



Importance of Compliance with the Obligation of the Suspicious Activity Report (SAR) against Money Laundering: Some General Considerations

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Abstract

In the fight against Money Laundering, the effectiveness of the task known as the Suspicious Activity Report (SAR), undoubtedly, constitutes one of the main protection shields for Obligated Subjects to their prevention with Risk-Based Approach (RBA). It stands as one of the most relevant sources of information for the analytical work of a Financial Intelligence Unit (FIU). It is the starting point for subsequent investigation, prosecution and application of criminal measures, and it is an incentive of great importance for decision-making in administrative, criminal and criminological policies for its confrontation in its dual profile: as a Risk, and as a Crime. And all this at an accelerated pace since, in addition to its seriousness, by the devastation it represents to the stability of a country's socio-economic financial order, its implementation and effectiveness, is being permanently monitored and qualified by international agencies specialized in the matter, and whose reports work as a basic criterion to measure Country-Risk, and therefore a true radar for attracting lawful investments. Then again, it becomes necessary to understand the guidelines for an effective SAR, and understand, in order to mitigate its impact, the most common reasons for its non-compliance, as a consequence of infractions to specific legal frameworks, that can make the whole Anti-Money Laundering system of a country, ineffective. Definitely, the presentation of a SAR with Quality,

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Timeliness and Accuracy, directly affects the mitigation of the Risk of Financial Crime, in pursuit of the health of businesses and the economy.

Keywords: Suspicious Activity Report; Money Laundering; FATF; Compliance; Guarantor Position.

1 Introduction

There is a piece of particularly sensitive information both in its structuring, management, and analysis, which is generated precisely, when there are complex operations or unusual transaction patterns, without an apparent economic or lawful purpose. This kind of information is denominated Suspicious Activity Report (SAR) and it is presented to the Financial Intelligence Unit (FIU), by companies and activities, qualified as Obligated Subjects to the Risk Prevention against Money Laundering, Terrorist Financing, and Financing of Proliferation of Weapons of Mass Destruction (BC/FT/FP). The effectiveness of the SAR constitutes a collaborative bridge between companies and the State, a very valuable input to counter Transnational Organized Crime. This short article aims to explain its reach and importance.

2.- The SAR: bull's-eye, meeting and inflection point between the reporting entities and the FIU, in an Anti-Money-Laundering System

2.1.- FATF Standards and UN Conventions, as an international foundation of SAR

With the emergence of the Financial Action Task Force (FATF, in 1989), and its Technical Recommendations¹, it is regarded as one of the most relevant worldstandards in the fight against Money Laundering. The legal obligation for early detection, and the scaling of Alerts, Unusualness and Suspicions, and consequently, the opportune presentation of the correspondent Suspicious Activity Report (SAR), by the denominated Obligated Subjects (Financial or Non-Financial) to the Risk Prevention of Money Laundering, Terrorism Financing and Financing for the Proliferation of Weapons of Mass Destruction. This sensitive and extremely confidential Information, must be sent to the competent authority, the Financial Intelligence Unit (FIU), which operates on each country, to be analyzed. Their names vary according to each country. SEPBLAC in Spain,

¹ The Financial Action Task Force (FATF) is an inter-governmental body established in 1989 by the Ministers of its Member jurisdictions. The mandate of the FATF is to set standards and to promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and the financing of proliferation, and other related threats to the integrity of the international financial system. In collaboration with other international stakeholders, the FATF also works to identify national-level vulnerabilities with the aim of protecting the international financial system from misuse. Source: <https://www.fatf-fatf.org/>



UAF in Nicaragua, UAF in Panama, IVE in Guatemala, UIAF in Colombia, FINCEN in the United States of America.

Money Laundering, as one of the most significant expressions of Financial Criminality (Blanco Cordero, I. 2015), consisting of the criminal activity by which it is intended to give appearance of legality to profits obtained illegally (beyond its mere enjoyment), in order to conceal its origin; distorts the economy and impedes the action of authorities with powers to adopt and implement cross-cutting regulatory, supervisory, financial intelligence, freezing, confiscation of property, investigation and prosecution mechanisms. And it is here, in this action, that SAR is precisely emerging as a backbone within an effective Anti-Money Laundering System in all countries that follow the current 40 FATF Recommendations, hereinafter 40-R-FATF.

SAR, as an expression of compulsory collaboration of Compulsory Subjects with the respective FIU, finds its main basis in the FATF Technical Recommendations, particularly those referred to in numbers 10, 20 and 29. Where number 10 refers to the existence of the legal obligation to develop Due Diligence of Knowledge of Clients and Other Counterparts (DDC), as the work of the Compulsory Subject. Number 29, which refers to the existence of a State Information Centralizing Office created by Law, whose generic name is that of the Financial Intelligence Unit (FIU)² And number 20, which is a bridge between the previous two, at which point joint efforts and shared responsibilities converge, and which refers to the existence of the legal obligation for Reporting Entities to submit to the FIU, the Suspicious Activity Reports (SAR). And, suspects of what? Well, precisely, of Money Laundering, and/or Terrorist Financing (FT), or Financing for the Proliferation of Weapons of Mass Destruction (FP), or activities related to Preceding Crimes or Determinants of Money Laundering (Blanco Cordero, I. 2020), within which the widest range of serious crimes and generators of huge profits for criminal organizations, fits.

FATF Recommendation 20:

"If a financial institution suspects or has reasonable grounds to suspect that the funds are the result of criminal activity, or are related to the financing of terrorism, it should be required, by law, to promptly report its suspicions to the Financial Intelligence Unit (FIU)."

Due to its relevance, it is worth to portray here, the Interpretative Note from the FATF, on the aforementioned Recommendation 20, which points out:

"1. The reference to criminal activity in Recommendation 20 refers to all criminal acts that would constitute a predicate offence for money laundering or, at a minimum, to those offences that would constitute a predicate offence, as required by Recommendation 3. Countries are strongly encouraged to adopt the first of these alternatives".

"2. The reference to terrorist financing in Recommendation 20 refers to: the financing of terrorist acts and also terrorist organizations or individual terrorists, even in the absence of a link to a specific terrorist act or acts.

"3. All suspicious transactions, including attempted transactions, should be reported regardless of the amount of the transaction."

4. "The reporting requirement should be a direct mandatory obligation, and any indirect or implicit obligation to report suspicious transactions, whether by reason of possible prosecution for a money laundering or terrorist financing offence or otherwise (so called "indirect reporting"), is not acceptable."

FATF, through a rigorous and detailed Evaluation Methodology, monitors countries in regulatory compliance and the effectiveness of 40-R-FATF, including the issue of SAR, and their subsequent treatment until they reach judicialized cases. It is important to mention that the Mutual Assessment Reports (MARs) issued by FATF are also incorporated as country-risk qualification criteria by other international agencies and research centres, that also take the pulse of the subject under their own Methodology, such as the Basel Institute³

(<https://www.translatoruser.net/bvsandbox.aspx?&from=es&to=en&csId=b9f3dbc0-426b-44cc-9c3f-ab1a0896dedb&usId=10f42060-a48b-4864-a48a-891791741879&ac=true&bvrpx=true&bvrpp=&dt=2020%2F12%2F5%20%2F22%20%2F13%20%2F7>), which is positioning itself as a referent for investors who take care of their financial health on their business strategies.

For example, while FATF currently has Panama and Nicaragua as Jurisdictions with Strategic Deficiencies in its ALA/CFT-FP System⁴, and in which Spain does not profile for having greater strengths; Basel Institute, on the other hand, in its last June 2020 Report, of the three countries, only Nicaragua is in the 16th position, poorly valued (the closer to 1, the higher the level of Risk) with a Risk score of 6.78, where the maximum

³Of the most relevant indicators for the comprehension of Risk LA/FT/FP by jurisdiction in the world, two outstand: The listing of jurisdictions that maintain strategic deficiencies on their systems ALA/CFT-FP, issued by the FATF; and the Basel AML Index from the Basel Institute on Governance. Both indicators have the pretension to contribute with reliable and useful information, on the permanent task of preventing and mitigating the LA/FT/FP Risk, both on the private sector, as well as on the public entities, and they coincide with some data. However, they show slightly different results, due to the fact of specific (own) methodologies being used.

⁴See the FATF Informs from February 2020 and February 2021.



Risk equals 10. Panama ranks 36th with a Risk score of 5.96. And Spain ranks 129th with a Risk score of 3.66.

On the other hand, commitments to the SAR system of countries that follow, the 40-R-FATF, go beyond them, and also point to compliance with at least four major United Nations (UN) Conventions, of which they are signatories, and which include anti-money laundering subjects, and in particular SAR. We saw this gestate on the 1988 UN Convention Against Narcotics and Psychotropic Substances Illicit Trafficking, namely on article 15, which includes aspects on training and discovery of suspicious circumstances in international trade subjects. Then, the SAR, already promptly configured, is present in Article 18 (paragraph.1.b) of the 2000 UN Convention for the Suppression of Terrorist Financing, which states that Compulsory Subjects must pay *"special attention to unusual or suspicious transactions and report transactions suspected of criminal activity"*. For its part, article 7 (paragraph 1.a) of the 2001 UN Convention against Transnational Organized Crime, suggests that countries should take measures to *"(...) prevent and detect all forms of money laundering, and this regime will emphasize the requirements relating to customer identification, record-keeping and reporting of suspicious transactions."* Article 14 (section 1.a) of the 2003 UN Convention against Corruption provides similarly that *"(...) this regime will emphasize the requirements relating to the identification of the customer and, where appropriate, the final beneficiary, the establishment of records and the reporting of suspicious transactions"*, and this must be understood in combination with Articles 12 (paragraph 1) and 58 of the same international instrument which guide respectively: *"Each State Party, in accordance with the fundamental principles of its domestic law, it shall take measures to prevent corruption and improve accounting and audit rules in the private sector, as well as, where appropriate, provide for effective, proportionate and deterrent civil, administrative or criminal sanctions in the event of non-compliance with such measures". and, to this end, consider establishing a financial intelligence unit to receive, analyze and disclose to the competent authorities any reports relating to suspicious financial transactions."*

2.2.- Legal, express and direct obligation for Reporting Entities to submit SAR.

The obligation to submit SAR, in accordance with the UN Conventions and the FATF Recommendations, must necessarily be entered into Laws explicitly, and without perjury, of course, to the specific administrative regulations that address the details

according to the Risk-Based Approach (EBR) of each Regulator in the country concerned. Almost all countries that follow the 40-R-FATF have the obligation of SAR established by law and unequivocally.

The following provisions of law are mentioned as mere references:

In Spain, Law No. 10 (of the year 2010 and reforms), Law on the Prevention of Money Laundering and the Financing of Terrorism: *"Article 18. Communication by indication. The obligated subjects shall, on their own initiative, communicate to the Executive Service of the Committee on the Prevention of Money Laundering and Monetary Infringements (hereinafter referred to as the Executive Service of the Commission) any fact or operation, including the mere attempt, in respect of which, following the special examination referred to in the preceding article, there is evidence or certainty that it relates to money laundering or the financing of terrorism."*

In Nicaragua, Law No. 976 (of the year 2018 and reforms), Law of the Financial Analysis Unit: *"Article 8. Obligation to report suspicious operations. 1. obligated subjects who suspect that a client's assets are linked to LA/FT/FP and previous crimes associated with Money Laundering at the time of performing or attempting an operation requested by the Client or at the conclusion of the analysis of their operations shall immediately report these suspicions to the UAF. Similarly, they will report the operations and assets of fund providers, services, associates, employees, partners and business partners on which they suspect that there is a relationship with LA/FT/FP and previous crimes associated with Money Laundering. (...)"*

In Panama, Law No. 23 (of 2015 and reforms), Law on Measures to Prevent Money Laundering, the Financing of Terrorism and the Financing of the Proliferation of Weapons of Mass Destruction: *"Article 54. Obligation to report a suspicious transaction Financially obligated subjects, non-financial obligated subjects and activities carried out by supervisory professionals shall communicate directly to the Financial Analysis Unit for the Prevention of the Crime of Money Laundering and Terrorist Financing any facts, transactions or operations, which are suspected of being related to crimes of money laundering, terrorist financing and financing of the proliferation of weapons of mass destruction, (...)"*.

2.3.- Structuring a viable SAR for an FIU.

In the context of SAR, there are basically three legal scenarios, three perspectives, three functions in scaling format, all complementary to each other. In a first stadium, that of the Obligated Subject, who generates Financial Information through SAR. Behind the scenes, the FIU, which as the recipient of SAR, analyses and shares financial intelligence results, based on the so-called Operational Analysis. Third, that of the Investigative and Judgment bodies, which as appropriate, generate evidence and financial evidence, incidentally.



SAR is always subjective in nature because it is a conclusion reached precisely by the Obligated Subject on suspicion or for having reasonable grounds to suspect that a possible situation of money laundering, or FT/FP, is being faced with suspicions of Preceding Crimes or Determinants of Money Laundering; but based on objective facts (and therein lies the reasonability required) and also presented in good faith. Precisely to be able to seize the respective legal protection. This is picked up on Recommendation 21 by FATF: *“Tipping off and confidentiality: Financial institutions, their directors, officers and employees should be: (a) protected by law from criminal and civil liability for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, if they report their suspicions in good faith to the FIU, even if they did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred; and (b) prohibited by law from disclosing (“tipping-off”) the fact that a suspicious transaction report (STR) or related information is being filled with the FIU. These provisions are not intended to inhibit Information sharing under Recommendation 18.”* For example, this Recommendation of the FATF we see expressed on Article 23 of the Spain’s Law No.10/2010; on Article 11 of Nicaragua’s Law No. 976 of Nicaragua, and on Article 56 of Panama’s Law No. 23.

Sending a SAR does not constitute a criminal complaint, let alone an accusation. The reporting entity does not need to be certain that it is actually a criminal activity, nor to identify the criminal type or verify that the resources have an unlawful origin; only the operation is required to be suspicious for the Obligated Subject, where the person (or group of persons) mentioned in the SAR, should not know or be warned of such a situation. All its handling is strictly confidential.

It is for the FIU and the other competent authorities to determine and judge whether or not there is a true scheme or case of LA/FT/FP, and to proceed accordingly. It should be noted that the Obligated Subject does not receive feedback on the specific SAR that he has submitted, since it is not the function of the FIU to co-manage the Risk with the Obligated Subject, who by his own, free decision, and according to his "risk appetite" decided to do business with a certain person, to which he should later report. An FIU does share with the Obligated Subjects general information, but not that resulting from the Operational Analysis of the one-off case, but the product of its Strategic Analysis, from which Typologies, Schemes and Trends on LA/FT/FP are generated.

For any Anti-Money Laundering System and FT/FP, SAR always constitutes sensitive and basic information, true raw material for the corresponding financial analysis



- h.** It should refer only to Operations classified by the Obligated Subject as Suspicious. Operations held only as Alerts or only as Unusual should not be reported.
- i.** Always focuses on suspected LA/FT/FP and/or LA Precedent Crimes, and not on other and different possible Crimes.
- j.** You must describe at least one LA/FT/FP Suspicious Operation or that is linked to the LA/FT/FP.
- k.** It is presented independently: -of the amount or amount of the transaction(s), -of the nature of the transaction(s), -of the type of customer(s) or counterparty(s) concerned (n), - whether or not tax or tax matters are involved, -whether or not the potential underlying criminal activity or preceding crime is known, whether or not the potential underlying criminal activity actually occurred, - whether or not the relationship with the client(s) or counterparty(ies) included in the Report is continued.
- l.** Transactional information should be relevant and accurate, and should not be scarce.
- m.** The conclusions should be reasonable, the result of the escalation of information in the internal analysis carried out by the Obligated Subject.
- n.** It should not meet panic criteria.
- o.** The minimum information content of the SAR Format may be comprised of the following parts: -place where the suspicious operation(s) was carried out, -natural or legal person who is a customer or counterparty of the Reporting Obligated Subject, and on behalf of the person who carried out or attempted the transaction, -beneficiary of the account or business relationship, -natural person (manager) who carried out or attempted the suspicious operation, -information about the suspicious operation, -indication of the warning signals and their sources, -current state of the relationship between the obligated subject and the person(s) mentioned within the SAR, -description of the operation(s) suspicious(s).
- p.** Clear and concise language should be used in the description of the Suspicious Operation(s).
- q.** The facts should be recounted as a short argument, ordering the ideas with the following parameters: -distinguishing between premises and conclusion, - on the basis of reliable premises, - presenting ideas in a chronological order, - using professional, concrete, specific and definitive language, - avoiding personal and emotional language.

All FIUs are entitled to reject SAR that do not meet the content and quality criteria indicated by it through Regulations or Instructions.⁶<https://www.translatoruser.net/bvsandbox.aspx?&from=es&to=en&csId=b9f>

⁶For example, on Article 18 of Spain's Law No. 10/2010. "(...) In any case, communication to the Executive Service of the Commission, will be preceded by a structured process of special examination of the operation, in accordance of the provisions of article 17. In cases where the Executive Service of the Commission deems that the Special examination carried out is insufficient, it will return the communication to the obliged subject so that the latter may deepen the examination of the operation, in which the reasons for the return and the content to be examined will be succinctly expressed."

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Once SAR is received, the FIU submits it to a risk certification/validation, both objective and subjective to determine priorities, based on the information contained in the description of the operator. The objective one, made by the system or platform (required fields). The subjective one, carried out jointly by Analysts and Managers of the respective FIU Analysis Area, and which determines the urgency and importance of the attention of the FIU, in order to determine whether it is in the presence of a true money laundering scheme.

3.- SAR Compliance Omission: inflection point which debilitates the Anti Money Laundering System

3.1.- Some non-compliance scenarios.

The compliance and effectiveness of SAR are currently marking accelerated changes and legal, legislative and administrative, doctrinal, jurisprudence and criminological trends and trends in the different countries following 40-R-FATF (Blanco Cordero, I. 2009); and in particular with regard to delimiting responsibilities of different natures for those who by law are Subject to Risk Prevention LA/FT/FP, who do not comply with the obligation to detect Suspicious Operations and report them in a timely manner. In this context, the global FATF standard requires that sanctions (of any kind) be proportionate, effective and dissuasive.⁷ This is the case, for example, of the crime of money laundering under the form of the Default Commission where the one who omits reporting is placed in a position of direct or indirect collaborator of the Money Launderer or Whitener (Caparrós, Eduardo F. 2013).

Following up, a synthesis of the main situations in which the Legal Obligation to present SAR is not usually met, grouped into the following three general scenarios. For these, there may be responsibilities at all levels:

- a.-** The Obligated Subject does not quite have Measures (Internal Control Policies and Procedures) for LA/FT/FP Risk Prevention Management.
- b.-** The Obligated Subject does have Measures (Internal Control Policies and Procedures) for LA/FT/FP Risk Prevention Management; however, these contain structural failures.
- c.-** The Obligated Subject does have Internal Control Policies (Policies and Procedures) for LA/FT/FP Risk Prevention Management, which do not contain structural failures, but become poorly implemented.

⁷Recommendation 35 of FATF: “Countries should ensure that there is a range of effective, proportional and dissuasive sanctions, whether criminal, civil or administrative, that are available to treat natural or legal persons covered in Recommendations 6 and 8 to 23, who fail to comply with the requirements. AML / CFT. Sanctions should be applicable not only to financial institutions and DNFBPs, but also to their directors and senior management.”



The above circumstances may give rise to or cause the following two possible factual variables that are serious regarding the non-compliance with SAR:

- i.-** That it is omitted to report the Suspicious Activity that has been detected and classified as such.
- ii.-** The Suspicious Activity is ignored even if it is obvious and reasonably easy in terms of detection and analysis.

And if it is the case that with the two indicated conducts the facilitation of Money Laundering occurred in any of its stages: Placement, Stratification and Integration; those responsible for them can then be prosecuted under the Commission's criminal justice test for omission of this Crime, regardless of the level of participation that is delimited for each of those involved, which can reach even the managers of a company.

This is the case, for example, of the grounds provided for in paragraphs 2 and 3 of article 301 of the Spanish Penal Code⁸, or in article 282 (f) of the Nicaraguan Penal Code⁹, or in article 255(1) of the Panama Penal Code¹⁰, obviously, all under a wide range of various interpretative nuances.

The situation will then be presented with different legal effect if the Obligated Subject does have Internal Control Policies (Policies and Procedures) for LA/FT/FP Risk Prevention Management, these do not contain structural failures, and are ultimately reasonably well implemented. So the confluence of these three duly documented positive circumstances will be a real radiance, exempt from responsibilities, even if no Report has been submitted to the FIU¹¹. There are a few situations in which there are cases detected

⁸"2. With the same penalties, the concealment or concealment of the true nature, origin, location, destination, movement or rights over the goods or property of the same will be sanctioned, according to the cases, knowing that they come from any of the crimes expressed in the previous section or an act of participation in them. 3. If the facts are carried out due to gross negligence, the penalty will be imprisonment from six months to two years and a fine of three times as much."

⁹"Seriously breaches the duties of his position to facilitate the conduct described in the preceding paragraphs"

¹⁰"Without having participated, but knowing its origin, conceals or prevents the determination, origin, location, destination or ownership of money, goods, securities or other financial resources, or helps to ensure their benefit, when these come from or have been obtained directly or indirectly from any of the illicit activities indicated in the previous article or, in any other way, help to ensure their benefit".

¹¹As a reference in this situation, article 31 bis (paragraph 2) of the Spanish Penal Code stands out:

"2. If the crime is committed by the persons indicated in letter a) of the previous section, the legal entity will be exempt from liability if the following conditions are met:

1.^a The administrative body has adopted and executed effectively, before the commission of the crime, organization and management models that include the appropriate surveillance and control measures to prevent crimes of the same nature or to significantly reduce the risk of their commission.

from Alerts or Unusualness, but which in the end are not reported to the FIU because the decision-making of the Obligated Subject concludes that there is no suspicion and do not qualify as such to the information known and analyzed. In such a case, however, it is recommended to rate the customer or counterparty as High Risk, and apply an intensified or reinforced DDC, which includes stricter monitoring of the relationship. Of everything acted internally, the Obligated Subject must archive and retain the information for the minimum period indicated by the respective legislation, and have it available to the authorities (administrative and judicial) with competence in the matter¹².

3.2.- Risk situation and Position of Guarantor in the context of the SAR Compliance Omission.

Money Laundering presents us with an overview of the permanent danger of the protected legal good, basically considered the stability of a country's socio-economic-financial order. For any company, as long as it is open developing its business turns, then there is no LA/FT/FP "0" Risk for it; risk will always be inherent to its economic activity. Here comes into scene, the figure that the doctrine calls The Position of Guarantor, which has particular legal-criminal relevance, although quite explicitly absent as such in the legislative texts. This is the holder of a duty of reply to avoid the harmful, unwanted outcome, and which is prohibited. It is the guarantor of the non-production of that result and that criminal responsibility for it may be substantiated and attributed to it in respect of the unimpeded outcome. In reference to the Penal Code of Spain: *"(...) in our legal system and from a harmonious interpretation of art. 11, the equality between action and omission, will only be possible, according to the meaning of the text of the Law, when there is a guarantor who has infringed a special legal duty"* (CuadradoRuíz, 2000, p. 19).

2.^a *The supervision of the operation and compliance with the implemented prevention model has been entrusted to a body of the legal entity with autonomous powers of initiative and control or that is legally entrusted with the function of supervising the effectiveness of the internal controls of the legal entity;*

3.^a *individual perpetrators have committed the crime by fraudulently evading the organization and prevention models and,*

4.^a *there has not been an omission or insufficient exercise of its supervision, surveillance and control functions by the body referred to in condition 2^a.* "

¹²FATF Recommendation 11:

"Registry maintenance

Financial institutions should be required to maintain, for a period of at least five years, all the necessary records on transactions, both local and international, so that they can quickly comply with the requests for information requested by the competent authorities. These records must be sufficient to allow the reconstruction of individual transactions (including the amounts and types of currency involved, if any) in such a way as to provide evidence, if necessary, for the prosecution of criminal activity.

Financial institutions should be required to retain all records obtained through CDD measures (e.g., copies or records of official identification documents such as passports, identity cards, driver's licenses, or similar documents), account files, and correspondence. including the results of any analyzes that have been performed (e.g., preliminary investigations to establish the background and purpose of complex, unusually large transactions), for a period of at least five years after the termination of the business relationship or after the date of the occasional transaction.

Financial institutions should be required, by law, to maintain records on transactions and information obtained through CDD measures. "



In this situation, the omissive action of any official or collaborator within the Obligated Subject may be subsumed, who has seriously failed to fulfill the duties of his office in his own tasks related to SAR within the route of detection, analysis, decision-making, structuring and presentation to the FIU, and who has thus contributed to the timely scheme of a money laundering in any of its stages.

Guarantor's Position then points, but not exclusively, to the Compliance Officer as the main executive of the matter within the Obligated Subject, as he is generally responsible for ultimately deciding whether the Operation is of a Suspicious nature and consequently whether or not to report to the competent authority such as the FIU. Whoever assumes the position of Compliance Officer within a mandatory entity, is constituted as a kind of barrier to prevent the company from being used as an instrument to launder assets from illicit activities, and if, by doing so, does not prevent the commission of the crime (knowingly), it will be had as if it had committed the conduct itself. There are many interpretive currents around Guarantor's Position (CuadradoRuiz, 1998, pp. 11-68).

Nevertheless, it could only be the author of the crime of money laundering under the modality of the Commission by Omission, persons who, with certain characteristics and functions, are required to carry out specific tasks under their LA/FT/FP Risk Prevention Programme, in order to prevent such a crime from materializing. The criminal responsibility of the Commission for omission in the field of money laundering, without at the causal level, must be placed at the regulatory level. This is because the crime of money laundering or money laundering is mostly accepted as a continuing crime, of mere activity, and not necessarily of result¹³.

¹³Article 11 of the Spanish Penal Code:

"Crimes that consist in the production of a result will only be understood to have been committed by omission when the failure to avoid it, by infringing a special legal duty of the author, is equivalent, according to the meaning of the text of the law, to its causation. For this purpose, the omission will be equated with the action:

- a) When there is a specific legal or contractual obligation to act.*
- b) When the defaulter has created an occasion of risk for the legally protected asset through a preceding act or omission "*

Article 12 of the Nicaraguan Penal Code:

"In pure crimes of omission, the act is considered carried out where the omitted action should have taken place."

Article 25 of the Penal Code of Panama:

"Crimes can be committed by commission or omission. There is a crime of commission when the agent, personally or using another person, performs the conduct described in the criminal law, and there is a crime of omission when the subject fails to comply with the mandate provided in the standard. When this Code incriminates a fact due to a prohibited result, it is also carried out by those who have a legal duty to avoid it and did not avoid it, being able to do so. "

The doctrine highlights several formal sources for Guarantor's Position, including: -the Law, -the Contract, -Special Relations and -Interference. Officials with direct roles to manage, mitigate and contain the Risk of Money Laundering, within an Obligated Subject, may frame their obligations in the four sources indicated, especially with the first two. On the one hand, the Law and the abundant Administrative Regulations, require the official in a specific and express way. On the other hand, the Employment or Professional Services Contract defines the scope of its functions and competences, which are LA/FT/FP Risk Surveillance Duties, and by not avoiding what is avoidable and available to it, acts not as an Active Subject, but as an Omissive Subject.

Without prejudice, to the omission of SAR, the materialization of money laundering schemes has been facilitated or not, the application of Administrative Sanctions by the Regulatory and Supervisory Authorities may always correspond for breaching the obligation to refer SAR to situations that do apply.

4. Conclusions and recommendations:

- i.-** Useful SAR should be the result of compliance with adequate and effective implementation of Money Laundering and FT/FP Risk Prevention mechanisms.
- ii.-** The presentation of SAR with characteristics of Quality, Opportunity and Accuracy, directly affects the mitigation of the Risk of Financial Crime, and promotes the health of business and economy, in any country.
- iii.-** The Obligated Subjects, their officers and officials, are guarantors that, under the proper exercise of their respective positions and roles, the necessary measures are taken and developed within the company, in order to prevent and detect suspicious operations early and to report them in a timely manner to the FIU.
- iv.-** The existence and effective application of proportional sanctions for the various SAR non-compliances, including cases of serious omission, achieve a deterrent effect on Obligated Subjects, resulting in the strengthening of mechanisms for determining, structuring and presenting better-targeted SAR, with primary information for the FIU.
- v.-** The constant strengthening of an effective SAR System, shields Subjects Bound against the Risk of Money Laundering and FT/FP, weakens the financial structures and movements of Organized Crime, and improves the perception of Country Risk.



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