ORDER
No. 408, dated 03.12.2020

ON THE ADOPTION OF THE STANDARDS AND METHODOLOGY OF INSPECTION OF NOTARY ACTIVITIES

Pursuant to Article 102, paragraph 4, of the Constitution, Article 7, paragraph 2, of Law No. 8678, dated 14.05.2001, "On the organization and functioning of the Ministry of Justice", as amended, and Article 23, paragraph 3, of Law No. 110/2018, "On Notaries",

ORDER:

1. Adoption of the standards and methodology for inspecting the activities of notaries, according to the text attached to this order, being an integral part of it.
2. The National Chamber of Notaries, the General Regulatory Directorate of Justice Affairs, as well as notaries are responsible for the follow-up and implementation of this order.

This order shall enter into force immediately and shall be published in the Official Gazette.

MINISTER OF JUSTICE
Etilda Gjonaj (Saliu)

METHODOLOGY
AND STANDARDS FOR INSPECTION OF NOTARY ACTIVITIES

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1. INTRODUCTION

1.1 Inspection scope

The mission of the Ministry of Justice is to "require the observance of the Constitution, laws, the realization and protection of dignity, human rights and fundamental freedoms, as well as to contribute to the prevention of violations of the law, in accordance with and in terms of the requirements of democratic development and European integration of the Republic of Albania" [1].

In fulfilling this mission, the Ministry of Justice is charged by the legislation in force with the supervision, control, inspection and conduct of disciplinary proceedings for the profession of the notary and other freelance professions associated with the justice system, according to the provisions of special legislation of the relevant field,[2] namely, the provisions of the law on notaries[3], which provides for the role of the Ministry of Justice in verifying compliance of the notaries with legal requirements in the exercise of their office.

The essence of the inspection institute and control mechanisms consists in:

- protection of the public interest; and
- legitimate interests of natural and legal persons.

All monitoring and controlling powers of the Ministry of Justice, regarding the way the notaries exercise their profession, also aim to:

- contribute to the fight against corruption;
- contribute to the fight against fraud/abuse of office;
- contribute to the fight against money laundering and financing of terrorism;
- avoid lack of professionalism;
- increase guarantees by notaries in the exercise of notarial activity.

1.2 Inspection objectives

The accomplishment of the mission and duties of the Ministry of Justice in terms of inspection and control mechanisms of notaries is achieved through:

- the assessment of compliance with legal requirements by the inspected entity;
- documentation of good practices in complying with legal requirements and their propagation;
- advising the inspected entity on the most correct implementation of legal requirements;
- ordering the correction of violations of legal requirements and elimination of consequences arising thereof;
- taking other administrative measures to avoid risks that may be caused to the public interest and legitimate interests of natural and legal persons, according to the terms and procedures provided for in law.

1.3 Inspection methodology

The Ministry of Justice carries out supervision of the general activity of notaries, in accordance with the rules provided for in the LN and for the purposes of inspection and control mechanisms of notaries, the Minister of Justice adopts standards and methodology for inspecting the activity of notaries.[4]

Using a standard form for the inspection of notaries has several advantages:

- officials tasked with the control and inspection duties proceed in conducting an administrative investigation in the same way, regardless of the notary office being inspected, providing guarantees of impartiality in the performance of their duties;
- facilitates data collection;
- data comparison becomes easier from one premises to another or from year to year;

[1] Sanctioned under Article 5, paragraph 2, of Law No. 8678, dated 14.05.2001, "On the organization and functioning of the Ministry of Justice", as amended (hereinafter "LMJ").
[2] Article 6, paragraph 18/1 of the LMJ.
[3] Sanctioned under Articles 22 and 23, of Law No. 110/2018, "On Notaries" (hereinafter "LN").
[4] Article 23, paragraph 3 of the LN.

- facilitates comparative studies and better foundation of recommendations;
- facilitates implementation of laws or by-laws.

This document is supported on European inspection standards and provisions of the LN in order to develop a practical and useful methodology for conducting regular inspections on-site on notarial acts and transactions of the notary, on the register of notarial activities, as well as any other documentation of notarial activity, with the aim of monitoring the notary's activity in relation to the implementation of the law and standards of professional conduct and, in particular, the implementation of legislation on the prevention of money laundering and financing of terrorism (addressed in detail in the methodology section on "Inspection for the prevention of money laundering").

2. INSPECTION

2.1 Rights and obligations of inspected notaries

The notary and his employees must substantiate and facilitate the inspection of inspectors[5]:

During the preliminary request (first inspection stage, see point 3.3).

- by sending the required documents within 24 hours.

During the on-site visit (second inspection stage, see points 3.4 to 5.3).

- welcoming inspectors;
- providing a desk, computer and printer;
- remaining at their availability throughout the inspection;
- actively participating in the inspection, by providing appropriate and accurate information and documents;
- providing all necessary explanations and important documents, without considering the absence of an external collaborator/partner as an objection;
- preparing in advance and in an organized manner all required documents in accordance with the laws and by-laws.

During the inspection procedure, the notary and his employees are entitled:

- to be acquainted with the reasons and topics of the inspection, especially for special inspections;
- be provided necessary and reasonable time for the preliminary preparation of the documents requested during the preliminary inspection request;
- make statements in relation to the claims of the inspector and have his/her statements registered in the inspection documentation;
- there should be no negative impact on the performance of notarial duties for the general public from the conduct of the inspection procedures in the notary office.

It should be clear that the inspection takes into account the observations and opinions of both stakeholders – the inspector and the notary – they should systematically fill in the comments columns, at least specifying that they "have no specific comments".

In case there are shortcomings found during an on-site inspection or through other sources, the notary shall be informed in writing and he/she is required to remedy the shortcomings within a time period determined by the Minister of Justice.[6]

2.2 Capacities and duties of specialists of the responsible organizational structure of the Ministry of Justice

The inspection procedure includes various aspects of notary activities, including the professional activities of notaries and deputy notaries (drafting of notarial acts and transactions, registers, archives, management of bank accounts, deontology, fees, etc.) and office management (employees, tax and professional liabilities, etc.).

[5] Submission of general tasks, parts of to be detailed below throughout the methodology text.
[6] Article 25, paragraph 6 of the LN.

The inspection regarding the notary's activity is carried out by the structure responsible of the Ministry of Justice,[7] in particular, by civil officials with control and inspection duties, part of the Section for the Regulation of Freelance Professions, under the Deregulation, Permits, Licenses and Monitoring Directorate, of the General Regulatory Directorate of Justice Affairs.

The specialists of the responsible structure of the Ministry of Justice have the authority to conduct the administrative investigation in accordance with the provisions of the Administrative Procedures Code, the LN, as well as the law on inspection.[8] They should introduce themselves and make statements politely, even though their role is not simply to fill out the standard form, which is the minimum framework of the inspection procedure, but also to take initiatives during the inspection procedure and to guide the search to specific and important issues.

The specialists and the notary must sign all the documents being inspected and the notary must be present during the inspection. The inspectors are entitled to keep a copy of any document they consider useful for the inspection: the copy must be cited in the comments.

In case irregularities or violations are noticed, the inspectors shall notify the Ministry of Justice, the National Chamber of Notaries and, where appropriate, the prosecution office, tax or social insurance authorities.

The specialists have the responsibility to organize special inspections, requesting prior communication of accounting documents from the notary.

Their mission is not to judge or propose a penalizing measure. They should follow up on the result of the inspection after a discussion with the notary; they should formulate recommendations, highlight efforts and repeated violations.

They are responsible for receiving accounting documents, completing the standard form, and forwarding to the relevant authorities the identified violations and irregularities.

2.3 Selection of specialists to be sent for inspection

The specialists should be selected based on their theoretical and practical experience in civil law, and more specifically, in the freelance professions and notary public. They should also have computer knowledge.

The selection of the specialists should be made in accordance with the essential goals of the methodology:

- to reduce delays and lack of transparency;
- to fight money laundering, corruption, fraud and embezzlement.

The specialists must be effective "detectors" of violations or irregularities, which means they must have the skills and personality to take initiatives during the inspection and to guide their search to specific and important issues.

To avoid the risk of undesirable ties between inspectors and notaries, it would be preferable to send a different inspector to the same office each year (or at least an alternation as much as possible), considering that a standardized inspection ensures homogeneity and that the annual follow-up by the same inspector is not necessarily compulsory.

2.4 Independent experts

For each inspection, the Minister of Justice shall determine the composition of the inspection team.

The Ministry of Justice, in carrying out the functions of preventive inspection, may be supported by a team of independent experts.[9] In case the Minister of Justice decides to appoint independent experts, the inspection shall be carried out by a joint team, consisting of an inspector from the Ministry of Justice and an independent expert.[10]

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[7] Article 23, paragraph 1 of the LN.

[8] Law No. 10 433, dated 16.06.2011, "On the inspection in the Republic of Albania".

[9] Article 24, paragraph 1 of the LN.

[10] Article 24, paragraph 5 of the LN.

The independent experts shall be appointed by the Minister of Justice, upon the proposal of the National Chamber of Notaries. The Chamber proposes at least two candidates for each independent expert position. Independent experts are selected from among notaries, former notaries or former judges specializing in civil law, with no less than 8 (eight) years of experience as notaries or judges, who enjoy high professional integrity and reputation. Former judges dismissed from office as a result of the vetting process, according to the legislation in force on the transitional re-evaluation of judges and prosecutors, shall not be appointed as independent experts.

The independent experts shall comply with the rules of professional secrecy in the performance of their office. The remuneration of independent experts, the rules for determining the number of experts, as well as other issues related to the exercise of the activity of independent experts, are set forth in Order No. 163, dated 10.06.2020, of the Minister of Justice, "On determining the number of independent experts, the remuneration, as well as rules on the exercise of their activity".

The selected experts, within the competences provided for in law, are entirely independent in conducting the expertise and making decisions on a specific case. The selected expert shall be entitled to carry out the following actions:

- be acquainted with the materials of the case for inspection;
- question the notary or deputy notary, at whose premises the inspection is carried out;
- provide explanations;
- request and collect data from third parties, within the limits necessary for the performance of the task.[11]

2.5 Identification of the parties to the inspection

This is the list of data that the inspector will need to enter at the beginning of an inspection, based on the order of the Minister of Justice to carry out the inspection.

2.5.1 Notary office

Purpose	- identify the inspected notary
Obligation of the notary	- provide complete and accurate information
Instructions for inspectors	- complete the following table

Name:	
Last name:	
Address:	
Phone:	
Fax:	
Email address:	
Website:	
License number:	
Unique Entity Identification Number (NIPT/NUIS)	

2.5.2 Inspectors

Purpose	- identify the inspectors inspecting the office
Instructions for inspectors	- if the office is inspected by several inspectors, create a table for each inspector

[11] Paragraph 11 of Order No. 163, dated 10.06.2020, of the Minister of Justice, "On determining the number of independent experts, the remuneration, as well as the rules on the exercise of their activity".

Name:	
Last name:	
Position:	
Address:	
Phone:	
Fax:	
Email address:	

2.5.3 Independent experts

Purpose	- identify independent experts, in cases there are independent experts appointed to carry out the inspection
Instructions for inspectors	- if the office inspection is supported by several independent experts, create a table for each expert - fill in in detail the tasks assigned to the expert by the Minister of Justice and, where appropriate, third parties (e.g. accountant) ordered to allow the expert to perform the assigned tasks

Name:	
Last name:	
Position:	
Address:	
Phone:	
Fax:	
Email address:	
Tasks assigned to the expert:	- - -
Third parties ordered (as applicable)	

3. PERFORMING THE INSPECTION

The Minister of Justice, in order to control and monitor the notary activity in relation to the implementation of the law, standards of professional conduct, and in particular the implementation of legislation on the prevention of money laundering and financing of terrorism,[12] carries out:

- regular on-site inspections of all acts, the register of notarial activities, as well as any other documentation of notarial activities;[13]

- special inspections, on general or specific topics, in cases he deems it necessary;[14]

Every notary office shall be inspected at regular intervals, but no less than every four years. A newly appointed or transferred notary shall be subject to inspection within two years of his appointment or transfer.[15] The Minister of Justice shall approve an annual inspection program for notaries.[16]

The inspection shall be carried out in two stages:

- preliminary request (see point 3.3), requesting the submission and preparation of acts, registers, archives and other documents according to the requirements of the structure responsible;

- on-site inspection on the designated day (on-site visit) (see points 3.4 to 5.3).

[12] Article 25, paragraph 4 of the LN.
[13] Article 25, paragraph 3 of the LN.
[14] Article 25, paragraph 2 of the LN.
[15]Article 25, paragraph 1 of the LN.
[16] Idem.

An inspection includes various aspects of notarial activities, including the professional activity of notary and deputy notary (drafting of acts and notarial actions, registers, archives, management of bank accounts, deontology, fees, etc.) and office management (employees, tax and professional liabilities, etc.).

3.1 Topics of the general inspection of notaries

The topics of the general inspection shall consist in the following:

- verification of the office premises in terms of the minimum criteria for the notary's office premises, whether the name is marked in his office, the office surface area, archive parameters, the fact whether he advertises services other than notary and translation ones, in accordance with the standards provided for in the respective by-laws;
- verification of the presence of the notary;
- verification of the deputy notary, as appropriate, and verification of his employment contract and payment of contributions;
- verification of candidates for notaries and notary administrative assistants;
- verification of data entry in the electronic system of the Albanian notarial register (hereinafter "ANR");
- verification of notarial registers, whether there are corrections in the register;
- verification whether the notarial registers are legalized by the Court and the Ministry of Justice before initiation of the registration and whether they comply with the self-declarations made to the Ministry according to the by-law of the Minister of Justice;
- verification whether the notary has a register of testaments;
- verification of the application of notary fees, as recorded in the register, by checking it with the act or transaction in the archive or, as the case may be, with the electronic system of the Chamber and ANR;
- verification of announced tariffs;
- verification of vehicle purchase contracts, if verified with the RBS (Register of Insurance Liens);
- verification whether there are any duty-free vehicle sales contracts made;
- verification whether there are immovable properties purchase contracts made without the construction permit being registered by the construction company with the ASHK;
- verification of the conclusion of the insurance contract;
- verification of compliance with the reporting obligation with the DPPPP (responsible authority), in the implementation of legislation on the prevention of money laundering and financing of terrorism.

In conducting the administrative investigation, the notary's other obligations under the LN are also taken into consideration, as follows:

- drafting notarial acts in a clear and clean way, according to the rules provided for in the LN and in the regulations adopted by the National Chamber of Notaries;
- reflection in the notarial deed of the stamp due;
- reflecting in the relevant act of the obligations that the parties have towards various tax bodies/institutions;
- continuous improvement of his professional qualification, by participating in continuing education programs and other training activities, for at least 5 (five) days per year, organized by the Albanian Notary Training Center or other entities;
- specifying in notarial acts containing transactions and issuance of the certificate of inheritance, of the obligation of the parties to register them with state/public or private institutions within the legal deadlines, to the purpose of publishing of the legal fact and avoiding penalties;

- submission for registration, upon fulfillment of the conditions, of the relevant notarial deed, performance of the actions specified in the law at the institution responsible for the registration of immovable property that administers the electronic register where the immovable property is located, within the time limit specified by law;

- making of payments determined annually by the Chamber Council, as adopted by the General Assembly, within 3 (three) calendar months of the contribution's year;

- compliance with the obligations arising from the Labor Code and the legislation in force on social insurance, regarding candidates for notaries and other persons employed in his office.

- the above paragraphs constitute a general outline of the topics that will be covered during the inspection by the inspector and, where appropriate, the independent expert, to be detailed hereunder, throughout the methodology text.

3.2 Documentation required before and during the on-site inspection

This is the list of documents that the notary must present to the inspectors during the inspection:

- some of them must be sent to the inspectors by the notary during the first inspection stage within 24 hours of receiving the request;

- other documents must be presented during the second inspection stage, during the on-site visit.

The list must be sent by the inspectors to the notary along with the order of the Minister of Justice ordering the inspection.

The notary must submit the required documents. In case he/she fails to do so, the inspector must mention it (comments, end of document). It may be a professional error for the notary.

REQUIRED DOCUMENTS	
First inspection stage: preliminary request	
Second inspection stage: on-site visit	
Control of professional activity by referring to notarial actions provided for in the joint instruction in force on determining fees	
1. Immovable property commissioning contracts	Prepare in order to present it to the inspectors on the day of the on-site visit
2. Immovable property exchange contracts	*Idem*
3. Contracts on the alienation of immovable property under the marital property regime	*Idem*
4. Vehicle transaction contracts	*Idem*
5. Certificates of inheritance issued by a notary public	*Idem*
6. Notarial acts where errors have been corrected by the notary	*Idem*
7. General register of notarial acts and actions	*Idem*
8. Register of testaments	*Idem*
9...	*Idem*
10... etc.	*Idem*
Control of office management	
Lease contract or ownership titles of the notary office premises	Prepare in order to present it to the inspectors on the day of the site visit
Employment contract of each employee	*Idem*
Income declaration (year 2)	*Idem*
Income tax payment certificate (year 1)	*Idem*
VAT payment certificate (year 1)	*Idem*
Proof of social insurance payments (year 1)	*Idem*
Proof of health insurance payments (year 1)	*Idem*
Certificate from the professional body of payment of the quota	*Idem*

(year 1)	
Proof of payment of the training fee (year 1)	*Idem*
Certificate of completion of continuing training	*Idem*
Professional liability insurance certificate	*Idem*
Insurance policy for office premises	*Idem*

3.3 First inspection stage: preliminary request

Purpose	- The first inspection stage consists in the preliminary request of all sensitive documents. - The notary receives a copy of the Minister's order and a list of required documents in his official email address. He must provide all the documents on the list within 24 hours of receiving the *email*.
Notary liability	- The notary must provide all requested documents within 24 hours of receiving *the email*.
Instructions for inspectors	- The list of required documents must be sent via email to the notary's official address along with a copy of the minister's order. - The Ministry's IT expert should ensure that inspectors will be informed that the email addresses through which documents were requested have been accessed. - The documents requested and received by the notary must be inspected prior to the on-site visit. - The following table should be completed before the on-site visit.

PRELIMINARY DOCUMENTS REQUIRED	**Date when the document is requested by the inspection DD.MM.YYYY**	**Date of notification to the notary (if applicable) DD.MM.YYYY**	**Date of transmission of the document by the notary DD.MM.YYYY**

If the notary has not sent the documents within the same day, indicate the reasons for which he justifies this delay.	

3.4 Second inspection stage: on-site visit
3.4.1 Previous on-site inspection

Purpose	- The objective of point 3.4.1 is to summarize in the same table the history of previous inspections (carried out in previous years or even in the current year in case of a special inspection).
Instructions for inspectors	- Inspectors should complete the following table before the current year's visit, (if the office has been operating for more than one year), indicating the date of previous inspections. A number of previous inspections may be important information. - When visiting the notary's premises, inspectors must obtain and keep all documents from previous inspections to check whether previous recommendations have been properly implemented.

	Year 4 (date)	**Year 3 (date)**	**Year 2 (date)**	**Year 1 (date)**	**Current year**
Regular inspections					N/A
Special inspections					

3.4.2 Actual on-site inspection

Purpose	- If the on-site inspection is postponed, the reason must be indicated in the inspection report.
Notary obligation	- The notary is bound to be present and available during the inspection.
Instructions for inspectors	- In case of postponement due to the notary, inspect whether there have been similar cases in previous years. - The notary may request a postponement only for objective and proven reasons (e.g., in case of illness proven by a medical report). - In case of postponement due to the inspector, check whether there have been similar cases in previous years (same notary - same inspector).

In case this year's on-site visit has been postponed, please indicate the reason:	
Have there been similar cases in previous years?	

3.4.3 Notarial activity

Purpose	- Ensure that the drafting of notarial acts is carried out in a clear and clean way, according to the rules provided for in the law and in the regulations approved by the Chamber.
Notary liability	- Submit the required documents immediately. - Immediately provide inspectors with all relevant information.
Instructions for inspectors	- The inspector must fill in the table carefully. - The inspector must ensure that the notarial acts and actions drafted by the notary are drafted in a clear and clean way, in accordance with the formal requirements provided for in the law. - The inspector shall verify whether the notary has carried out verifications at the RBS (Register of Insurance Liens), and whether there are any vehicle sales contracts without the payment of customs been made, in case of vehicle purchase contracts. - The inspector shall verify whether there are any commissioning contracts or exchange contracts have been made for immovable properties without the construction permit being registered by the construction company with the ASHK. - the contracts must bear the elements provided for in the Civil Code and other elements provided for in the law. - The inspector shall verify whether the stamp duty is reflected in the notarial deed. - The inspector shall verify whether the obligations that the parties have towards various tax bodies/institutions are reflected in the relevant act. - The inspector shall verify whether the notary has performed the notarial act for the transfer or recognition of ownership of an immovable property or a real right over it, after having verified the ownership of the party through the immovable property electronic system. - The inspector shall verify whether the notary has specified in the notarial acts containing transactions and the issuance of the certificate of inheritance, the obligation of the parties to register them with state/public or private institutions within the legal deadline, in order to publish the legal fact and avoid penalties. - NOTE: Last will and testamentary acts are not subject to inspection as long as the testator is alive.[17]

[17] Article 94, paragraph 2 of the LN.

Notarial act/deed	Fulfillment of formal and legal criteria P/J	Comments on the drafting of notarial acts/deeds
Entrepreneurial contract		

Inspector's comments:

3.5 Office premises

Purpose	- Ensure that the office is suitable and offers the appropriate conditions for work and for receiving customers/parties as provided for in the Minister's order.
Notary liability	- The notary is part of the justice system. The notary's premises are part of the image of justice and must be appropriate.
Instructions for inspectors	- Inspect whether working and customer reception conditions meet the relevant requirements of legal acts and by-laws. - In the first table, the inspector shall indicate the location of the office. - In the second table, the inspector shall indicate the destination of each workspace, the surface area and a general comment on size, infrastructure, etc.

Address:	
Floor:	
Details:	

Room	DESTINATION (room used for …)	Approximate surface area	Comments on size, lighting, furniture, etc.
Reception hall	Reception	Sqm	
Room 1		Sqm	
Room 2		Sqm	
...		Sqm	
Archive		Sqm	
...		Sqm	
Premises in total	–	Sqm	

Inspector's comments:

3.6 Office employees

Purpose	- Identify the staff. - Check employment contracts. - Check whether the legislation on social services and wages/salaries is implemented in accordance with the rules on social services and/or on a contractual basis.
Notary liability	- Immediately submit the required documents. - Immediately provide inspectors with all relevant information.
Instructions for inspectors	- The inspector must fill in the table carefully. - The notary is part of the justice system: failure to comply with legislation on social services and wages/salaries should be considered a serious violation.

Name	Last name	ID	Position	Date of employment contract	Monthly salary (gross)	In accordance with legislation Y/N

Inspector's comments:

4. MAINTENANCE OF ACCOUNTS AND FINANCIAL RECORDS

4.1 Maintenance of accounts

Purpose	- Check whether the notary has all the documents required by the laws and by-laws for maintaining the accounts and ensure that the notary makes no withdrawals from special accounts where he performs acts for customers, but only transfers related to notarial acts. - The notary is part of the justice system: failure to comply with the legislation on maintaining special accounts should be considered a serious violation.
Notary liability	- Immediately submit the documents requested by the inspectors. - Immediately provide inspectors with all relevant information.
Instructions for inspectors	- The inspector shall approve the documents after they are submitted by the notary. - Inspectors do not have to go into detail: they do not replace tax inspectors but must inform the tax authorities in case accounting documents have not been maintained and updated. - Since the last inspection by the inspectors (no later than last year), if the tax authorities have inspected the accounting documents, the inspectors will nevertheless complete the column “Maintained and updated” AND indicate the date of the inspection by the tax authorities in the column “Certification by the tax authorities”. - IMPORTANT: The notary’s statement that the tax authorities have inspected the accounting maintenance is not sufficient and must be confirmed by a certificate or approval from the tax authorities.

Account type	Account holder name	Comments on maintaining the account in accordance with the law	Maintained and updated Y/N
Special account for transfers related to notarial acts			
Current account for conducting commercial activity as a notary			

Inspector’s comments:

4.2 Financial documentation

Purpose	- Inspect whether the notary has declared on time the tax liabilities. - The notary is part of the justice system. His work is not the same as others and therefore he should be inspected not only by the tax authorities, as any other citizen, but also by the special inspection structure of the justice system. - Delay or failure to declare taxes should be considered a violation and should be a ground for disciplinary proceedings.
Notary liability	- Provide all required information on the day of the inspection.

	- Provide any requested explanation on the day of the inspection.
Instructions for inspectors	- When the inspectors visit the premises, they must have with them a list provided by the tax administration, related to the situation of notaries. Inspectors will require that the tax declaration has been filed on time. If not, they should contact the tax authorities, the Ministry of Justice, and the National Chamber of Notaries. - If applicable, inspectors will show that there is a payment certificate issued by the tax authorities (date of certificate to be indicated).

Documents and references	Declaration date	Certification from tax authorities
Income tax return		
VAT		
Etc.		

Inspector's comments:

4.3 Payment of taxes

Purpose	- Check whether the notary has paid the taxes on time. - The notary is part of the justice system. His work is not the same as others and therefore he should be inspected not only by the tax authorities, as any other citizen, but also by the special inspection structure of the justice system. - Delay or failure of payment of taxes should be considered a violation and should be a ground for disciplinary proceedings.
Notary liability	- Provide all required information on the day of the inspection. - Provide any requested explanation on the day of the inspection.
Instructions for inspectors	- When the inspectors visit the premises, they must have with them a list provided by the tax administration, related to the situation of notaries. Inspectors will inspect that the tax payments have been made on time. If not, they must report this to the tax authorities, the Ministry of Justice and the National Chamber of Notaries. - ATTENTION: Inspectors have the responsibility to inspect that the payment has been made (for example, with a payment certificate issued by the tax authorities). - If available, the inspectors will show that there is a payment certificate issued by the tax authorities (indicate the date of the certificate).

Documents and references	Payment date	Certification from tax authorities
Payment of income tax		
VAT		
Etc.		

Inspector's comments:

4.4 Social insurance obligations

Purpose	- Check whether the notary has paid his social insurance obligations on time. - The notary is part of the justice system. His work is not the same as others and therefore he should be inspected not only by the tax authorities, as any other citizen, but also by the special inspection structure of the justice system. - Delay or failure of payment of taxes should be considered a violation and should be a ground for disciplinary proceedings.
Notary liability	- Provide all required information on the day of the inspection. - Provide any requested explanation on the day of the inspection.
Instructions for inspectors	- When the inspectors visit the premises, they must have with them a list provided by the tax administration, related to the situation of notaries. Inspectors will check that social insurance obligations have been paid on time. If not, they must forward it to the social insurance authorities, the Ministry of Justice and the National Chamber of Notaries. ATTENTION: Inspectors have the responsibility to inspect that the payment has been made (for example, with a payment certificate issued by the social insurance authorities). - If available, inspectors will show that there is a payment certificate issued by the social insurance authorities (date of certificate to be indicated).

Nature of obligation	Last payment date	Certificate from social insurance authorities
Social insurance		
Pension		
Health insurance		
Etc.		

Inspector's comments:

4.5 Financial obligations in relation to the professional body

Purpose	- To inspect whether the notary fulfills his professional obligations towards the professional body (National Chamber of Notaries). In this section, the inspection should focus on financial obligations, that is, the payment of professional obligations (quotas, annual fee, etc.). - The notary is part of the justice system. His professional duties must be inspected by the professional body (Chamber), but according to European standards, a double inspection is necessary to ensure that a professional body inspects the notary regularly and fairly.

	- Failure of payment should be considered a violation and should be a ground for disciplinary proceedings.
Notary liability	- Provide all required information on the day of the inspection. - Provide any requested explanation on the day of the inspection.
Instructions for inspectors	- When the inspectors visit the premises, they must have with them an updated list of notaries' professional obligations (professional obligations only). - Inspectors should check that professional fees have been paid on time. If not, they should contact the Ministry of Justice and the National Chamber of Notaries. ATTENTION: Inspectors have the responsibility to check that the payment has been made (for example, with a payment certificate issued by the National Chamber of Notaries). - If available, inspectors will show that there is a payment certificate issued by the Chamber (date of certificate to be indicated).

Nature of obligation	Last payment date	Certificate from the Chamber
Membership quota		
Training fees		
Other financial obligations (to be completed with the Chamber)		

Inspector's comments:

4.6 Continuous training

Purpose	- Check whether the notary has attended, being mandatory, continuous training within the last twelve months. According to the LN provisions, the notary participates in continuous training programs and other training activities held by the Albanian Notary Training Center or other entities, for at least 5 (five) days per year. - The notary is part of the justice system. He must undergo continuous training to refresh his knowledge. This professional obligation must be checked by the professional body (Chamber), but according to European standards, a double inspection is necessary to ensure that a professional body controls the notary regularly and fairly. - Lack of training should be considered a violation and should be a ground for disciplinary proceedings.
Obligation of the notary	- Provide all required information on the day of the inspection. - Provide any requested explanation on the day of the inspection.
Instructions for inspectors	- When the inspectors visit the premises, they must have with them with a list of ongoing trainings organized by the Chamber or other entities in the last 12 (twelve) months. - Inspectors will check that training has been attended (certificate of attendance issued by the Chamber must be shown to inspectors).

Nature and topics of training sessions followed during the last 12 months	Date	Number of hours	Certificate of participation issued by the Chamber (must be shown)
Training on			
Training on			
Training on			
Training on			
Training on			

Inspector's comments :

4.7 Professional insurance

Purpose	- Check whether the notary is insured and the premiums have been paid on time. - The notary is part of the justice system. In case of an error, he must be covered by insurance. This insurance is a guarantee not only for the notary himself, but this is the most important thing for the customer who has the right to good administration of justice. Therefore, this professional obligation must be checked by the professional body (Chamber), but according to European standards, a double inspection is necessary to ensure that a professional body controls the notary regularly and fairly. - Lack of insurance or failure to pay the insurance premium should be considered a violation and should be a ground for disciplinary proceedings.
Notary liability	- Provide all required information on the day of the inspection. - Provide any requested explanation on the day of the inspection.
Instructions for inspectors	- For civil liability coverage: inspectors will inspect whether the insurance contract number is correctly reported in the contract signed with creditors/customers.

Insurance	Insurance company name + address	Contract number	Date of last premium payment	Certificate (issued by the insurance company must be shown)
Professional liability coverage:				
Other……				

Inspector's comments:

5. REGISTERS AND ARCHIVES

5.1 Registers

Purpose	- Check whether the notary has all the documents required by laws and by-laws.
Notary liability	- Immediately submit the documents requested by the inspectors. - Immediately provide inspectors with all relevant information.
Instructions for inspectors	- The inspector shall approve the documents after they have been submitted by the notary. - The inspector shall verify the notarial registers if there are corrections therein. - The inspector shall verify whether the notarial registers are legalized by the Court and the Ministry of Justice before the register is opened and whether they comply with the self-declarations made with the Ministry according to the instructions of the Minister of Justice. - The inspector shall verify whether the notary has a register of testaments. - The inspector shall verify the application of notary fees with the records in the register, crosschecking it with the act or transaction in the archive or, as appropriate, with the Chamber's electronic system or with the RNSH.

Register	Comments on keeping of register and corrections	Reflection of the content of the registers in the ANR and the Chamber's electronic system	Legalized Y/N
General register of notarial acts and transactions			
Register of testaments			

Inspector's comments:

5.2 Archive

Purpose	- Inspect whether all acts and transactions are registered in the ANR.
Notary liability	- Provide all required information on the day of the inspection. - Provide any requested explanation on the day of the inspection. - Show the inspectors the archive where all notarial acts and transactions are preserved and make them available to the inspectors.
Instructions for inspectors	- During the first inspection stage (preliminary request): Inspectors will inspect the number of notarial acts and transactions registered in the ANR by the notary. - During the second inspection stage (on-site visit): the inspectors shall request the notary to show them the notarial archive. - Inspectors shall count the number of notarial acts and transactions preserved and compare it with the number of notarial acts and transactions registered in the ANR.

How many acts/transactions are recorded in the IT system (ANR):		
How many acts/transactions are preserved in the premises?	- Notarial acts	
	- Notarial transactions	

Inspector's comments:

5.3 General features of the archive

Purpose	- Archival files are one of the useful criteria to assess the organizational capabilities and diligence of notaries. Inspectors will provide a general opinion on these criteria.
Notary liability	- Provide all required information on the day of the inspection. - Provide any requested explanation on the day of the inspection. - Show inspectors the premises where all acts and transactions are preserved and make them available to inspectors.
Instructions for inspectors	- The objective is to inspect whether the archival files are well-organized, preserved, completed, etc.

The files are:

	From 1: (very bad) to 10 (very good)										
	1	2	3	4	5	6	7	8	9	10	
Disorganized											Well-organized
Unsystematic											Well-systemized
Unclassified											Classified
Incomplete											Complete
Not updated											Updated
Other (please specify).											*Other (please specify).*

Inspector's comments:

6. INSPECTION ON THE PREVENTION OF MONEY LAUNDERING

6.1 Scope of the Law on the Prevention of Money Laundering and Financing of Terrorism with respect to Notaries

Law No. 9917, dated 19.05.2008, "On the prevention of money laundering and financing of terrorism", as amended (hereinafter "LML") provides in Article 3 (gj) that notaries are also subjects of the scope of this law, when preparing or carrying out transactions for their customers for the following activities:

- transfer of ownership of real estate, administration of liquidities, securities or other assets;
- administration of bank accounts;
- administration of capital shares be used for the establishment, operation or administration of commercial companies;
- creation, operation or administration of legal persons and/or legal organizations;
- legal agreements, sale and purchase of shares or capital parts of joint-stock companies and transfer of commercial activities.

6.2 Role of the Ministry of Justice as a supervisory authority

The Ministry of Justice, in accordance with Article 24, paragraph 1 (d) of the LML, runs as the supervisory authority for the activity of notaries in terms of preventing money laundering and financing of terrorism.

The Ministry of Justice supervises, through inspections, the compliance of notaries' activities with the obligations set out in the LML and immediately reports to the General Directorate for the Prevention of Money Laundering any suspicion, information or data related to money laundering or financing of terrorism.

The Ministry of Justice also carries out the following tasks in terms of preventing money laundering:

- controls the implementation of anti-money laundering and counter-terrorism financing programs by notaries and ensures that these programs are appropriate;
- informs in a timely manner and cooperates with the responsible authority on issues of non-compliance, the results of inspections, the corrective measures and administrative measures to be taken, if any;
- takes the necessary measures to prevent an unsuitable person from owning, controlling or participating, directly or indirectly, in the management, administration or activity of a notary office;
- cooperates and provides specialized assistance, according to its activity, in the field of money laundering and financing of terrorism, in accordance with the requirements of the responsible authority;
- cooperates in the preparation and distribution of training programs in the field of prevention of money laundering and financing of terrorism;
- maintains statistics on actions taken, as well as sanctions imposed in the field of preventing money laundering and financing of terrorism.

6.3 Office Organization – Risk Management

6.3.1 Risk analysis

Notaries must conduct and document a risk analysis for the legal transactions performed by them in general, verify regularly and eventually update it, and make it available to the supervisory body upon request.

Other remarks

The relevant legal framework provides for a regular inspection of the notary's activity, at least every four years.[18] The inspection monitors the notary's activity with regard to the application of the law, standards of professional conduct, in particular the implementation of legislation on the prevention of money laundering and financing of terrorism.[19] Depending on the outcome of the inspection, the risk analysis must be updated.

Other remarks

The LML is structured under the influence of the concept of "Vigilance". In this way, on one hand, obligated persons are provided with a wide scope for action, while on the other hand, this principle requires the notary to judge the reasonableness of a measure under a specific situation and circumstance.

Article 11, paragraph 1 of the LML, requires inter alia, that the entity bound with vigilance must appoint a person responsible for the prevention of money laundering and financing of terrorism at the administrative/management levels in the head office and in each representative office, subsidiary, branch or agency, to whom all employees shall report any fact that may constitute a suspicion of money laundering or financing of terrorism. Given that the notary office usually has a small number of employees, the provision may be applied that in case the number of employees is less than 3 (three) persons, the above obligations shall be carried out by the notary himself or by an employee authorized by him.[20]

[18] Article 25, paragraph 1 of the LN and Article 24, paragraph 2 of the LML.
[19] Article 25, paragraph 4 of the LN.
[20] Article 11, paragraph 3 of the LML.

Furthermore, there are principles, procedures and controls for internal organization and measures in accordance with practice for fulfilling vigilance obligations, meeting reporting obligations, recording information and storing data under the LML that may be elaborated.

With regard to the organizational structure of notary offices, in which the final product, i.e. the notarial function, always belongs to the notary and the "final product", i.e. the notarial act, cannot be drawn up and issued by other employees without the involvement of the notary (with the exception of the deputy notary in accordance with the criteria and procedures provided for in the law[21]), a further elaboration of the principles, procedures and controls is only necessary if specific risks are identified in relation to the organizational structure.

6.3.2 Prevention of money laundering and employees

Employees must be selected taking into consideration to their appropriateness to be engaged in notarial activity, must be acquainted with the general professional requirements and the specific one related to money laundering and must be supervised for compliance with these requirements. With regard to training in relation to the LML, it is required that employees be provided with applicable suggestions, in particular, on the money laundering typologies (see Article 11, paragraph 1 (d) of the LML). Furthermore, the notary may document in the context of discussions with the employee that he has been informed about current developments and that the employee is trustworthy, i.e. to carefully comply with the relevant obligations for money laundering, inform the notary of the relevant facts and not to be involved in money laundering himself.

Furthermore, employees should be informed of a service office where they can provide anonymous information regarding internal violations in accordance with Law No. 60/2016, "On whistleblowing and protection of whistleblowers". This role should be undertaken by the notary and employees should be informed of an anonymous way to provide this information. As a further option, employees may be advised that they can also provide this information anonymously with the National Chamber of Notaries.

6.3.3 Obligation to recording and preservation

The following must be recorded and preserve:

- data and documentation for the identification and verification of customer's identity;
- data and documentation for customer's accounts;
- data and documentation of correspondence with the customer;
- data, reports and documentation for financial transactions, national and international, regardless of whether the transaction was carried out on behalf of the client or on behalf of a third party;
- data and documentation for transactions carried out before a notary;
- risk analysis and program to fight money laundering and financing of terrorism.

It should be noted that the first 4 points mentioned above cover the general duties of the notary, which must be implemented at all times, regardless of the obligations arising from the LML.

Other remarks

The necessary documentation according to Articles 5, 11 and 16 of the LML and Article 3 of Instruction no. 29, dated 31.12.2012, of the Minister of Finance, "On the methods and procedures for reporting of non-financial freelance professions" is preserved as part of the file in the notary's archive for the transaction in question. The same approach applies to internal security measures – although the notary is not bound to their documentation – in order to verify their creation, supervision and eventual updating.

In case of practices related to the LML, it is recommended that the following documents be preserved standardized in a secondary file:

[21] Article 66 of the LN.

- Copy of ID card;[22]
- Certificates issued by civil status offices and entry or residence permits for foreigners (for natural persons);
- Deed of incorporation and extracts issued by the National Business Center (for legal entities);
- Documentation verifying the identity of the final beneficial owner (who must always be a natural person), proving the identity and relationship of the beneficial owner to the legal entity and to the one carrying out the transaction.

There can be a relationship monitoring and concrete risk assessment carried out[23]:

☐ Low risk ☐ Medium risk ☐ High risk

(If necessary, document other remarks/measures)

If measures have been taken based on the identified risk or, in case of doubt, the existence of a reporting obligation is verified, this must also be documented with the relevant results.

The data that must be preserved regarding the nature and purpose of the business relationship (Article 6 of the LML) is duly derived from the document, so there are no further recording and preservation obligations. The information regarding the "business relationship" of the parties may be obtained from the list of names and the notarial register, so no further measures are necessary to provide further information to the central office for financial transaction investigations or other bodies in accordance with Article 11 of the LML regarding business relationships of the last five years.

In case of a person previously identified according to the requirements of the LML, the documentation obligation is fulfilled through the inclusion in the document of the information that this person is known to the notary, if a copy of the identity card is available.

Records and other documents must be preserved for 5 (five) years from the end of the calendar year in which the notarial action was completed with the notice of execution. These records and other documents may be kept as part of the secondary file, for an additional 5 years (e.g., with the secondary file).

6.4 Organization in line with practices – obligation for vigilance

6.4.1 Concrete risk assessment

Every practice related to money laundering must be verified with regard to the risk of money laundering. On the basis of the findings of the general risk analysis, a specific risk assessment of the practice is carried out based on the existing risk factors. Furthermore, consideration must be given to the purpose pursued by the parties through the notarial act (as a rule, it emerges from the document), the economic significance of the practice (as a rule, the value of the legal act) and the number of practices with participants (as a rule, only one).

The performance and result of the specific risk assessment must be documented. The result of the specific risk assessment may be found through a three-level scale (low risk, medium risk, high risk) in the questionnaire or in a special document in the secondary file.

If there is a high risk identified, additional obligations arise, in particular the measures taken following this identification must be documented. In case of a low risk, the obligation to exercise caution may be reduced to a reasonable extent, in particular identification does not necessarily have to be carried out through a valid official photo ID, such obligation may be met with either with a passport and ID card.

Other remarks

The range of measures to be taken under the general vigilance obligations according to Articles 4 - 10 of the LML, taking into account the risk identified in the specific case, must be

[22] In case of ID cards under Article 5 of the LML, according to which the issuing office must be registered, the front and back pages must be photocopied or scanned.

[23]See Article 6, paragraph 1 of the LP.

reasonable. Articles 4 and 5 of the LML contain provisions regarding the obligations of due diligence if a low risk of money laundering is identified in the specific case against the high risk that entails the obligation of enhanced vigilance under Articles 7 - 10 of the LML. The structuring of the notarial procedure (e.g., the obligation of presence and identification, the obligation to verify the right of disposal and power of attorney, the prohibition of cash storage and delivery) in itself contributes substantially to reducing the risk of abusive exercise of notarial activity for the purpose of money laundering and financing of terrorism.

The risk of money laundering is greatly reduced in practice through the fact that the notary must rigorously comply with the requirements of the LN, as well as the bylaws in force.

The risk assessment should begin at the time **of the establishment of the business relationship**, that is, with the commencement of the drafting, advisory or more closely related official activity, for diligence or enforcement. In the case of **recurring customers,** a new risk assessment is not mandatory for every new legal notarial act, but should be undertaken "in due time", in particular in the event of a change in essential circumstances. To the extent that the "renewed" business relationship is supported on new facts, such as an act in another notarial office or other parties, a new risk assessment is still necessary (e.g., each construction contract for a building with several units should be assessed separately, but the partners' decision and the corresponding notification in the commercial register do not have to be verified separately from each other).

The risk assessment is carried out within the framework of an overall overview of all the circumstances of the specific case, so that the existence of a particular perspective(s) does not necessarily lead to the conclusion of a low or high risk.

A low risk is especially present in case of the following legal transactions within the scope of the LML:

- legal transactions with immovable properties for residential or business purposes, including in the case of second or holiday homes, as well as for rental purposes;
- practices under company law in case of entities that are actually operative.

A **high risk** in accordance with Article 8 of the LML exists especially in the following cases:

- participation of a politically exposed person (PEP), family members or a person known to be close to a PEP;
- parties or financial means come from unsafe third countries under Commission Delegated Regulation (EU) 2016/1675;
- Complex, high-valued and unusual transactions that have no apparent economic or legal purpose.

Other indicators of high risk may include:

- legal transactions for immovable properties without appropriate financing;
- non-resident foreign buyers of real estates;
- the purchase price does not seem representative considering the social status;
- the purchase price outside the usual market range;
- the obvious impatience of the parties;
- readiness for payment in cash (Note: The notary, in view of his notarial activity, may not make financial transactions in cash for amounts higher than ALL 150,000 according to Article 68 of the LN);
- willingness for cash payment to a third account;
- return agreement with the buyer;
- the buyer seems to have no interest in the item being purchased;
- the seller requests payment of the purchase price into a separate account in a country under monitoring by the Financial Action Task Force (FATF);
- the purchase price is significantly below or above market value;

- restoration of obsolete real estate;
- payment of the purchase price through foreign offices, especially public administrations or foreign companies.

In case of the criteria mentioned above, these are circumstances that constitute a higher risk but may also have a reasonable cause and therefore may reduce the apparent high risk. If there are no doubts, the inspector may request further information from the notary.

6.4.2 Identification of formal participants

Persons who need to be identified

Obligation to identify the "contractual partners" and the person who eventually appears in their behalf is related to the formal parties, who are the persons who appear before the notary.[24]

Identification

The identification of the formal parties is carried out no later than the meeting with the notary and as a rule through the verification of the personal ID card or passport. The document presented for the verification of identity must be included as a copy in the secondary file or stored electronically. In case of ID cards, the front and back pages must be photocopied or scanned.

Other remarks

The identification of formal parties **according to the LML** consists in the ascertainment of the identity and in the verification of the identity.

The identity ascertainment is carried out through the collection of data according to the provisions of Article 5, paragraph 1, of the LML, as explained above.

The identity verification is usually carried out in accordance with Article 5, paragraphs 2 and 3, of the LML through original documents or notarized photocopies.

6.4.3 Identification of persons with economic rights

The notary must also have identified the "beneficial owner." "Persons with property rights" are always natural persons. The obligation to identification includes at least the ascertainment of the name, but it should be taken into account that the relevant risk in the specific case may also include other data.
The following situations are possible in notarial transactions:

Illustrative situation	Person with property rights	Identification measures
Representation of a natural person	Represented natural person	Since the represented person is reflected in the document, as a rule no further measures are necessary.
Representation of capital company or of a person	Natural persons who directly or indirectly hold more than 25% of the capital or votes or exercise control in a similar manner, if no natural person	If there is no high risk of money laundering and the notary has no information regarding the inaccuracy of the parties' data, the notary may trust the accuracy of the parties' data, so, as a rule, no further measures are necessary.

[24] The concept of a person who appears to represent the contractual partner was introduced with the partial transposition of the Fourth EU Anti-Money Laundering Directive (EU) 2015/849 through the law on the transposition of the directive on the comparability of payment account fees, the replacement of payment accounts and access to payment accounts with basic features, that is, before the law on the transposition of the Fourth EU Anti-Money Laundering Directive, on the implementation of the EU Money Laundering Regulation and the reorganization of the Central Office for the Investigation of Financial Transactions. The Fourth EU Anti-Money Laundering Directive is based on the 2012 FATF recommendations. The Fourth EU Anti-Money Laundering Directive does not mention "a person who appears to represent the contractual partner", but rather a person "stating he is acting on behalf of the customer". In English it is *"any person purporting to act on behalf of the customer"* , where the FATF recommendations refer to "financial institutions" as obliged entities, while Article 13, paragraph 1, last sentence, of the EU directive bounds all obliged entities to identify the person who appears to represent the partner in the contract. The consequences of the transposition that go beyond the directive and FATF recommendations in the domestic law on notarial activity have been recognized by the legislator. In accordance with the EU directive and the FATF recommendations, it states that "the concept of the contractual partner and the person appearing" are concretized in the same person in notarial practice and these obligations relate to the persons presented" and this legal amendment has no effects on the practice of identifying notaries (BT-Drucks. 18/7204, S. 99). There are no new amendments with the new version of the LP through the law on the transposition of the fourth EU money laundering directive on the implementation of the EU regulation on the transfer of money and on the reorganization of the Central Office for the Investigation of Financial Transactions. Thus, it should be noted that the obligation to identify the contractual partner and eventually the person appearing in his representation relates only to the person appearing.

	can be identified or there are doubts, the legal representative, managing partner or partner of the partner in the contract is considered a person with property interests.	But since the notary must still register and document at least the name of the persons with property rights within the meaning of the LML, in practice it is necessary to download an extract from the commercial register (commercial partnerships) or the list of partners (ltd) or similar documents from the relevant company register and enter it electronically in the secondary file.
Confidant	Beneficiary (such a term under Article 2, paragraph 19 of the LML)	If there is no high risk of money laundering and the notary has no information regarding the inaccuracy of the parties' data, the notary can trust the accuracy of the parties' data, so, as a rule, no further measures are necessary. But since the notary must still register and document at least the name of the persons with property rights within the meaning of the LML, in practice it is necessary to download an extract from the commercial register (commercial partnerships) or the list of partners (ltd) or similar documents from the relevant company register and enter it electronically in the secondary file.

Other remarks

Since the contractual partners in notarial acts are always formal parties, i.e. natural persons, the contractual partner can never be in the "ownership or control" of another natural person as a person with property rights. A person with property interests is a person on whose order a notarial act is ultimately carried out or serves as its causing.

The identification of the person with property rights consists of establishing the identity by recording the identification features and ensuring that the data collected are accurate. Both these components must be carried out in accordance with the risk. As a rule, the notary can rely on the declarations of the parties regarding the name of the person with property interests, so that no further measures are necessary.

In order to establish the identity of a person with property rights, the name and, if it appears reasonable considering the risk of money laundering in the specific case, other identifying characteristics should be obtained. The date of birth, place of birth and address of the person with property interests should be obtained regardless of the risk identified.

If the notary has doubts regarding the accuracy of the parties' data or if the notary determines a higher risk of money laundering within the framework of the specific risk assessment, in order to identify the person with property interests, it may be necessary to inspect the following documents and to administer them physically or electronically in the file:

- In case of representation of companies registered in the commercial register: extracts from the commercial register (especially in the case of commercial companies of persons) or lists of companies (ltd) or similar register documents;
- In case of representation of companies registered in the commercial register: the deed of incorporation/statutes or decisions of the partners;
- In case of bailment reports: bailment contracts.

In relation to the notary's subject-matter independence, it is necessary if, for the convenience of documenting his obligations, he administers in a file or stores electronically the extract from the commercial register.

6.4.4 Other general vigilance obligations

In addition to the obligation of identification, the notary must also have fulfilled the general obligations of diligence:

- If the notary is aware that a formal party or person with financial interests is a politically exposed person (PeP), a close relative or a person known to be close to him, he should in principle assume a high risk of money laundering. If the notary has a suspicion of such a nature, methods such as an internet search or inquiries regarding the profession and the origin of the funds may be used. If there is no such suspicion, the notary is not bound to conduct investigations.

- Notarial activity for a customer should be monitored from the first contact until the moment of execution, in relation as well to new facts relating to money laundering that emerge after the specific risk assessment. The emergence of these facts should be documented and eventually this requires a new risk assessment and the implementation of other reasonable measures in relation to the newly ascertained risk.

Other remarks

Other general duties of diligence of the notary, given their organizational structure, are of lesser importance.

Information regarding the purpose of the transaction must be obtained within the framework of a specific risk assessment and it is usually derived from the notarial deed. The nature of the transaction always derives from the document or draft drawn up. In case of advisory commitments, the notary regularly draws up a note regarding the content of the advice and preserves it.

Notarial acts are concluded with the execution of the transaction and do not extend to the business relationship for an indefinite period. A monitoring within the meaning of the LML is only possible in the time frame from the notification of a legal transaction to its execution.

6.4.5 Added obligations in case of enhanced vigilance

In the context of “enhanced customer due vigilance”, the notary must have determined the origin of the funds. Furthermore, it is required a thorough investigation of the parties, the persons with property rights and the purpose of the business activity, as well as continuous and enhanced monitoring.

Other remarks

If the notary, in the context of a general risk analysis or a specific risk assessment, determines that there may be a high risk, in addition to the general duties of diligence, he must follow a more in-depth control process within the framework of “enhanced customer due vigilance”. The range of additional measures depends on the risk already established.

In any case, the following reinforced precautions must be met:

- Reasonable measures must be taken to determine **the origin of the assets used in the context of the relevant practice** (e.g., assets for payment of the purchase price or for making deposits in the event of the establishment of a company or an increase in capital). For this purpose, the notary normally only has the possibility of asking the parties about the origin of the assets, to verify these with regard to their reasonableness and include the relevant documentation in the file. The possibility of obtaining information from (trusted) third parties does not exist for the notary due to his obligation of confidentiality.

- The practice should be subject to **continuous monitoring and enhanced vigilance.**

- Practices that are extremely complex and large, develop in an unusual way, and do not indicate any economic or legal purpose, should **be investigated more closely.**

Other measures taken based on the identified risk, as well as their results, must be recorded and preserved.

6.4.6 Summary of diligence duties

Duties of diligence depending on the identified risk:		
Low risk	**Medium risk**	**High risk**
Simple diligence	Proper vigilance	Enhanced vigilance
Always necessary: identification of formal parties, as well as persons with property rights		
Identity verification even with ID cards that are not suitable for money laundering law	Identity verification only with ID cards that are appropriate for money laundering law	Identity verification only with ID cards that are appropriate for money laundering law
Necessary, but with varying intensity: findings regarding the purpose of the transaction and the type of transaction, as well as for a participation of PeP, family members or persons close to them.		
Necessary, but with varying intensity: continuous monitoring for important new facts		
		“Continuous extended monitoring”
		Additional: investigations into the origin of the funds

6.5 Peculiarities of the activity of preservation of securities or monetary amounts

Given that the third-party accounts may also serve to cover the origin of funds, the notary must have developed a special sensitivity to indicia of money laundering in the context of the preservation of monetary values.

When, during the drafting of a notarial deed, it becomes necessary to accept for safekeeping, together with the deed, securities or valuables, in order to give them to a specific person or other persons recognized by law as having this right, the notary shall accept them, keeping a minutes, which contains the date of acceptance, the full identity of the depositor, the description of the deposited items, the date of delivery, the identity and residential address of the beneficiary.[25]

When, during the drafting of a notarial deed, it becomes necessary to accept monetary amounts, in local or foreign currency, for safekeeping along with the deed, in order to give them to a specific person or other persons who are granted this right by law, the notary shall accept them, transferring them to the special bank account for notarial transactions, and keeps a minutes, which contains the date of acceptance, the full identity of the depositor, the amount deposited, the date of delivery, the identity and residence address of the beneficiary.[26]

Other remarks

In case of transfer of immovable property or when requested by the parties in the event of other notarial acts containing liabilities towards the parties, the notary’s special bank account may serve, ipso jure, for the transfer of the amounts of these financial liabilities. In this case, the notary shall be subject to the provisions of Article 10 of the LML and shall be bound to identify the name, last name, place of residence and abode, identification document number or account number, if any, of the sender, including the name of the financial institution from which the transfer originates.

The information must be included in the comments or payment form that accompanies the transfer. In the absence of an account number, the transfer shall be accompanied by a unique reference number.

The subjects shall transmit the information together with the payment, including when they act as intermediaries in a payment chain. If the notary has received transfers of money or valuables,

[25] Article 133, paragraph 1 of the LN.
[26] Article 133, paragraph 2 of the LN.

including direct electronic ones that do not contain complete information about the subject ordering the payment, he must request the missing information from the sending institution. If he fails to record the missing information, he must refuse to accept the transfer and report it to the responsible authority.

It should also be noted that under Article 68, paragraph 3, of the LN, a notary may not make financial transactions, in view of his notarial activity, with cash amounts higher than ALL 150,000.

Furthermore, the notary must have observed the terms of the separate accounts and other deposits[27].

6.6 Obligation to report with the responsible authority and authority's duties towards notaries

In accordance with Article 12 of the LML, the notaries shall be bound to inform the responsible authority upon a report submitting their suspicions in cases where they know or suspect that laundering of proceeds of crime or financing of terrorism is being carried out, has been carried out or is being attempted.

The reporting shall be carried out immediately and no later than the period determined in accordance with the provisions of the LML.

When a notary, to whom a customer requests to carry out a transaction, has suspicions that the transaction may involve money laundering or financing of terrorism, he must immediately report it with the responsible authority and seek guidance on whether to carry out the transaction.

Notary office employees are prohibited from informing the customer or any other person about the procedures for verifying suspicious cases, as well as any reporting to the responsible authority (Article 15 of the LML).

Notaries are required to report to the responsible authority, according to the time limit set in implementation of the LML, on:

- all transactions in cash, in an amount equal to or higher than ALL 1,000,000 (one million) or equivalent in foreign currency, carried out as a single transaction or as linked transactions, within 24 hours.

7. COMMENTS AND SIGNATURES

Purpose	- Both the inspector and the notary are entitled to make comments on the inspection (terms, errors...).
Instructions for inspectors	- This document must be completed electronically on the inspector's laptop or on a computer that the notary will make available to the inspector during the inspection (if the second alternative is chosen, the inspectors will take with them an electronic version of this document on USB). - At the conclusion of the inspection, the document must be printed and signed by the notary and the inspector. If the notary refuses to sign, the inspector shall makes the appropriate annotation in the comments.

Notary's comments	Inspector's comments
Date: Comments:	Date: Comments:

[27] The terms for the separate accounts and separate deposits of notaries are provided for in Article 68 of the LN.

<table>
<tr><th>Notary’s signature</th><th>Signature of the inspector(s)</th></tr>
<tr><td rowspan="3">Number of pages of the document:
Signature:</td><td>Number of pages of the document:
Signature:

Declaration by the inspector that there is no conflict of interest with the inspected entity</td></tr>
<tr><td>Signature of the independent expert(s)
(as appropriate)</td></tr>
<tr><td>Number of pages of the document:
Signature:

Declaration of the expert that there is no conflict of interest with the inspected entity</td></tr>
</table>

Note: One copy is given to the notary and one copy is received by the inspector and expert, as appropriate.

APPENDIX 1

CHECKLIST FOR NOTARY RISK LEVEL INDICATORS FOR MONEY LAUNDERING

Scope of the LML towards notaries

Notaries are subjects of the scope of the LML when they prepare or carry out transactions for their customers for the following activities (Article 3, letter "gj" of the LML):

- transfer of ownership of real estate, administration of money, securities or other assets;
- administration of bank accounts;
- administration of parts of the capital to be used for the establishment, functioning or administration of commercial companies;
- creation, functioning or administration of legal persons and/or legal organizations;
- legal agreements, sale and purchase of shares or parts of the capital of joint-stock companies and transfer of commercial activities.

Risk indicator

1. Transactions originating from countries with high risk for money laundering in the case of notarial legal transactions, based on:

a) Commission Delegated Regulation (EU) 2016/1675;

b) the list of countries under monitoring by the Financial Action Task Force (FATF). It regards a list of countries under monitoring, divided into two categories:

- calls for action to address serious problems;
- jurisdictions under monitoring regime.

2. Suspicious features of the parties to the transaction:

- the volume of transactions does not comply with the social status and specific knowledge of the parties;
- lack of language knowledge and lack of interest on the part of the parties;
- parties have no local relations with the notary's office, frequent change of legal advisor;
- persons who have the right of ownership avoid personal contact with the notary;
- representative by proxy for several times without having close ties to the person represented;
- non-transparent ownership structures, companies structured as Holdings;
- clients with links to organized crime, drug trafficking and prostitution;
- extremely high impatience to complete the transaction;
- delay in the execution of the contract by the parties;
- multiple transactions of the same parties within a short period of time;
- parties are politically exposed persons (PEPs), members of their families or persons known to be close to PEPs.

3. Suspicious features of the contract:

- request that the transaction be carried out through a third-party account, instead of the notary's separate account;
- complicated structure for carrying out the transaction without apparent reason;
- sudden desires for change without providing explanations;
- purchase and sale within a short time, especially when there is a significant price change;
- sale below or above value;
- desire for cash payment if there are large amounts;
- desire for cash payment to the notary's special account;
- payments in different currencies;
- payment of the purchase price before documentation.

4. Suspicious features related to commercial companies:

- obvious discrepancy between the official headquarters and administrative headquarters (caution should be exercised especially for companies that have a post office box as an address);
- establishment of companies that serve only the flow of capital, especially for the inflow of funds from abroad;
- compensation of losses of domestic subsidiary through foreign parent companies;
- purchase and sale of shares of different branches unrelated to one another within a short time;
- investors in capital without having special subject matter or language knowledge;
- commercial company without actual commercial activity;
- enterprises with liquidity problems;
- repeated use of companies without commercial activity.

Risk assessment

A low risk is especially present in the case of the following legal transactions within the scope of the LML:

- legal transactions with immovable properties for residential or business purposes, including in the event of second or holiday homes, as well as for rental purposes;
- practices under company law in cases of enterprises that are actually operative.

A high risk in accordance with Article 8 of the LML exists especially in the following cases:

- participation of a politically exposed person (PEP), family members or a person known to be close to a PEP;
- parties or financial means derive from unsafe third countries under Commission Delegated Regulation (EU) 2016/1675 as per above;
- complex, high-value and unusual transactions that have no apparent economic or legal purpose.

Other indicators of high risk may include:

- legal transactions for immovable properties without appropriate financing;
- foreign buyers of immovable properties;
- too young or too old buyer of immovable properties;
- the purchase price does not seem representative considering the social status;
- purchase price outside the usual market range;
- obvious impatience of the parties;
- desire for cash payment;
- desire for cash payment to a third account;
- return agreement with the buyer;
- the buyer seems to have no interest in the item being purchased;
- the buyer has no knowledge of the item or the relevant branch;
- the seller requests payment of the purchase price into a separate account in a country under FATF monitoring;
- the purchase price is significantly below or above market value;
- restoration of obsolete immovable properties;
- payment of the purchase price through foreign offices, especially public administrations or foreign companies.

APPENDIX 2
TYPOLOGIES OF MONEY LAUNDERING IN THE NOTARY FIELD

To provide the inspector and the inspected notary with guidance on which situations are specifically used to carry out relevant money laundering transactions, find next some illustrative examples, as well as a list of classic indicators, which are not exhaustive, but dynamic.

Illustrative examples

The illustrative examples are mainly obtained from the Financial Action Task Force (FATF) Report "Money Laundering and Terrorist Financing Vulnerabilities of Legal Professions" of June 2013. Due to the different legal situation in other countries that participated in the preparation of this report, the examples may be partially applicable and shown for the purpose of providing non-binding examples.

The following are cases in which a money laundering operation is evident, as the stakeholders regularly accept economic disadvantages to the interest of anonymity and lack of transparency. This is an indicator that based on the relevant legal transaction, the property does not derive from legitimate sources. In distinguishing suspicious cases of money laundering, the principle that applies is: The more unusual and meaningless a legal transaction appears, the higher the risk of money laundering.

Abuse with the special account

Case 1. A notary accepts transfers to his separate account from a buyer in connection with a purchase transaction. After the purchase fails, the notary must return the funds paid to a third party, who is resident in a country considered to be high risk.[28]

Clarification. The transfer of payment to a third party serves to cover the payment route. The termination of the legal transaction aims to enable the free diversion of the transfer of the amount. If it is a question of illegal assets by which the purchase price will be paid, the investigations of the criminal prosecution authorities is eventually be impossible due to the obligation of the notary to maintain confidentiality. The "diversion" of the payment to third parties by the notary would not be ascertained and in this way the investigation would be interrupted.

Red flag. The legal transaction is terminated without an understanding ground, there are parties involved who are not participating parties, without any apparent reason, payments in unsafe countries.

Case 2. Instead of the buyer making the payment into the special account, this is carried out by a third party, probably a company or entity which has no apparent connection to the buyer or the purchased item, from a third country considered risky.[29]

Clarification: The tracing is interrupted through the payment, as there is no apparent connection between the property price and the person who made the payment, and the notary's obligation to maintain confidentiality makes it difficult to investigate the persons actually involved.

Red flag. Involvement of third parties that are not participants, payments from a country with a high risk of corruption or deficient legislation on money laundering are included without any apparent reason.

Immovable property transactions

Case 3. A foreign national pays the purchase price in cash before the purchase contract is documented. He claims that he cannot open a bank account in that country. After reporting the suspicions of the Belgian notary, it turned out that the buyer has a bank account in Belgium, receives social assistance there and is known for trading in stolen goods.[30]

[28] See Case 7 of FATF Reports Money Laundering and Terrorist Financing Vulnerabilities of Legal Professions, June 2013.
[29] See Case 78 of FATF Reports Money Laundering and Terrorist Financing Vulnerabilities of Legal Professions, June 2013.
[30] See Case 9 of FATF Reports Money Laundering and Terrorist Financing Vulnerabilities of Legal Professions, June 2013.

Explanation. Cash payment is a classic example of money laundering, and this initially serves the so-called "Placement", which means converting the amount of money into less visible and traceable property values. Furthermore, cash payment leaves no direct traces and is thus the best way to cover up. The purchase of land plots is very attractive for money laundering, as the immovable property market is very stable in value and is considered invisible, even if the owners are registered.

Red flag. Cash transactions are generally considered suspicious for the grounds mentioned above and should be investigated for compelling reasons. In addition, there is the unusual behavior of the buyer, who pays before the documentation of the purchase contract. If the notary also has data regarding the buyer's financial situation, which does not comply with the legal transaction, there is another risk criterion here.

Case 4. A gardener in his early twenties purchases several properties. He stated that he financed the purchases by selling his previous properties and provided bank statements. Shortly afterwards, this person sold the properties to an acquaintance of his of the same age and with similar professional experience for a higher price. In reality, the financial means for the purchase of the properties were obtained through the criminal offence of financial fraud committed by the parties involved.[31]

Clarification. The legal transactions related to the immovable properties serve to conceal the criminal origin of the assets used for the purchase. The rapid purchase and sale of the immovable properties aims to make it difficult to trace through the number of transactions and to lengthen the trace in a process called 'Layering'. The layering the trace of documents increases the risk that this trace will be lost by the criminal prosecution authorities during the investigation.

Red flag. The profession does not comply with the legal transactions performed and the age of the customer and his business partner, the number and frequency of legal transactions with immovable properties are atypical for this legal transaction with real estate.

Case 5. The seller sells a plot of land to the buyer at a high purchase price. The notary is informed that the seller will transfer a share of the purchase price upon completion to a third account of the buyer.

Clarification. The payment does not only serve to purchase the land plot, but also to cover up the true grounds of the payment flow. There may be various causes for such situations, which may be closely related to the concealment of the payment route or the sources of payment (for example, involvement in active and passive corruption, etc.) in a process known as "Kick-back".

Red flag. The legal transaction is non-profitable – for example, taking into account notary fees and property tax – and should be investigated for this.

Corporate law

Case 6. The sole partner of a limited liability company sells some shares to a Dutch company BV1, whose manager is BV2. BV2, in turn, is represented by BV3, while BV3 is represented by a natural person X. It is not clear from the commercial register who is financially behind the BV. X does not appear before the local notary, but provides his consent through a private document.

Clarification. The anonymity of X, which is preserved even during the legal transaction at a distance, does not directly serve to conceal the payment route, but the owner of the property. The criminal prosecution authorities can follow the documentary trace, but the unknown person, who benefits from the economic right, would be protected from criminal prosecution, as long as he cannot be identified.

Red flag. The inability to identify the person receiving the shares is a risk factor, as in the case of the anonymity of the beneficiary of financial transactions, it is the most effective means of concealing income and preventing criminal prosecution.

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[31] See Case 12 of FATF Reports Money Laundering and Terrorist Financing Vulnerabilities of Legal Professions, June 2013.

Risk indicator

The following summary of indicators is based on the experience of the bodies involved in criminal prosecution in the field of money laundering and financing of terrorism and it is intended to bring to the attention of the notary as a list of red flags. The presence of one or more of the following data does not result in the notary taking for granted a suspicion of money laundering or financing of terrorism, but makes it mandatory to exercise vigilance, addressing the matter in its entirety.

General indicators

International background

Countries with high risk for money laundering in case of notarial legal transactions (residence, origin of financial assets, citizenship, subsidiary or parent company, etc.).

In accordance with the finding of Commission Delegated Regulation (EU) 2016/1675, in 2020, it includes:

- Afghanistan;
- Bosnia and Herzegovina;
- Guyana;
- Iraq;
- Laos;
- Syria;
- Uganda;
- Vanuatu;
- Yemen;
- Ethiopia;
- Sri Lanka;
- Trinidad and Tobago;
- Tunisia;
- Pakistan;
- Iran;
- Democratic People’s Republic of Korea (DPRK).
- Also, the Financial Action Task Force (FATF) compiles a list of countries under monitoring, divided into two categories:

- *Call for action to address serious problems:*
- Democratic People’s Republic of Korea (DPRK);
- Iran.
- *Jurisdictions under monitoring regime:*
- Albania;
- Bahamas;
- Barbados;
- Botswana;
- Cambodia;
- Ghana;
- Iceland;
- Jamaica;
- Mauritania;
- Mongolia;
- Myanmar;
- Nicaragua;
- Pakistan;
- Panama;

- Syria;
- Uganda;
- Yemen;
- Zimbabwe.

- Specific features:

- The specific features of the Parties to the transaction include:
- Volume of transactions that do not comply with the social status and specific knowledge of the parties;
- Lack of language knowledge and lack of interest on the part of the Parties;
- Parties have no local relations with the notary's office, frequent change of legal advisor;
- Persons with the right to ownership avoid personal contact with the notary;
- Representative by proxy for several times without having close ties to the person represented;
- Non-transparent ownership structure, structured companies, such as Holding;
- Customers with links to organized crime, drug trafficking and prostitution;
- Extremely high impatience to complete the transaction;
- Delay in the execution of the contract by the parties;
- Multiple transactions of the same parties within a short period of time;
- Parties are politically exposed persons (PEPs), members of their families or persons known to be close to politically exposed persons.
- Given the transaction, unusual contract organization:
- Request for the transaction to be carried out through a third-party account, instead of the notary's separate account;
- Complicated structure for carrying out the transaction without apparent cause;
- Sudden requests for change without explanation.

- Specific indicators of the sales contracts:

- Purchase and sale within a short time, especially when there is a significant price change;
- Sale below or above price;
- Desire for cash payment if there are large amounts;
- Desire for payment in cash to the notary's special account;
- Payment in different currencies;
- Payment of the purchase price before documentation.

- Specific indicators of company law:

- Obvious divergence between the official headquarters and administrative headquarters (caution should be exercised in particular for companies that have a post office box as an address);
- Establishment of companies that serve only the circulation of capital, especially for the inflow of funds from abroad;
- Compensation of losses of the domestic subsidiary through foreign parent companies;
- Purchase and sale of shares of different branches unrelated to one another within a short time;
- Investors in capital without having special knowledge on the subject matter or language;
- Commercial company without actual commercial activity;
- Enterprises with liquidity problems;
- Repeated use of companies without commercial activity.