



Unión Internacional del Notariado
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RISK ALERTS IN THE NOTARIAL SECTOR



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A. INTRODUCTION

The objective of this document is to provide clear and precise guidelines to help notaries to improve their processes of identification, control and analysis of notarial transactions which, according to their competences, allow them to detect those which may be linked to money laundering and the financing of terrorism.

This is not a list that includes all possible cases of transactions linked to money laundering or terrorist financing; nor does it imply that all the transactions included are necessarily linked to money laundering or terrorist financing.

The list is intended to provide examples for the professional's assessment of his or her potential risk, according to his or her competencies, to facilitate the detection of transactions likely to be linked to money laundering and terrorist financing, with a twofold objective:

- Firstly, those aimed at detecting suspicious transactions before they are carried out, in order to prevent funds of illicit origin from being introduced into the system or destined for terrorist financing transactions.
- Secondly, those that allow a more in-depth analysis of suspicious transactions, when it is impossible to detect them beforehand.

The alerts have been classified taking into account the various risks that may be present in notarial transactions:

1. Risks associated with the client(s)¹ or participant(s)
2. Risks associated with the transaction
3. Risks associated with means of payment
4. Risks arising from repeated transactions

In order to identify the risk alerts associated with the transaction, the main types of business in which the notary may be involved were considered, and the following were identified:

- a. **Commercial Transactions** (creation of Entities, capital increases and similar, purchase and sale of shares).
- b. **Real Estate transactions.**
- c. **Financing transactions** (loans, debts recognition and its guarantees, cancellations and letters of payment).
- d. **Authorizations, powers and appointments.**
- e. **Minutes and recognition of signatures.**
- f. **Other transactions.**

¹ As referred by the FATF in the 40 Recommendations and the Guidance for Legal Professionals.



B. RISK ALERTS

1. RISK ASSOCIATED WITH THE CLIENT(S) OR PARTICIPANT(S)

- Any of the participants or their representatives (and where appropriate, the beneficial owners or intermediary companies in the chain of ownership of legal persons), is a national, resident or in the case of legal person was incorporated in a country of greater risk²...
- The client wishes to use foreign companies but does not appear to have a legitimate, legal or commercial reason for doing so.
- The client wishes to form or buy a company with a corporate purpose that is irrelevant to his profession or normal activities without a reasonable explanation.
- The client repeatedly changes notaries in a short period of time without any reasonable explanation.
- The client insists on signing the documents only by fax or scanned documents³.
- The age or socio economic status of the grantors is inconsistent with the volume or characteristics of the transaction, especially in the case of minors, people with difficulties in understanding what they are signing or of advanced age, not finding a logical explanation that motivates their intervention.
- Participant or related person (directs the transaction, is a family member, is a beneficial owner, etc.) known to be involved in criminal activities that may generate economic benefits.
- The customer is not sure of the location of his company's records.
- Family, work, corporate or any other nature's relationship between the parties that raises doubts about the nature or cause of the legal business.

² Factors that are generally considered to include a country in a higher risk category include: (a) Countries subject to sanctions, embargoes or similar measures issued, for example, by the United Nations (UN). In addition, in some circumstances, countries subject to sanctions or measures issued by UN-like bodies, although they may not be universally recognized, may be taken into account because of the status of the issuer of the sanctions and the nature of the measures, (b) Countries, identified by reliable sources, such as generally lacking appropriate laws, regulations and other CBP/FT measures, (c) Countries, identified by reliable sources, such as a place from which funds or support are provided to terrorist organizations, (d) Countries, identified by reliable sources, that have significant levels of corruption or other criminal activity. Jurisdictions of particular concern may include "extraterritorial jurisdictions" and those with high political instability or low levels of PBC/FT compliance or insufficient observance of the rule of law, (e) Countries that allow the use of nominee shareholders and bearer shares for non-listed companies, allowing the final beneficiary to be concealed, and (f) For domestic clients, the geographic risk that may exist in certain specific areas, such as proximity to the border, free trade zones or areas with a massive immigrant population from high-risk countries, could also be considered.

³ The request of using electronic secure signature is not considered high risk.



- The amount of the transaction is paid or received, even partially, by a third party unrelated to the transaction, without any reasonable explanation. It also applies when the payment of the costs associated with the public document (provision of funds, taxes, notary costs, registry costs, etc.) is assumed by a third party without reasonable explanation.
- The client has excessive urgency to carry out the transaction; refusal or distrust of the provision of data requested by the Notary (identification documents, statements about the beneficial owner or means of payment, etc.) or to give registral publicity to the legal business; as well as any other conduct that shows a lack of transparency.
- The natural person acting as administrator or representative does not seem appropriate to exercise such representation (risk of front man or interposed person).
- Intervener who performs or has performed a public function (high-level political or technical position) at the national level or abroad, or professionally or familiarly related to it, who conducts unusual private business because of its frequency or characteristics.
- The person who actually directs the transaction is not one of the grantors or their representatives, or uses an unknown intermediary to contact the notary.
- Client documentation to determine identification, support income or verify employment is provided by an intermediary who has no apparent reason to be involved.
- A buyer or purchaser who moves to another location in the territory to purchase or acquire goods, without apparent justification.
- The client formalizes the act or contract before a Notary of a different locality to the location of the goods or the matter of the act or contract, without reasonable explanation.
- It is known by public media or otherwise, that a client is being investigated or prosecuted for the offence of money laundering, predicate offences, the offence of terrorist financing or related offences.



2. RISKS ASSOCIATED WITH THE TRANSACTION

a. Risks common to all types of business

- The client requests a transaction for which more taxes are paid than the apparently necessary, without reasonable explanation.
- The client presents an unusual disregard for the risks inherent to the transaction performed or for the amounts involved in the legal business to be formalized before the notary or the costs involved in the transaction.
- The client engages in activities that are irrelevant to his/her normal activities or profession and cannot provide a reasonable explanation.
- The type of transaction that is authorized is ostensibly inconsistent with the size, seniority or activity of the legal entity or the granting natural person, without reasonable explanation.
- The customer requests sudden and unjustified changes in any of the essential elements of the transaction (except the means of payment) that imply a lack of information or transparency in it.
- The transaction involves high risk jurisdictions such as places in or near the midst of armed conflicts in which terrorist groups operate or places that are not subject to ML/TF controls.

b. Specific risks of Commercial transactions (creation of Entities, capital increases and similar, purchase and sale of shares).

- Excessively high or low price, according to the market conditions, of the securities transmitted (volume of income, turnover or business, facilities, size, knowledge of systematic profit or loss statement) or against the amount reported in another transaction⁴.
- Contributions to companies created or increasing their capital of goods with an unreal valuation, of an ostensibly high amount in relation to the turnover or size of the company, or of a difficult valuation (such as jewelry, precious stones, art or antique objects, virtual currencies), without a reasonable explanation⁵.

⁴ Applicable to the purchase and sale of shareholdings, and also, depending on the jurisdiction, to the category "Minutes and recognition of signatures " and "Other transactions".

⁵ The purchase and sale of shares is excepted. Also applicable, depending on the jurisdiction, to the category "Minutes and recognition of signatures" and "Other transactions".



- Extraordinary and very relevant differences (much higher or much lower price) between the declared price and the approximate real value, according to any reference that could give an approximate idea of this value (appraisal value in the case of mortgage or cadastral value) or of the Notary's own appreciation, without reasonable explanation⁶.
- Frequent large investments in stocks, bonds, investment trusts or other securities in cash or by check within a short period of time, which is inconsistent with normal client practice.

c. Risks specific to Real Estate transactions

- Purchase of personal use goods under the corporate veil when this type of transaction is inconsistent with the client's ordinary business practice.
- The client purchases property in the name of a designated person, such as an associate or relative.
- Purchase multiple properties in a short period of time and the client seems to have few concerns about the location, condition, anticipated repair costs, etc. of each property.
- Extraordinary and very relevant differences (ostensibly much higher or much lower price) between the declared price and the approximate real value, according to any reference that could give an approximate idea of this value (appraisal value in the case of mortgage or cadastral value, for example) or of the Notary's own appreciation.
- Use of notaries to structure deposits and buy real estate, in the name of the client.
- Purchase of real estate by a legal entity with no apparent economic capacity.

d. Specific risks of Financing transactions (loans, debts recognition and its guarantees, cancellations and letters of payment)

- The client does not seem to be concerned about the guarantees provided for the recovery of the debt.
- The client does not appear to be concerned with the terms of the credit or the costs associated with completing a loan transaction.
- Successive mortgages on the same assets, which are cancelled before its expiration, without reasonable explanation.

⁶ Also applicable, depending on the jurisdiction, to the category "Minutes and recognition of signatures" and "Other transactions".



- The value of the good or goods granted in guarantee does not correspond to the fair value of the market.
- Anticipated cancellation of a mortgage and/or chattel guarantee, without reasonable explanation, especially when it is with cash, in whole or in part.

e. Specific Risks of Authorizations, Powers and Appointments

- Powers of attorney under unusual conditions (e.g. when irrevocably granted) or in relation to specific assets (e.g. a single property, a particular current account) when the reasons for that specificity do not exist or are not logical.
- General powers of attorney given by the administrator to a third party to act on behalf of the legal entity without the administrator's involvement and without reasonable explanation
- General powers of attorney where there are indications that the grantor intends to move to high-risk jurisdictions (including cities or districts of interest), specifically countries (and adjacent countries) in situations of conflict and/or political instability or known to support terrorist activities and organizations⁷.

3. RISKS ASSOCIATED WITH MEANS OF PAYMENT

a. Risks common to all types of business

- Funds or assets located, coming from or destined for a high risk jurisdiction other than those of nationality or residence of the participants.
- Use of cash in relevant amounts: Cash and/or bearer bank cheques equal to or exceeding €10,000/USD⁸.
- Use of the Notary's account or deposits made before a notary in an unusual manner (e.g. without the type of transaction justifying it), or with risk transactions (e.g. transfers to/from high risk territories, deposits in cash or by means of bank cheques, return of excess to a third party).⁹

⁷ This alert is specific to TF risk transactions .

⁸ Not applicable to "Capital Increases" or to "Authorizations, Powers and Appointments".

⁹ Not applicable to the category "Authorizations, Powers and Appointments".



- Last-minute changes, without reasonable explanation, in the means of payment used which imply a lack of information or transparency in the transaction¹⁰.
- Means of payment of unusual use in commercial traffic, such as virtual currencies, precious metals or any other means difficult to assess, as well as those in which there is a willingness to hide the true form of payment or the reality of the legal business itself, such as deferment of payment to a date very close to or far from the time of authorization or with the absence of interest, guarantees to ensure it, or compensation of debts, without reasonable explanation¹¹.

b. Specific risks of Financing transactions (loans, debts recognition and its guarantees, cancellations and letters of payment)

- Financing from a lender (natural or legal person) other than a credit institution without reasonable explanation¹².
- Establishment of unusual conditions or clauses in the credit market (unusually short or long repayment term, interest rate well above or below normal, repayment by a single payment at expiration or the absence of guarantee for the creditor), without there being a reasonable explanation¹³.
- Provision of guarantees (securities, real estate, etc.) located in high risk territory¹⁴.
- Contribution, equal to or exceeding €10,000/USD of cash (in current account, deposits, time deposits, etc.) as a guarantee provided by the borrower/debtor himself¹⁵.

4. RISKS ARISING FROM REPEATED TRANSACTIONS

a. Risks common to all types of business

- Two or more transactions of the same or similar nature in a short period of time, without reasonable explanation or that between two of the transactions there is a common intervener¹⁶.

¹⁰ Not applicable to the category "Authorizations, Powers and Appointments".

¹¹ Not applicable to "Capital Increases", "Authorizations, Powers and Appointments" or to "Creation of Entities".

¹² Also applicable to the category "Minutes and recognition of signatures" and "Other transactions".

¹³ Also applicable to the category "Minutes and recognition of signatures" and "Other transactions".

¹⁴ Also applicable to the category "Minutes and recognition of signatures" and "Other transactions".

¹⁵ Not applicable, within this category, to Cancellations and payment letters. Also applicable to the category "Minutes and recognition of signatures" and "Other transactions".

¹⁶ Not applicable to Cancellations and payment letters, Creation of Entities and Capital Increases and analogous.



b. Specific risks of Commercial transactions (creation of Entities, capital increases and analogous, purchase and sale of shares/shares).

- Purchase and sale of securities and/or creation of multiple legal entities in a short period of time with common elements (one or more shareholders, partners or participants, administrator, manager, director, attorney-in-fact, registered office, corporate purpose, etc.) without reasonable explanation¹⁷.
- Successive contributions in a short period of time to the same company, without reasonable explanation¹⁸.
- Increase of social capital by contributions of new partners related to each other or to other legal entities.
- Successive sale of the same shares in a short period of time with relevant differences of price, without reasonable explanation.

c. Risks specific to Real Estate transactions

- Successive sales of the same property in a short period of time, with relevant differences in price, without reasonable explanation (a reclassification, for example, between sales)¹⁹.

d. Specific risks of Financing transactions (loans, debts recognition and its guarantees, cancellations and letters of payment)

- Repeated mortgage cancellations well in advance of the final date initially agreed without reasonable explanation²⁰.

¹⁷ Also applicable to the category "Minutes and recognition of signatures" and "Other transactions".

¹⁸ Not applicable, within this category, to Creation of Entities or Purchase-sale of shares. Also applicable to the category "Minutes and recognition of signatures" and "Other transactions".

¹⁹ Also applicable to the category "Minutes and recognition of signatures" and "Other transactions".

²⁰ Not applicable, within this category, to Loans, Debt Recognitions and their guarantees. Also applicable to the category "Minutes and recognition of signatures" and "Other transactions".