



# COLOMBIA

## FINANCIAL SECTOR ASSESSMENT PROGRAM

November 2018

### REPORT ON THE OBSERVANCE OF STANDARDS AND CODES—FATF RECOMMENDATIONS FOR ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM

This Report on the Observance of Standards and Codes on FATF Recommendations for Anti-Money Laundering and Combating the Financing of Terrorism for Colombia was prepared by a staff team of the International Monetary Fund as background documentation for the periodic consultation with the member country. It is based on the information available at the time it was completed in June 2017.

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**International Monetary Fund**  
**Washington, D.C.**



# COLOMBIA

October 2018

## REPORT ON THE OBSERVANCE OF STANDARDS AND CODES

### FATF RECOMMENDATIONS FOR ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM

**Anti-Money Laundering/Combating the Financing of Terrorism:** This Report on the Observance of Standards and Codes for the FATF Recommendations—International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation (AML/CFT) was prepared by the IMF.<sup>1</sup> The report provides a summary of the AML/CFT measures in place in Colombia and of the level of compliance with the FATF Recommendations and the level of effectiveness, and contains recommendations on how Colombia’s AML/CFT system could be strengthened. The assessment is based on the information available at the time of the mission from June 5–22, 2017 and other verifiable information subsequently provided by the authorities. It was conducted using the 2013 assessment methodology. The Detailed Assessment Report (DAR) on which this document is based was adopted by the Financial Action Task Force for Latin America (GAFILAT) Plenary on July 26, 2018. The views expressed here, as well as in the full assessment report, are those of the staff team and the FATF and do not necessarily reflect the views of the Government of Colombia or the Executive Board of the IMF.

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This Report on the Observance of Standards and Codes (ROSC) for the FATF Recommendations—International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation (AML/CFT) was prepared by IMF staff using the 2013 assessment methodology. Further information on ROSCs can be found at <http://www.imf.org/external/NP/rosc/rosc.aspx>

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## Glossary

AFL	Asset Forfeiture Law
AML/CFT	Anti-Money Laundering and Combating the Financing of Terrorism
BO	Beneficial Ownership
CDD	Customer Due Diligence
DNFBP	Designated Non-Financial Businesses and Professions
FATF	Financial Action Task Force
FGN	<i>Fiscalía General de la Nación</i> (Public Prosecutor's Office)
GAOS	<i>Grupos Armados Organizados</i> (Organized Armed Groups)
IO	Immediate Outcome
LEA	Law Enforcement Agency
ML	Money Laundering
NPO	Nonprofit Organization
NRA	National Risk Assessment
PEP	Politically Exposed Person
PF	Proliferation Financing
POC	Proceeds of Crime
UIAF	<i>Unidad de Información y Análisis Financiero</i> (Financial Analysis and Information Unit)
RBA	Risk-Based Approach
UNSCR	UN Security Council Resolution
SAS	<i>Sociedad anónima simplificada</i> (Simplified Joint Stock Company)
SFC	<i>Superintendencia Financiera de Colombia</i> (Financial Superintendent of Colombia)
STR	Suspicious Transaction Report
TF	Terrorist Financing
TFS	Targeted Financial Sanctions

## KEY FINDINGS

- Colombia has a reasonable understanding of its main domestic money laundering/terrorist financing (ML/TF) risks. The country's understanding of risks relies particularly on the results of the 2013 and 2016 National Risk Assessments (NRAs).
- The 2016 NRA has yielded reasonable findings with respect to the identification of the main ML threats and vulnerabilities.
- The AML/CFT supervisory systems and tools are not entirely in line with the risk-based approach (RBA), and there are significant gaps in the supervision of designated non-financial businesses and professions (DNFBPs).
- Colombia investigates and prosecutes ML effectively, but not in a manner that is commensurate with its ML risks.
- The main TF threat in Colombia is the proceeds-generating criminal activities of domestic organized armed groups (*Grupos Armados Organizados*—GAOS). The primary source of funds for domestic criminal organizations are drug trafficking and other criminal activities.
- The financial intelligence produced by the Financial Analysis and Information Unit (*Unidad de Información y Análisis Financiero*—UIAF) is generally a key input to initiate investigations regarding predicate offenses and tracing assets, specially such financial intelligence generated upon the request of the *Fiscalía General de la Nación* (FGN—Public Prosecutor's Office). However, while the FGN uses most of the UIAF's disseminations for preliminary inquiries, the financial intelligence disseminated spontaneously by the UIAF has led to less ML cases and no TF cases.
- There are significant deficiencies in the customer due diligence (CDD) framework and its implementation, as well as the enhanced risk mitigation measures under the existing AML/CFT framework that negatively impact the overall effectiveness of preventive measures.
- The UIAF can accede to various types of financial information that allows it to produce financial intelligence of good quality.
- Overall, financial institutions have a reasonable understanding of ML risks and of AML obligations. DNFBPs, except for casinos, have a lower level of awareness of ML/TF risks and obligations than financial institutions.
- Confiscation and asset forfeiture are pursued as a priority policy objective. Law enforcement agencies (LEAs) are well trained and have adequate skills and resources to trace and recover proceeds of crime (POC). Asset forfeiture (*extinción de dominio*) is being applied with important results. Colombia has an effective system for managing the POC as well.

- Colombia has a legal framework to apply targeted financial sanctions (TFS) related to TF, but its framework for TFS related to the financing of proliferation of weapons of mass destruction (WMD) has technical and operational deficiencies.
- While basic information of legal persons is updated annually and accessible in the public registries and supervisors' databases, the authorities have difficulty obtaining accurate and up-to-date information on the beneficial ownership (BO) of complex corporate structures and when there is foreign ownership or control involved.
- Overall, Colombia provides timely, good quality, and constructive mutual legal assistance and extradition. Its approach to international cooperation is proactive and collaborative. Constructive international cooperation is provided timely both upon request and spontaneously.

## RISKS AND GENERAL SITUATION

**1. Colombia's main ML threat comes from organized crime groups.** The most vulnerable sectors are banking, gold mining, lawyers, real estate, accountants, statutory auditors (*revisores fiscales*),<sup>2</sup> auditors, and the real sector. Overall, financial institutions (banks, securities, and insurance firms, as well as savings and loans cooperatives) have a good understating of ML risks. DNFBPs generally have a lower level of understanding of ML risks than financial institutions, while both appear to have less understanding of TF risks. A RBA to AML/CFT supervision has been applied to varying degrees and is the most advanced in the case of the Financial Superintendent of Colombia (*Superintendencia Financiera de Colombia*—SFC). Other supervisory agencies are still in the process of developing adequate supervisory frameworks and cannot yet demonstrate effectiveness in mitigating risks.

**2. The main TF threat in Colombia is the proceeds-generating criminal activity of GAOS.** GAOS have used drug trafficking, kidnapping, extortion, and other crimes as sources of income. While the authorities deem the risk for TF as medium to high, the assessment of TF risk in the NRA is insufficient. While there is better understanding of TF risks by LEAs, the TF factor is not sufficiently considered by supervisory agencies and awareness of TF risks affecting their sectors is generally low.

## FINDINGS ON COMPLIANCE AND EFFECTIVENESS

### A. Assessment of Risk, Coordination, and Policy Setting

**3. Colombia has made significant efforts to identify, assess, and understand its ML/TF risks.** The main agencies responsible in the fight against ML/TF have a good understanding of the

<sup>2</sup> The Statutory Auditor is a delegate of the partners that conducts a continual inspection of the administration of a company and validate the reports they present and must report on them at statutory meetings.

main threats that Colombia faces. The country's understanding of the risks is mainly based on the results of the 2013 and 2016 NRAs, which broadly address the main threats and vulnerabilities. Overall, the exercise confirmed the authorities' view on the main domestic ML/TF threats but did not factor in other relevant threats nor properly assess other existing risks in the country (i.e., risks associated with simplified joint stock companies (*sociedades anónimas simplificadas*—SAS), tax evasion, threats derived from the informal sector, and threats of foreign origin, among others. National coordination and cooperation on AML/CFT at a policy level has improved since the last mutual evaluation in 2008 and is relatively sound. However, operational cooperation is partially fragmented and inadequately coordinated. The AML/CFT policies include an articulated strategy to strengthen the AML/CFT regime in Colombia and broadly address the main ML/TF risks. Specific measures to prevent or mitigate ML/TF risks based on the findings of the 2016 NRA have not yet been implemented, due in part to the recent adoption of the report and the fact that the adoption of a revised policy depends on a wider decision of the Government. Other specific AML/CFT policies are included in relevant public documents such as the National Development Plan 2014–2018, addressing some of the previously identified risks.

## B. Financial Intelligence, and ML Investigations, Prosecutions and Confiscation

**4. The UIAF conducts high-quality operational and strategic analysis and supports the operational needs of LEAs, spontaneously and upon request.** However, despite collaboration between the UIAF and LEAs, spontaneously disseminated financial intelligence has resulted in a limited number of ML and predicate crime investigations and not at all for TF. The good collaboration between the UIAF and the LEAs, and the financial intelligence provided by the UIAF supports the operational needs of the LEAs in asset forfeiture cases and existing ML investigations. The UIAF has access to a wide range of information sources and has the authority to request any information from reporting entities and other relevant authorities regarding ML/TF. The UIAF has an effective process for prioritizing and analyzing suspicious transaction reports (STRs). However, a few factors negatively impact on the more efficient use of financial intelligence, such as the poor quality of STRs from certain reporting entities, the inexperience of certain reporting entities regarding the fulfillment of their reporting obligation, and insufficient reporting by some DNFBPs. The UIAF makes a significant effort to verify and analyze the information in the STRs, along with the information in its own databases.

**5. Colombian authorities can investigate and prosecute ML through a wide range of legal tools and well-resourced investigative bodies.** Nevertheless, most of the cases involve simple ML schemes comprising low amounts of funds. Most ML cases that are investigated and prosecuted are related to illegal drug trafficking and few involve pursuing ML originating from other predicate crimes. The number of ML investigations and prosecutions is rising but is still insufficient given the country's ML risk profile.

**6. Colombia has a robust legal framework for confiscating and forfeiting POC, and confiscation is pursued as a priority policy objective.** LEAs are skilled, trained, and sufficiently

resourced for tracing and recovering instrumentalities and POC. The physical transportation of proceeds of drug trafficking such as cash and bearer negotiable instruments is a common ML technique in Colombia. Nondeclared and nondisclosed cross-border currency is routinely being seized and confiscated. Competent authorities pursue proceeds and instrumentalities through criminal confiscation and asset forfeiture mechanisms. Asset forfeiture is being applied effectively with important results. Asset forfeiture proceedings are autonomous and are independent from criminal prosecution. There is room for improvement regarding confiscation of proceeds moved to other countries and the repatriation of assets. At the time of the onsite visit, there were no cases of sharing of confiscated proceeds with foreign counterparts. Colombia has an effective system for managing POC. The country seizes, forfeits, and confiscates currency which is falsely declared, or which is not disclosed during cross-border movements.

## C. Terrorist Financing and Proliferation Financing

### 7. **The significant number of terrorist acts committed shows a high risk for domestic TF.**

The TF offense is investigated and prosecuted to a limited extent. There have been some significant TF convictions, but the number of standalone TF investigations and prosecutions is small in comparison with the magnitude of the threat. Colombia has established a registration regime for nonprofit organizations (NPOs), but risk-based supervision or monitoring for CFT is lacking. Colombia has not identified the subset of organizations falling under the FATF definition and has not identified the features and types of NPOs which are likely to be at risk for TF abuse.

### 8. **Colombian legislation establishes the general obligation to circulate UN sanctions lists to the competent authorities and requires that freezing be carried out through judicial proceedings under the Asset Forfeiture Law (AFL).**

The authorities have not received any notifications to date relating to assets or funds belonging to persons designated pursuant to UN Security Council Resolutions (UNSCRs) and have not yet designated any person under UNSCRs 1267 or 1373. According to Colombian authorities, freezing actions on proliferation financing (PF) would also follow the AFL process. However, since AFL can only be applied to assets linked to criminal offenses, it cannot be applied to assets of designated persons or entities by the UN in the PF lists.

## D. Preventive Measures and Supervision

9. **Significant gaps in the legal framework negatively impact on the effective implementation of preventive measures.** Postal transfer operators are not explicitly listed as reporting entities, and as such, they are not legally required to apply AML/CFT measures, including CDD. There are also shortcomings in the legal framework regarding the identification and verification of the identity of the beneficial owner, and there is no requirement to collect BO's information in all cases. While the regulatory framework presents some shortcomings, financial institutions and those DNFBPs classified as reporting entities generally apply adequate risk mitigating measures for politically exposed persons (PEPs), correspondent banking, new technologies, wire transfer rules, and TFS related to TF. Financial institutions generally have a good understanding of the obligations imposed by the *Sistema de Administración del Riesgo de Lavado de*

*Activos y de la Financiación del Terrorismo* (Risk Management System for ML/TF) or equivalent risk management systems, including for enhanced due diligence and record-keeping requirements. Financial institutions understand their STR obligations, but shortcomings were identified with respect to reporting attempted transactions among financial institutions and DNFBPs. Lastly, there are several categories of DNFBPs that, under the existing AML/CFT framework, are not considered reporting entities and are not subject to the AML/CFT obligations.

## E. Supervision

**10. The understanding of ML/TF risks by supervisors is still evolving with most being well informed of the main ML threats facing the Colombian financial system.** However, awareness of TF risks affecting their sectors was generally low, with none of the risk-based supervisory models specifically assessing exposure to TF. In addition, most supervisors focus on domestic threats and do not take adequate account of foreign-sourced risks. The licensing regime, including fit and proper checks on owners and directors of financial institutions and DNFBPs, appears to be robust with respect to Colombian nationals, but less stringent for foreign beneficial owners. Scope limitations in Colombia's AML/CFT legal framework for financial institutions and most DNFBP sectors also constrain supervisors' understanding of sectoral risks and their effectiveness in risk mitigation. Many lawyers, accountants, real estate agents, and dealers in precious metals and stones (except in relation to gold) are outside the scope of the AML/CFT regime. The application of proportionate and dissuasive sanctions across all sectors is generally weak, with more reliance placed on warning letters than other more stringent administrative sanctions and fines.

**11. The SFC has improved its risk-based framework for offsite and onsite AML/CFT supervision in recent years.** Other supervisors are still developing their offsite risk identification and assessment systems and cannot yet demonstrate their effectiveness in mitigating risks and compliance supervision. Supervisors are also facing emerging challenges in adapting their risk assessment and mitigation systems to take account of the integration of *ex-Fuerzas Armadas Revolucionarias de Colombia-Ejército del Pueblo* (Revolutionary Armed Forces of Colombia-People's Army) members into the formal financial system, including their control of credit unions.

## F. Transparency of Legal Persons and Arrangements

**12. Basic information of all legal persons held by registries is publicly available and is updated every year by the legal entities.** Back-up documents kept by registries are not public but are easily obtained by the authorities when requested. Shareholder information of legal persons is also obtained easily and in a timely fashion by authorities using different sources, such as public registries, books of shareholders, and supervisors' databases. However, BO information of legal persons is only partially available: authorities may get BO information from these sources for simple corporate structures but have limitations to get BO information for complex corporate structures and when there is foreign ownership or control involved. Authorities have adopted several types of measures to prevent the misuse of legal persons, including strict regulations, supervision, powers of supervisors, and easy access to information of legal persons. Bearer shares are not allowed.

Currently, 54 percent of the commercial companies are SAS, which only require a simple private document for their creation. The ML/TF risks arising from this type of company have not been analyzed by the authorities. *Fiduciae* are an important financial market and only licensed fiduciary companies (26) can provide fiduciary services. All information on the participants and terms of the *fiduciae* must be updated in the SFC registries. Fiduciary services face a high ML risk, but there are no requirements for enhanced AML/CFT mitigation measures specific for this sector beyond the regular obligations for financial institutions. Specific measures ultimately depend on internal rules of each fiduciary company.

## G. International Cooperation

**13. Colombia has a robust legal and institutional framework, which allows competent authorities to provide constructive, good quality, and timely mutual legal assistance and extradition to third countries.** The Colombian approach to international cooperation is overall proactive and collaborative. International cooperation is provided both upon request and spontaneously. Overall, LEAs' procedures for protecting information, prioritizing, and executing international cooperation requests are in place and adequate. Colombia regularly submits extradition requests to other countries related to ML, TF, and terrorism, as well as for asset forfeiture. Financial supervisory authorities, the UIAF, and other LEAs exchange information with their foreign counterparts and implement measures to protect the confidentiality of the information. The implementation of international cooperation procedures of the *Dirección de Impuestos y Aduanas Nacionales* (National Tax and Customs Office) could be further improved. Colombia can identify and exchange basic information on domestic legal persons and arrangements. Regarding the BO information, shortcomings related to its availability would limit Colombia's ability to respond in a timely manner to specific foreign requests in this regard.

## PRIORITY ACTIONS

- Extend the scope and approach of the NRA to provide for a more in-depth ML/TF threat and vulnerability analysis to cover additional areas (e.g., tax evasion, foreign threats, and cross-border financial flows, among others).
- Articulate a national AML/CFT policy with clear objectives, timeline, and allocation of responsibilities, as well as a mechanism to monitor/measure progress and maintain more comprehensive statistics.
- Improve implementation of risk mitigating measures, including for enhanced measures, and fully extend AML/CFT requirements to sectors that are completely or partly out-of-scope, including unregulated lenders, internet casinos, real estate intermediaries, lawyers, accountants, and dealers in precious metals and stones.

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- Fully implement the risk-based supervisory systems for all financial institutions and DNFBP sectors, including with respect to onsite inspections and cross-border supervision of financial groups.
- The UIAF should support the requirements of LEAs for ML/TF investigations to a greater extent.
- The UIAF should systematically provide feedback to supervisors and reporting entities regarding the quality of STRs.
- Establish a mechanism to maintain accurate and updated information on beneficial owners readily available to competent authorities.
- Colombia should widen the scope of the ML investigations to extend to cases where the underlying criminal activities are different from drug trafficking, at least to those that have been indicated as a high risk in the NRA.
- Enhance the use of available legal measures to combat TF offense and not rely only on alternative judicial measures to tackle TF activities.
- Require physical and legal persons, not only reporting entities, to implement the UCSCRs on TF and PF for WMD.
- Colombia should strengthen its capacity to provide international cooperation on BO information.

## COMPLIANCE AND EFFECTIVENESS RATINGS

### Compliance Ratings

R.1	R.2	R.3	R.4	R.5	R.6	R.7	R.8	R.9	R.10
LC	LC	LC	C	LC	PC	NC	PC	C	PC

R.11	R.12	R.13	R.14	R.15	R.16	R.17	R.18	R.19	R.20
C	PC	PC	C	PC	PC	N/A	C	PC	LC

R.21	R.22	R.23	R.24	R.25	R.26	R.27	R.28	R.29	R.30
C	PC	PC	PC	LC	LC	LC	PC	LC	C

R.31	R.32	R.33	R.34	R.35	R.36	R.37	R.38	R.39	R.40
C	LC	PC	PC	PC	LC	LC	C	LC	LC

### Effectiveness Ratings

IO.1	IO.2	IO.3	IO.4	IO.5	IO.6	IO.7	IO.8	IO.9	IO.10	IO.11
Sub	Sub.	Mod.	Mod.	Mod	Sub.	Low	Sub.	Low	Mod.	Low