

Project on the Designated Non-Financial Businesses and Professions

- DNFBPs Risk Assessment in the GAFISUD Member States ¹-

I. Introduction

In January 2010 the Designated Non-Financial Businesses and Professions² project, hosted by the German government, was implemented in the GAFISUD Executive Secretariat. Aim of the project is to “Foster and Develop Regional Mechanisms to Prevent Money Laundering and Terrorist Financing”.

The project was chosen by the German Ministry of Development and Technical Assistance to participate in the so called CIM Program, which foresees the provision of an expert to be incorporated into the applicant body and to work on the designated project.

The program has an elapsed time of 2 years and includes the possibility of 2 extendable years

Therefore Ms. Barbara Friedrich took up work with the GAFISUD Secretariat in January 2010 as an integrated expert to GAFISUD in order to add to the secretariat's working team and in particular to head the DNFBPs project.

The following work program was set up for 2010 to 2011:

- Elaboration of a legal analysis of existing DNFBP legislation in the member states
- Compilation of case studies and typologies including DNFBPs detected in the GAFISUD member states
- Risk assessment of the DNFBPs in the GAFISUD member states
- Development of a best practice handbook and a model legislation

¹ Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico, Panama, Peru, Uruguay and Spain (GAFISUD observer country)

² Casinos, real estate agents, dealers in precious metals and precious stones, notaries, lawyers, accountants, trust and company service providers

Based on the answers and information provided by the member states, in the course of 2010, the legal framework of DNFBPs in the GAFISUD member states was analyzed.

In particular the implementation of the FATF Recommendations 12 (5, 6, 8-11), 16 (13-15 & 21), 24 and 25 was evaluated to determine the level of transposition of FATF recommendations into national legislation and to establish the different legal approaches that were chosen.

Furthermore a casebook compiling all cases and typologies detected in the GAFISUD member states including DNFBPs was gathered.

Both documents, "Evaluation of existing DNFBP legislation in the GAFISUD Member States" and "Casebook of Cases and Typologies related to DNFBPs" were submitted to the GAFISUD Plenary Session and approved in December 2010.

The second part of the project in 2011 will focus on a risk assessment to determine the exposure of DNFBPs to money laundering and terrorist financing. Based on the established findings a best practice handbook and a model legislation will be developed.

II. Methodology

An effective risk assessment requires the establishment of reference criteria which allow measuring the risk of abuse of the respective businesses and professions for the purpose of money laundering or terrorist financing. A consistent methodology has to include a wide range of different aspects such as legal and operational criteria, statistics and typologies.

The most simple and basic criteria to determine the exposure to money laundering and terrorist financing risk is **the degree of full implementation of FATF standards into national legislation and its compliance with the international standards**; especially Recommendations 12 (5, 6, 8-11), 16 (13-15 & 21), 24 and 25. Since DNFBPs were only introduced into the FATF Recommendations in 2004, one of the outstanding questions is, if countries have already established any kind of legislation regarding DNFBPs.

Another lead is the legal structure chosen by member countries in order to implement the recommendations into national legislation. One aspect would be the **legal hierarchy** of transposition acts; especially if legal obligations are regulated by law or resolutions issued by a supervisory body. Given the fact that the FATF requires for most of its recommendations

transposition by law or regulation it has to be verified if national laws provide sufficient competences for supervisory bodies to complete and specify legal obligations.

Aside from legal hierarchy the existence of a **regulatory level playing-field within jurisdictions** has to be evaluated. Especially in countries with decentralized legal structures, which foresee legislative competence on a regional level, it has to be reviewed if legislative standards are comparable within the jurisdiction or if there is gap for regulatory arbitrage.

The **supervisory system** is another criterion that could indicate reference points for a risk assessment. First it has to be determined if supervision is **carried out by a single regulator or by a network of regional operating supervisory bodies**. In case of a network of supervisors it has to be verified if supervisory standards and its application are comparable and consistent.

Another important aspect would be if the **general supervision and the special supervision concerning AML/CFT are carried out by the same supervisory body or if there are two different institutions** in charge. In case that there are two different institutions involved the quality of collaboration between the two bodies should be reviewed.

In case that the FIU is in charge of AML/CFT supervision it should be verified if its officers are well grounded in **expertise and knowledge of the characteristics of the controlled professions and businesses**.

When it comes to operational data the **number of persons executing the professions and businesses** in question have to be established and compared to the **number of supervisory officers, on-site inspections and Suspicious Transaction Reports** deriving from these professions and businesses. In some cases the **market volume** of the respective business could be interesting.

Las but not least the **number of cases and typologies detected** in the different member states have to be taken into account.

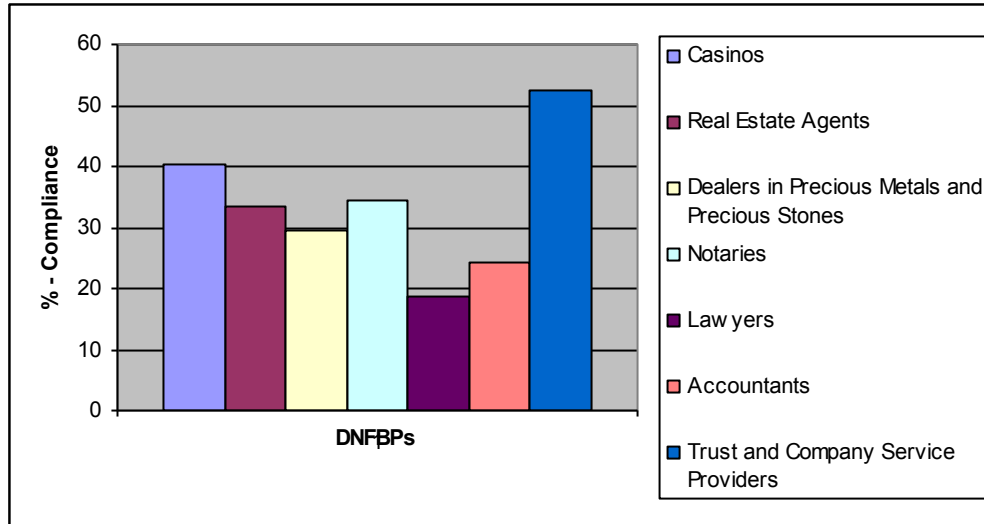
III. Analysis

1. Compliance of national legislation with the FATF Recommendations

As in general it has to be mentioned that only 3 of the 13 evaluated countries (Costa Rica, Spain, Uruguay) have already included all the professions and businesses mentioned in Recommendation 12 (casinos, real estate agents, dealers of precious metals and precious stones, notaries, lawyers, accountants, trust and company service providers) in their national AML/CFT legislation; meanwhile 2 countries (Bolivia, Mexico) have none of the DNFBPs included so far.

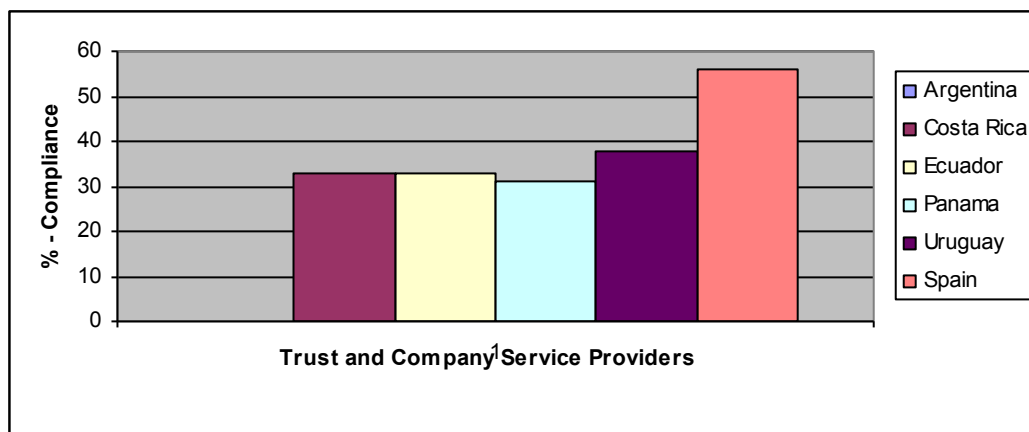
Concerning the panorama of the effective law several legal weaknesses repeat themselves in almost every jurisdiction. DNFBP legislation lacks consistent obligations to establish a risk based system of customer due diligence measures. Most countries show deficiencies concerning rules how to detect and treat customers who are politically exposed persons as well as appropriate rules how to detect and analyze unusual transactions. Furthermore, most countries lack feed back and

guidelines for DNFBPs by competent authorities concerning the implementation of AML/CFT obligations.



a. **Trust and company service providers** show the highest degree of implementation of the FATF Recommendations among DNFBPs.

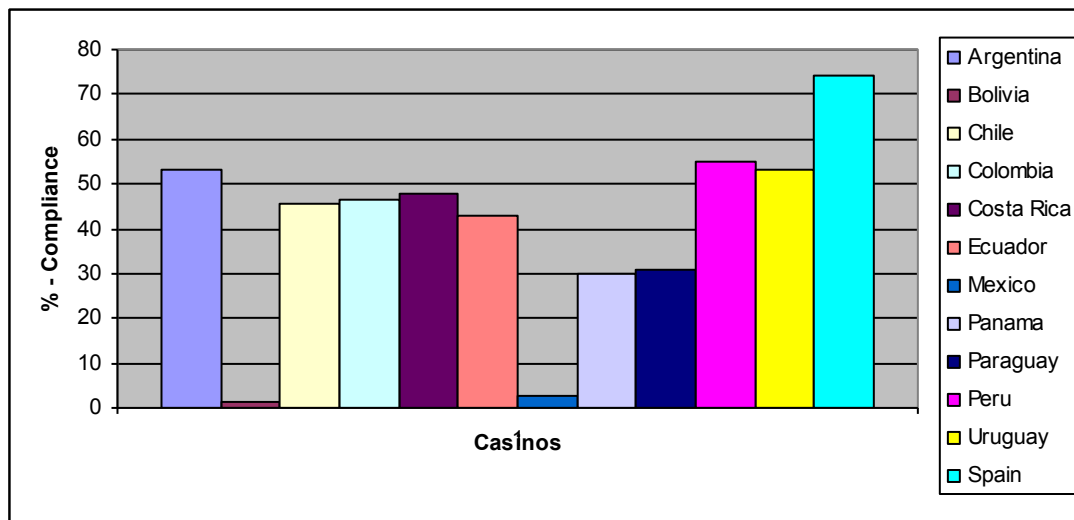
However this result is relative because only in 6 out of 13 countries Trust or Company Service Providers are a profession of its own (Argentina, Costa Rica, Ecuador, Panama, Uruguay, Spain). In most countries trusts are provided by banks or some other kind of financial institute. Company services are normally offered by lawyers and accountants and in some rare cases as well by notaries. One of the 6 mentioned countries still does not have any legislation in place (Argentina/trust administrators). The remaining 5 jurisdictions reach an average compliance of **52,3%**.



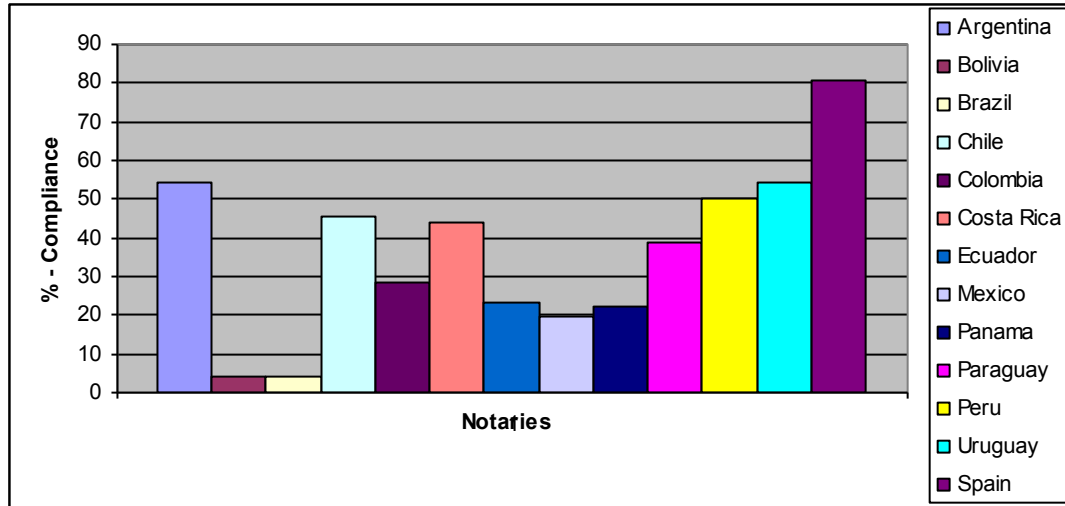
b. The sector that truly disposes most AML/CFT legislation are **casinos** and games of chance with **40,2%**. In 10 out of the 13 evaluated countries casinos are submitted to AML/CFT legislation. In Brazil casinos are prohibited since 1945. So the only countries that have not enacted any legislation yet are Mexico and Bolivia.

Especially customer identification and registration rules are quite complete. Furthermore most casinos have sufficient internal policies in place such as the obligation to designate a compliance officer, enable audits and carry out regular employee training. In all countries casinos need a public license to operate and most countries inquire criminal records of the owner and the directors (mind and management) before licensing.

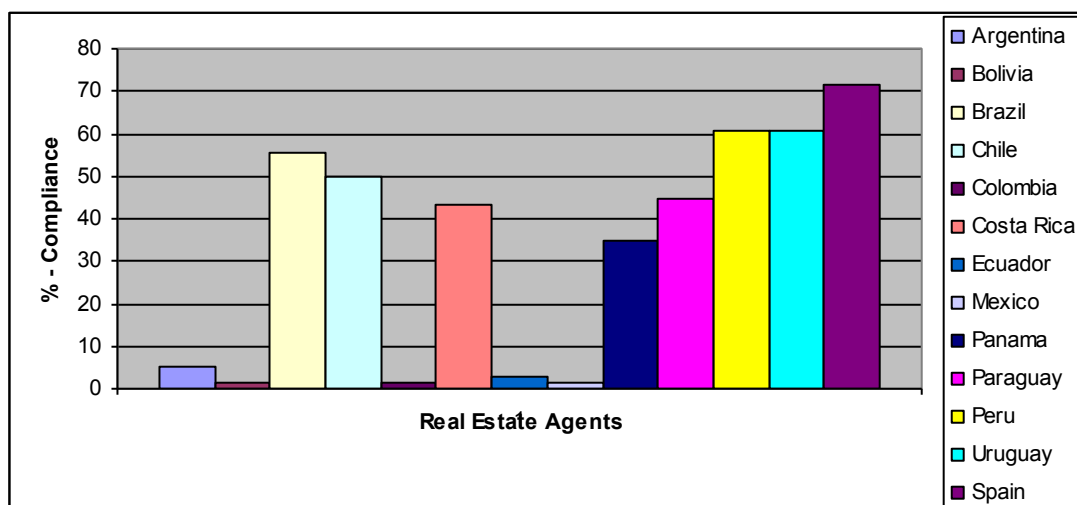
Internet casinos still suffer from considerable regulatory deficiencies. Many jurisdictions allow online gambling but do not count with specific legislation. In case that regulation exists, obligations are mostly rudimentary and insufficient.



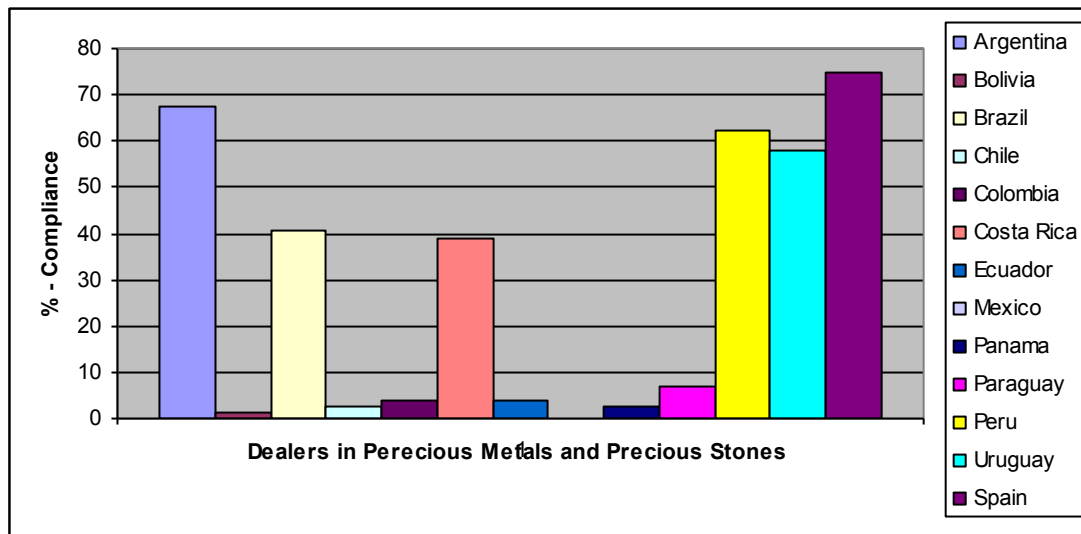
c. **Notaries** comply **34,5%** with the FATF Recommendations. The result is remarkable bearing in mind that in 5 out of 13 countries (Brazil, Bolivia, Ecuador, Mexico, Panama) notaries are not even submitted to AML/CFT obligations. The reason why is, that the general notary's legislation includes a wide range of client identification and documentation obligations. Those cover, without any special AML/CFT legislation in place, a priori parts of the obligations deriving from the Recommendations 5 and 10.



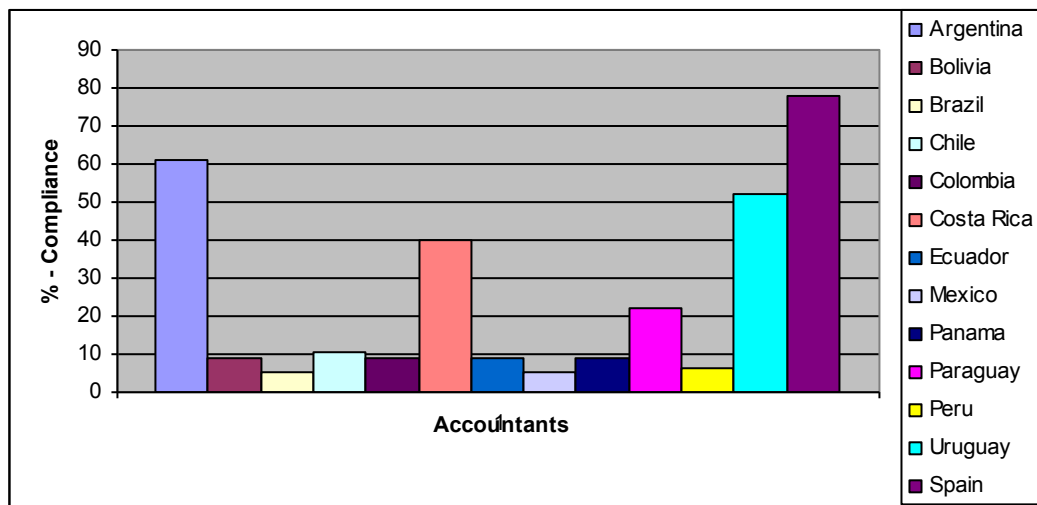
d. The compliance rate of the **real estate sector is 33,3%**. In 5 out of 13 countries (Argentina, Bolivia, Colombia, Ecuador, Mexico) real estate agents are neither submitted to AML/CFT legislation nor to any other kind of regulation. The remaining countries show a quite satisfying level of implementation of customer identification rules and internal policies. There are remaining deficiencies concerning the establishment of a risk based approach of customer due diligence, politically exposed persons and unusual transactions.



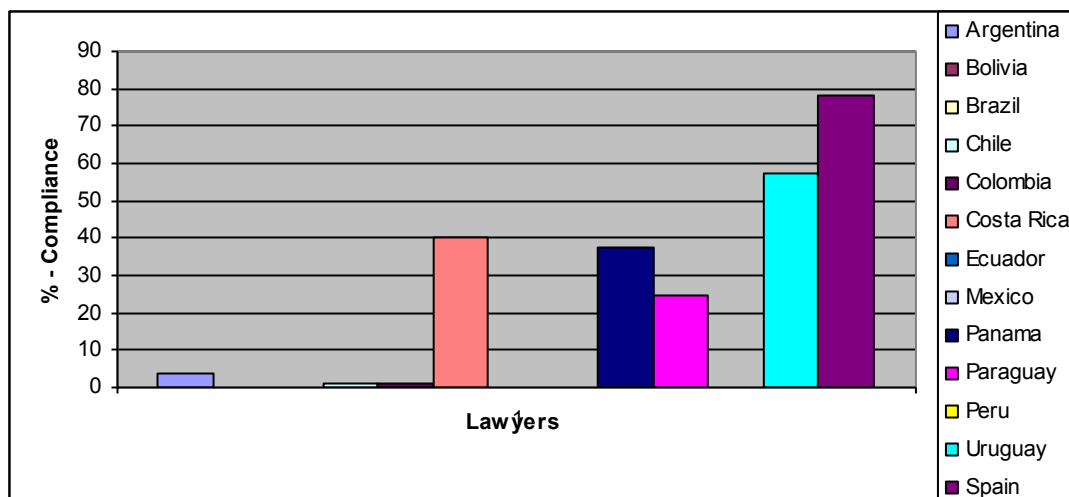
e. **Dealers in precious metals and precious stones** achieve an average compliance of **29,5%**. In 5 out of 13 countries (Bolivia, Chile, Ecuador, Mexico, Panama) they are not submitted to any AML/CFT regulations. Colombian legislation only refers to the gold sector. On the other hand Argentina, Brazil, Costa Rica, Paraguay and Uruguay extended their AML/CFT legislation to other high value goods such as artwork, antiques, high-end cars, philately etc. In general the sector suffers from grand regulatory weakness due to the fact that many countries do not even have general legislation regulating these professions.



f. In 8 out of 13 countries (Bolivia, Brazil, Chile, Ecuador, Mexico, Peru) **accountants** are not even submitted to AML/CFT legislation and therefore only achieve an average compliance of **24,3%**.



g. With **18,6% lawyers** have the lowest compliance rate. In 8 out of 13 countries (Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Mexico, Peru) they are not submitted to any AML/CFT regulation. Only in Spain AML/CFT law mentions lawyers explicitly meanwhile in other jurisdictions (Costa Rica, Panama, Paraguay, Uruguay) AML/CFT law refers to specific activities and therefore applies to lawyers only when caring out these activities.



Legal professions are traditionally delicate because of their close relationship to the constitutional right of legal defense and the involved professional secrecy. Hence many jurisdictions have been avoiding the incorporation of lawyers into AML/CFT legislation so far.

2. Legal structure

Most countries chose a two level approach to implement the FATF Recommendations into national legislation. A basic law defines the common obligations that all institutions, professions and activities share that are subject to the law. Specific rules that only apply to specific sectors are defined by resolutions enacted by the supervisory bodies. Uruguay has a single regulatory decree for all businesses and activities subject to AML/CFT legislation. The Spanish AML/CFT Act is completed by a general decree including a special regime for the DNFBPs.

Some countries have decentralized legislative competences. Especially casinos are subject of regional/provincial legislation, but only in terms of general regulation whereas AML/CFT regulation is generally national.

3. Supervision

a. The DNFBP sector suffers from general supervisory deficiencies. Many of the professions and activities lack a supervisory authority both in terms of general and AML/CFT supervision. In particular dealers in precious metals and precious stones and real estate agents carry out their businesses in most countries without any control. In addition, most countries that already designated supervisory entities for the DNFBPs still have not implemented supervision.

aa. Casinos are largely supervised in most countries. Only Costa Rica does not apply any general controls to its games of chance sector.

bb. Real estate agents are hardly regulated so far; both concerning general and AML/CFT supervision. As a matter of fact, most jurisdictions require matriculation or the inscription in a public register, but in 5 out of 13 countries (Argentina, Bolivia, Chile, Costa Rica, Mexico but only in the State of Sonora) there is no general supervision carried out and in 4 countries (Argentina, Bolivia, Chile, Costa Rica, Mexico but only in the State of Sonora) there is not even a regulatory body. The level of supervision in the remaining countries is very low.

cc. Dealers in precious metals and precious stones do not have to register in hardly any country, neither exist regulatory nor supervisory bodies. Colombian legislation includes the obligation to enlist in the commercial register and provides general supervision and a regulatory body, but is limited to gold exporters. Spain does not require any kind of registration. Moreover, the sector is not homogenous but fractioned into many sub-sectors generally supervised by different entities. Only the special supervision to detect and deter AML/CFT is carried out by SEBPLAC (Spanish FIU). It was not possible to establish if sufficient collaboration between the different supervisory bodies exists.

The other countries do not have no regulatory framework for dealers in precious metals and precious stones in place.

In Argentina, Brazil, Paraguay, Peru and Uruguay, where dealers in precious metals and precious stones are submitted to AML/CFT regulation, at least special supervision is carried out by the FIU (except Uruguay where the special supervision over the DNFBPs is carried out by the Auditoría Interna de la Nación).

dd. Concerning legal professions – lawyers and notaries - and accountants there is a significant difference between general and AML/CFT supervision.

Virtually all professionals are generally supervised in all countries. Only in Uruguay and Ecuador general supervision does not cover all active professionals. In Uruguay lawyers and accountants are supervised by their professional chambers. But since these professionals are not legally obliged to join a chamber, supervision can only be executed upon enlisted members. In Ecuador accountants are not supervised so far.

On the other hand AML/CFT supervision shows still a lot of deficiencies; especially because in many countries lawyers and accountants are still not subject of AML/CFT legislation.

b. Usually general and AML/CFT supervision are executed by two different bodies. Only in 5 countries (Ecuador, Panama, Paraguay, Peru, Uruguay) casinos have a single supervisory body. In the other sectors only insular cases of coinciding supervision were detected.

As mentioned earlier, it is the games of chance sector which is most developed in AML/CFT matters. This reflects both in the degree of compliance with FATF standards and in the evolution of the supervisory system.

In Peru the supervisory bodies for general and the AML/CFT supervision are legally obliged to carry out joint inspections. Information about the quality of cooperation between supervisory bodies in other countries was not available.

c. In 4 countries AML/CFT supervision is carried out by only one authority. In Costa Rica, Paraguay and Spain the FIU is in charge of AML/CFT supervision upon DNFBPs. In Uruguay the Auditoría de la Nación supervises DNFBPs in AML/CFT matters.

Due to the lack of statistics on the personal structure of these entities it is not possible to establish if they dispose of sufficient expertise concerning the specialities of the different professions and activities they control.

4. Operational data

The comparison of operational information is especially difficult since the majority of the evaluated countries do not have complete statistics so far. In particular information on the number of Suspicious Transaction Reports, on-site inspections and supervising officers was only presented by a few countries.

Nevertheless, evaluating the available information the following conclusions can be drawn:

a. The number of casinos ranges between 7 and 50 classic casinos per country, offering casino games such as roulette, baccarat, poker, black jack etc. Costa Rica has 50 operating casinos, Colombia 47, Spain 40, Panama 28, Chile 22, Paraguay 19 and Uruguay 11. In Mexico 7 establishments are currently operating with a timely limited license.

In countries where not only classic casinos but also slot machines are included, the number of operators is much higher. Peru for instance has 9 classic casinos but 507 slot machine halls. Ecuador has 30 classic casinos and 24 slot machine halls.

aa. Even though the number of casinos indicated by the evaluated countries is not very high the gaming economy is a very important market and gaining high earnings. It is believed that if both the legal and illegal gaming activities were combined in Latin America it is likely that the region would generate over US\$150 billion a year. The twelve principle gambling countries in this region generate combined revenues of over US\$33 billion.

Latin Americans spend circa US\$10 billion a year on gaming and gambling and it is also estimated that on average each inhabitant in this region spends US\$250 a year on gaming and gambling. Costa Rica, Brazil, Mexico, Argentina, Chile, Colombia, Peru, Panama and Venezuela are considered to be the most prolific gambling countries in the region.

Due to the circa 500 Online gambling operators that are based in Costa Rica, the gaming industry generates circa US\$14.5 billion. This places Costa Rica as having the largest gambling market within Latin America. In Brazil casinos are prohibited since 1949. Notwithstanding, Brazil has the largest lottery market in the region generating US\$4.1 billion a year and combined with its slots and bingo halls (although illegal) generated gambling revenues exceed US\$7 billion. Mexico should be one of the top ranking countries in the gaming industry within Latin America and it is estimated that if it removed its ban on casinos the gambling industry could generate revenues of US\$80 - US \$120 billion. Argentina has (together with Mexico) the third largest gaming industry within the region which generates approximately US\$4.5 billion a year. In Colombia circa US\$2 billion in sales are generated by its gambling industry. The betting and games of chance sector reached sales of US\$1.5 billion in 2008 and casinos, bingos and slot machines sales of US\$ 518.5 million. It is estimated that Chile's gambling market to be at least US\$ 600 million. Lotteries alone generate US\$300 million a year and casinos last reported revenues reached US\$219

million.³ The Panamanian FIU informed that in 2005 the gaming industry generated revenues of US\$666 million.

bb. Only 6 countries (Argentina, Chile, Panama, Peru, Uruguay, Spain) keep records on Suspicious Transaction Reports that include DNFBPs. The available data shows that casinos report constantly. The number of reports per year ranges between 14% (Panama) and 36% (Uruguay) compared to the number of establishments.

cc. There are only 4 countries (Chile, Colombia, Peru, Spain) that keep records of the number of on-site inspections carried out per year. Chile reported 12 inspections in 2010. Colombia performed 14 inspections between 2009 and 2010. In Peru they registered 8 inspections in 2008 and 7 in 2009. On-site inspections in Spain go back to 2001. Nevertheless, there inspections were not carried out every year (1 inspection in 2001, 2002 and 2006 at a time and 4 in 2004).

dd. Information concerning the number of supervisory officers is not available.

b. Only 8 out of 13 countries (Brazil, Chile, Colombia, Ecuador, Mexico, Panama, Peru, Spain) have information on the number of real estate agents operating in the respective markets. The number of people working as real estate agents varies significantly from country to country. Chile reported 400 real estate agents and 153 real estate companies. In Panama 711 persons are registered as real estate agents, in Spain 3975, in Ecuador 10.111, in Colombia 17.789 and in Peru 19.986. The highest number of real estate agents by far operates on the Brazilian market, where 207.586 agents are active.

aa. After the “subprime crisis” that shook global economy, real estate markets have been recovering considerably and attracting new investment over the last years. Especially large Latin American countries are experiencing a growing demand for property which is flanked by a strong growth of the construction sector.

Only in the first half of 2010 Mexican commercial banks handed out US\$86,8 million in credits for housing and commercial premises. The federal budget 2010 included US\$593,5 million for public construction projects. Investment for mega projects in Panama and Colombia mount up to round about US\$ 1 billion. In Argentina investment for small apartments that range between US\$ 60.000 and US\$100.000 are booming. Construction activity in Chile is very strong too; especially after having suffered from a severe earthquake in February 2010. The current construction portfolio exceeds US\$14 billion. The Peruvian market is boosted by high-end apartments that cost around US\$300.000. In Lima 17 projects are currently under construction and represent an investment of US\$450 million.⁴

The activity of real estate agents has been growing in line with the development in the real estate and construction market over the last years.

bb. Only 5 out of 13 countries (Brazil, Chile, Panama, Peru, Uruguay, Spain) keep record of the number of Suspicious Transaction Reports sent by real estate agents. In Costa Rica and Paraguay real estate agents are submitted to AML/CFT legislation but no statistics are available.

³ Latin American Gaming and Gambling Report 2011, Research and Markets

⁴ “Sector inmobiliario en América Latina, en plena recuperación”, Construcción Panaméricana, 20.10.2010

In general real estate agents have not reported much so far. Chile recorded 1 report in 2008, 1 in 2009 and 6 in 2010. In Spain the number of reports has been varying during the last years. In 2004 8 suspicious transactions were reported. The number of reports reached its peak in 2007 (42 reports). In 2009 the number of reports went back to 12.

cc. Peru and Spain are the only countries that communicated the performance of on-site inspections in the real estate sector. In Peru 66 real estate agents were inspected in 2008 and 107 in 2009. In Spain constant on-site inspections have been carried out since 2001 but there were never more than 1 to 8 real estate agents inspected per year.

dd. Information concerning the number of supervisory officers is not available.

c. Due to the fact that **dealers in precious metals and precious stones** are still not regulated in most countries very little information on the number of persons working in this field is available. 5 out of 13 countries (Brazil, Colombia, Ecuador, Peru, Spain) provided the respective information. Argentina, Costa Rica, Paraguay and Uruguay – even though dealers in precious metals and precious stones are submitted to ALM/CFT legislation – still do not keep records. The number of professionals varies from country to country conditional on their natural resources. In Colombia 37.396 dealers are registered, in Brazil 2170, in Spain 1099, in Peru 100 and in Ecuador 385.

aa. Some of the most important natural reserves of precious metals and stones are located in Latin America. Mexico is the world's number one exporter of silver. Peru and Colombia have significant gold resources. Furthermore, Colombia is famous for its emeralds. Brazil is known for its richness and diversity of all types of precious stones; it is the world second producer of emeralds and the only place where imperial topaz and tourmalines have been found so far. Moreover, a huge quantity of lemon chrome stones, agate, amethyst tourmaline, aquamarine topaz and quartz crystal are stoped. One third of the international production of precious stones is estimated to originate from Brazilian soil. Besides, Brazil is an important exporter of gold. In 2004 Brazil was 13th on the list of global exports, exporting 42 tons of gold. According to the International Jeweler's Confederation the international jewelry markets move around US\$ 200 billion a year. American Latin markets are calculated to sell and by diamonds and precious jewelry for US\$ 7 billion a year. Round about 15.000 businesses are involved. In 2009 the first Latin American Diamond Stock Exchange opened its gates in Panama City to bundle all precious metals and jewelry businesses in the region. It is estimated that businesses with a total value of at least US\$ 5 billion are concentrated. Moreover, estimations forecast an annual growth of 20% of the sector in Latin America.⁵

bb. Dealers in precious metals and precious stones are submitted to AML/CFT obligations in 8 out of 13 countries (Argentina, Brazil, Colombia, Costa Rica, Paraguay, Peru, Uruguay, Spain) but only 5 (Argentina, Brazil, Panama, Peru, Spain) keep records of the number of the reported suspicious transactions. In Brazil 23 reports were filed both in 2008 and 2009 and another 14 reports in 2010. Spain registered 1 report in 2007 and 2 in 2009.

⁵ La Nación, 9.11.2008

cc. The number of on-site inspections is very low. Only Peru (31) and Spain (13) reported the performance of inspections.

dd. Information concerning the number of supervisory officers is not available.

d. Since the profession of a **notary** is a function that enjoys public faith most countries maintain records of the number of persons executing it. Only Argentina, Uruguay and Bolivia did not provide any respective information. The number of notaries is generally determined by jurisdictions and often relates to the number of inhabitants; that is why the total number often varies from country to country due to its population. In Chile 333 notaries and 51 “conservadores”, special notaries for the mining sector, are registered. Colombia reported 872 notaries, Costa Rica 10.043, Ecuador 434 and Mexico 4175 notaries and 329 “corredores públicos” (lawyer who can notarize and legalize in the field of contract law). In Panama only 23 notaries are active, in Paraguay 1163, in Peru 543 and in Spain 2809.

aa. Notaries are submitted to AML/CFT legislation in 8 out of 13 countries, but only 5 keep records of the reported suspicious transactions. Notaries report conspicuously more than all the other professions and businesses. In Argentina 173 reports were registered in 2006, 221 in 2007, 257 in 2008, 282 in 2009 and 308 in 2010. In Chile the portion of reports sent by notaries has been growing continuously over the last years. In 2005 and 2006 3 cases were reported at a time. In 2007 and 2008 2 reports were registered per year. In 2009 notaries reported 32 cases and “conservadores” 6. In 2010 both notaries and “conservadores” sent 48 reports each. In Spain 97 cases were reported in 2007, 248 in 2008 and 194 in 2009. Peru informed that 7% of all reports in 2009 originated from the notary sector.

bb. In Spain one single on-site inspection has been carried out so far. In Peru 6 inspections were performed in 2008 and 4 in 2009.

cc. Information concerning the number of supervisory officers is not available.

e. Due to the fact that most **lawyers** are members in a bar association, a lot of countries have available data on the number of persons performing this profession. Brazil reported 585.555 registered lawyers, Mexico 420.591, Peru 95.672, Paraguay 22.000, Costa Rica 15.000, Ecuador 11.214, Panama 9000 and Spain 146⁶. The remaining countries did not communicate any respective information.

aa. Costa Rica and Paraguay do not have any statistics on the reporting of lawyers even though they are – indirectly – submitted to AML/CFT legislation. In Panama and Uruguay no reports sent by lawyers have been registered so far. In Spain lawyers have been reporting since 2004 and the number of reports has been growing constantly. Whereas in 2004 only 5 cases were reported, in 2009 32 Suspicious Transaction Reports were filed.

bb. Spain is the only country that communicated the performance of on-site inspections. 3 inspections were carried out in 2007 and 5 in 2008.

⁶ In Spain only records of those lawyers are kept that have already designated a compliance officer to SEBPLAC

cc. Information concerning the number of supervisory officers is not available.

f. In Mexico 420.591 **accountants** are registered; thus Mexico has the highest number of accountants in the area of Latin America. In the Brazilian accountant register 407.033 natural persons and 70.623 accountant firms are listed. Colombia reported 156.972 active accountants, Peru 65.169, Ecuador 21.081, Panama 11.888, Costa Rica and Paraguay 6000 and Spain 3804⁷. The remaining countries did not provide any respective information.

aa. Costa Rica and Paraguay do not have any statistics on the reporting of accountants even though they are – indirectly – submitted to AML/CFT legislation. In Panama and Uruguay no reports sent by accountants have been registered so far. In Argentina 3 reports were filed in 2006, 4 in 2007 and 2008, 5 in 2009 and 8 in 2010. In Spain accountants have been reporting since 2004 but the number reports has grown significantly since 2006. Whereas in 2004 only 1 report was filed and in 2005 15 cases were reported, the number of reports has been exceeding 3000 per year since 2006 (2006:3063; 2007:3099; 2008:3708; 2009:3804).

bb. No AML/CFT on-site inspections have been carried out so far by any of the evaluated countries. Only Brazil communicated the performance of round about 40.000 general inspections per year.

cc. Information concerning the number of supervisory officers is not available.

g. In most countries **trust and company services** are not provided by a special profession but by financial institutes (trusts) and lawyers, notaries and/or accountants (company services). In Argentina independent trust administrators do exist but they are not yet submitted to AML/CFT legislation. Information on the number of administrators is not available either. In Costa Rica trust providers are submitted to AML/CFT obligations but no registers are kept. Ecuador informed that 32 fund and trust administrators are active in the country. In Panama 60 trust companies are currently operating. In Uruguay company services are not only offered by lawyers, notaries and accountants but also by other independent professionals. All in all they mount up to round about 30 company service providers.

aa. Costa Rica and Ecuador did not inform about the number of suspicious transactions reported by trust providers. In Uruguay no reports have been filed so far. In Panama 2 cases were reported in 2008 and another 2 in 2009.

bb. No on-site inspections have been carried out so far by any of the evaluated countries.

cc. Information concerning the number of supervisory officers is not available.

⁷ In Spain only records of those accountants are kept that have already designated a compliance officer to SEBPLAC

5. Cases and Typologies

	Cases	Typologies
Games of Chance	18	<ul style="list-style-type: none"> • Channelling of corruption funds through bingo halls (Brazil) • Purchase of winning lottery tickets (Brazil) • Channelling of funds deriving from drug trafficking through casinos (Peru) • 15 cases without further description (Colombia 2005-2010)
Real Estate Agents	21	<ul style="list-style-type: none"> • 2 cases of land purchase with corruption funds (Brazil) • Leasing/ rent with funds deriving from drug trafficking (Mexico) • Employment of construction and real estate development companies as sham companies to justify illegal funds (Peru) • 17 cases without further description (Colombia 2005-2010)
Dealers in Precious Metals and Precious Stones	17	<ul style="list-style-type: none"> • Simulated gold exports (Peru) • Export of false gold or low quality gold (Peru) • Gold production to finance terrorist activities (Colombia) • 14 cases without further description (Colombia 2005-2010)
Lawyers/ Accountants	6	<ul style="list-style-type: none"> • Simulation of lawyer's and accountant's services to justify/ hide funds deriving from corruption (Brazil) • Simulation of lawyer's and accountant's services to justify/ hide funds deriving from drug trafficking (Peru) • 2 cases involving lawyers and 2 cases involving accountants without further description (Colombia 2005-2010)

IV. Conclusions

Based on the available information the non-financial businesses and professions are ranked due to their individual risk and exposure to money laundering and terrorist financing. The latter is expressed numerically; 1 representing the smallest and 5 representing the highest risk.

Nevertheless, trust and company service providers will not be considered due to the fact that these services do hardly exist as a proper profession in the evaluated countries.

Trust providers are generally financial institutes and therefore part of the financial market and its supervision; whereas company services are provided by lawyers, accountants and notaries that are explicitly included in Recommendation 12 and therefore analyzed separately.

Business or Profession	Risk Level*
Trust and Company Service Providers	NA**
Casinos	1
Notaries	2
Real Estate Agents	3
Dealers in Precious Metals and Precious Stones	4
Accountants	5
Lawyers	5

*1 represents the lowest and 5 the highest risk

** Trust and Company Service Providers are not included since they hardly exist as a proper profession in the evaluated countries

Level 1 – Casinos

The formal casino sector shows – compared to the other DNFBPs – a considerable low risk.

Casinos have always been an important source of public income – be it through public managed casinos or through duties and taxes paid by concessionaires – and therefore of great public interest. As a consequence of this, casinos have always been submitted to a wide range of regulation.

The interest to know casino customers is not new and has not been primarily generated by AML/CFT prevention. In most countries the access to casinos is limited to customers full at age and therefore entry controls are performed. Moreover, the tax administration requires customer data in order to tax winners. And finally, since black lists of high indebted gamblers and cardsharps have always existed, casinos have a proper interest to know who is gambling.

When casinos were introduced into the FATF Recommendations to prevent money laundering and terrorist financing, a solid legal foundation - that only required completion with the special AML/CFT obligations - was already in place.

Nevertheless, the sector has a sore spot; the growing sector of online gambling that becomes more and more an important player in local economies. In Costa Rica for example round about 500 operators are offering online games. Online gambling generates annual revenues of US\$ 14,5 billion, which make Costa Rica the third gambling market in Latin America. One of the reasons that attract online operators and software providers is the lack of a regulatory framework for online gambling. Commercial licenses apply only for the taxation of the online gambling companies. But not only Costa Rica but also all the other evaluated countries lack special legislation to tackle the special risks arising from the online sector.

Up to now the risk involving online gaming is scarcely known. Typologies have not been detected yet in Latin America. Anyway, due to the growing economic importance of the sector internet gambling should be tackled urgently.

The highest risk deriving from the games of chance sector is black market gambling, which cannot be considered in this analysis. Informal casinos and gambling halls attract gamblers not only because of its high revenues but also because of its anonymity.

Level 2 – Notaries

Even though notaries are not submitted to AML/CFT legislation in a number of countries, its exposure to AML/CFT risk is significantly lower than of the other businesses and professions.

The notary's office is one of the most regulated professions. Due to the fact that notaries have power to notarize and legalize they have to comply with many formal obligations. All clients have to be identified. Moreover, notaries have to keep records of all executed acts. Those do not only include client information but also the underlying information concerning the requested act. The records are not limited in time but have to be maintained indefinitely.

Based on these facts, notaries have to fulfill various obligations that prevent money laundering and terrorist financing even when they are not subject to AML/CFT legislation. The legal situation of notaries is comparable to what has already been detected in the casino sector. Existing legislation is quite extensive has only to be completed with the new obligations such as suspicious transaction reporting, customer due diligence and the designation of a compliance officer.

Due to the fact that notaries enjoy public faith the profession should actually be less exposed to AML/CFT risk than casinos. The only reasons why the notary's office is considered to be a profession fraught with risk are the lack of compliance with AML/CFT standards, the number of jurisdictions that still have not included notaries in their AML/CFT legislation and the fact that most typologies detected in Latin America involving DNFBPs are related to the purchase of property (which always involves notaries).

Level 3 – Real Estate Agents

Due to the number of detected cases, the lack of regulation and supervision of real estate agents the exposure of the profession to AML/CFT risk is considered to be increased.

Money laundering through the real sector – be it the purchase, the construction or rent of property – is one of the most employed techniques. This tendency is confirmed by the increasing number of typologies originating from the real estate sector communicated by the evaluated countries.

Level 4 – Dealers in Precious Metals and Precious Stones

Given the low level of regulation and supervision and the attractiveness of the typology the AML/CFT risk is considerably high.

Precious metals and precious stones are generally used to hide illegal funds and invest into stable values at the same time.

Especially precious stones have the remarkable advantage that they are inverse in value and dimension. Therefore they permit to transport high value in an easy way such as in a coat lining or a heel. Moreover rough stones do not carry any identification marks that would allow their identification or backtracking.

Both precious metals and precious stones are employed for simulated transactions; such as sham transactions of first quality products (jewelry, gold bars, polished diamonds etc.) or the purchase of manipulated products (alloys, painted gold bars, rough stones) in order to camouflage their true value.

Both precious stones and precious metals are easy to camouflage and non-specialized staff – such as customs officers – are hardly able to determine if the imported goods coincide with the ones declared in the export papers.

Regulation and supervision in this sector are very rudimental and therefore leave gaps for illegal activities.

Level 5 – Lawyers and Accountants

The professions that suffer from the highest risk and exposure to AML/CFT are lawyers and accountants.

The majority of the typologies involving accountants and lawyers are related to the set up of sham companies. In these cases the professional know-how is employed to create especially sophisticated business structures. The companies are fractioned and located in many different countries – including tax havens and non-cooperating countries – or multinational companies execute financial transactions through many natural and legal persons (nominees, triangulation of funds etc.) or in cash in order to channel and hide illegal funds.

The professional know-how of lawyers and accountants is especially valuable to those who intend to launder money or to camouflage any other type of illegal activity. Moreover these professions enjoy a legal peculiarity that is especially attractive: the professional secrecy. The absolute confidentiality between the client and its lawyer or accountant is a protection that could be used by criminals to hide their activities. Only 3 out of 13 countries (Argentina, Uruguay, Spain) made explicit reference in their AML/CFT legislation that the professional secrecy does not apply when the lawyer or accountant executes one of the activities mentioned in Recommendation 12.