



Unión Internacional del Notariado  
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UINL/AML WORKING GROUP

# **GUIDE TO PERFORM ML/FT RISK ASSESSMENT IN THE NOTARIAL SECTOR**



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## ACRONYMS

<b>AML/CFT</b>	Anti-money laundering/Countering the Financing of Terrorism
<b>DNFBPs</b>	Designated Non-Financial Businesses and Professions
<b>NGO-NPO</b>	Non-governmental organization- Non-profit organization
<b>NRA</b>	National Risk Assessments
<b>PEP</b>	Politically Exposed Person
<b>SRA</b>	Sectoral Risk Assessment
<b>SRB</b>	Self-Regulatory Body



## I. INTRODUCTION AND PURPOSE

1. According to FATF Recommendation 1 and its accompanying Interpretative Note, DNFBPs, including notaries, should take appropriate measures to identify and assess their money laundering and terrorist financing risks.
2. To this end, each sector should conduct such assessments, document them in order to demonstrate their basis, keep them up to date, and have appropriate mechanisms in place to provide information about the risk assessment to competent authorities and SRBs.
3. Competent authorities or SROs may determine that individual documented risk assessments are not required if the specific risks inherent in the sector have been identified and are clearly understood.
4. The Financial Action Task Force (FATF) has developed a "Guide to Conducting National Risk Assessment", published in 2013, which provides guidelines for countries to conduct National Risk Assessments (hereinafter, NRAs) required by Recommendation 1, defining the concept of "risk" for the purposes of such assessments.
5. The Latin American Financial Action Task Force (GAFILAT) has developed a "Guide on Sectoral Risk Assessment", published in September 2020, but in virtually no jurisdiction has developed specific methodology for Sectoral Risk Assessments, except in the case of the banking industry.
6. Considering that this Recommendation imposes obligations on both countries and obliged parties, and taking into account that in most countries the Sectoral Risk Assessment (hereinafter SRA) in the notarial sector has not yet been carried out, the purpose of this document is to establish the basis for the execution of such assessments, proposing minimum contents of elements and criteria to be considered in the elaboration of such assessment, in order to facilitate the Self-Regulatory Bodies or each Notarial Council member of the UINL to carry out such assessment of the notarial sector in their country and its application to the sector as a whole.



## II. PRELIMINARY QUESTIONS

7. In its "Guidance for Conducting a National Risk Assessment", FATF defines that risk can be viewed as a function of three factors: threats, vulnerabilities and consequences.
- A **threat** is a person or group of persons, object or activity with the potential to cause harm, e.g., to the state, society, the economy, etc. In the context of ML/FT this includes criminals, terrorist groups and their facilitators, their funds, as well as past, present and future ML/FT activities. Threat is described as one of the risk-related factors, and normally serves as an essential starting point in developing an understanding of ML/FT risk. For this reason, having an understanding of the environment in which predicate offences are committed and how the proceeds of crime are generated to identify their nature (and, if possible, size or volume) is important in conducting an ML/FT risk assessment. In some cases, certain types of threat assessments may serve as a precursor to a ML/FT risk assessment.
  - The concept of **vulnerabilities**, as used in risk assessment, encompasses those things that can be exploited by the threat or that can support or facilitate its activities. In the context of ML/FT risk assessment, focusing on vulnerabilities as opposed to threats involves focusing on, for example, factors that represent weaknesses in AML/CFT systems or controls or certain characteristics of a country. They may also include the characteristics of a particular sector, financial product or type of service that make them attractive for ML or FT purposes.
  - **Consequence** refers to the impact or harm that ML or FT may cause and includes the effect of the underlying criminal and terrorist activity on financial systems and institutions, as well as the economy and society at large. The consequences of ML or FT may be short- or long-term in nature and also relate to specific populations, communities, the business environment, or national or international interests, as well as the reputation and attractiveness of a country's financial sector. As noted above, ideally a risk assessment involves making judgments about threats and vulnerabilities.
8. The SRA, in addition to being part of international requirements, is part of the necessary and recurrent review of the strengths and weaknesses of the preventive regime applied in the notarial sector.



9. This revision should have some particularly noteworthy features, among which we can mention at least the following:
- the metric to be used should be, to the greatest extent possible, the same as the one used for the elaboration of the country's National Risk Assessment<sup>1</sup>;
  - both qualitative and quantitative techniques should be used, provided that up-to-date and accurate data can be obtained; and
  - the exercise should be dual, i.e. include both Money Laundering and Terrorist Financing.
10. Also, for the purposes of the SRA approach, before starting the implementation of the SRA, it will be necessary to make some decisions regarding the approach to be applied. These include:

#### 1. Perspective to be adopted in SRA

11. Some countries have sufficient information to provide individual risk ratings for all participants, i.e. for each notary or notary's office. In these cases, it would be possible to use a **bottom-up approach**, i.e. to derive an average (median) risk rating for the sector from the weighting (single or multi-factor) of the ratings of each and every professional.
12. In order to use this perspective by applying the methodology proposed in this document, if there is insufficient information to enable individual risk ratings to be awarded to each notary's office or notary, certain information should be obtained for this purpose, including, but not limited to, the following:
- The corporate structure, taking into account the level of complexity and transparency of its organization and structure.
  - The nature and complexity of services provided and the activities and operations performed;
  - The distribution channels used, including the free provision of services and the use of agents or intermediaries;
  - The types of clients served;
  - The geographical area of the services provided, in particular when performed in high-risk third countries, as well as, where applicable, the countries of origin or establishment of a significant part of the clients of the professional or notary's office under assessment.

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<sup>1</sup> If conducted. If the NRA has not been conducted, consider sector-specific threats and vulnerabilities or consider waiting for the NRA to be conducted before proceeding with this SRA.



- The quality of internal governance structures and procedures, including the adequacy and effectiveness of compliance functions, the level of compliance with AML/CFT legal and regulatory requirements, and the effectiveness of AML/CFT policies and procedures to the extent already known.
  - The existing "corporate culture", in particular the "culture of compliance" and the culture of transparency and trust in relations with the competent authorities.
  - Other prudential and general aspects, such as years of activity.
13. For this purpose, in addition to the information that can be obtained from various sources, in order to identify risk factors, a questionnaire could be used to be sent to the notaries or notaries' offices under analysis.
14. Alternatively, if there is no individual risk rating and it would be too complex to obtain the necessary information to grant individual risk ratings to each notary's office or notary, a **cross-sectional perspective** could be used, exploiting integrated data from the entire sector, i.e. without differentiating between notary's offices or notaries.

## 2. Threat concretization

15. The second decision that should be made is whether to consider as "threats" only those identified in the NRA<sup>2</sup> or whether, taking these as a starting point, an additional specific analysis should be carried out to identify those specific to the sector.
16. As we have mentioned, GAFILAT has developed a "Guide on Sectoral Risk Assessment", but in practically no jurisdiction has developed specific methodology for SRAs, except in the case of the banking industry. In practice, the issue has been avoided by making a simple reference that in all cases stated that no threats other than the general national ones (operational criminal organizations and mass of illicit funds) were observed.
17. From the strictly Latin notarial point of view, there are, or at least can be, specific notarial threats. By way of example, we will mention some of them:
- **Licensing, or registration, as an instrument of crime**
18. In some countries, typical criminal organisations in which notaries were involved have been dismantled. These cases, in which criminal organizations penetrate the notarial sector, are the indicator of a specific threat that usually has very worrying features but that usually occur in jurisdictions in which it is possible to occupy the position of notary -and give faith in mercantile, civil acts, etc., in the terms that the local law has established- without the need of opposition

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<sup>2</sup> If done.



or special test. That is to say, one can finish the career and can immediately give faith without any other act than the mere registration, with the title of lawyer. There are various levels of requirement in different jurisdictions, but it is a fact that this threat exists not only for the purpose of perpetrating unlawful acts against the assets of third parties, but also for the purpose of legalising unlawful acts of different types via own notaries, or associated notaries, as a matter of course. Therefore, it would be relevant to apply a basic metric to this type of threat (even if it is simply categorized as high, medium or low).

- **Specific threats in special risk areas**

19. In some jurisdictions there may be another type of specific threat linked to the presence of criminal organizations, strictly associated with the role of the Latin notary, essential in some types of transactions to consider them perfected, where criminal organizations could try to force the notary to record the transaction in terms that do not generate alerts.
20. It should be noted that this threat is specific to the notary's office in those jurisdictions in which its participation in certain legal transactions is indispensable according to local law, so that neither its reluctance nor its non-participation would be possible.

### 3. Vulnerability assessment

21. With respect to vulnerabilities, although some NRAs have conducted sectoral vulnerability surveys, as in the case of threats, they have been limited to the financial sector.
22. As in the case of hazards, it should be decided whether only those identified in the NRA will be considered as "vulnerabilities" or whether, taking them as a starting point, an additional specific analysis will be carried out to identify those specific to the sector.
23. In the case of notaries, there may be specific vulnerabilities to consider. We mention, by way of example, some of them:

- **How to enter the profession**

24. This vulnerability is directly related to the first of the threats described above. It can be seen that national notarial models in which the profession is exercised practically freely, or on a concessionary basis without public rules, or in other unclear ways<sup>3</sup>, directly **increase** the notary's preventive ineffectiveness.
25. Therefore, it is advisable to carry out **an analysis of how the right to provide trust services is obtained**, since this public responsibility must have a high level of control by the public

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<sup>3</sup> For example, presidential appointment for the term of the presidential mandate itself.





authorities, otherwise, there would be an asymmetry between function and responsibility with potential harmful effects both on the legal system, directly, and on the economic system, indirectly.

- **Services not subject to ML/FT prevention regulations**

26. There is a second vulnerability associated with the mechanical application of the FATF recommendations, certainly more designed for the Anglo-Saxon notary's office than for the Latin notary's office. In fact, what is observed is that, in many jurisdictions, notarial operations of great responsibility - and great risk - are not included in the inventory of actions subject to the notarial ML/FT preventive program.

27. By way of example, the granting of full powers of attorney, with patrimonial powers, for foreign jurisdictions, ordinary civil donations or the custody of patrimonial documents and/or financial instruments may be carried out without being considered to be subject to the application of ML/FT prevention measures. It is therefore highly advisable to carry out a review of those services provided in notaries' offices that are not subject to the preventive rule.

- Countries with a bijudicial system

28. A potential vulnerability that cannot be overlooked is the one facing countries with a bijudicial legal system, meaning both common law and civil law have jurisdiction depending on your place of residency within that country. Among those countries, some may require certain improvements despite their strong regime to combat money laundering and the financing of terrorism in fields other than the legal field, example in the financial sector. An example would be Canada where Latin notaries, can be found only in the province of Quebec. Therefore, transactions in sectors like real estate can become high risk, if the parties knowingly decide to choose one jurisdiction over another, to deter alerts, suspicion, and even professional regulatory board supervisions.



### III.METHODOLOGY

29. Generally speaking, sectoral risk assessments should build on the results of the National Risk Assessments (if available) first prepared for the FATF Round IV Mutual Evaluation.
30. Specifically, the potential money laundering and terrorist financing risks faced by notaries will vary depending on a number of factors, including the services offered by the professional, the type and identity of the client and the nature and origin of the client relationship.
31. Risk assessments should be conducted in accordance with the internationally established basic methodology, which indicates that ML/FT risk cannot be measured directly, but can be approximated through the review of various elements, categories and criteria.
32. These elements, categories and criteria must be analysed on the basis of the nature of the activities carried out by the professional in question, always on the basis of the corresponding objective data.
33. Money laundering and terrorist financing risks can be measured using various categories. There is no single methodology for applying these risk categories, and the application of these categories is only intended to provide a suggested framework for approaching the assessment and management of potential risks. The most commonly used structural risk criteria are:
  - a. Country or geographic risk;
  - b. Customer risk;
  - c. Risk associated with the particular service offered; and
  - d. Risk associated with the channel used
34. The weight given to these risk categories (individually or in combination) in assessing the overall risk of potential money laundering or terrorist financing may vary from notary to notary, particularly given the size, sophistication, nature and scope of the services provided by the professional and/or the notary's office. However, these criteria should not be considered in isolation.



35. In addition, the most common international methodology groups risk analysis data into three interrelated matrices:

- A. Element "Institutional"
- B. Element "Risk exposure", and
- C. Element "internal control measures".

A different relative weight would be attributed to each of them, depending on the circumstances detailed below.

36. For the purpose of assigning each of the categories, a minimum and a maximum risk value should be determined, whereby the minimum risk value may be 1 and the maximum 5.

37. Likewise, a **relative weight** should be given **to each of the** aforementioned **matrices** for the purpose of calculating the relationships between them. Thus, the first would generally have a relative weight of 30% or 35%, the second 40% and the third would be assigned the remaining 30% or 25%.

### III.A. MATRIXES USED

#### A. Element "Institutional"

38. This element would be used to assess the inherent risk of the notary or notary's office. For the configuration of this matrix, different factors characteristic of the notary's office can be considered, giving a relative weight to each of them, such as, for example:

- Transaction volumes of the Notary's offices (legal act, whether or not it has patrimonial content, carried out in a notary's office),
- Ratio of clients per notary's office professional,
- .....

#### B. Element "Risk exposure"

39. This element would include all the criteria identified in Section III of this document. For the purposes of its total calculation, these criteria should be combined by weighting them.

- **Risk Clients, grantors or parties.**



40. For the qualification of the first criterion, the risk of the granting or appearing clients could be considered individually or by groups of clients with the same characteristics. In this group, the different types of clients would be classified on the basis of risk, such as, for example:
- PEP customer
  - NGO-NPO Client
  - ....
- **Risk services.**
41. The second criterion is undoubtedly the most complicated to qualify, as it would include all transactions, according to the risk rating given to each service provided by the notary or notary's office.
42. It should be noted that, although there is no universally accepted set of risk categories, examples of those services offered by Latin-type notaries that are most susceptible to money laundering and terrorist financing activities have been identified in documents such as the "Good Practices for the Prevention of Money Laundering and Terrorist Financing in the Notarial Sector", approved by UINL in 2018 and the "Guide for the Application of a Risk-Based Approach in the Legal Professions", approved by FATF in 2019.
- **Geographical risk.**
43. For the purposes of this computation, two tables should be used, one for **local risk** and one for **international risk**, which should be weighted.
44. The **national geographical risk** attribute should use the map developed by the competent authorities, if available, which would be applied directly to the location of the Notaries.
45. The classification of risk jurisdictions also developed by the competent authorities could be used for **international geographic risk** allocation.
- **Channel risk.**
46. This indicator would measure the risk associated with the direct non-appearance of the person contracting the service, which is directly affected by its effects (e.g. property displacement). This could be calculated, among other factors, considering the percentage of services contracted by natural persons in which there is representation, with respect to the total number of services contracted by natural persons.



### C. Element internal controls measures

47. This element would serve to qualify the risk of the internal controls that the notary or notary's office has. The most commonly used rating of internal controls would be made up of elements such as:
- Existence of policies and procedures
  - Number of employees (including notaries) who have attended training in the prevention of money laundering and financing of terrorism,
  - ....



## CONCLUSIONS

48. The reports of the 4th Round of Mutual Evaluations conducted by FATF and FATF Style Regional Bodies (FSRBs) show that, although in general most of the countries evaluated have prepared their National Risk Assessments (NRAs), they still need to deepen their knowledge of the risks of certain sectors or professional activities, which are not sufficiently known and understood.
49. This requires countries to make an additional effort precisely with the objective of acquiring sufficient knowledge of these risks to be able to assess, understand and, if necessary, mitigate them.
50. The process and methodology proposed in this document should make it possible to obtain a risk assessment for each notary or notary's office and the sectoral risk rating, which is essential for carrying out the Risk Analysis of the Notary Sector and for rating the country's overall risk.
51. This result not only has value in itself, but could additionally contribute to feed the successive plans for supervision, training and review of the strengths and weaknesses of the preventive regime applied in the notarial sector.