

AML Tuesday's Session #14 on:

Conducting a Business Risk Assessment

- Lawyers, Legal advisors & Accountants

May 14, 2024

Discussion Topics

01

Purpose and relevance of the BRA

02

BRA process, sources and phases

03

Practical examples (per BRA phase)



01

Purpose and relevance of the BRA

FATF International standards on combating ML and TF

Recommendation 1 & interpretive note:

- Countries should require FIs and DNFBPs to identify, assess and take effective action to mitigate their money laundering, terrorist financing risks and proliferation financing risks.

Recommendations 10/22 & interpretive note:

- FIs and DNFBPs should determine the extent of CDD measures using a risk-based approach (RBA):
 - Where the risks are higher, they should be required to conduct enhanced CDD measures
 - Where the risks are lower, they could be allowed to conduct simplified CDD measures

The difference between BRA and CRA

BRA

Identifies the risk of ML /FT-P-C posed to the business as a whole based on its activities

CRA

Assessment which specifically identifies the risks that each individual customer poses to the business

Monegasque legal framework

- **Art. 3 of Law No. 1.362**, as amended, lies down the obligation for FIs and DNFBPs to apply **appropriate vigilance measures according to their assessment of the risks presented by their activities** in terms of ML/FT-P-C.
- To this end, they shall **define and implement mechanisms for identifying, assessing and understanding the risks of ML, FT-P-C** to which they are exposed, as well as **a policy adapted to these risks**. In particular, they shall develop a risk classification and take appropriate measures to manage and mitigate their risks.
- Art. 3 further outlines the **categories of risk factors** and some main **sources** (e.g. NRA) to be taken into account in the risk identification and assessment.
- **Breaches of Art. 3 can be sanctioned** as per Art. 65 et seq. / Art. 69-1 et seq. both at entity-level and at level of directors, employees, agents & persons acting on behalf of the entity based on personal involvement.

Recent AMSF Guidance on the BRA (February 2024)

LUTTE CONTRE LE BLANCHIMENT DE CAPITAUX, LE FINANCEMENT DU TERRORISME
ET DE LA PROLIFÉRATION DES ARMES DE DESTRUCTION MASSIVE ET LA CORRUPTION

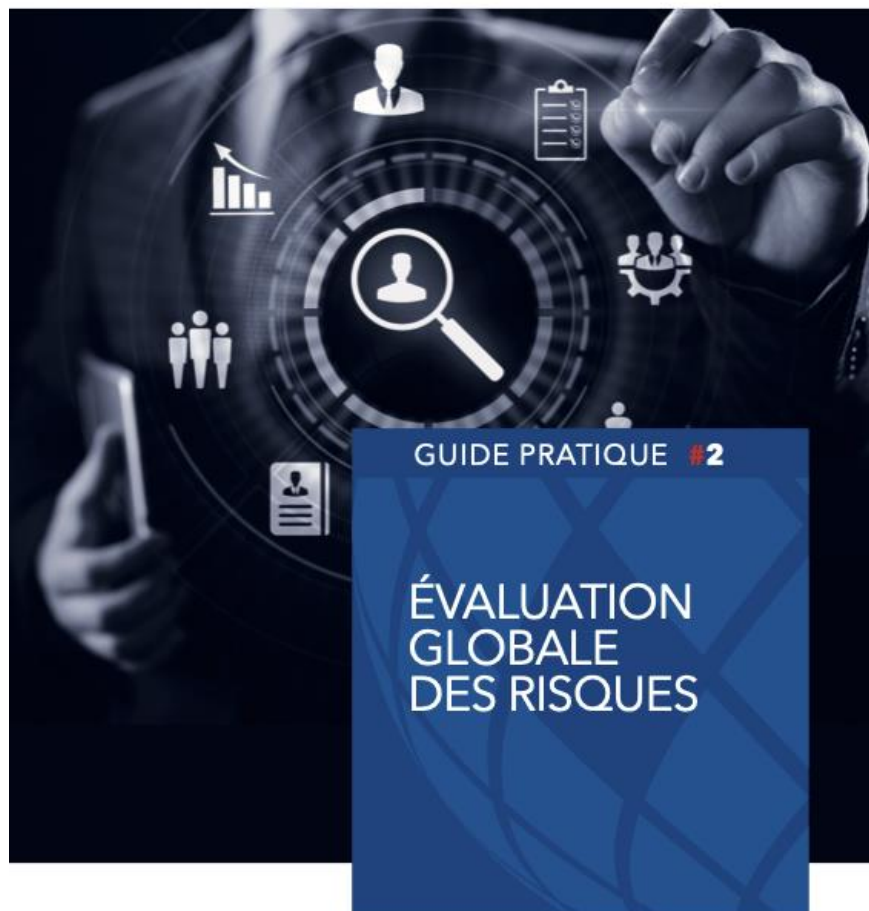


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BRA process, sources and phases

Requirements for development of BRA

Formalities

Documented

Explicit methodology

Overall conclusion on risk exposure

Transmitted to supervisor upon request

Content

Tailored & specific to the business

Distinction ML/TF

Inherent risk/controls/residual risk

Use NRA + other sources

Input from relevant persons/services

Approval & updates

High-level approval

Regular updates

Living document

High-level external sources on risks

International guidance & typologies

Country-level evaluation reports

Black lists & grey lists

Sanctions lists

Topical risk assessments

Monaco National Risk Assessment

Sectorial risk assessments

Threat & risk assessments of other jurisdictions/regions

Communications by competent authorities

Guidance published by AMSF/Bar Association

Information from professional sectorial bodies

Reports from media

GAFI



LIGNES DIRECTRICES
APPROCHE FONDÉE SUR LES RISQUES

PROFESSIONS JURIDIQUES

GAFI



LIGNES DIRECTRICES
APPROCHE FONDÉE SUR LES RISQUES

PRESTATAIRES DE SERVICES AUX SOCIÉTÉS ET TRUSTS

JUIN 2019

JUIN 2019

FATF



GUIDANCE FOR A RISK-BASED APPROACH

ACCOUNTING PROFESSION

FATF



GUIDANCE FOR A RISK-BASED APPROACH

REAL ESTATE SECTOR

JULY 2022

FATF



Concealment of Beneficial Ownership

July 2018



Understanding money laundering through real estate transactions

SUMMARY

Money laundering through real estate transactions integrates black funds into the legal economy while providing a safe investment. It allows criminals to enjoy assets and derived funds having camouflaged the origin of the money used for payment.

A number of techniques are used, namely cash or opaque financing schemes, overvalued or undervalued prices, and non-transparent companies and trusts or third parties that act as legal owners. Among the possible indicators are geographical features (such as the distance between the property and the buyer and their actual geographical centre of interest). In order to assess the existence of a money-laundering risk, concrete assessments of transactions and a customer's situation provide indications that help raise red flags and trigger reporting obligations.

The anti-money-laundering recommendations set out by the international Financial Action Task Force (FATF) are implemented in the European Union (EU) by means of coordinated provisions (chiefly the Anti-money-laundering Directive). Customer due diligence and reporting of suspicious transactions are tools to address money laundering. Real estate transactions involve both non-financial and financial sector parties operating under different legal requirements. Yet, reporting of suspicious transactions in real estate is limited, leaving ample room for improvement.

Improvement is all the more necessary inasmuch as money laundering in general, and in the real estate sector in particular, has a major socio-economic impact, the magnitude of which is difficult to quantify. Awareness is however growing as a result not least of high profile examples of money laundering through real estate in a number of EU cities.



TAINTED TREASURES
MONEY LAUNDERING RISKS
IN LUXURY MARKETS




BEHIND A WALL

Investigating company and real estate ownership in France

High-level external sources on risks

International guidance & typologies	Country-level evaluation reports	Black lists & grey lists	Sanctions lists
Topical risk assessments	Monaco National Risk Assessment	Sectorial risk assessments	Threat & risk assessments of other jurisdictions/regions
Communications by competent authorities	Guidance published by AMSF/Bar Association	Information from professional sectorial bodies	Reports from media



EUROPEAN COMMISSION

Brussels, 27.10.2022
SWD(2022) 344 final

COMMISSION STAFF WORKING DOCUMENT

Accompanying the document

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

on the assessment of the risk of money laundering and terrorist financing affecting the internal market and relating to cross-border activities

{COM(2022) 554 final}

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**ANALYSE SECTORIELLE
DES RISQUES
DE BLANCHIMENT
DE CAPITAUX ET
DE FINANCEMENT
DU TERRORISME
POUR LA PROFESSION
D'AVOCAT**

**2^e ÉDITION
2023**


ASR - Annexe 7 : exemples de classification

PDF - 333.02 Ko



ASR - Annexe 8 : exemples de cartographie

PDF - 1.1 Mo




EDITION 2019

ARPEC

Analyse des risques
de la profession d'expertise comptable



LUTTE CONTRE LE BLANCHIMENT DE CAPITAUX
ET LE FINANCEMENT DU TERRORISME

High-level external sources on risks

International guidance & typologies

Country-level evaluation reports

Black lists & grey lists

Sanctions lists

Topical risk assessments

Monaco National Risk Assessment

Sectorial risk assessments

Threat & risk assessments of other jurisdictions/regions

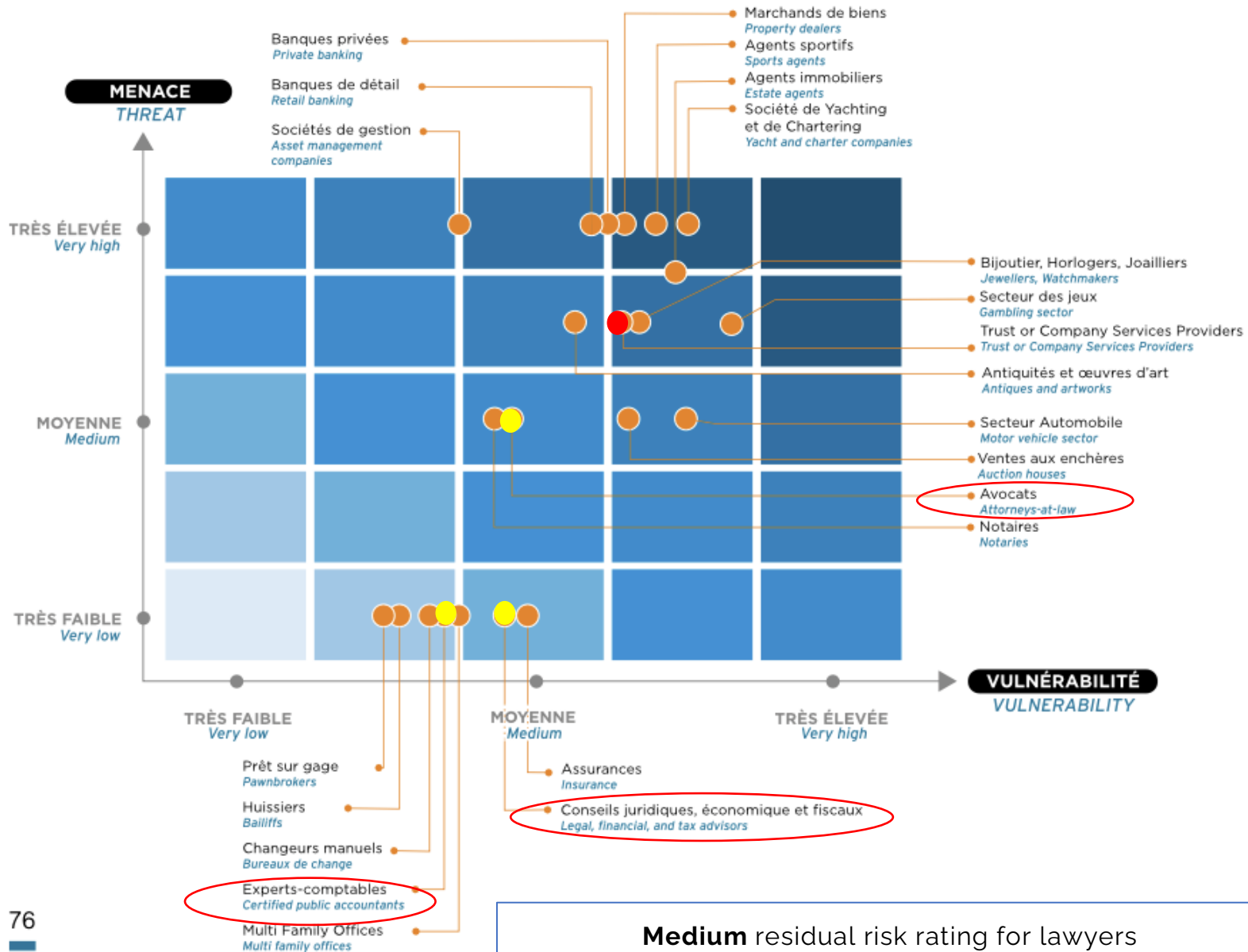
Communications by competent authorities

Guidance published by AMSF/Bar Association

Information from professional sectorial bodies

Reports from media

ÉVALUATION NATIONALE DES RISQUES #2
NATIONAL RISK ASSESSMENT
 DE BLANCHIMENT DE CAPITAUX ET DE FINANCEMENT DU TERRORISME
OF MONEY LAUNDERING AND TERRORIST FINANCING



76

Medium residual risk rating for lawyers
Medium-low residual risk rating for legal advisors
Low residual risk rating for accountants

High-level external sources on risks

International guidance & typologies

Country-level evaluation reports

Black lists & grey lists

Sanctions lists

Topical risk assessments

Monaco National Risk Assessment

Sectorial risk assessments

Threat & risk assessments of other jurisdictions/regions

Communications by competent authorities

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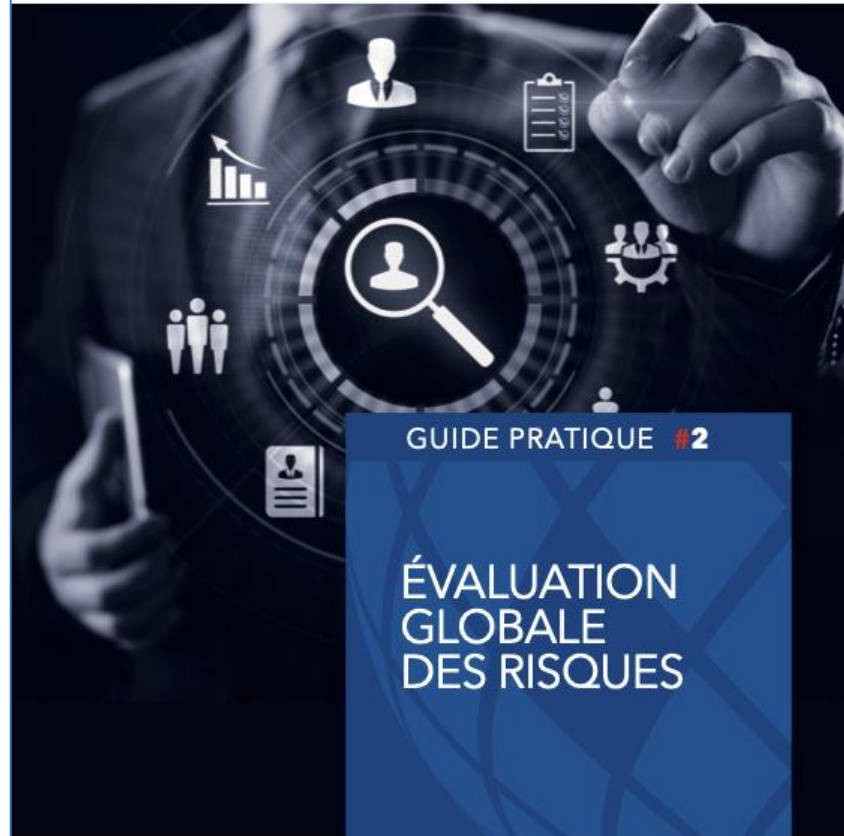


**LUTTE CONTRE LE BLANCHIMENT
DE CAPITAUX, LE FINANCEMENT
DU TERRORISME ET LA
CORRUPTION**

LIGNES DIRECTRICES GÉNÉRIQUES À DESTINATION DES
PROFESSIONNELS MONÉGASQUES

V.1 – 22 juillet 2021

LUTTE CONTRE LE BLANCHIMENT DE CAPITAUX, LE FINANCEMENT DU TERRORISME
ET DE LA PROLIFÉRATION DES ARMES DE DESTRUCTION MASSIVE ET LA CORRUPTION



GUIDE PRATIQUE #2

**ÉVALUATION
GLOBALE
DES RISQUES**

Guide :

**Guide de sensibilisation relatif au financement
du terrorisme pour le secteur privé
(Institutions financières et entreprises et
professions non financières désignées)**

et

**Lutte contre le blanchiment de capitaux, le
financement du terrorisme et de la prolifération**

BRA operational/internal sources - examples

Data on customers:
numbers,
residence, value of
activity

Data on beneficial
ownership of
customers

Results of analyses
of unusual &
suspicious
transactions

Findings of internal
or external auditors

Volume of
transactions

Proportion of cash
transactions

Product range and
characteristics

Reports from
compliance

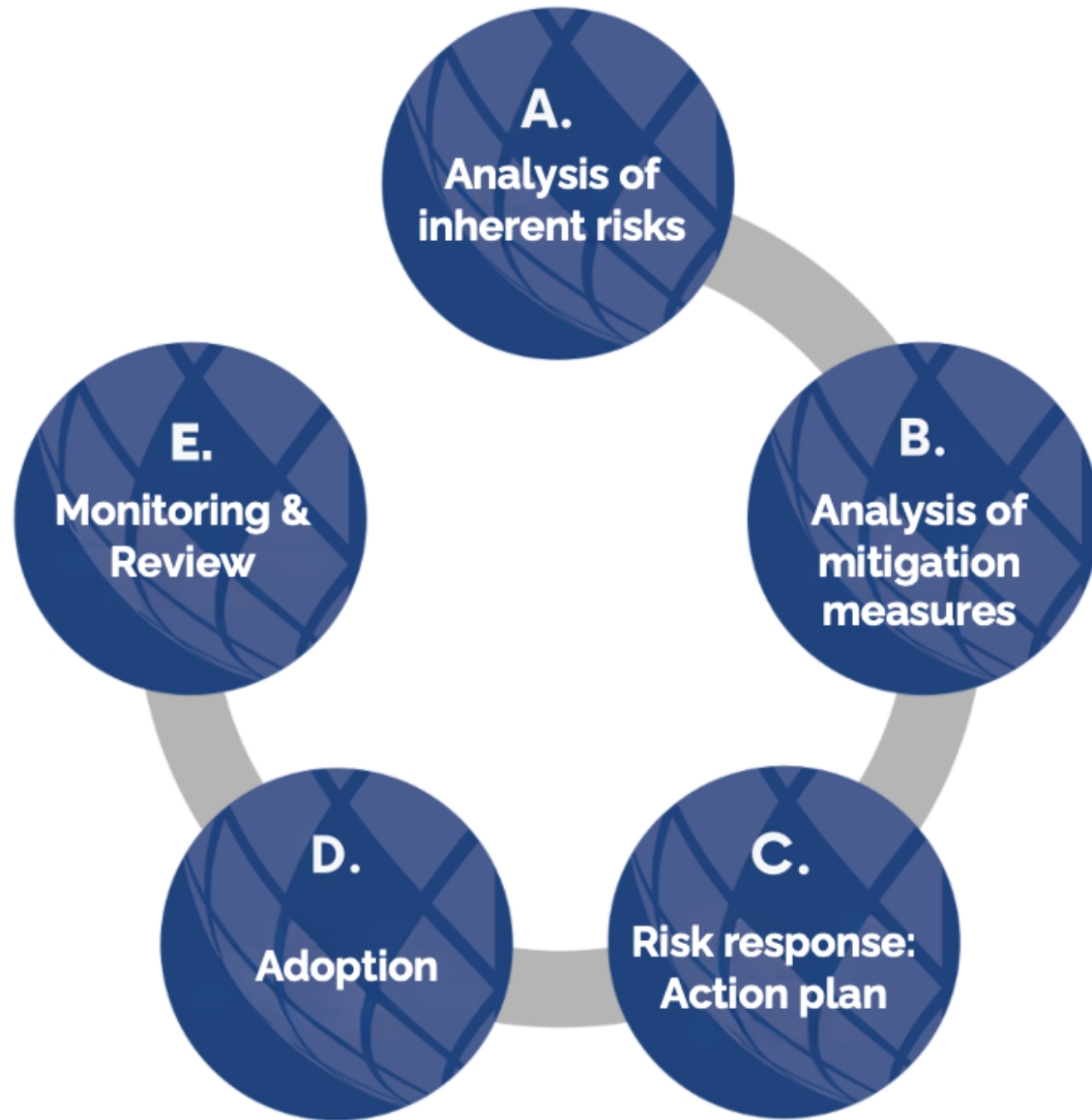
Exposure to
customers active in
higher-risk
industries/sectors

Size of the business

Use of third parties

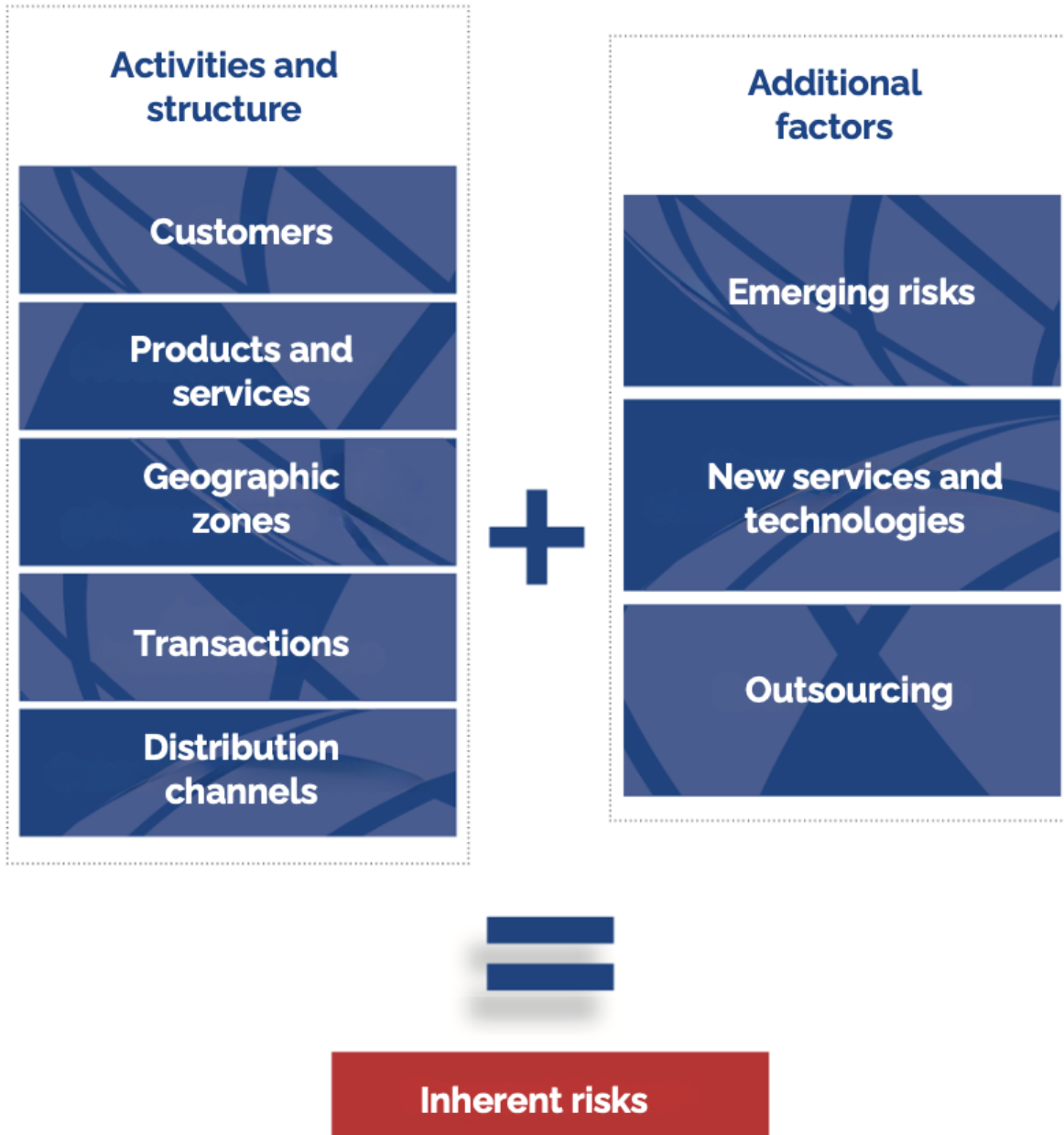
Extent of non-face-
to-face business

BRA phases



A. Analysis of inherent risks

- This phase relates to the **identification, assessment and understanding the inherent risks across the business**
- **Inherent risk** = the risk of ML/FT-P-C occurring without consideration of any controls or mitigant in place to alter the likelihood or impact of the risk
- For every risk factor, the obliged entity must identify the **risks**, evaluate the **probability** that the risks will materialise and measure their potential **impact** on the business
- A **range of risk factors grouped under different categories** should be assessed – see next slide
- Data used should include up-to-date **quantitative and qualitative information**
- Risk factors should be **weighted depending on their relative importance** for the business. There is no one-size-fits-all method for this. The AMSF guidance sets out considerations to be taken into account by obliged entities when deciding on the weightings.



International documents & AMSF guidance & outreach give a range of information on the **risk factors, topics and types of data** to be considered for each risk category.

Such examples are **not exhaustive** – additional factors and information may need to be taken into account according to the variety of activities and complexity of the business.

B. Analysis of mitigation measures

- This phase relates to an assessment of the **level and adequacy of the risk mitigation measures** which are in place within the business.
- Obligated entities must adopt **measures, policies, controls and procedures** that should prevent risks from materializing or mitigate their existence. The level of inherent ML/TF risk influence the type of controls and level of AML/CFT resources.
- Such controls should include **customer due diligence measures**, record-keeping & reporting measures, and measures relating to **risk management & internal controls**, such as client acceptance policies, procedures for customer risk assessment, compliance, independent testing of controls, standards for hiring and training employees, etc.
- The effects of such controls depend on their implementation in day-to-day operations. Therefore, their implementation should be **monitored on an ongoing basis**, to guarantee their effective application, determine their effectiveness and enable timely remediation of any gaps or issues.

Examples of information on controls to be considered

Since when has the control been implemented?

Dedicated resources to implement the control

Training provided to persons implementing the control

Level of oversight on the application of the control

Has the control been subject to independent testing?

Budget for EDD on (very) high-risk clients, e.g. obtaining external intelligence

Availability of reliable data on domestic & foreign BOs

Frequency of KYC reviews

Automatic versus manual controls

Periodic screening of whole customer database

Commercial databases used for sanctions & PEP screening

Responsibilities and timeframes for updating of sanctions lists

C. Residual risk response: Action plan

- Phase A & B should result in **the determination of the level of residual risk**: formed by the risks which remain after application of the controls.
- ML/TF/PF/C risk cannot be 100% eliminated regardless of how effective the control framework is.
- In this phase, the obliged entity should verify whether the residual risks to which it is exposed are aligned with its **risk appetite**: the level of risk that it is willing to accept.
- The entity should put an **Action Plan** in place following the identification and assessment of inherent risk & controls.
- The Action Plan should specify the follow-up measures to be taken to reduce the residual risk exposure, particularly by specifying how controls will be strengthened.



D. Adoption

- The BRA and the Action Plan should be formalized in a **written document** (on paper or digital format).
- The document should be **approved by senior management** and be made **available to the supervisors** upon request.
- It is also important that **employees are made aware of the results** of BRA, for instance through the ongoing employee ML/TF training programme. This ensures that employees are aware of the main risks that their entity is exposed to and that they can effectively execute the policies, procedures and controls determined by senior management to mitigate the risks.

E. Risk monitoring and review

- As ML/TF/PF/C risks evolve constantly, the BRA is a **cyclical process** that should remain under regular review and updated on a periodic basis to ensure that **changing, new or emerging risks** are adequately taken into account.
- The BRA should be **updated periodically** on the basis of **(new) threats and vulnerabilities** that may be identified and take into account **any changes in the business model/clientele/activities** since the previous iteration.
- The BRA should be reviewed at least once a year. The exact scope/frequency of the updates should be **proportionate to the risks**. Reviews and updates should be **transparent and documented**.
- **Ad-hoc updates** are called for whenever there are **major developments** in management and operations (e.g. change in the business model, launch of a new product, implementation of new technologies, new geographic scope of business, change in clientele, risk exposure, etc.). FIs/DNFBPs are recommended to develop an **internal list of trigger events** that trigger such ad hoc review.



03

Practical examples (per BRA phase)

Examples per BRA phase



Assessing inherent risks

Focus on assessing inherent risks relating to services



Assessing controls

Focus on assessing controls relating to PEP customers



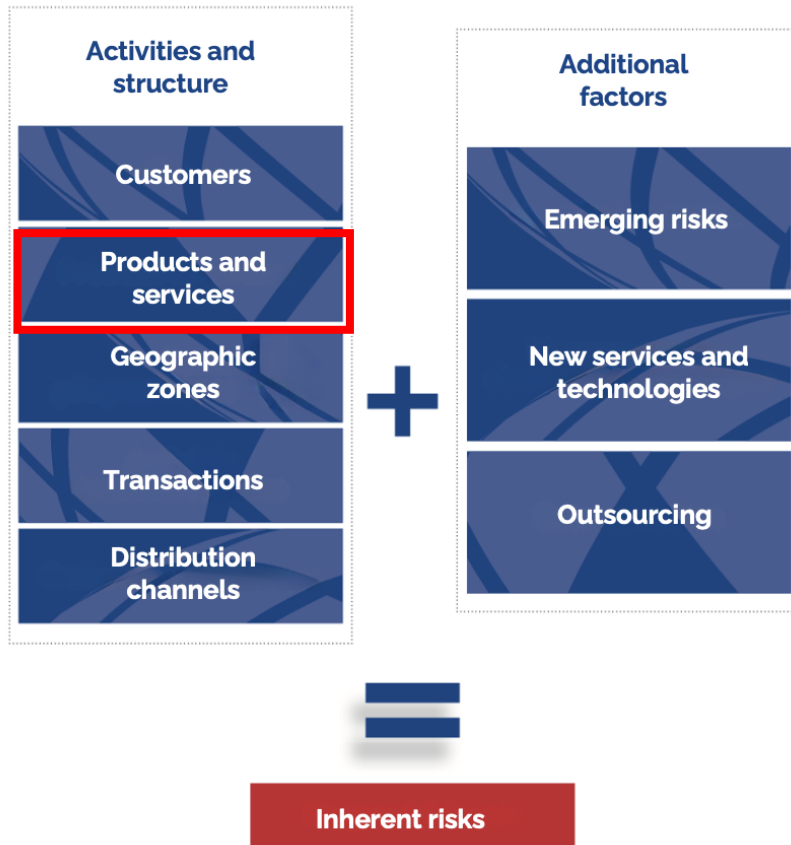
Develop action plan

Focus on developing an Action Plan relating to HNWI's



Focus on assessing inherent risks relating to products
& services

Inherent risks: Risk categories & risk factors



The AML/CFT Law applies to lawyers & legal advisors when they offer the following services:

- participate, in the name of and on behalf of their client, in any financial or real estate transaction or;
- assist their client in the preparation or execution of transactions relating to:
 - the purchase and sale of real estate or commercial companies;
 - the management of funds, securities or other assets belonging to the client;
 - the opening or management of bank accounts, savings accounts or portfolios;
 - the organisation of contributions necessary for the formation or management of companies;
 - the creation or management of trusts, companies, foundations or similar structures;

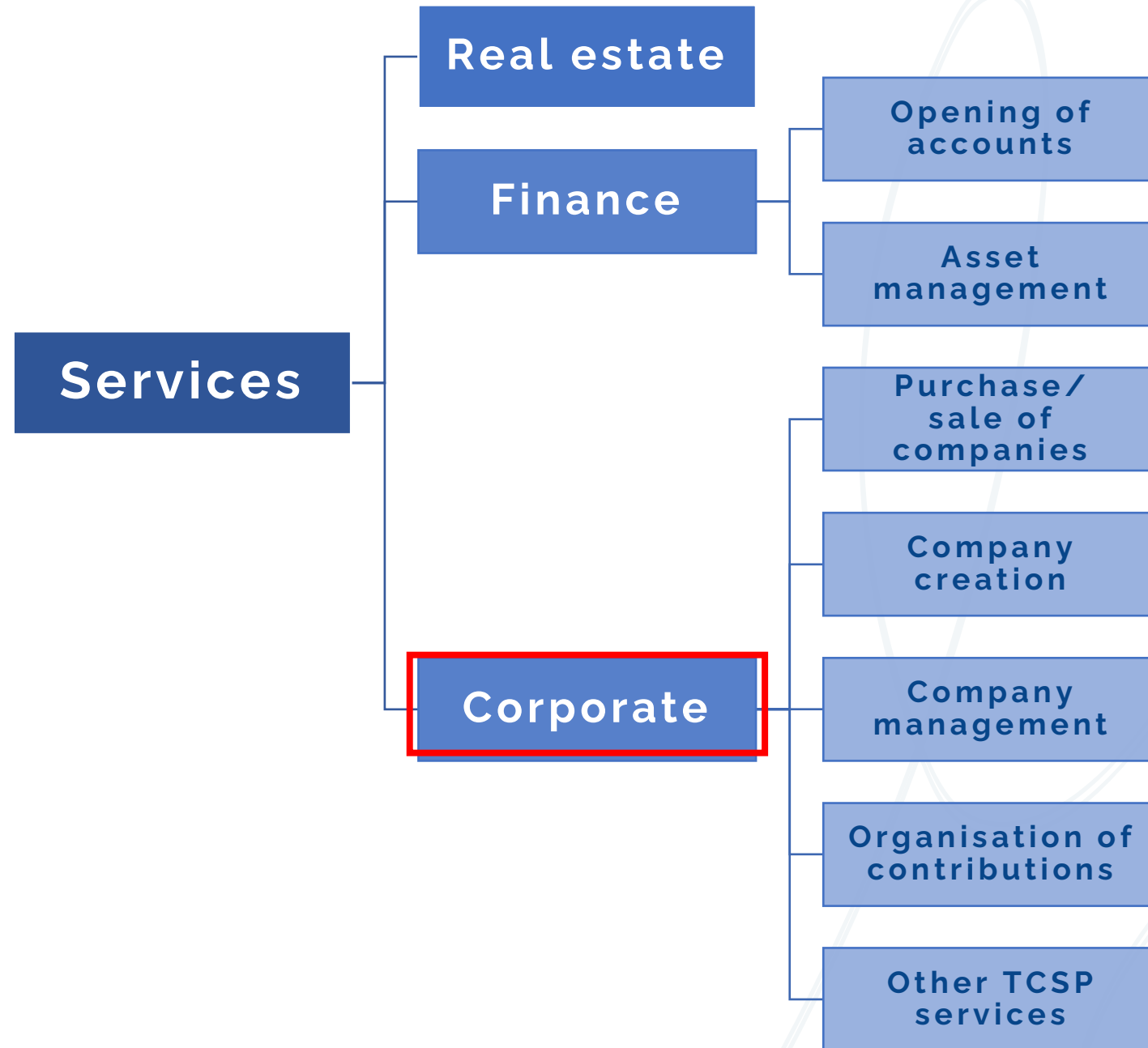
Examples of **quantitative factors** to be taken into account when deciding on (sub-)weightings and ratings of inherent product/services risks:

- Size of client base using each service
- Number of active products
- Volume of transactions under each service
- Contribution of each service to turn-over of entity

Examples of **qualitative factors** to be taken into account when assessing inherent risks associated to each service/product:

- Characteristics of the client base making use of the service/product (incl. risk profiles & BO information)
- Level of transparency or opacity inherent in the service/product
- Level of complexity of the service/product, incl. geographic aspects
- Level/frequency/speed of transactions under each product/service, incl. any limits/caps and liquidity.

Simplified example of risk mapping for services - overview



High-level external sources on risks relating to corporate services (domestically)

Monaco Legal Entities Risk Assessment (results presented to DNFBP sector in November 2023)

“Monaco is home to many **prominent, high and ultra-high net worth individuals** from all parts of the globe that invest heavily in the domestic economy, **using LLCs, joint stock companies and civil law partnerships to purchase or develop real estate or participate in high value commerce or service industry**. It is in this manner that international ML risks are brought into the corporate sector in Monaco. »

Inherent risk rating assigned to the Monegasque corporate sector is considered to be **high**.

High-level external sources on risks relating to corporate services (internationally)

EU sNRA:

“Accountants or advisors may offer their services/expertise in helping to **creating or promoting “opaque structures”, often set up in multiple jurisdictions including offshore centres**, defined as business structures where the **true identity of the owner(s) of entities and arrangements in that structure is concealed** through the use of, for example, nominee directors.”

“As for all legal activities, **risk of misuse by or active collaboration with organised crime groups is a money laundering threat** for accountants, auditors, advisors and tax advisors. These experts may be unwittingly involved in the money laundering but may also be complicit or wilfully negligent in conducting their customer due diligence obligations.”

“The assessment of the ML threat related to services provided by legal professionals has some **features in common with services** provided by accountants, auditors and tax advisors.”

“Law enforcement agencies report that **organised crime groups frequently use services provided by legal professionals in their ML schemes**. (...) Lawyers are particularly prone to being misused by criminals because engaging a lawyer adds respectability and an appearance of legitimacy to an activity even when the service provided can help criminals launder money.”

“Legal professionals can become involved in the facilitation of ML either by using the tools already at their disposal (e.g. client accounts) or by **helping their clients create and manage accounts, trusts and companies to conceal and/or legitimise the source of their funds**.”

Simplified example of risk factor analyses for complex structures (with fictional data)

Risk category	Services risk: Setting up complex structures – ML risks / Geographic risk: Exposure to structures featuring foreign entities
Risk factor	Assistance in the creation of complex corporate structures (incl. cross-border structures, offshore trusts)
Assessed risk level (1 to 5)	5 (Very High)
Justification (using combination of qualitative & quantitative data)	<p>Flows of funds through complex corporate structures are known to particularly attractive to criminals, including organised crime groups, to launder money. Criminals, including organized crime groups, are known to use services provided by legal professionals to help set up such structures. See FATF guidance, EU sNRA, AMSF TCSP SRA, etc.</p> <p>The Firm proposes corporate services relating to the creation of companies both for companies to be incorporated in Monaco and relating to the creation of corporate structures involving also entities abroad. Such services are proposed to 200 out of 2000 customers and revenues from such services account for 20% of the company's turn-over. Object companies to be set up frequently have multi-layered ownership structures (90% multi-layered, 10% single-layered). They occasionally have trusts featuring in the ownership structure (3%). It is further noted that nearly 80 of the object companies feature entities in their ownership structure which are incorporated in jurisdictions featuring on the FATF grey list or the EU list of non-cooperative jurisdictions for tax purposes, in particular South Africa and BVI,</p> <p>In sum, the inherent risks relating to involvement in the setting-up of complex structures are internationally known to be (very) high. The probability of this risk factor materialising for the business are also high due to the relative important involvement of the Firm in services relating to complex structures, including structures involving offshore trusts and higher-risk jurisdictions. The impact of the risk factor materialising would be very significant. This combination of factors leads to a Very High score for this risk factor.</p>



Focus on assessing
controls relating to
PEP customers

Example Phase B: Assess controls relating to PEP risks

- **Monaco NRA 2 (2021)** points at **difficulties amongst legal and accountancy professionals to detect high-risk clients**, including difficulties to detect **PEPs**.
- **Fictive example of Company ABC:**
 - Company ABC assessed its PEP controls in its 2022 BRA as **weak**.
 - ABC's senior management then endorsed an Action Plan to introduce new controls (e.g. automated screening) and enhance existing controls (e.g. increase frequency of KYC reviews) to better manage risks relating to exposure to PEPs, which were implemented in the course of 2023.
 - The BRA update in 2024 is to analyse the **adequacy and strength of the new & enhanced PEP controls**.

Information on PEP controls to be considered

Since when has the control been implemented?

Dedicated resources to implement the control

Training provided to persons implementing control

Level of oversight on the application of the control

Has the control been subject to independent testing?

Budget for EDD for high-risk clients

Availability of reliable data on domestic & foreign BOs

Availability of reliable means for identification

Automatic versus manual controls

Periodic screening of whole customer database

Commercial databases used for sanctions & PEP screening

Responsibilities and timeframes for updating of sanctions lists

Simplified examples of Risk mitigation analysis for PEP controls (with fictional data/information)

Risk category	Risk factor	Weighted risk rating (1 – 15)	Risk mitigation measures in place	Estimated impact of mitigation	Residual risk (1 – 15)
Customer risk	Customer or BO of customer is a PEP, raising ML risks in particular in relation to laundering of proceeds of predicate offenses such as corruption, embezzlement and influence peddling	12 (High)	<p>Procedure has been updated (< 1 year) to describe more clearly the measures/process to be followed to detect PEPs</p> <p>There is a new process in place (<1 year) to screen the new potential customers & the whole existing customer database against a commercial database on a periodic basis.</p> <p>These measures have improved the PEP detection rate by +10%.</p> <p>The opinion/advice of compliance officer is henceforth sought for every new PEP client.</p> <p>There is senior management approval for every PEP client.</p> <p>Enhanced monitoring, incl. more frequent KYC updates</p> <p>PEP training for frontline staff</p> <p>Pending legacy issues in relation to 20% of files for PEPs who became recurrent clients prior to new tool</p> <p>Independent test of new control planned for Q3-2024</p>	10%	10.8 (High)

Phase C: Fictional example of Action Plan for HNWI controls

- The BRA of Company XYZ identified gaps in controls relating to high-net worth individuals (HNWIs), resulting in inadequate mitigation of customer risks.
- The BRA Action Plan of Company XYZ therefore outlines concrete steps for **the improvement of controls relating to HNWIs**.
- Once the BRA & Action Plan are approved by senior management, the **internal procedures will need to be updated** to reflect the new approach to HNWIs and to assign the related roles/responsibilities. **Staff will be informed** of the changes and receive training through dedicated information sessions.
- The adequacy and strength of the enhanced controls as well as the sufficiency of the additional resources dedicated to implement them should be assessed at the **next iteration of the BRA**. It can then be considered to what extent the new controls are implemented in an effective manner and whether further changes/improvements are needed.

Simplified example of Action plan item to enhance controls for HNWIs (with fictional data/info)

Area of concern	Risks and controls relating to high-net worth individuals (HNWIs)
BRA results	Inherent risk score 15 (high-risk); Controls rated as Weak (low impact); Residual risk score 15 (high-risk)
General course of action proposed	The high inherent risk exposure to HNWIs is a matter of fact for the business and it is not intended to seek to lower the exposure. Therefore, in order to reduce the level of residual risk, the focus should be on improving the controls.
Concrete actions proposed to reduce the level of residual risk	<p>The following improvements of controls are proposed for consideration:</p> <ul style="list-style-type: none"> ➤ Update the internal AML/CFT procedures in order to: <ul style="list-style-type: none"> • Define what constitutes a HNWI in the context of the business's client base; • Outline the factors and thresholds to be considered when designating a customer/BO as (ultra)HNWI; • Outline which enhanced due diligence measures are to be applied to HNWIs. ➤ Design and introduce an enhanced screening process to ensure that HNWIs are screened against public records/internet databases to determine whether they have a criminal history, are (associated to) PEPs, or are subject to negative media concerning possible criminal activity or connections. ➤ Recruit additional resources (1 fte) to support the implementation of EDD measures in relation to HNWIs as well as to implement other controls which are to be introduced or enhanced according to the Action Plan.
Proposed timelines for actions	<ul style="list-style-type: none"> • Update of the procedures to be finalised by the end of Q2-2024 • Existing resources to be trained and new resources to be operational by the end of Q3-2024 • Test phase of enhanced screening process to be implemented by Q4-2024 • New controls to be assessed at next iteration of BRA foreseen in Q1-2025



*Thank you for your
time*

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Next Session:

28.05.2024

Topic:

Customer Risk
Assessment

Today's Host: Tamar Goderdzishvili

Today's Presenter: Suzanna van Es