

August 30, 2018
Circular N° SBP-DR-0073-2018

General Manager

Subject: Risk Rating for Nonfinancial Professions

Dear General Manager:

We wish to reiterate that the Financial Action Task Force's Explanatory Note on Recommendation 1 provides that designated nonfinancial businesses and professions (DNFBPs) must take enhanced measures to appropriately handle and prevent the major risks identified in their countries. Similarly, the Explanatory Note establishes the risk assessment methodology the financial entities and DNFBPs must use to assess and understand their ML/FT risks, among which are documenting risk assessments, considering all relevant risks factors before determining which is the overall risk level and keeping their assessments updated.

It is worth noting that the DNFBPs, within which fall the activities engaged in by lawyers, certified public accountants and public notaries, are also subject to meeting the requirements for preventing money laundering and the financing of terrorism in accordance with FATF Recommendations and are entities supervised and controlled by the Intendancy for the Supervision and Regulation of Nonfinancial Entities.

On the other hand, FATF Recommendation 22 stipulates that the customer due diligence and recordkeeping requirements established by the Financial Action Task Force will only be applicable to lawyers, notaries and accountants when they prepare for or carry out transactions for their clients concerning the following activities:

1. Purchase and sale of real estate;
2. Management of client money, securities or other assets;
3. Management of bank, savings or securities accounts;
4. Organization of contributions for the creation, operation or management of companies;
5. Creation, operation or management of legal entities or structures, and the purchase and sale of business entities.

Consequently, Article 24 of Law 23 of 2015 provides that lawyers, public accountants and notaries will be subject to Intendancy supervision of their professional activities only when acting on behalf of their clients or for their clients in the activities established in the FATF Recommendations and some additional activities that it was considered advisable to include in the AML/FT regime.

For its part, Chapter III of the National Risk Assessment entitled "Sectors subject to the supervision of the Intendancy for the Supervision and Regulation of Nonfinancial Entities" established that lawyers,

certified public accountants and notaries will be under the supervision of the aforementioned regulator only when conducting professional activity described in Article 24 of Law 23 of 2015.

Similarly, the assessment provides that lawyers subject to supervision must apply preventive measures when carrying out activities vulnerable to money laundering and that could be used for committing that crime, and clearly establishes that it is obvious that not all lawyers are subject to these preventive measures.

In connection with the above, the risk rating must be based on the activities the aforementioned professions carry out, as provided in FATF Recommendations and the National Risk Assessment. By virtue of the above, we urge banks to make the appropriate verifications and avoid automatically rating all of these clients (lawyers, notaries or certified public accountants) as high-risk when opening personal accounts, especially when the standard stipulates when these professions could be considered reporting entities in terms of anti-money laundering.

The Superintendency considers that if there is any evidence within the due diligence process that the customer is engaging in the aforementioned professions, the bank must make sure it investigates the types of activities the user engages in and whether these activities match those that could be vulnerable or pose a risk in terms of money laundering, the financing of terrorism and financing the proliferation of weapons of mass destruction.

Regarding the above, we deem it is necessary to clarify that not all professionals performing activities as lawyers, certified public accountants or notaries should be rated as high-risk customers if their activities or work does not involve the activities described above, since this measure could be discriminatory and inconsistent with FATF Recommendations and Superintendency regulations.

We would greatly appreciate your providing your staff with the necessary instructions for compliance with the provisions herein.

Best regards,

Ricardo G. Fernandez D.
Superintendent

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