



## RISK & VERIFICATION NETWORK

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# RISK REPORT: RISK MONITORING AND REVIEW OF FRANCHISEE AND TRIANGULAR ACCREDITED EMPLOYERS

3 November 2022

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### KEY POINTS

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1. The purpose of this report is to communicate findings of a risk monitoring and review (RMR) activity on a sample of Franchisee and Triangular Accredited Employers after approval through the Accredited Employer and Job Check Gateways. The activity assesses whether risk controls are operating as intended.
2. It should be noted that the applications reviewed have been assessed by Immigration Officers (IO) under policy settings which support risk management post-decision and that all Franchisee and Triangular Accredited Employers will be subject to Accredited Employer Risk Monitoring and Review (AERMR) activities.
3. The review findings note:
  - a) Under current settings financial viability checks are reliant on declarations made in the employer accreditation form, with adverse responses informing whether a manual assessment of viability is required at the Accredited Employer Gateway (AEG). For the 77 reviewed applications, only five (6%) financial viability assessments were required under this process. The rate of declaration is in conflict with media reporting on the impact of COVID-19 for businesses in New Zealand. Particularly those Franchisee or Triangular Accredited Employers in retail, hospitality, construction, accommodation and tourism sectors.<sup>1</sup>
  - b) It has been observed that when processing both the Triangular and Franchise Accredited Employer applications, only five (6%) of the “Assessment Activities” capture the viability requirement that applies to all Employers under instruction WA2.10.
  - c) It is noted that declarations made during the application process can be checked post-decision through the AERMR programme which includes monitoring of all Franchisee and Triangular Accredited Employers, providing programme risk management oversight.
  - d) There was a lack of financial viability evidence to conduct a detailed review, which has the potential to make both manual assessments as well as AERMR-related assessments more difficult and time consuming. However, this could be due to the lack of clarity of the policy intent as to whether employers will need to supply the financial viability documents at the time of application to satisfy WA2.5(c) and WA2.10.1(d) instructions.
  - e) IOs completed the genuine business assessment (GBA) activity well for WA2.10.1(a) instructions, using checks of the Companies Office, Labour Inspectorate stand down lists and Insolvency registers to assess whether any insolvency or adverse holdings were present.

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<sup>1</sup> [Media article on impacts of COVID-19 on NZ businesses](#)

- f) 31 of 77 (40%) Franchisee and Triangular Accredited Employers correctly triggered the evaluation rules that make up the GBA. However, there appears to be a system anomaly for 13 of the 19 Triangular Accredited Employer applications in relation to the evaluation rule that an organisation should not have made a loss over 24 months as these 13 applications declared that they did not make a loss over the last 24 months. This has been escalated with the Risk and Verification (R&V) Technical Specialist to determine if this is an ADEPT system error.
- g) 18 of 77 (23%) Franchisee and Triangular Accredited Employers that were companies
- h) 41 of 77 (53%) Franchisee and Triangular Accredited Employers applied for 238 job check roles. Overall, the criteria for Job Check instructions were appropriately followed as IOs are assessing criteria familiar to them. These include labour market test, genuine advertising, individual employment agreements etc.
- i) 10 cases were identified where assessment notes indicated that alerts and warnings relevant to risk to be treated during processing were accepted at face value, with no further verification conducted to mitigate the risks.

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## ANALYSIS

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4. A sample of 77 decided accredited Franchisee and Triangular Accredited Employers were selected with a 90% confidence level<sup>2</sup> for the period 23 May to 29 September 2022.

Accreditation Type	Applications Received	Decided Applications (# / %)	Approved %	Sample Size	Sample % of Decisions
Franchisee	332	298 / 90%	100%	39	13%
Triangular	129	120 / 93%	100%	38	32%
Total	461	418 / 91%	100%	77	18%

5. For an employer accreditation application to be approved, the employer must meet the requirements specified in [WA2.10](#) of the INZ Operations Manual. There are additional requirements for Franchisee ([WA2.25](#)) and Triangular ([WA2.20](#)) Accredited Employers detailed in Appendix 1.
6. ADEPT raises assessment activities under the Assessment Activities and RFI section of the Employer’s Accreditation Application corresponding with the instruction requirements. For example, under the Franchisee Accredited Employer assessment one criteria is that *“A minimum of 15% of the employer’s employees must be New Zealand citizens or residents who are guaranteed at least 30 paid hours per week, unless the employer has no more than one employee”*. The Franchisee Accredited Employer Application form asks “How many employees does you

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<sup>2</sup> A confidence interval displays the probability that a parameter will fall between a pair of values around the mean. Confidence intervals measure the degree of certainty in a sampling method.

organisation have? And “How many of these are NZ citizens/residents that work a minimum of 30 hours.” The IO then needs to consider whether the requirement has been met or not.

7. System-triggered risks (medium or high-risk rules triggered by the business rules engine (BRE)) are listed and summarised in the Assessment Activities and RFI section of the Employer’s Accreditation Application, as a Risk Assessment Activity. The Risk Assessment Activity section specifies the Risk Area and provides an Advice Link giving more information about the risk and advice on how to mitigate the risk.
8. Six of 77 (8%) Accredited Franchisee and Triangular Accredited Employers had the risk assessed in line with the ADEPT User Guide, where the IO raised a Risk Advice Referral to R&V as further risk treatment advice was required.
9. The review confirmed that the Employer warning risk had been considered by the IO in each instance.

### Franchisee Accredited Employers

10. All AMS system warnings for the 39 Franchisee Accredited Employers triggered in ADEPT.
11. 14 of 39 (36%) Franchisee Accredited Employers had at least one active or expired warning for employer misrepresentation. Maintenance of the law  
[REDACTED]
12. Four warning cases were referred to R&V for support, out of which two resulted in a recommendation that the risk be managed at the Job Check Gateway (JCG). After review, it is considered that in both instances, risk would have been more appropriately managed at the AEG based on the particulars outlined in each warning. These cases will be raised with the R&V Practice Lead for consideration of training.
13. 10 warning cases were managed by the IO with minimal checks and accepted by virtue of employer declaration on application. These warnings related to employer non-compliance, and allegations of working excess hours than what the migrants are paid.
14. It was noted that only eleven of 39 (28%) Franchisee Accredited Employers reviewed supplied evidence of a financially viable business. All eleven Employers provided bank statements with their applications to support their financial position. However, SBFAs did not see reference to the bank statements in IOs rationale. There were no other viability assessments seen occurring on the Accredited Franchisee Employer applications.
15. For WA2.10a(i) instructions, IOs only focussed on and completed the GBA activity, using checks of the New Zealand Companies Office (NZCO), Labour Inspectorate stand down lists and Insolvency registers to assess whether the instruction had been met. However, as noted above no financial viability assessments were seen.
16. It is noted that the Franchisee Accredited Employer assessment does not include a stand-alone financial viability activity because it is the WA2.10.1 general instruction which has the requirement that an Employer should demonstrate its financial viability. This is a risk given these accreditation types pose higher financial risk given the unlimited volume of migrant workers they can recruit, unlike Standard Accreditation with a limit of five employees.
17. There were 25 of 39 (64%) Franchisee Accredited Employer applications that triggered the manual GBA activity in ADEPT. Maintenance of the law  
[REDACTED]

- a) Maintenance of the law [REDACTED]
- [REDACTED]
- [REDACTED]

- 18. 5 of 25 (20%) Accredited Franchisee Employer applications that triggered the GBA declared in their application that their organisation had not made a loss over the last 24 months but still, the GBA risk rule was triggered. It is unclear what caused this incident to occur. This anomaly has been raised with the R&V Technical Specialist. As for the remaining 20 applications where it is declared in the application that they are sole trader or general partnership or they do not have physical or online presence, there was no issue noted. The system rule for these other GBA triggers appears to be working well.
- 19. None of the Franchisee Accredited Employer assessment activities raised by ADEPT capture WA2.10.1 which requires the general instruction requirement of assessing the viable aspect of “viable and genuinely operating business or organisation”. Rather, assessment activities only focussed on each of the respective specific instructions for Franchisee employers (WA2.25) and for Triangular employers (WA2.20). This is a risk given they have a potential increased risk due to the volume of people impacted through adverse behaviours / financial risk.
- 20. There was no specialist financial advisor referrals seen in the Accredited Employer assessment for the 39 Franchisee Employer applications.

**Triangular Accredited Employers**

- 21. All AMS system warnings for Triangular Accredited Employers triggered in ADEPT.
- 22. Seven of the 38 (18%) Employers had at least one active or expired warning for employer misrepresentation.
- 23. Again, the review showed that all ten EA1009 warnings and alerts transferred from AMS triggered the medium risk warning “Employer has an active / expired warning”. Two cases were referred to the Verification Team (VT) for further risk treatment and the remaining cases were treated by IOs.
- 24. As seen with the Franchisee Accredited Employers above, there was little or no financial assessment completed by the IOs on 37 Triangular Accredited Employers reviewed. Again, this raises concern given it is a standard requirement under WA2.10 that all Accredited Employers must not only be genuine but also be viable businesses.
- 25. Maintenance of the law [REDACTED]
- 26. Maintenance of the law [REDACTED]
- 27. There were 19 of 38 (50%) Triangular Accredited Employer applications that triggered a manual GBA activity in ADEPT which is the same as for Franchisee Accredited Employers detailed above.

28. The review noted that the IO had undertaken the required business structure checks, insolvency checks, physical or online presence checks so the risks were mitigated as far as being a genuinely operating business. However, there were no financial documents or information seen used to assess the viable aspect of WA2.10.1 instructions, apart from one application (Commercial Information) where the IO had considered the evidence of external capital investment to sustain the business provided on application by the Employer. IOs accepted at face value the Employer's declaration that the business was viable in all other instances.
29. 13 of 19 (68%) Accredited Triangular Employer applications that triggered the GBA declared in their application that their organisation had not made a loss over the last 24 months, but the GBA viability risk rule was still triggered. Similarly with the Franchisee Employer case identified above, it is unclear what caused this event to occur. This anomaly has been raised with the R&V Technical Specialist. As for the remaining 6 applications where it is declared in the application that they are sole trader or general partnership or they do not have physical or online presence, there was no issue noted.
30. There was no specialist financial SBFA referral seen in the Accredited Employer assessment for the 38 Triangular Accredited Employer applications.
31. There was one Triangular Accredited Employer application (Commercial Information) with an active AMS warning that related to employer misrepresentation and HR policies and processes that were deemed unsatisfactory plus possible financial stress following a decrease in revenues. AMS records note one declined labour hire accreditation application (Commercial Information) in April 2021. The employer requested for reconsideration (Commercial Information) but the original decision to decline was upheld. There was little or no recorded information in the Triangular Accredited Employer assessment about how the historical issues on the Employer had been mitigated and the accreditation was approved.
32. It has been observed that when processing Triangular Accredited Employer applications, based on the 38 applications sampled, none of the "Triangular Assessment Activity" captures the viability requirement that applies to all Employers under instruction WA2.10.
33. As with the Franchisee Accredited Employer assessment seen above the Triangular Accredited Employer assessment activity also only focuses on WA2.20 and WA2.60 instructions – requirements of placing migrant workers to third parties who are INZ-compliant, and with no key people on stand down list etc. This means the IO is not being prompted to look further than WA2.20 instructions when assessing the Triangular Accredited Employer application. This is a risk as it avoids any viability assessment as required under WA2.10.1 general instructions for all Employers - "viable and genuinely operating business or organisation".
34. An IO processing Triangular Accredited Employers confirmed that financial viability was not being assessed unless an assessment activity was triggered by the BRE based on a credible warning of unsustainability. This financial assessment approach was confirmed by a Senior Technical Advisor, Christchurch who was involved in the early development of accreditation application process (refer to Genuine Business Assessment Flow Chart in Appendix 3).
35. Just as in Franchisee Accredited Employer, SBFAs consider that Triangular Accredited Employers have a potential increased risk due to the volume of people impacted through adverse behaviours or financials risk, hence having sufficient financial-related information submitted at the time of application is essential.

## Key People

36. The ADEPT team advised that the names of Employer’s Key People are prompted for on the application form but only one name entered is mandatory for the Employer to move through the rest of application question stream.

37. Maintenance of the law [Redacted]

38. Maintenance of the law [Redacted]

39. Maintenance of the law [Redacted]

40. Maintenance of the law [Redacted]

41. Maintenance of the law [Redacted]

## Franchisee & Triangular Accredited Employer Job Check Gateway observations

42. The Global Process Manual<sup>4</sup> sets out the steps an IO must follow to assess the Job Check. Processing officers are required to Assess Risk as follows:

43. At the time of the review 41 of 77 (53%) Franchisee and Triangular Accredited Employers had applied for a total of 216 job checks.

44. Overall, the criteria for job check instructions were appropriately followed as IOs are assessing criteria familiar to them. These include labour market test, genuine advertising, individual employment agreements etc.

45. Cases of note:

- a. An Employer with two active warnings with pre-existing job inflation, wage recycling and migrant exploitation concerns passed the AEG but was referred to R&V at the JCG. The VO agreed with the IO at the JCG, and the financial documents were requested to mitigate the risk.
- b. An Employer that had passed the AEG was referred to R&V to warning advice. The information warning related to the Employer breaching minimum employment standards. The VO advised the IO “Concerns around payments of premiums can be suitably assessed in migrant gateway”.

<sup>3</sup> Additional information [Govt cracks down on misuse of NZ companies | Beehive.govt.nz](#)

<sup>4</sup> [Global Process Manual Global Process Manual](#) – Job Check – Assess Risk

46. SBFAs consider that the first case detailed above was treated appropriately, however, the second case could have been treated earlier at the AEG. Payment of premiums for roles breach employment and immigration standards and may indicate more systemic issues with the employer.

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## RECOMMENDATIONS

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47. Based on the review findings SBFAs see potential opportunities to improve risk management in Franchisee and Triangular Accredited Employer processing in future as recommended below:
- a) SBFAs to liaise with Operational Policy to:
    - i. Clarify the intent behind WA2.5(c) and WA2.10.1(d) on financial viability evidential requirements and expected assessment processes for Franchise and Triangular businesses.
    - ii. Ensure awareness of ADEPT settings that allow capture of incomplete key person information.
  - b) R&V Practice Lead to liaise with BVO Practice Lead to share the findings related to treatment of alerts and warnings and determine what action is required to improve understanding of how to manage specific risks in alerts and warnings.

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## APPENDIX ONE – INSTRUCTIONS

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The relevant requirements for all Accredited Employers related to financial risk are shown below:

### WA2.10.1 Viable and genuinely operating business or organisation

- a. A viable and genuinely operating business or organisation is one where:
  - i. it is registered as an employer with the Inland Revenue Department; and
  - ii. if the employer is a general partnership or sole trader, the partners or sole trader must not be bankrupt or subject to a No Asset Procedure; or
  - iii. if the employer is a limited partnership, the general partners must not be bankrupt or subject to a No Asset Procedure.
- b. The employer must:
  - i. have not made a loss (before depreciation and tax) over the last 24 months; or
  - ii. have a positive cash flow for each of the last 6 months; or
  - iii. have sufficient capital and/or external investment (for example funding from a founder, parent company or trust) to ensure the employer's business remains viable and ongoing; or
  - iv. have a credible, minimum two-year plan (for example by having contracts for work) to ensure the employer's business remains viable and ongoing.
- c. "Viable and ongoing" includes being able to:
  - i. meet financial obligations such as paying wages or salaries and all other operating costs and expenses; and
  - ii. purchase inventory (if relevant).

The relevant additional requirements for Triangular employment arrangements

## WA2.20 Requirements for employers using triangular employment arrangements

An employer who places, or wants to place, Accredited Employer work visa holders in triangular employment arrangements (as defined at [WA2.60.15](#)), must:

- a. only place Accredited Employer work visa holders with organisations that meet the requirements set out at WA2.20.1; and
- b. monitor the employment conditions and safety of Accredited Employer work visa holders that are placed in a triangular employment arrangement, as set out at WA2.20.5; and
- c. respond appropriately to any issues regarding the employment conditions and safety of Accredited Employer work visa holders that are placed in triangular employment arrangements, as set out at WA2.20.10; and
- d. place New Zealand citizens and residents in work, as set out at WA2.20.15; and
- e. have a history of employing staff, as set out at WA2.20.20.

The relevant additional requirements for Franchisee Accredited Employers are:

## WA2.25 Requirements for franchisee employers

- a. An employer who is a franchisee (as defined at [WA2.60.20](#)) must meet the following requirements:
  - i. The employer must have been operating (trading or carrying out business) in New Zealand, as a franchisee, for at least 12 months prior to the application being made (see (b) below); and
  - ii. a minimum of 15% of the employer's employees must be New Zealand citizens or residents who are guaranteed at least 30 paid hours per week, unless the employer has no more than one employee.

The Global Process Manual sets out the steps a processing officer must follow to assess all employers for Employer Accreditation. Financial risk is covered by the step headed "assess viable and genuinely operating business / organisation for all employers" and contains the following steps:



IN-CONFIDENCE

- Employer is a partnership or sole trader, and the partners or sole trader are bankrupt or subject to a No Asset Procedure
- Employer (organisation) is not insolvent
- Employer is not registered as an employer with the IRD
- Employer is profitable, has positive cashflow, sufficient capital or a 2-year plan to remain viable and ongoing
- Employer is not a viable and genuinely operating business or organisation
- New Zealand is not the primary place of established residence for the sole trader (person), or at least one partner or trustee.

## APPENDIX TWO – VIABLE AND GENUINE ORGANISATION SCREENSHOTS

**Financial information**

Has your organisation been operating for at least 24 months?  
 Yes  No

Has your organisation made a loss over the last 24 months?  
Whether your organisation has made a loss should be calculated based on earnings before tax and depreciation.  
 Yes  No

Provide details (optional)

In every month for the last six months, has your organisation had positive cash flow?  
 Yes  No

Provide details (optional)

**Definition of viable and ongoing**  
To be viable and ongoing, an organisation must have sufficient funds to:

- pay staff wages and salaries, and
- pay all other operating costs and expenses, and
- purchase inventory (if relevant).

Does your organisation have sufficient capital and/or external investment to cover all of the above?  
 Yes  No

What is your organisation's primary source of capital or external investment?

Provide details (optional)

Options:  
- Reserve cash funds  
- Line of credit  
- Bank loan  
- Trust account  
- Support from parent or affiliated company  
- Other

Section visible where 'Yes' response to 'Has your organisation been operating or trading for more than 12 months?'

Section visible where 'Yes' response to 'Has your organisation been operating for at least 24 months?'

Question visible where 'No' response to 'Has your organisation made a loss over the last 24 months?'

Section visible where 'No' response to 'Has your organisation been operating or trading for more than 12 months?' or 'Yes' response to 'Has your organisation made a loss over the last 24 months?'

Question visible where 'Yes' response to 'In every month for the last six months, has your organisation had positive cash flow?'

Section visible where 'No' response to 'In every month for the last six months, has your organisation had positive cash flow?'

Section visible where 'Yes' response to 'Does your organisation have sufficient capital and/or external investment to cover all of the above?'

Question visible where 'Other' response to 'What is your organisation's primary source of capital or external investment?'

**Does your organisation have a credible two-year plan to ensure it can continue to cover all of the above?**  
For example, having contracts for work or another future source of revenue.

Yes  No

**Provide details (optional)**

**WARNING**  
Your application is unlikely to be approved if your organisation does not have sufficient cash flow (including projected cash flow), capital or external investment to cover all required expenses.

**Provide details about how your organisation plans to continue to operate over the next two years**  
Make sure you describe how the organisation will have sufficient funds to offer real, full-time jobs.

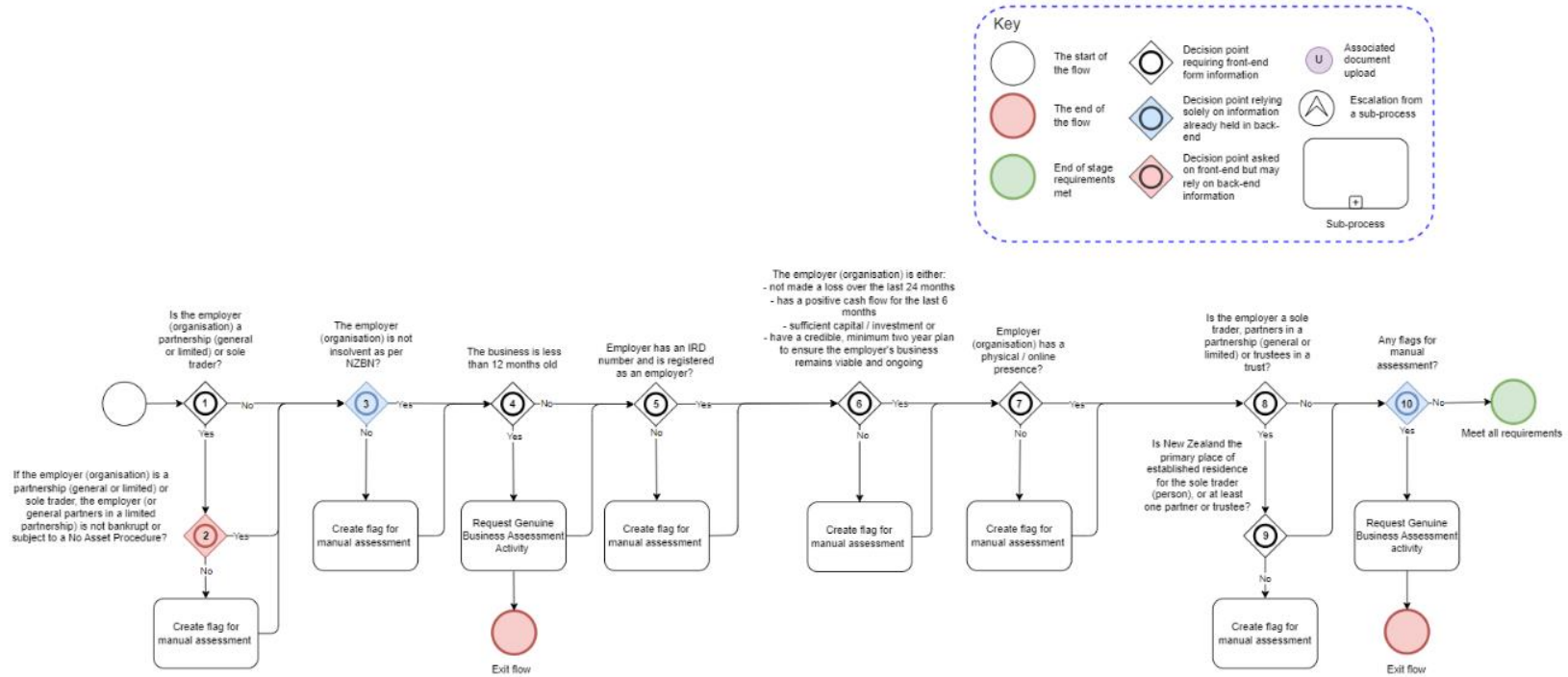
Section visible where 'No' response to 'Does your organisation have sufficient capital and/or external investment to cover all of the above?'

Question visible where 'Yes' response to 'Does your organisation have a credible two-year plan to ensure it can continue to cover all of the above?'

Question visible where 'No' response to 'Does your organisation have a credible two-year plan to ensure it can continue to cover all of the above?'

SAVE AND CONTINUE

## APPENDIX THREE – FLOW CHART FOR GENUINE BUSINESS ASSESSMENT



## ADMINISTRATION

### Production

	Author:	Review:	Released:
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### RVTG

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Yes	3 November 2022	Choose an item.	

### Document Control

Version	Date	Author:	Description of Change
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.03	11/8/2022	Privacy of natural persons	Review by Privacy of natural persons
.04	16/8/2022	Privacy of natural persons	Review / changes by Privacy of natural persons
.05	17/8/2022	Privacy of natural persons	Paper for submission to RVTG
.06	24/8/2022	Privacy of natural persons	With changes from RVTG feedback
.07	08/9/2022	Privacy of natural persons	After feedback to .06 from Privacy of natural persons
.08	21/9/2022	Privacy of natural persons	Draft revised following Privacy of natural persons comments
.09	28/9/2022	Privacy of natural persons	Edits on Key People and Financial Evidence after consulting with Privacy of natural persons
.10	04/10/2022	Privacy of natural persons	Increased the sample size to 77 from 27 and reported the additions on the report.
.11	06/10/2022	Privacy of natural persons	Query on sample size
.12	11/10/2022	Privacy of natural persons	Further feedback from Privacy of natural persons
.13	18/10/2022	Privacy of natural persons	Further feedback from Privacy of natural persons
.14	25/10/2022	Privacy of natural persons	Re-focused the key points of the paper after feedback from Privacy of natural persons
15	2/11/2022	Privacy of natural persons	Further feedback from Privacy of natural persons
1.0	3/11/2022	Privacy of natural persons	Final edits.

### Dissemination List

For Action:	For Information Only:
RVTG – For noting	R&V Verification Teams (AEVV focussed)
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