) would be to take the following approach to every transaction; many of these elements are critical to satisfying other obligations owed to clients, such as fiduciary duties, and as part of their general regulatory obligations:

- a) Know your client: identify the client (and its beneficial owners where relevant) and the true "beneficiaries" of the transaction. Obtain an understanding of the source of funds and source of wealth of the client, where required, its owners and the purpose of the transaction.
- b) Understand the nature of the work: accountants must know the exact nature of the service that they are providing and have an understanding of how that work could facilitate the movement or obscuring of the proceeds of crime. Where an accountant does not have the requisite expertise, the accountant should not undertake the work.
- c) Understand the commercial or personal rationale for the work: accountants need to be reasonably satisfied that there is a commercial or personal rationale for the work

undertaken. Accountants however are not obliged to objectively assess the commercial or personal rationale if it appears reasonable and genuine.

- d) Be attentive to red flag indicators: exercise vigilance in identifying and then carefully reviewing aspects of the transaction if there are reasonable grounds to suspect that funds are the proceeds of a criminal activity, or related to terrorist financing. Documenting the thought process by having an action plan may be a viable option to assist in interpreting red flags/indicators of suspicion.
- e) Then consider what action, if any, needs to be taken.
- f) The outcomes of the above action (i.e. the comprehensive risk assessment of a particular client/transaction) will dictate the level and nature of the evidence/documentation collated under a firm's CDD/EDD procedures (including evidence of source of wealth or funds).
- g) Accountants should adequately document and record steps taken under a) to e).

3.1.1. Country/Geographic risk

60. A client may be higher risk when features of their business are connected to a higher risk country as regards:

- a) the origin, or current location of the source of wealth or funds;
- b) where the services are provided;
- c) the client's country of incorporation;
- d) the location of the client's major operations;
- e) the beneficial owner's country of domicile; or
- f) a target company's country of incorporation (for potential acquisitions).

61. There is no universally agreed definition of a higher risk country or geographic area but accountants should pay attention to those countries that are:

- a) Countries/areas identified by credible sources²⁶ as providing funding or support for terrorist activities or that have designated terrorist organisations operating within them.
- b) Countries identified by credible sources as having significant levels of organized crime, corruption, or other criminal activity, including source or transit countries for illegal drugs, human trafficking and smuggling and illegal gambling.
- c) Countries subject to sanctions, embargoes or similar measures issued by international organisations such as the United Nations.
- d) Countries identified by credible sources as having weak governance, law enforcement, and regulatory regimes, including countries identified by FATF statements as having weak AML/CFT regimes, and for which financial institutions

²⁶ "Credible sources" refers to information that is produced by reputable and universally recognised international organisations and other bodies that make such information publicly and widely available. In addition to the FATF and FATF-style regional bodies, such sources may include, but are not limited to, supra-national or international bodies such as the International Monetary Fund, the World Bank and the Egmont Group of Financial Intelligence Units.

(as well as DNFBPs) should give special attention to business relationships and transactions.

- e) Countries identified by credible sources to be uncooperative in providing beneficial ownership information, a determination of which may be established from reviewing FATF mutual evaluation reports or reports by organisations that also consider various co-operation levels such as the OECD Global Forum reports on compliance with international tax transparency standards.
 - f) Countries that permit the use of nominee shareholders and bearer shares, thereby allowing the obfuscation of beneficial ownership.
62. Accountants may also consider the examples of fraud risk factors listed in International Standard of Auditing 240: The auditor’s responsibilities relating to fraud in an audit of financial statements (ISA 240) and the examples of conditions and events that may indicate risks of material misstatement in International Standard of Auditing 315: Identifying and assessing risks of material misstatement through understanding the entity and its environment (ISA315). Even where the accountant is not performing an audit, ISA 240 and ISA 315 provide helpful lists of additional red flags.

3.1.2. *Client risk*

63. The key risk factors that accountants should consider are:
- a) The firm’s client base includes industries or sectors where opportunities for ML/TF are particularly prevalent.
 - b) The firm’s clients involve PEPs and persons closely associated with or related to PEPs, are considered as higher risk clients (Please refer to the FATF Guidance (2013) on politically-exposed persons for further guidance on how to identify PEPs).

Box 2. Particular considerations for PEPs and source of funds and wealth

If an accountant is advising a PEP client, or where a PEP is the beneficial owner of assets in a transaction, appropriate enhanced CDD is required if a specified activity under R.22 is involved. Such measures include, obtaining senior management (e.g. senior partner, managing partner or CEO) approval before establishing a business relationship, taking reasonable measures to establish the source of wealth and source of funds of customers and beneficial owners identified as PEPs, and conducting enhanced ongoing monitoring on that relationship.

The source of funds and the source of wealth are relevant to determining a client’s risk profile. The source of funds is the activity that generates the funds for a client (e.g. salary, trading revenues, or payments out of a trust). Source of funds relates directly to the literal origin of funds to be used in a transaction. This is likely to be a bank account. Generally, this would be evidenced by bank statements or similar. Source of wealth describes the activities that have generated the total net worth of a client (e.g. ownership of a business, inheritance, or investments). Source of wealth is the origin of the accrued body of wealth of an individual. Understanding source of wealth is about taking reasonable steps to satisfy that the funds to be used in a transaction are not the proceeds of crime.

While source of funds and wealth may be the same for some clients, they may be partially or entirely different for other clients. For example, a PEP who receives a modest official salary, but who has substantial funds, without any apparent business interests or inheritance, might raise suspicions of bribery, corruption or misuse of position. Under the RBA, accountants should satisfy themselves that adequate information is available to assess a client's source of funds and source of wealth as legitimate with a degree of certainty that is proportionate to the risk profile of the client.

Relevant factors that influence the extent and nature of CDD include the particular circumstances of a PEP, whether the PEP has access to official funds, makes decisions regarding the allocation of public funds or public procurement contracts, the PEP's home country, the type of activity the PEP is instructing the legal professional to perform or carry out, whether the PEP is domestic or international, particularly having regard to the services asked for, and the scrutiny to which the PEP is under in the PEP's home country.

If a PEP is otherwise involved with a client, then the nature of the risk should be considered in light of all relevant circumstances, such as:

- a) the nature of the relationship between the client and the PEP: If the client is a trust, company or legal entity, even if the PEP is not a natural person exercising effective control or the PEP is merely a discretionary beneficiary who has not received any distributions, the PEP may nonetheless affect the risk assessment.
 - b) the nature of the client (e.g. where it is a public listed company or regulated entity who is subject to and regulated for a full range of AML/CFT requirements consistent with FATF Recommendations, the fact that it is subject to reporting obligations will be a relevant factor, albeit this should not automatically qualify the client for simplified CDD).
 - c) the nature of the services sought. For example, lower risks may exist where a PEP is not the client but a director of a client that is a public listed company or regulated entity and the client is purchasing property for adequate consideration. Higher risks may exist where an accountant is involved in the movement or transfer of funds/assets, or the purchase of high value property or assets..
- c) Clients conducting their business relationship or requesting services in unusual or unconventional circumstances (as evaluated in all the circumstances of the representation).
 - d) Clients where the structure or nature of the entity or relationship makes it difficult to identify in a timely manner the true beneficial owner or controlling interests or clients attempting to obscure understanding of their business, ownership or the nature of their transactions, such as:
 - i. Unexplained use of shell and shelf companies, front company, legal entities with ownership through nominee shares or bearer shares, control through nominee and corporate directors, legal persons or legal arrangements, splitting company incorporation and asset administration over different countries, all without any apparent legal or legitimate tax, business, economic or other reason.
 - ii. Unexplained use of informal arrangements such as family or close associates acting as nominee shareholders or directors.

- iii. Unusual complexity in control or ownership structures without a clear explanation.
- e) Client companies that operate a considerable part of their business in or have major subsidiaries in countries that may pose higher geographic risk.
- f) Clients that are cash (and/or cash equivalent) intensive businesses. These may include, for example:
 - i. Money or Value Transfer Services (MVTs) businesses (e.g. remittance houses, currency exchange houses, casas de cambio, centros cambiarios, remisores de fondos, bureaux de change, money transfer agents and bank note traders or other businesses offering money transfer facilities). Where such clients (e.g. MVTs providers) are themselves subject to and regulated for a full range of AML/CFT requirements consistent with the FATF Recommendations, this will aid to mitigate the risks.
 - ii. Operators, brokers and others providing services in virtual assets.
 - iii. Casinos, betting houses and other gambling related institutions and activities.
- g) Businesses that while not normally cash intensive appear to have substantial amounts of cash.
- h) Businesses that rely heavily on new technologies (e.g. online trading platform) that may have inherent vulnerabilities to exploitation by criminals, especially those not regulated for AML/CFT.
- i) Charities and other “not for profit” organisations (NPOs) that are not subject to monitoring or supervision (especially those operating on a “cross-border” basis) on a RBA by designated competent authorities¹²⁷ or SRBs.
- j) Clients using financial intermediaries, financial institutions or DNFBPs that are not subject to adequate AML/CFT laws and measures and that are not adequately supervised by competent authorities or SRBs.
- k) Clients who appear to be acting on somebody else’s instructions without disclosure.
- l) Clients who appear to actively and inexplicably avoid face-to-face meetings or who provide instructions intermittently without legitimate reasons and are otherwise evasive or very difficult to reach, when this would normally be expected.
- m) Clients who request that transactions be completed in unusually tight or accelerated timeframes without a reasonable explanation for accelerating the transaction, which would make it difficult or impossible for the accountants to perform a proper risk assessment.
- n) Clients having convictions for proceeds generating crimes who instruct the accountant (who has actual knowledge of such convictions) to undertake specified activities on their behalf.
- o) Clients who have no address, or multiple addresses without legitimate reasons.

²⁷ See the FATF Report on Money Laundering and Terrorist Financing: Vulnerabilities of Legal Professionals (June 2013).

- p) Clients who have funds that are obviously and inexplicably disproportionate to their circumstances (e.g. their age, income, occupation or wealth).
- q) Clients who change their settlement or execution instructions without appropriate explanation.
- r) Clients who change their means of payment for a transaction at the last minute and without justification (or with suspect justification), or where there is an unexplained lack of information or transparency in the transaction. This risk extends to situations where last minute changes are made to enable funds to be paid in from/out to a third party.
- s) Clients who insist, without adequate justification or explanation, that transactions be effected exclusively or mainly through the use of virtual assets for the purpose of preserving their anonymity.
- t) Clients who offer to pay unusually high levels of fees for services that would not ordinarily warrant such a premium. However, bona fide and appropriate contingency fee arrangements, where an accountant may receive a significant premium for a successful provision of their services, should not be considered a risk factor.
- u) Unusually high levels of assets or unusually large transactions compared to what might reasonably be expected of clients with a similar profile may indicate that a client not otherwise seen as higher risk should be treated as such. Conversely, low levels of assets or low value transactions involving a client that would otherwise appear to be higher risk might allow for an accountant to treat the client as lower risk.
- v) Where certain transactions, structures, geographical location, international activities or other factors that are not consistent with the accountants' understanding of the client's business or economic situation.
- p) The accountants' client base includes industries or sectors where opportunities for ML/TF are particularly prevalent²⁸.
- w) Clients who are suspected to be engaged in falsifying activities through the use of false loans, false invoices, and misleading naming conventions.
- x) The transfer of the seat of a company to another jurisdiction without any genuine economic activity in the country of destination poses a risk of creation of shell companies which might be used to obscure beneficial ownership.
- y) The relationship between employee numbers/structure and nature of the business is divergent from the industry norm (e.g. the turnover of a company is unreasonably

²⁸ The source of funds and the source of wealth are relevant to determining a client's risk profile. The source of funds is the activity that generates the funds for a client (e.g. salary, trading revenues, or payments out of a trust), while the source of wealth describes the activities that have generated the total net worth of a client (e.g. ownership of a business, inheritance, or investments). While these may be the same for some clients, they may be partially or entirely different for other clients. For example, a PEP who receives a modest official salary, but who has substantial funds, without any apparent business interests or inheritance, might raise suspicions of bribery, corruption or misuse of position. Under the RBA, accountants should satisfy themselves that adequate information is available to assess a client's source of funds and source of wealth as legitimate with a degree of certainty that is proportionate to the risk profile of the client.

high considering the number of employees and assets used compared to similar businesses).

- z) Sudden activity from a previously dormant client without clear explanation.
 - aa) Client starts or develops an enterprise with unexpected profile or abnormal business cycles or client is entrant into new/emerging markets. Organised criminality generally does not have to raise capital/debt, often making them first into a new market, especially where this market may be retail/cash intensive.
 - bb) Indicators that client does not wish to obtain necessary governmental approvals/filings, etc.
 - cc) Reason for client choosing the firm is unclear, given the firm's size, location or specialisation.
 - dd) Frequent or unexplained change of professional adviser(s) or members of management.
 - ee) The client is reluctant to provide all the relevant information or accountants have reasonable doubt that the provided information is correct or sufficient.
64. The clients referred above may be individuals that is, for example, trying to obscure their own business interests and assets or the client may be representatives of a company's senior management who are, for example, trying to obscure the ownership structure.

3.1.3. Transaction/Service Risk

65. Services which may be provided by accountants and which (in some circumstances) risk being used to assist money launderers may include:

- a) Unexplained (where explanation is warranted) use of pooled client accounts or safe custody of client money or assets.
- b) Situations where advice on the setting up of legal arrangements may be misused to obscure ownership or real economic purpose (including setting up of trusts, companies or change of name/corporate seat or on establishing complex group structures). This might include advising in relation to a discretionary trust that gives the trustee discretionary power to name a class of beneficiaries that does not include the real beneficiary (e.g. naming a charity as the sole discretionary beneficiary initially with a view to adding the real beneficiaries at a later stage). It might also include situations where a trust is set up for the purpose of managing shares in a company with the intention of making it more difficult to determine the beneficiaries of assets managed by the trust.
- c) In the case of an express trust, an unexplained (where explanation is warranted) nature of classes of beneficiaries and classes within an expression of wishes.
- d) Acting or providing trustees or directors of such trust, company or other legal entity.
- e) Services where accountants may in practice represent or assure the client's standing, reputation and credibility to third parties, without a commensurate knowledge of the client's affairs.
- f) Services that improperly conceal beneficial ownership from competent authorities, or that have the effect of improperly concealing beneficial ownership without any clear legitimate purpose.

- g) Services requested by the client for which the accountant does not have expertise except where the accountant is referring the request to an appropriately trained professional for advice.
- h) Services that rely heavily on new technologies (e.g. online trading platform) that may have inherent vulnerabilities to exploitation by criminals.
- i) Transfer of real estate or other high value goods or assets between parties in a time period that is unusually short for similar transactions with no apparent legal, tax, business, economic or other legitimate reason.
- j) Transactions where it is readily apparent to the accountant that there is inadequate consideration, especially where the client does not identify legitimate reasons for the amount of the consideration.
- k) Administrative arrangements concerning estates where the deceased was known to the accountant as being a person who had been convicted of proceeds generating crimes.
- l) Services that deliberately have provided or depend upon more anonymity in the client identity or participants than is normal under the circumstances and experience of the accounting professional.
- m) Use of virtual assets and other anonymous means of payment and wealth transfer within the transaction without apparent legal, tax, business, economic or other legitimate reason.
- n) Transactions using unusual means of payment (e.g. precious metals or stones).
- o) The postponement of a payment for an asset or service delivered immediately to a date far from the moment at which payment would normally be expected to occur, without appropriate assurances that payment will be made.
- p) Unexplained establishment of unusual conditions/clauses in credit arrangements that do not reflect the commercial position between the parties. Arrangements that may be abused in this way might include unusually short/long amortisation periods, interest rates materially above/below market rates, or unexplained repeated cancellations of promissory notes/mortgages or other security instruments substantially ahead of the maturity date initially agreed.
- q) Contributions or transfers of goods that are inherently difficult to value (e.g. jewels, precious stones, objects of art or antiques, virtual assets), where this is not common for the type of clients, transaction, or with accountant's normal course of business such as a transfer to a corporate entity, or generally without any appropriate explanation.
- r) Successive capital or other contributions in a short period of time to the same company with no apparent legal, tax, business, economic or other legitimate reason.
- s) Acquisitions of businesses in liquidation with no apparent legal, tax, business, economic or other legitimate reason.
- t) Power of representation given in unusual conditions (e.g. when it is granted irrevocably or in relation to specific assets) and the stated reasons for these conditions are unclear or illogical.
- u) Transactions involving closely connected persons and for which the client and/or its financial advisors provide inconsistent or irrational explanations and are

subsequently unwilling or unable to explain by reference to legal, tax, business, economic or other legitimate reason.

- v) Situations where a nominee is being used (e.g. friend or family member is named as owner of property/assets where it is clear that the family member/friend is receiving instructions from the beneficial owner) with no apparent legal, tax, business, economic or other legitimate reason.
- w) Payments received from un-associated or unknown third parties and payments for fees in cash where this would not be a typical method of payment.
- x) Commercial, private, or real property transactions or services to be carried out by the client with no apparent legitimate business, economic, tax, family governance, or legal reasons.
- y) Existence of suspicions regarding fraudulent transactions, or ones which are improperly accounted for. These might include:
 - i. Over and under invoicing of goods/services.
 - ii. Multiple invoicing of the same goods/services.
 - iii. Falsely described goods/services – over and under shipments (e.g. false entries on bills of lading).
 - iv. Multiple trading of goods/services.

3.1.4. Variables that may impact on risk

66. Due regard must be accorded to the vast and profound differences in the obligations, practices, size, scale and expertise, amongst accountants, as well as the nature of the clients they serve. As a result, consideration must be given to these factors when creating a RBA that also complies with the accountants existing obligations.

67. Consideration must also be given to the resources that can be reasonably allocated to implement and manage an appropriately developed RBA. For example, a sole practitioner would not be expected to devote an equivalent level of resources as a large firm; rather, the sole practitioner would be expected to develop appropriate systems and controls and a RBA proportionate to the scope and nature of the practitioner's practice and its clients. Small firms serving predominantly locally based clients cannot generally be expected to devote a significant amount of senior personnel's time to conducting risk assessments other than on those clients with the highest risk profiles. It may be more reasonable for sole practitioners to rely on publicly available records and information supplied by a client for a risk assessment than it would be for a large firm. However, accountants in many jurisdictions and practices are required to conduct both a risk assessment of the general risks of their practice, and of all new clients and current clients engaged in one-off specific transactions. The emphasis must be on following a RBA.

68. A significant factor to consider is whether the client and proposed work would be unusual, risky or suspicious for the particular accountant. This factor must always be considered in the context of the accountant's practice, as well as the legal, professional, and ethical obligations in the jurisdiction(s) of practice. An accountant's RBA methodology may thus take account of risk variables specific to a particular client or type of work. Consistent with the RBA and proportionality, the presence of one or more of these variables may cause an accountant to conclude that either enhanced CDD and monitoring is warranted, or conversely that standard CDD and monitoring can be reduced, modified or

simplified. When reducing, modifying or simplifying, accountants should always adhere to the minimum requirements as set out in national legislation. These variables may increase or decrease the perceived risk posed by a particular client or type of work.

69. Examples of factors that may increase risk are:

- a) Unexplained urgency of assistance required.
- b) Unusual sophistication of client, including complexity of control environment.
- c) Unusual sophistication of transaction/scheme.
- d) The irregularity or duration of the client relationship. One-off engagements involving limited client contact throughout the relationship may present higher risk.

70. Examples of factors that may decrease risk are:

- a) Involvement of adequately regulated financial institutions or other DNFBP professionals.
- b) Similar country location of accountants and client.
- c) Role or oversight of a regulator or multiple regulators.
- d) The regularity or duration of the client relationship. Long-standing relationships involving frequent client contact and easy flow of information throughout the relationship may present less risk.
- e) Clients who have a reputation for probity in the local communities.
- f) Private companies that are transparent and well-known in the public domain.
- g) The familiarity of the accountant with a country, including knowledge of local laws and regulations as well as the structure and extent of regulatory oversight.

3.1.5. Documentation of risk assessments

71. Accountants must always understand their ML/TF risks, however, competent authorities or SRBs may determine that individual documented risk assessments are not required, if the specific risks inherent to the sector are clearly identified and understood.

72. Accountants may fail to satisfy their AML/CFT obligations, for example by relying completely on a checklist risk assessment where there are other clear indicators of potential illicit activity. Completing risk assessments in a time efficient yet comprehensive manner has become more important.

73. Each of these risks could be assessed using indicators such as low risk, medium risk and/or high risk. A short explanation of the reasons for each attribution should be included and an overall assessment of risk determined. An action plan (if required) should then be outlined to accompany the assessment, and dated. In assessing the risk profile of the client at this stage, reference must be made to the relevant targeted financial sanctions lists to confirm neither the client nor the beneficial owner is designated and included in any of them.

74. A risk assessment of this kind should not only be carried out for each specific client and service on an individual basis, but also to assess and document the risks on a firm-wide basis, and to keep risk assessment up-to-date through monitoring of the client relationship. The written risk assessment should be made accessible to all professionals having to perform AML/CFT duties.

3.2. Risk mitigation

75. Accountants should have policies, controls and procedures that enable them to effectively manage and mitigate the risks that they have identified (or that have been identified by the country). They should monitor the implementation of those controls and enhance or improve them if they find the controls to be weak or ineffective. The policies, controls and procedures should be approved by senior management, and the measures taken to manage and mitigate the risks (whether higher or lower) should be consistent with national requirements and with guidance from competent authorities and supervisors. Measures and controls may include:

- a) General training on ML/TF methods and risks relevant to accountants.
- b) Targeted training for increased awareness by the accountants providing specified activities to higher risk clients or to accountants undertaking higher risk work.
- c) Increased or more appropriately targeted CDD or CDD for higher risk clients/situations that concentrate on providing a better understanding about the potential source of risk and obtaining the necessary information to make informed decisions about how to proceed (if the transaction/ business relationship can be proceeded with). This could include training on when and how to ascertain, evidence and record source of wealth and beneficial ownership information if required.
- d) Periodic review of the services offered by the accountant, and the periodic evaluation of the AML/CFT framework applicable to the accountant and the accountant's own AML/CFT procedures, to determine whether the ML/TF risk has increased.
- e) Reviewing client relationships from time to time to determine whether the ML/TF risk has increased.

3.2.1. Initial and ongoing CDD (R.10 and 22)

76. Accountants should design CDD procedures to enable them to establish with reasonable certainty the true identity of each client and, with an appropriate degree of confidence, know the types of business and transactions the client is likely to undertake. Accountants should have procedures to:

- a) Identify the client and verify that client's identity using reliable, independent source documents, data or information.
- b) Identify the beneficial owner, and take reasonable measures to verify the identity of the beneficial owner, such that accountants are satisfied that they knows who the beneficial owner is. This should include accountants' understanding of the ownership and control structure of the client. This is articulated in the following box

Box 3. Beneficial ownership information obligations (see R.10 and 22 and INR.10)

R.10 sets out the instances where accountants will be required to take steps to identify and verify beneficial owners, including when there is a suspicion of ML/TF, when establishing business relations, or where there are doubts about the veracity of previously provided information. INR.10 indicates that the purpose of this requirement is two-fold: first, to prevent

the unlawful use of legal persons and arrangements, by gaining a sufficient understanding of the client to be able to properly assess the potential ML/TF risks associated with the business relationship; and, second, to take appropriate steps to mitigate the risks. Accountants should have regard to these purposes when assessing what steps are reasonable to take to verify beneficial ownership, commensurate with the level of risk. Accountants should also have regard to the AML/CFT 2013 Methodology Criteria 10.5 and 10.8-10.12.

At the outset of determining beneficial ownership, steps should be taken to identify how the immediate client can be identified. Accountants can verify the identity of a client by, for example meeting the client in person and then verifying their identity through the production of a passport/identity card and documentation confirming his/her address. Accountants can further verify the identity of a client on the basis of documentation or information obtained from reliable, publicly available sources (which are independent of the client).

A more difficult situation arises where there is a beneficial owner who is not the immediate client (e.g. in the case of companies and other entities). In such a scenario reasonable steps must be taken so that the accountant is satisfied about the identity of the beneficial owner and takes reasonable measures to verify the beneficial owner's identity. This likely requires taking steps to understand the ownership and control of a separate legal entity that is the client that may be through public searches as well as by seeking information directly from the client.

Accountants will likely need to obtain the following information for a client that is a legal entity:

- a) the name of the company;
- b) the company registration number;
- c) the registered address and/ or principal place of business (if different);
- d) the identity of shareholders and their percentage ownership;
- e) names of the board of directors or senior individuals responsible for the
- f) company's operations;
- g) the law to which the company is subject and its constitution; and
- h) the types of activities and transactions in which the company engages in.

To verify the information listed above, accountant may use sources such as the following:

- a) constitutional documents (such as a certificate of incorporation, memorandum and articles of incorporation/association);
- b) details from company registers;
- c) shareholder agreement or other agreements between shareholders concerning control of the legal person; and
- d) filed audited accounts.

Accountants should adopt a RBA to identify beneficial owners of an entity. It is often necessary to use a combination of public sources and to seek further confirmation from the immediate client that information from public sources is correct and up-to-date or to ask for additional documentation that confirms the beneficial ownership and company structure.

The obligation to identify beneficial ownership does not end with identifying the first level of ownership, but requires steps to be taken to identify the beneficial ownership at each level of the corporate structure until an ultimate beneficial owner is identified. This requires the same process of identifying and verifying information in relation to legal entities and natural persons at each level of a corporate structure

- c) Understand and, as appropriate, obtain information on the purpose and intended nature of the business relationship.

- d) Conduct ongoing due diligence on the business relationship. Ongoing due diligence ensures that the documents, data or information collected under the CDD process is kept up-to-date and relevant by undertaking reviews of existing records, particularly for higher-risk categories of clients. Undertaking appropriate CDD also allows the accurate filing of STRs to FIU, or to respond to requests for information from FIU and law enforcement

77. Accountants should design their policies and procedures so that the level of client due diligence addresses the risk of being used for ML/TF by the client. In accordance with the national AML/CFT framework, accountants should design a ‘standard’ level of due diligence for normal risk clients and a reduced or simplified CDD process for low risk clients. Simplified CDD measures are not acceptable whenever there is a suspicion of ML/TF or where specific higher-risk scenarios apply. Enhanced due diligence should be applied to those clients that are assessed as high risk. These activities may be carried out in conjunction with firms’ normal client acceptance procedures and should take account of any specific jurisdictional requirements for CDD

78. In the normal course of their work, accountants are likely to learn more about some aspects of their client, such as their client’s business or occupation and/or their level and source of income, than other advisors. This information is likely to help them reassess the ML/TF risk.

79. A RBA means that accountants should perform varying levels of work according to the risk level. For example, where the client or the owner of the controlling interest is a public company that is subject to regulatory disclosure requirements, and that information is publicly available, fewer checks may be appropriate. In the case of trusts, foundations or similar legal entities where the beneficiaries are distinct from the legal owners of the entity, it will be necessary to form a reasonable level of knowledge and understanding of the classes and nature of the beneficiaries; the identities of the settlor, trustees or natural persons exercising effective control; and an indication of the purpose of the trust. Accountants will need to obtain a reasonable level of comfort that the declared purpose of the trust is in fact its true purpose.

80. Identification of clients should be reviewed (on an appropriate risk related basis) to ensure that changes in ownership or other factors have not resulted in a change in the client, with a consequent need to review or repeat client identification and verification of identity procedures. This may be carried out in conjunction with any professional requirements for client continuation processes.

81. Public information sources may assist with this ongoing review (scrutinising transactions undertaken throughout the course of that relationship). The procedures that need to be carried out can vary, in accordance with the nature and purpose for which the entity exists, and the extent to which the underlying ownership differs from apparent ownership by the use of nominees and complex structures.

82. The following box provides a non-exhaustive list of examples of standard, enhanced and simplified CDD:

Box 4. Examples of Standard/Simplified/Enhanced CDD measures (see also INR.10)

Standard CDD

- Identifying the client and verifying that client's identity using reliable, independent source documents, data or information
- Identifying the beneficial owner, and taking reasonable measures on a risk-sensitive basis to verify the identity of the beneficial owner, such that the accountant is satisfied about the identity of beneficial owner. For legal persons and arrangements, this should include understanding the ownership and control structure of the client and gaining an understanding of the client's source of wealth and source of funds, where required
- Understanding and obtaining information on the purpose and intended nature of the business relationship
- Conducting ongoing due diligence on the business relationship and scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the business and risk profile the client, including, where necessary, the source of wealth and funds

Simplified CDD

- Limiting the extent, type or timing of CDD measures
- Obtaining fewer elements of client identification data
- Altering the type of verification carried out on client's identity
- Simplifying the verification carried out on client's identity
- Inferring the purpose and nature of the transactions or business relationship established based on the type of transaction carried out or the relationship established
- Verifying the identity of the client and the beneficial owner after the establishment of the business relationship
- Reducing the frequency of client identification updates in the case of a business relationship
- Reducing the degree and extent of ongoing monitoring and scrutiny of transactions

Enhanced CDD

- Obtaining additional information on the client (e.g. occupation, volume of assets, information available through public databases, internet, etc.), and updating more regularly the identification data of client and beneficial owner
- Carrying out additional searches (e.g. internet searches using independent and open sources) to better inform the client risk profile
- Obtaining additional information and, as appropriate, substantiating documentation, on the intended nature of the business relationship
- Obtaining information on the source of funds and/or source of wealth of the client and clearly evidencing this through appropriate documentation obtained
- Obtaining information on the reasons for intended or performed transactions
- Obtaining the approval of senior management to commence or continue the business relationship
- Conducting enhanced monitoring of the business relationship, by increasing the number and timing of controls applied, and selecting patterns of transactions that need further examination
- Requiring the first payment to be carried out through an account in the client's name with a bank subject to similar CDD standards
- Increasing awareness of higher risk clients and transactions, across all departments with a business relationship with the client, including the possibility of enhanced briefing of engagement teams responsible for the client.
- Enhanced CDD may also include lowering the threshold of ownership (e.g. below 25%), to ensure complete understanding of the control structure of the entity involved. It may also include looking further than simply equity shares, to understand the voting rights of each party who holds an interest in the entity

3.2.2. Politically exposed persons (PEP) (R.12 and R.22)

83. Accountants should take reasonable measures to identify whether a client is a PEP or a family member or close associate of a PEP. Accountants should also refer to the 2013 FATF Guidance on politically-exposed persons for further guidance on how to identify PEPs.

84. If the client is a PEP, accountants should perform the following additional procedures:

- a) obtain senior management approval for establishing (or continuing, for existing clients) such business relationships;
- b) take reasonable measures to establish the source of wealth and source of funds²⁹; and
- c) conduct enhanced ongoing monitoring of the business relationship.

85. Relevant factors that will influence the extent and nature of CDD include the particular circumstances of a PEP, whether the PEP has access to official funds, the PEP's home country, the type of work the PEP is instructing the accountant to perform or carry out (i.e. the services that are being asked for), whether the PEP is domestically based or international, particularly having regard to the services asked for, and the scrutiny to which the PEP is under in the PEP's home country.

86. The nature of the risk should be considered in light of all relevant circumstances, such as:

- a) The nature of the relationship between the client and the PEP. If the client is a trust, company or legal entity, even if the PEP is not a natural person exercising effective control or the PEP is merely a discretionary beneficiary who has not received any distributions, the PEP may nonetheless affect the risk assessment.
- b) The nature of the client (e.g. where it is a public listed company or regulated entity which is subject to and regulated for a full range of AML/CFT requirements consistent with FATF recommendations, the fact that it is subject to reporting obligations will be a relevant factor, albeit this should not automatically qualify the client for simplified CDD).
- c) The nature of the services sought. For example, lower risks may exist where a PEP is not the client but a director of a client that is a public listed company or regulated entity and the client is purchasing property for adequate consideration.

3.2.3. Ongoing monitoring of clients and specified activities (R.10 and 22)

87. Accountants are not expected to scrutinise every transaction that goes through their clients' books and some accounting services are provided only on a one-off basis, without a continuing relationship with the client and without the accountant having access to client's books and/or bank records. However, many of the professional services provided by accountants put them in a relatively good position to encounter and recognise suspicious activities (or transactions) carried out by their clients through their inside knowledge of, and access, to the client's records and management processes, as well as through close working relationships with senior managers and owners. The continued administration and management of the legal persons and arrangements (e.g. account reporting, asset disbursements and corporate filings) would also enable the relevant accountants to develop a better understanding of the activities of their customers.

29

See INR 28.1.

88. Accountants need to be continually alert for events or situations which are indicative of a reason to be suspicious of ML/TF, employing their professional experience and judgement in the forming of suspicions where appropriate. An advantage in carrying out this function is the professional scepticism which is a defining characteristic of many professional accountancy functions and relationships.

89. Ongoing monitoring of the business relationship should be carried out on a risk related basis, to ensure that the client retains the same identity and risk profile established at client acceptance. This requires an appropriate level of scrutiny of activity during the relationship, including enquiry into source of funds where necessary, to judge consistency with expected behaviour based on accumulated CDD information. As discussed below, ongoing monitoring may also give rise to filing a suspicious transaction report.

90. Accountants should also consider reassessing CDD on an engagement/assignment basis for each client. Well-known, reputable, long-standing clients may suddenly request a new type of service that is not in line with the previous relationship between the client and accountant. Such an assignment may suggest a greater level of risk.

91. Accountants should not conduct investigations into suspected ML/TF on their own but instead file a STR or if the behaviour is egregious they should contact the FIU or law enforcement or supervisors, as appropriate, for guidance. Within the scope of engagement, an accountant should be mindful of the prohibition on “tipping off” the client where a suspicion has been formed. Carrying out additional investigations, which are not within the scope of the engagement should also be considered against the risk alerting a money launderer.

92. When deciding whether or not an activity or transaction is suspicious, accountants may need to make additional enquiries (within the normal scope of the assignment or business relationship) of the client or their records this could be typically be done as part of the accountant’s CDD process. Normal commercial enquiries, being made to fulfil duties to clients, may assist in understanding an activity or transaction to determine whether or not it is suspicious.

3.2.4. Suspicious activity/transaction reporting, tipping-off, internal controls and higher-risk countries (R.23)

93. R.23 sets out obligations for accountants on reporting and tipping-off, internal controls and higher-risk countries as set out in R.20, R.21, R.18 and R.19.

Suspicious transaction reporting and tipping-off (R.20, 21 and 23)

94. R.23 requires accountants to report suspicious transactions set out in R.20. Where a legal or regulatory requirement mandates the reporting of suspicious activity once a suspicion has been formed, a report must always be made promptly. The requirement to file a suspicious transaction report is not subject to a RBA, but must be made whenever required in the country concerned.

95. Accountants may be required to report suspicious activities, as well as specific suspicious transaction, and so may make reports on a number of scenarios including suspicious business structures or management profiles which have no legitimate economic rationale and suspicious transactions, such as the misappropriation of funds, false invoicing or company purchase of goods unrelated to the company's business. As specified under INR.23, where accountants seek to dissuade a client from engaging in illegal activity, this does not amount to tipping-off.

96. However, it should be noted that a RBA is appropriate for the purpose of identifying a suspicious activity or transaction, by directing additional resources at those areas that have been identified as higher risk. The designated competent authorities or SRBs may provide information to accountants, which will be useful to them to inform their approach for identifying suspicious activity or transactions, as part of a RBA. Accountant should also periodically assess the adequacy of their system for identifying and reporting suspicious activity or transactions.

97. Accountants should review CDD if they have a suspicion of ML/TF.

Internal controls and compliance (R.18 and 23)

98. In order for accountants to have effective RBA, the risk-based process must be imbedded within the internal controls of the firm and they must be appropriate for the size and complexity of the firm.

Internal controls and governance

99. Strong senior management leadership and engagement in AML/CFT is an important aspect of the application of the RBA. Senior management must create a culture of compliance, ensuring that staff adhere to the firm's policies, procedures and processes designed to limit and control risks.

100. The nature and extent of the AML/CFT controls, as well as meeting national legal requirements, need to be proportionate to the risk involved in the services being offered. In addition to other compliance internal controls, the nature and extent of AML/CFT controls will depend upon a number of factors, such as:

- a) designating an individual or individuals, at management level responsible for managing AML/CFT compliance;
- b) designing policies and procedures that focus resources on the firm's higher-risk products, services, clients and geographic locations and include risk-based CDD policies, procedures and processes;
- c) ensuring that adequate controls are in place before new services are offered; and
- d) ensuring adequate controls for accepting higher risk clients or providing higher risk services, such as management approval.

101. These policies and procedures should be implemented across the firm by all service lines and include:

- a) performing a regular review of the firm's policies and procedures to ensure that they remain fit for purpose;
- b) performing a regular compliance review that checks that staff are properly implementing the firm's policies and procedures;
- c) providing senior management with a regular report of compliance initiatives, identify compliance deficiencies, corrective action taken, and suspicious transaction reports filed;
- d) planning for changes in management, staff or firm structure so that there is compliance continuity;

- e) focusing on meeting all regulatory record-keeping and reporting requirements, recommendations for AML/CFT compliance and provide for timely updates in response to changes in regulations;
- f) enabling the timely identification of reportable transactions and ensure accurate filing of required reports;
- g) incorporating AML/CFT compliance into job descriptions and performance evaluations of appropriate personnel;
- h) providing for appropriate training to be given to all relevant staff;
- i) having appropriate risk management systems to determine whether a client, potential client, or beneficial owner is a PEP or a person subject to applicable financial sanctions;
- j) providing for adequate controls for higher risk clients and services as necessary (e.g. additional due diligence, evidencing the source of wealth and funds of a client and escalation or additional review and/or consultation);
- k) providing increased focus on the accountant/accounting firm's operations (e.g. services, clients and geographic locations) that are more vulnerable to abuse for ML/TF;
- l) providing for periodic review of the risk assessment and management processes, taking into account the environment within which the accountant/accounting firm operates and the services it provides; and
- m) providing for an AML/CFT compliance function and review programme as appropriate given the scale of the organisation and the nature of the accountant's practice.

102. The firm should perform a firm-wide risk assessment that takes into account the size and nature of the practice; the existence of high risk clients (if any); and the provision of high risk services (if any). Once completed, the firm wide risk assessment will assist the firm in designing its policies and procedures.

103. Accountants should consider using proven technology-driven solutions to minimise the risk of error and find efficiencies in their AML/CFT processes. As these solutions are likely to become more affordable, and more tailored to the accountants as they continue to develop, this may be particularly important for smaller firms that may be less able to commit significant resources of time to these activities.

104. Depending on the assessed ML/TF risks, and the size of the firm, it may be possible to simplify both risk assessments and internal procedures. For example, for sole practitioners, client acceptance may be reserved to the sole owner/proprietor taking into account their business and client knowledge and experience (which may be highly specialised). The involvement of the sole owner/proprietor may also be required in detecting and assessing possible suspicious activities. For larger firms, more sophisticated procedures and risk assessments are likely to be necessary.

Internal mechanisms to ensure compliance

105. Accountants (and where relevant senior management) should monitor the effectiveness of internal controls. If accountants identify any weaknesses in those internal controls, improved procedures should be designed.

106. The most effective tool to monitor the internal controls is a regular (typically at least annually) independent (internal or external) compliance review. If carried out internally, a staff member that has a good working knowledge of the firm's AML/CFT internal control framework, policies and procedures and is sufficiently senior to challenge them should perform the review. The compliance review should include a review of CDD documentation to confirm that staff are properly applying the firm's procedures.

107. If the compliance review identifies areas of weakness and makes recommendations on how to improve the policies and procedures, then senior management should monitor how the firm is acting on those recommendations.

108. Accountants should review firm-wide risk assessments regularly and ensure that policies and procedures continue to target those areas where the ML/TF risks are highest.

Vetting, recruitment and remuneration

109. Accountants should consider the skills, knowledge and experience of staff both before they are appointed to their role and on an ongoing basis. The level of assessment should be proportionate to their role in the firm and the ML/TF risks they may encounter. Assessment may include criminal records checking and other forms of pre-employment screening such as credit reference checks (as permitted under national legislation) for key staff positions.

Education, training and awareness

110. R.18 requires that accounting firms/ accountants provide their staff with AML/CFT training. For accountants, and those in smaller firms in particular, such training may also assist with raising awareness of monitoring obligations. The accounting firm's commitment to having appropriate controls in place relies fundamentally on both training and awareness. This requires a firm-wide effort to provide all relevant staff with at least general information on AML/CFT laws, regulations and internal policies.

111. Firms should provide targeted training for increased awareness by the accountant providing specified activities to higher risk clients or to accountants undertaking higher risk work. Case studies (both fact-based and hypotheticals) are a good way of bringing the regulations to life and making them more comprehensible. Training should also be targeted towards the role the individual performs in the AML/CFT process. This could include false documentation training for those undertaking identification and verification duties, or training regarding red flags for those undertaking client/transactional risk assessment.

112. In line with a RBA, particular attention should be given to risk factors or circumstances occurring in accountant's own practice. In addition, competent authorities, SRBs and representative bodies should work with educational institutions to ensure that the curriculum addresses ML/TF risks. The same training should also be made available for students taking courses to train to become accountants.

113. Firms must provide their employees with appropriate AML/CFT training. In ensuring compliance with this requirement, accountants may take account of AML/CFT training included in entry requirements and continuing professional development requirements for their professional staff. They must also ensure appropriate training for any relevant staff without a professional qualification, at a level appropriate to the functions being undertaken by those staff, and the likelihood of their encountering suspicious activities.

114. Where the firm has identified departments or services lines to be at higher risk of being used for ML/TF, the firm should consider whether the staff in those departments or service lines would benefit from additional training. Case studies (both fact-based and hypotheticals) are a good way of bringing the regulations to life and making them more comprehensible.

Higher-risk countries (R.19 and 23)

115. Consistent with R.19, accountants should apply enhanced due diligence measures (also see paragraph 70 above), proportionate to the risks, to business relationships and transactions with clients from countries for which this is called for by the FATF.

4. Section IV – Guidance for supervisors

116. R.28 requires that accountants are subject to adequate AML/CFT regulation and supervision. Supervisors and SRBs must ensure that accountants are implementing their obligations under R.1.

4.1. Risk-based approach to supervision

117. A risk-based approach to AML/CFT means that measures taken to reduce ML/TF are proportionate to the risks. Supervisors and SRBs should supervise more effectively by allocating resource to areas of higher ML/TF risk. R.28 requires that accountants are subject to adequate AML/CFT regulation and supervision. While it is each country's responsibility to ensure there is an adequate national framework in place in relation to regulation and supervision of accountants, any relevant supervisors and SRBs should have a clear understanding of the ML/TF risks present in the relevant jurisdiction³⁰

4.1.1. Understanding ML/TF risk

118. The extent to which a national framework allows accountants to apply a RBA should also reflect the nature, diversity and maturity of the sector and its risk profile as well the ML/TF risks associated with individual accountants.

119. Access to information about ML/TF risks is essential for an effective risk-based approach. Countries are required to take appropriate steps to identify and assess ML/TF risks on an ongoing basis in order to (a) inform potential changes to the country's AML/CFT regime, including changes to laws, regulations and other measures; (b) assist in the allocation and prioritisation of AML/CFT resources by competent authorities; and (c) make information available for AML/CFT risk assessments conducted by accountants. Countries should keep the risk assessments up-to-date and should have mechanisms to provide appropriate information on the results to competent authorities, SRBs and accountants. In situations where some accountants have limited capacity to identify ML/TF risks, countries should work with the sector to understand their risks.

120. Supervisors and SRBs should, as applicable, draw on a variety of sources to identify and assess ML/TF risks. These may include, but will not be limited to, the jurisdiction's national risk assessments, supranational risk assessments, domestic or international typologies, supervisory expertise and FIU feedback. The necessary information can also be obtained through appropriate information-sharing and collaboration among AML/CFT supervisors, when there are more than one for different sectors (legal professionals, accountants and TCSPs).

121. These sources can also be helpful in determining the extent to which an accountant is able to effectively manage ML/TF risk. Information-sharing and collaboration should take place among AML/CFT supervisors across all sectors (legal professionals, accountants and TCSPs).

122. Where competent authorities do not adequately understand the specific environment in which accountants operate in the country, it may be appropriate for competent authorities to consider undertaking a more targeted sectoral risk assessment.

³⁰ Such as the FATF, the OECD, the WB, the IMF and the UNODC

123. Supervisors and SRBs should understand the level of inherent risk including the nature and complexity of services provided by the accountant. Supervisors and SRBs should also consider the type of services the accountant is providing as well as its size and business model (e.g. whether it is a sole practitioner), corporate governance arrangements, financial and accounting information, delivery channels, client profiles, geographic location and countries of operation. Supervisors and SRBs should also consider the controls accountants have in place (e.g. the quality of the risk management policy, the functioning of the internal oversight functions and the quality of oversight of any outsourcing and subcontracting arrangements).

124. Supervisors and SRBs seek to ensure their supervised populations are fully aware of, and compliant with, measures to identify and verify a client, source of wealth and funds where required, along with measures designed to ensure transparency of beneficial ownership, as these are cross-cutting issues that affect several aspects of AML/CFT.

125. To further understand the vulnerabilities associated with beneficial ownership, with a particular focus on the involvement of professional intermediaries, supervisors should stay abreast of research papers and typologies published by international bodies.¹³¹ Useful reference include the Joint FATF and Egmont Group Report on Concealment of Beneficial Ownership published in July 2018.

126. Supervisors and SRBs should review their assessment of accountants' ML/TF risk profiles periodically, including when circumstances change materially or relevant new threats emerge.

4.1.2. SRBs' role in supervision and monitoring

127. According to R.28, countries can ensure that accountants are subject to effective oversight through the supervision performed by a SRB.

128. A SRB is body representing a profession (e.g. accountants, legal professionals, notaries, other independent legal professionals or TCSPs) made up of member professionals, which has a role (either exclusive or in conjunction with other entities) in regulating the persons that are qualified to enter and who practise in the profession. A SRB also performs supervisory or monitoring functions (e.g. to enforce rules to ensure that high ethical and moral standards are maintained by those practising the profession).

129. SRBs should have appropriate powers to perform their supervisory functions (including powers to monitor and apply sanctions), and adequate financial, human and technical resources. SRBs should determine the frequency and intensity of their supervisory or monitoring actions on accountants on the basis of their understanding of the ML/TF risks, and taking into consideration the characteristics of the accountants, in particular their diversity and number.

130. Countries should ensure that a SRB is as equipped as a competent authority in identifying and sanctioning non-compliance by its members. Countries should also ensure that SRBs are well-informed about the importance of AML/CFT supervision, including enforcement actions as needed.

131. Countries should also address the risk that AML/CFT supervision by SRBs could be hampered by conflicting objectives pertaining to the SRB's role in representing their

³¹ In some jurisdictions or professions, the term "customer" is used, which has the same meaning as "client" for the purposes of this document.

members, which the SRB is also obligated to supervise. If a SRB contains members of the supervised population, or represents those people, the relevant person should not continue to take part in the monitoring/ supervision of their practice/law firm to avoid conflicts of interest.

132. Supervisors and SRBs should clearly allocate responsibility for managing AML/CFT related activity, where they are also responsible for other regulatory areas.

4.1.3. Mitigating and managing ML/TF risk

133. Supervisors and SRBs must take proportionate measures to mitigate and manage ML/TF risk. Supervisors and SRBs should determine the frequency and intensity of these measures based on their understanding of the inherent ML/TF risks. Supervisors and SRBs should consider the characteristics of accountants, particularly where they act as professional intermediaries, in particular their diversity and number. It is essential to have a clear understanding of the ML/TF risks: (a) present in the country; and (b) associated with the type of accountant and their clients, products and services. Supervisors or SRBs may determine that individual documented risk assessments are not required, provided that the specific risks inherent to the sector are clearly identified and understood.

134. Supervisors and SRBs should take account of the risk profile of accountants when assessing the adequacy of internal controls, policies and procedures.

135. Supervisors and SRBs should develop a means of identifying which accountants are at the greatest risk of being used by criminals. This involves considering the probability and impact of ML/TF risk.

136. Probability means the likelihood of ML/TF taking place as a consequence of the activity undertaken by accountants and the environment in which they operate. The risk can also increase or decrease depending on other indicators:

- a) product and service risk (the likelihood that products or services can be used for ML/TF);
- b) client risk (the likelihood that clients' funds may have criminal origins);
- c) the nature of transactions (e.g. frequency, volume, counterparties);
- d) geographical risk (does the accountant, its clients or other offices trade in riskier locations); and
- e) other indicators of risk are based on a combination of objective factors and experience, such as the supervisor's wider work with the accountant as well as information on its compliance history, complaints about the accountant or about the quality of its internal controls, and intelligence from law enforcement agencies on suspected involvement in financial crimes (including unwitting facilitation). Other such factors may include information from government/law enforcement sources or whistle-blowers.

137. In adopting a RBA to supervision, supervisors may consider allocating supervised entities sharing similar characteristics and risk profiles into groupings for supervision purposes. Examples of characteristics and risk profiles could include the size of business, type of clients serviced and geographic areas of activities. The setting up of such groupings could allow supervisors to take a comprehensive view of the sector, as opposed to an approach where the supervisors concentrate on the individual risks posed by the individual firms. If the risk profile of an accountant within a grouping changes, supervisors may

reassess the supervisory approach, which may include removing the firm from the grouping.

138. Supervisors and SRBs should also consider the impact, i.e. the potential harm caused if ML/TF is facilitated by the accountant or group of accountants. A small number of accountants may cause a high level of harm. This can depend on:

- a) Size (i.e. turnover), number and type of clients, number of premises, value of transactions etc.); and
- b) Links or involvement with other businesses (susceptibility to being involved in ‘layering’ activity, e.g. concealing the origin of the transaction with the purpose to legalise the asset).

139. The risk assessment should be updated by supervisors and SRBs on an ongoing basis. The result from the assessment will help determine the resources the supervisor will allocate to the supervision of accountants.

140. Supervisors or SRBs should consider whether accountants meet the ongoing requirements for continued participation in the profession as well as assessments of competence and of fitness and propriety. This will include whether the accountant meets expectations related to AML/CFT compliance. This will take place both when a supervised entity joins the profession, and on an ongoing basis thereafter.

141. If a jurisdiction chooses to classify an entire sector as higher risk, it should be possible to differentiate between categories of accountants based on factors such as their client base, countries they deal with and applicable AML/CFT controls etc.

142. Supervisors and SRBs should acknowledge that in a risk-based regime, not all accountants will adopt identical AML/CFT controls and that an isolated incident where the accountant is part of an illegal transaction unwittingly does not necessarily invalidate the integrity of the accountant’s AML/CFT controls. At the same time, accountants should understand that a flexible RBA does not exempt them from applying effective AML/CFT controls.

143. Supervisors and SRBs should use their findings to review and update their ML/TF risk assessments and, where necessary, consider whether their approach to AML/CFT supervision and the existing AML/CFT rules and guidance remain adequate. Whenever appropriate, and in compliance with relevant confidentiality requirements, these findings should be communicated to accountants to enable them to enhance their RBA.

4.2. Supervision of the RBA

4.2.1. Licensing or registration

144. R.28 requires a country to ensure that accountants are subject to regulatory and supervisory measures to ensure compliance by these businesses and professions with AML/CFT requirements.

145. R.28 requires the supervisor or SRB to take the necessary measures to prevent criminals or their associates from being professionally accredited or holding or being the beneficial owner of a significant or controlling interest or holding a management function. This can be achieved through the evaluation of these persons through “fit and proper” test.

146. A licensing or registration mechanism is one of the means to identify accountants to whom the regulatory and supervisory measures, including the “fit and proper” test should

be applied. It also enables the identification of the number of accountants for the purposes of assessing and understanding the ML/TF risks for the country, and the action that should be taken to mitigate them in accordance with R.1.

147. Licensing or registration provides a supervisor or SRB with the means to fulfil a “gatekeeper” role over who can undertake the activities specified in R.22. Licensing or registration should ensure that upon qualification, accountants are subject to AML/CFT compliance monitoring.

148. The supervisor or SRB should actively identify individuals and businesses who should be supervised by using intelligence from other competent authorities (FIUs, company registry or tax authority), information from financial institutions and DNFBPs, complaints by the public, open source information from advertisements and business and commercial registries, or any other sources which indicate that there are unsupervised individuals or businesses providing the activities specified in R.22.

149. Licensing or registration frameworks should define the activities that are subject to licensing or registration, prohibit unlicensed or unregistered individuals or businesses providing these activities and set out measures for both refusing licences or registrations and for removing “bad actors”.

150. The terms “licensing” or “registration” are not interchangeable. Licensing regimes generally tend to operate over financial institutions and impose mandatory minimum requirements based upon Core Principles on issues such as capital, governance, and resourcing to manage and mitigate prudential, conduct as well as ML/TF risks on an ongoing basis. Some jurisdictions have adopted similar licensing regimes for accountants, generally where accountants carry out trust and corporate services, to encompass aspects of prudential and conduct requirements in managing higher ML/TF risks that have been identified in that sector.

151. A jurisdiction may have a registration framework over the entire DNFBP sector, including accountants or have a specific registration framework for each constituent of a DNFBP. Generally, a supervisor or SRB carries out the registration function.

152. The supervisor or SRB should ensure that requirements for licensing or registration and the process for applying are clear, objective, publicly available and consistently applied. Determination of the licence or registration should be objective and timely. A SRB could be responsible for both supervision and for representing the interests of its members. The SRB should ensure that registration decisions are taken separately and independently from its activities regarding member representation.

Fit and proper tests

153. A fit and proper test provides a possible mechanism for a supervisor or SRB to take the necessary measures to prevent criminals or their associates from owning, controlling or holding a management function.

154. In accordance with R.28, the supervisor or SRB must establish the integrity of every beneficial owner, controller and individual holding a management function. However, the decisions on an individual’s fitness and propriety may also be based upon a range of factors concerning the individual’s competency, probity and judgement as well as integrity.

155. In some jurisdictions, a fit and proper test forms a fundamental part of determining whether to license or register the applicant and whether on an ongoing basis the licensee or

registrant (including its owners and controllers, where applicable) remains fit and proper to continue in that role. The initial assessment of an individual's fitness and propriety is a combination of obtaining information from the individual and corroborating elements of that information against independent credible sources to determine whether the individual is fit and proper to hold that position.

156. The process for determining fitness and propriety generally requires the applicant to complete a questionnaire. The questionnaire could gather personal identification information, residential and employment history, and require disclosure by the applicant of any convictions or adverse judgements, including pending prosecutions and convictions relating to the applicant. Elements of this information should be corroborated to establish the bona fides of an individual. Such checks could include enquiries about the individual with law enforcement agencies and other supervisors or screening the individual against independent electronic search databases. The personal data collected should be kept confidential.

157. The supervisor or SRB should also ensure on an ongoing basis that owners, controllers and individuals holding management functions are fit and proper. A fit and proper test should apply to new owners, controllers and individuals holding a management function. The supervisor or SRB should consider re-assessing the fitness and propriety of these individuals arising from any supervisory findings, receipt of information from other competent authorities; or open source information indicating significant adverse developments.

Guarding against "brass-plate" operations

158. The supervisor or SRB should ensure that its licensing or registration requirements require the applicant to have a meaningful physical presence in the jurisdiction. This usually means that the applicant must have its place of business in the jurisdiction. Where the applicant is a legal person, those individuals who form its mind and management, should also be resident in the jurisdiction and be actively involved in the business. A business with only staff who do not possess the professional requirements of an accountant should not be licensed or registered.

159. A supervisor or SRB should consider the ownership and control structure of the applicant to determine that sufficient control over its operation will reside within the business, which it is considering licensing or registering. Factors to take account of could include consideration of where the beneficial owners and controllers reside, the number and type of management functions the applicant is proposing to have in the country, such as directors and managers, including compliance managers, and the calibre of the individuals who will be occupying those roles.

160. The supervisor or SRB should also consider whether the ownership and control structure of accountants unduly hinders its identification of the beneficial owners and controllers or presents obstacles to applying effective supervision.

4.2.2. Monitoring and supervision

161. Supervisors and SRBs should take measures to effectively monitor accountants through on-site and off-site supervision. The nature of this monitoring will depend on the risk profiles prepared by the supervisor or SRB and the connected risk-based approach. Supervisors and SRBs may choose to adjust:

- a) the level of checks required to perform their authorisation function: where the ML/TF risk associated with the sector is low, the opportunities for ML/TF associated with a particular business activity may be limited, and approvals may be made on a review of basic documentation. Where the ML/TF risk associated with the sector is high, supervisors and SRBs may ask for additional information.
- b) the type of on-site or off-site AML/CFT supervision: to the extent permitted by their regime, supervisors and SRBs may determine the correct mix of on-site and off-site supervision of accountants. Off-site supervision may involve analysis of annual independent audits and other mandatory reports, identifying risky intermediaries (i.e., on the basis of the size of the firms, involvement in cross-border activities, or specific business sectors), automated scrutiny of registers to detect missing beneficial ownership information and identification of persons responsible for the filing. It may also include undertaking thematic reviews of the sector, making compulsory the periodic information returns from firms. Off-site supervision alone may not be appropriate in higher risk situations. On-site inspections involve reviewing AML/CFT internal policies, controls and procedures, interviewing members of senior management and staff, gatekeeper's own risk assessments, spot checking CDD documents and supporting evidence, reporting ML/TF suspicions in relation to clients, accountants and others which may be observed in the course of an onsite visit and where appropriate, sample testing of reporting obligations.
- c) the frequency and nature of ongoing AML/CFT supervision: supervisors and SRBs should proactively adjust the frequency of AML/CFT supervision in line with the risks identified and combine periodic reviews and ad hoc AML/CFT supervision as issues emerge (e.g. as a result of whistleblowing, information from law enforcement, or other supervisory findings resulting from accountants' inclusion in thematic review samples).
- d) the intensity of AML/CFT supervision: supervisors and SRBs should decide on the appropriate scope or level of assessment in line with the risks identified, with the aim of assessing the adequacy of accountants' policies and procedures that are designed to prevent them from being abused. Examples of more intensive supervision could include; detailed testing of systems and files to verify the implementation and adequacy of the accountant's risk assessment, CDD, reporting and record-keeping policies and processes, internal auditing, interviews with operational staff, senior management and the Board of directors and AML/CFT assessment in particular lines of business.

162. Supervisors and SRBs should use their findings to review and update their ML/TF risk assessments and, where necessary, consider whether their approach to AML/CFT supervision and the existing AML/CFT rules and guidance remain adequate. Whenever appropriate, and in compliance with relevant confidentiality requirements, these findings should be communicated to accountants to enable them to enhance their RBA.

163. Record keeping and quality assurance are important, so that supervisors can document and test the reasons for significant decisions relating to AML/CFT supervision. Supervisors should have an appropriate information retention policy and be able to easily retrieve information while complying with the relevant data protection legislation. Record keeping is crucial and fundamental to the supervisors' work. Undertaking adequate quality assurance is also fundamental to the supervisory process to ensure decision-making/sanctioning is consistent across the supervised population.

4.2.3. Enforcement

164. R.28 requires supervisors or SRB to have adequate powers to perform their functions, including powers to monitor compliance by accountants. R.35 requires countries to have the power to impose sanctions, whether criminal, civil or administrative, on DNFPBs, to include accountants when providing the services outlined in R.22(d). Sanctions should be available for the directors and senior management of the firm when an accountant fails to comply with requirements.

165. Supervisors and SRBs should use proportionate actions, including a range of supervisory interventions and corrective actions to ensure that any identified deficiencies are addressed in a timely manner. Sanctions may range from informal or written warning, reprimand and censure to punitive measures (including disbarment and criminal prosecutions where appropriate) for more egregious non-compliance, as identified weaknesses can have wider consequences. Generally, systemic breakdowns or significantly inadequate controls will result in more severe supervisory response.

166. Enforcement by supervisors and SRBs should be proportionate while having a deterrent effect. Supervisors and SRBs must have (or must delegate to those who have) sufficient resources to investigate and monitor non-compliance. Enforcement should aim to remove the benefits of non-compliance.

4.2.4. Guidance

167. Supervisors and SRBs should communicate their regulatory expectations. This could be done through a consultative process after meaningful engagement with relevant stakeholders, including accountants. This guidance may be in the form of high-level requirements based on desired outcomes, risk-based rules, and information about how supervisors interpret relevant legislation or regulation, or more detailed guidance about how particular AML/CFT controls are best applied. Guidance issued to accountants should also discuss ML/TF risk within their sector and outline ML/TF indicators to help them identify suspicious transactions. All such guidance should preferably be consulted on, where appropriate, and drafted in ways that are appropriate to the context of the role of supervisors and SRBs in the relevant jurisdiction.

168. Where supervisors' guidance remains high-level and principles-based, this may be supplemented by further guidance written by the accountancy profession, which may cover operational and practical issues, and be more detailed and explanatory in nature. Where supervisors cooperate to produce combined guidance across sectors, supervisors should ensure this guidance adequately addresses the diversity of roles that come within the guidance's remit, and that such guidance provides practical direction to all its intended recipients. The private sector guidance should be consistent with national legislation and with any guidelines issued by competent authorities with regard to the accountancy profession and be consistent with all other legal requirements and obligations.

169. Supervisors should consider communicating with other relevant domestic supervisory authorities to secure a coherent interpretation of the legal obligations and to minimise disparities across sectors (such as legal professionals, accountants and TCSPs). Multiple guidance should not create opportunities for regulatory arbitrage. Relevant supervisory authorities should consider preparing joint guidance in consultation with the relevant sectors, while recognising that in many jurisdictions accountants will consider that separate guidance targeted at their profession will be the most appropriate and effective form.

170. Information and guidance should be provided by supervisors in an up-to-date and accessible format. It could include sectoral guidance material, newsletters, internet-based material, oral updates on supervisory visits, meetings and annual reports.

4.2.5. Training

171. Training is important for supervisory staff, and other relevant employees, to understand the accountancy profession and the various business models that exist. In particular, supervisors should ensure that staff are trained to assess the quality of ML/TF risk assessments and to consider the adequacy, proportionality, effectiveness and efficiency of AML/CFT policies, procedures and internal controls. It is recommended that the training has a practical basis/dimension.

172. Training should allow supervisory staff to form sound judgments about the quality of the risk assessments made by accountants and the adequacy and proportionality of AML/CFT controls of accountants. It should also aim at achieving consistency in the supervisory approach at a national level, in cases where there are multiple competent supervisory authorities or when the national supervisory model is devolved or fragmented.

4.2.6. Information exchange

173. Information exchange between the public and private sector is of importance in the accountancy profession and may form an integral part of a country's strategy for combating ML/TF, in accordance with relevant data protection legislation. Information sharing and intelligence sharing arrangements between supervisors and public authorities (such as law enforcement) should be robust and secure.

174. In situations where accountants do not have experience, or have limited capacity for an effective assessment of ML/TF risk, it will be important for public authorities to share risk information to better help inform the risk assessments of accountants.

175. The type of information that could be shared between the public and private sectors include:

- a) ML/TF risk assessments;
- b) Typologies (i.e., case studies) of how money launderers or terrorist financiers have misused accountants;
- c) feedback on STRs and other relevant reports;
- d) targeted unclassified intelligence. In specific circumstances, and subject to appropriate safeguards such as confidentiality agreements, it may also be appropriate for authorities to share targeted confidential information with accountants as a class or individually; and
- e) countries, persons or organisations whose assets or transactions should be frozen pursuant to targeted financial sanctions as required by R.6.

176. Domestic co-operation and information exchange between FIU and supervisors of the accountancy profession and among competent authorities including law enforcement, intelligence, FIU, tax authorities, supervisors and SRBs is also vital for effective monitoring/supervision of the sector. Such co-operation and co-ordination may help avoid gaps and overlaps in supervision and ensure sharing of good practices and findings. Intelligence about active misconduct investigations and completed cases between supervisors and law enforcement agencies should also be encouraged. When sharing information, protocols and safeguards should be implemented in order to protect personal data.

177. Cross border information sharing of authorities and private sector with their international counterparts is of importance in the accountancy profession, taking account of the multi-jurisdictional reach of many accounting firms.

4.3. Supervision of Beneficial Ownership requirements and source of funds/wealth requirements

178. The FATF Recommendations require competent authorities to have access to adequate, accurate and timely information on the beneficial ownership and control of legal persons (R.24). In addition, countries must take measures to prevent the misuse of legal arrangements for ML/TF, in particular ensuring that there is adequate, accurate and timely information on express trusts (R.25). Implementation of the FATF Recommendations on beneficial ownership has proven challenging. As a result, the FATF developed a Guidance on Transparency and Beneficial Ownership (2014) to assist countries in their implementation of R.24 and R.25, as well as R.1 as it relates to understanding the ML/TF risks of legal persons and legal arrangements. The FATF and Egmont Group also published the Report on Concealment of Beneficial Ownership in July 2018 which identified issues to help address the vulnerabilities associated with the concealment of beneficial ownership.

179. R.24 and R.25 require countries to have mechanisms to ensure that information provided to registries is accurate and updated on a timely basis and that beneficial ownership information is accurate and current. 'To determine the adequacy of a system for monitoring and ensuring compliance, countries should have regard to the risk of AML/CFT in given businesses (i.e., if there is a proven higher risk then higher monitoring measures should be taken). Accountants must, however, be cautious in blindly relying on the information contained in registries. It is important for there to be some form of ongoing monitoring during a relationship to detect unusual and potentially suspicious transactions as a result of a change in beneficial ownership as registries are unlikely to provide such information on a dynamic basis.

180. Those responsible for company formation and the creation of legal arrangements fulfil a key gatekeeper role to the wider financial community through the activities they undertake in the formation of legal persons and legal arrangements or in their management and administration.

181. As DNFBPs, accountants are required to apply CDD measures to beneficial owners of legal persons and legal arrangements to whom they are providing advice or formation services. In a number of countries an accountant may be required as part of the process of registering the legal person and will be responsible for providing basic and/or beneficial ownership information to the registry.

182. In their capacity as company directors, trustees or foundation officials etc. of these legal persons and legal arrangement, accountants often represent these legal persons and legal arrangements in their dealings with other financial institutions and DNFBPs that are providing banking or audit services to these types of customer.

183. These financial institutions and other DNFBPs may request the CDD information collected and maintained by accountants, who because of their role as director or trustee, will be their principal point of contact with the legal person or legal arrangement. These financial institutions and other DNFBPs may never meet the beneficial owners of the legal person or legal arrangement.

184. Under R.28, countries are to ensure that accountants are subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements, which includes identifying the beneficial owner/s and taking reasonable measures to verify them. R.24 and R.25, which deal with transparency of beneficial ownership of legal persons and legal arrangements, require countries to have mechanisms for ensuring that adequate, accurate and up-to-date information on these legal entities is available on a timely basis.

185. In accordance with R.28, accountants should be subject to risk-based supervision by a supervisor or SRB covering the beneficial ownership and record-keeping requirements of R.10 and R.11. The supervisor or SRB should have a supervisory framework, which can help in ascertaining that accurate and current basic and beneficial ownership information on legal person and legal arrangements is maintained and will be available on a timely basis to competent authorities.

186. The supervisor or SRB should analyse the adequacy of the procedures and the controls, which accountants have established to identify and record the beneficial owner. In addition, they should undertake sample testing of client records on a representative basis to gauge the effectiveness of the application of those measures and the accessibility of accurate beneficial ownership information.

187. During onsite inspections, the supervisor or SRB should examine the policies, procedures and controls that are in place for taking on new clients to establish what information and documentation is required where the client is a natural person or legal person or arrangement. The supervisor or SRB should verify the adequacy of these procedures and controls to identify beneficial owners to understand the ownership and control structure of these legal persons and arrangements and to ascertain the business activity. For example, self-declaration on beneficial ownership provided by the client without any other mechanism to verify the information may not be adequate in all cases.

188. Sample testing of records will assist the supervisor or SRB in determining whether controls are effective for the accurate identification of beneficial ownership, accurate disclosure of that information to relevant parties and for establishing if that information is readily available. The extent of testing will be dependent on risk but the records selected should reflect the profile of the client base and include both new and existing clients.

189. The supervisor or SRB should consider the measures the accountants have put in place for monitoring changes in the beneficial ownership of legal person and legal arrangements to whom they provide services to ensure that beneficial ownership information is accurate and current and to determine how timely updated filings are made, where relevant to a registry.

190. During examinations, the supervisor or SRB should consider whether to verify the beneficial ownership information available on the records of accountants with that held by the relevant registry, if any. The supervisor or SRB may also consider information from other competent authorities such as FIUs, public reports and information from other financial institutions or DNFBPs, to verify the efficacy of accountants' controls.

191. Accountants should be subject to risk-based supervision by a supervisor or SRB covering the requirements to identify and evidence the source of funds and source of wealth for higher risk clients to whom they provide services. The supervisor or SRB should have the supervisory framework, which can help in ascertaining that accurate and current information on sources of funds and wealth is properly evidenced and available on a timely basis to competent authorities. The supervisor or SRB should analyse the adequacy of the procedures and the controls, which accountants have established to identify and record sources of wealth in arrangements.

4.4. Nominee arrangements

192. A nominee director is a person who has been appointed to the Board of Directors of the legal person who represents the interests and acts in accordance with instructions issued by another person, usually the beneficial owner.

193. A nominee shareholder is a natural or legal person who is officially recorded in the register of members and shareholders of a company as the holder of a certain number of specified shares, which are held on behalf of another person who is the beneficial owner. The shares may be held on trust or through a custodial agreement.

194. In a number of countries, accountants act or arrange for other persons (either individuals or corporate) to act as directors. Accountants also act or arrange for other persons (either individuals or corporate) to act as a nominee shareholder for another person as part of their professional services. In accordance with R.24, one of the mechanisms to ensure that nominee shareholders and directors are not misused, is by subjecting these accountants to licensing and recording their status in company registries. Countries may rely on a combination of measures in this respect.

195. There are legitimate reasons for accountants to act as or provide directors to a legal person or act or provide nominee shareholders. These may include the settlement and safekeeping of shares in listed companies where post traded specialists act as nominee shareholders. Nominee director and nominee shareholder arrangements can be misused to hide the identity of the true beneficial owner of the legal person. There may be individuals prepared to lend their name as a director or shareholder of a legal person on behalf of another without disclosing the identity of whom they will take instructions or whom they represent. They are sometimes referred to as “strawmen”.

196. Nominee directors and nominee shareholders can create obstacles to identifying the true beneficial owner of a legal person, particularly where the status is not disclosed. This is because it will be the identity of the nominee, which is disclosed in the corporate records of the legal person held by a registry and in the company records at its registered office. Company law in various countries does not recognise the status of a nominee director because in law it is the directors of the company who are liable for its activities and the directors have a duty to act in the best interest of the company.

197. The supervisor or SRB should be aware that undisclosed nominee arrangements may exist. They should consider whether undisclosed nominee arrangements would be identified and addressed during their onsite inspections and examination of the policies, procedures, controls and client records of the accountant, including the CDD process and ongoing monitoring by the accountant.

198. An undisclosed nominee arrangement may exist where there are the following (non-exhaustive) indicators:

- a) the profile of a director or shareholder is inconsistent with the activities of the company;
- b) the individual holds numerous appointments to unconnected companies;
- c) a nominee’s source of wealth is inconsistent with the value and nature of the assets within the company;
- d) funds into and out of the company are sent to, or received from unidentified third party/ies;

- e) the directors or shareholders are accustomed to acting on instruction of another person; and
- f) requests or instructions are subject to minimal or no scrutiny and/or responded to extremely quickly without challenge by the individual/s purporting to act as the director/s.

ANNEX 1: Beneficial ownership information in relation to a company, trust or other legal arrangements to whom an accountant provides services

1. Taking a RBA, the amount of information that should be obtained by an accountant will depend on whether an accountant is establishing or administering the trust, company or other legal entity or is acting as or providing a trustee or director of the trust, company or other legal entity. In these cases, an accountant will be required to understand the general purpose behind the structure and the source of funds in the structure in addition to being able to identify the beneficial owners and controlling persons. An accountant who is providing other services (e.g. acting as registered office) to a trust, company or other legal entity will be required to obtain sufficient information to enable it to be able to identify the beneficial owners and controlling persons of the trust, company or other legal entity.
2. An accountant that is not acting as trustee may, in appropriate circumstances, rely on a synopsis prepared by other accountants, legal professionals or TCSPs providing services to the trust or relevant extracts from the trust deed itself to enable to identify the settlor, trustees, protector (if any), beneficiaries or natural persons exercising effective control. This is in addition to the requirement, where appropriate, to obtain evidence to verify the identity of such persons as discussed below.

In relation to a trust

3. An accountant should have policies and procedures in place to identify the following and verify their identity using reliable, independent source documents, data or information (provided that an accountant's policies should enable it to disregard source documents, data or information which is perceived to be unreliable):
 - i. the settlor;
 - ii. the protector;
 - iii. the trustee(s), where the accountant is not acting as trustee;
 - iv. the beneficiaries or class of beneficiaries; and
 - v. any other natural person actually exercising effective control over the trust.

Settlor

- a) A settlor is generally any person (or persons) by whom the trust is made. A person is a settlor if he or she has provided (or has undertaken to provide) property or funds directly or indirectly for the trust. This requires there to be an element of bounty (i.e. the settlor must be intending to provide some form of benefit rather than being an independent third party transferring something to the trust for full consideration).
- b) A settlor may or may not be named in the trust deed. Accountants should have policies and procedures in place to identify and verify the identity of the real economic settlor.
- c) An accountant establishing on behalf of a client or administering a trust, company or other legal entity or otherwise acting as or providing a trustee or director of a trust, company or other legal entity should have policies and procedures in place (using a RBA) to identify the source of funds in the trust, company or other legal entity.
- d) It may be more difficult (if not impossible) for older trusts to identify the source of funds, where contemporaneous evidence may no longer be available. Evidence of source of funds may include reliable independent source documents, data or information, share transfer forms, bank statements, deeds of gift or letter of wishes.

- e) Where assets have been transferred to the trust from another trust, it will be necessary to obtain this information for both transferee and transferor trust.

Beneficiaries

- a) An accountant should have policies and procedures in place, adopting a RBA to enable them to form a reasonable belief that they know the true identity of the beneficiaries of the trust, and taking reasonable measures to verify the identity of the beneficiaries, such that an accountant is satisfied that it knows who the beneficiaries are. This does not require an accountant to verify the identity of all beneficiaries using reliable, independent source documents, data or information but the accountants should at least verify the identity of beneficiaries who have current fixed rights to distributions of income or capital or who actually receive distributions from the trust.
- b) An accountant should obtain sufficient information to enable them to identify beneficiaries who have fixed rights or fixed interests over income or capital of the trust (e.g. a life tenant).
- c) Where the beneficiaries of the trust have no fixed rights to capital and income (e.g. discretionary beneficiaries), accountants should obtain information to enable them to identify the named discretionary beneficiaries (e.g. as identified in the trust deed).
- d) Where beneficiaries are identified by reference to a class (e.g. children and issue of X) or where beneficiaries are minors under the law governing the trust, although accountants should satisfy themselves that these are the intended beneficiaries (e.g. by reference to the trust deed) they are not obliged to obtain additional information to identify the individual beneficiaries referred to in the class unless or until the trustees make a distribution to such beneficiary.
- e) In some trusts, named individuals only become beneficiaries on the happening of a particular contingency (e.g. on attaining a specific age or on the death of another beneficiary or the termination of the trust period). In this case, an accountant is not required to obtain additional information to identify such contingent beneficiaries unless or until the contingency is satisfied or until the trustees make a distribution to such beneficiary.
- f) An accountant who administers the trust or company or other legal entity owned by a trust or otherwise provides or acts as trustee or director to the trust, company or other legal entity should have procedures in place so that there is a requirement to update the information provided if named beneficiaries are added or removed from the class of beneficiaries, or beneficiaries receive distributions or benefits for the first time after the information has been provided, or there are other changes to the class of beneficiaries.
- g) An accountant is not obliged to obtain other information about beneficiaries other than to enable an accountant to satisfy itself that it knows who the beneficiaries are or identify whether any named beneficiary or beneficiary who has received a distribution from a trust is a PEP.

Natural person exercising effective control

- a) An accountant providing services to the trust should have procedures in place to identify any natural person exercising effective control over the trust.
- b) For these purposes "control" means a power (whether exercisable alone or jointly with another person or with the consent of another person) under the trust instrument or by law to:
 - i. dispose of, advance, lend, invest, pay or apply trust property;
 - ii. make or approve trust distributions;
 - iii. vary or terminate the trust;
 - iv. add or remove a person as a beneficiary or to or from a class of beneficiaries and or;
 - v. appoint or remove trustees.
- c) An accountant who administers the trust or otherwise act as trustee must, in addition, also obtain information to satisfy itself that it knows the identity of any other individual who has power to give another individual "control" over the trust; by conferring on such individual powers as described in paragraph (b) above.

Corporate settlors and beneficiaries

4. These examples are subject to the more general guidance on what information should be obtained by an accountant to enable it to identify settlors and beneficiaries. It is not intended to suggest that an accountant must obtain more information about a beneficiary that is an entity where it would not need to obtain such information if the beneficiary is an individual.

- a) In certain cases, the settlor, beneficiary, protector or other person exercising effective control over the trust may be a company or other legal entity. In such a case, an accountant should have policies and procedures in place to enable them to identify (where appropriate) the beneficial owner or controlling person in relation to the entity.
- b) In the case of a settlor that is a legal entity, an accountant should satisfy itself that it has sufficient information to understand the purpose behind the formation of the trust by the entity. For example, a company may establish a trust for the benefit of its employees or a legal entity may act as nominee for an individual settlor or on the instructions of an individual who has provided funds to the legal entity for this purpose. In the case of a legal entity acting as nominee for an individual settlor or on the instructions of an individual, an accountant should take steps to satisfy itself as to the economic settlor of the trust (i.e. the person who has provided funds to the legal entity to enable it to settle funds into the trust) and the controlling persons in relation to the legal entity at the time the assets were settled into trust. If the corporate settlor retains powers over the trust (e.g. a power of revocation), an accountant should satisfy itself that it knows the current beneficial owners and controlling persons of the corporate settlor and understands the reason for the change in ownership or control.
- c) In the case of a beneficiary that is an entity (e.g. a charitable trust or company), an accountant should satisfy itself that it understands the reason behind the use of an entity as a beneficiary. If there is an individual beneficial owner of the entity, an accountant should satisfy itself that it has sufficient information to identify the individual beneficial owner.

Individual and Corporate trustee

- a) Where an accountant is not itself acting as trustee, it is necessary for an accountant to obtain information to enable it to identify and verify the identity of the trustee (s) and, where the trustee is a corporate trustee, identify the corporate entity, obtain information on the identity of the beneficial owners of the trustee, and take reasonable measure to verify their identity.
- b) Where the trustee is a listed entity (or an entity forming part of a listed group) or an entity established and regulated to carry on trust business in a jurisdiction identified by credible sources as having appropriate AML/CFT laws, regulations and other measures, an accountant should obtain information to enable it to satisfy itself as to the identity of the directors or other controlling persons. An accountant can rely on external evidence, such as information in the public domain, to satisfy itself as to the beneficial owner of the regulated trustee (e.g. the web-site of the body that regulates the trustee and of the regulated trustee itself).
- c) It is not uncommon for families to set up trust companies to act for trusts for the benefit of that family. These are typically called private trust companies and may have a restricted trust licence that enables them to act as trustee for a limited class of trusts. Such private trust companies are often ultimately owned by a fully regulated trust company as trustee of another trust. In such a case, an accountant should satisfy itself that it understands how the private trust company operates and the identity of the directors of the private trust company and, where relevant, the owner of the private trust company. Where the private trust company is itself owned by a listed or regulated entity as described above, an accountant does not need to obtain detailed information to identify the directors or controlling persons of that entity that acts as shareholder of the private trust company.

Individual and Corporate protector - key to identify

- a) Where an accountant is not itself acting as a protector and a protector has been appointed, the accountant should obtain information to identify and verify the identity of the protector.
- b) Where the protector is a legal entity, an accountant should obtain sufficient information that it can satisfy itself who is the controlling person and beneficial owner of the protector, and take reasonable measure to verify their identity.
- c) Where the protector is a listed entity (or an entity forming part of a listed group) or an entity established and regulated to carry on trust business in a jurisdiction identified by credible sources as having appropriate AML/CFT laws, regulations and other measures, an accountant should obtain information to enable it to satisfy itself as to the identity of the directors or other controlling persons. An accountant can rely on external evidence, such as information in the public domain to satisfy itself as to the beneficial owner of the regulated protector (e.g. the web-site of the body that regulates the protector and of the regulated protector itself).

ANNEX 2: Glossary of terminology

Beneficial Owner

Beneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.

Competent Authorities

Competent authorities refers to all public authorities with designated responsibilities for combating money laundering and/or terrorist financing. In particular, this includes the FIU; the authorities that have the function of investigating and/or prosecuting money laundering, associated predicate offences and terrorist financing, and seizing/freezing and confiscating criminal assets; authorities receiving reports on cross-border transportation of currency & BNIs; and authorities that have AML/CFT supervisory or monitoring responsibilities aimed at ensuring compliance by financial institutions and DNFBPs with AML/CFT requirements. SRBs are not to be regarded as a competent authorities.

Designated Non-Financial Businesses and Professions (DNFBPs)

Designated non-financial businesses and professions means:

- a) Casinos (which also includes internet and ship based casinos).
- b) Real estate agents.
- c) Dealers in precious metals.
- d) Dealers in precious stones.
- e) Lawyers, notaries, other independent legal professionals and accountants – this refers to sole practitioners, partners or employed professionals within professional firms. It is not meant to refer to ‘internal’ professionals that are employees of other types of businesses, nor to professionals working for government agencies, who may already be subject to AML/CFT measures.
- f) Trust and Company Service Providers refers to all persons or businesses that are not covered elsewhere under the Recommendations, and which as a business, provide any of the following services to third parties:
 - Acting as a formation agent of legal persons;
 - Acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
 - Providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
 - Acting as (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another form of legal arrangement;
 - Acting as (or arranging for another person to act as) a nominee shareholder for another person.

Express Trust

Express trust refers to a trust clearly created by the settlor, usually in the form of a document e.g. a written deed of trust. They are to be contrasted with trusts which come into being through the operation of the law and which do not result from the clear intent or decision of a settlor to create a trust or similar legal arrangements (e.g. constructive trust).⁷

FATF Recommendations

Refers to the FATF Forty Recommendations.

Legal Person

Legal person refers to any entities other than natural persons that can establish a permanent client relationship with an accountant or otherwise own property. This can include bodies corporate, foundations, anstalt, partnerships, or associations and other relevantly similar entities.

Legal Professional

In this Guidance, the term “*Legal professional*” refers to legal professionals, civil law notaries, common law notaries, and other independent legal professionals.

Politically Exposed Persons (PEPs)

Foreign PEPs are individuals who are or have been entrusted with prominent public functions by a foreign country, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials. *Domestic PEPs* are individuals who are or have been entrusted domestically with prominent public functions, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials. Persons who are or have been entrusted with a prominent function by an international organisation refers to members of senior management, i.e. directors, deputy directors and members of the board or equivalent functions. The definition of PEPs is not intended to cover middle ranking or more junior individuals in the foregoing categories.

Red Flags

Any fact or set of facts or circumstances which, when viewed on their own or in combination with other facts and circumstances, indicate a higher risk of illicit activity. A “*red flag*” may be used as a short hand for any indicator of risk which puts an investigating accountant on notice that further checks or other appropriate safeguarding actions will be required.

Self-regulatory bodies (SRB)

A *SRB* is a body that represents a profession (e.g. legal professionals, notaries, other independent legal professionals or accountants), and which is made up of members from the profession, has a role in regulating the persons that are qualified to enter and who practise in the profession, and also performs certain supervisory or monitoring type functions. Such bodies should enforce rules to ensure that high ethical and moral standards are maintained by those practising the profession.

Supervisors

Supervisors refers to the designated competent authorities or non-public bodies with responsibilities aimed at ensuring compliance by financial institutions (“financial supervisors”) and/or DNFBSs with requirements to combat money laundering and terrorist financing. Non-public bodies (which could include certain types of SRBs) should have the power to supervise and sanction financial institutions or DNFBSs in relation to the AML/CFT requirements. These non-public bodies should also be empowered by law to exercise the functions they perform, and be supervised by a competent authority in relation to such functions.

ANNEX 3: Members of the RBA Drafting Group

FATF members and observers	Office	Country/Institution
Sarah Wheeler (Co-chair)	Office for Professional Body AML Supervision (OPBAS), FCA	UK
Sandra Garcia (Co-chair)	Department of Treasury	USA
Erik Kiefel	FinCen	
Helena Landstedt and Josefin Lind	County Administrative Board for Stockholm	Sweden
Charlene Davidson	Department of Finance	Canada
Viviana Garza Salazar	Central Bank of Mexico	Mexico
Fiona Crocker	Guernsey Financial Services Commission	Group of International Finance Centre Supervisors(GIFCS)
Ms Janice Tan	Accounting and Regulatory Authority	Singapore
Adi Comeriner Peled	Ministry of Justice	Israel
Richard Walker	Financial Crime and Regulatory Policy, Policy & Resources Committee	Guernsey
Selda van Goor	Central Bank of Netherlands	Netherlands
Natalie Limbasan	Legal Department	OECD
Accountants		
Member	Office	Institution
Michelle Giddings (Co-chair)	Professional Standards	Institute of Chartered Accountants of England & Wales
Amir Ghandar	Public Policy & Regulation	International Federation of Accountants
Legal professionals and Notaries		
Member	Office	Institution
Stephen Revell (Co-chair)	Freshfields Bruckhaus Deringer	International Bar Association
Keily Blair	Economic Crime, Regulatory Disputes department	PWC, UK
Mahmood Lone	Regulatory issues and complex cross-border disputes	Allen & Overy LLP, UK
Amy Bell	Law Society's Task Force on ML	Law Society, UK
William Clark	ABA's Task Force on Gatekeeper Regulation and the Profession	American Bar Association (ABA)
Didier de Montmollin	Founder	DGE Avocats, Switzerland
Ignacio Gomá Lanzón	CNUE's Anti-Money Laundering working group	Council of the Notariats of the European Union (CNUE)
Alexander Winkler	Notary office	Austria
Rupert Manhart	Anti-money laundering Committee	Council of Bars and Law Societies of Europe
Silvina Capello	UINL External consultant for AML/CFT issues	International Union of Notariats (UINL)

Member	TCSPs Office	Institution
John Riches (Co-chair) Samantha Morgan	RMW Law LLP	Society of Trust and Estate Practitioners (STEP)
Emily Deane	Technical Counsel	
Paul Hodgson	Butterfield Trust (Guernsey) Ltd	The Guernsey Association of Trustees
Michael Betley	Trust Corporation International	
Paula Reid	A&L Goodbody	A&L Goodbody, Ireland