



Technical Analysis of  
FATF  
Recommendations –  
Rerating of Costa  
Rica



OCTOBER 2017

## FOURTH ROUND OF MUTUAL EVALUATIONS GAFILAT RE-RATING REPORT

### I. INTRODUCTION

1. Costa Rica requested re-rating of Technical Compliance (TC) with Recommendations 6-8, 22-25, 27-29 and 35 by means of the following official letters and supporting information:

- O-UIF-135-2017 (19 May 2017) re-rating of Recommendation 29 is requested
- O-UIF-126-2017 (15 May 2017) re-rating of Recommendations 22, 23, 27, 28 and 35 is requested.
- O-UIF-010-2017 (23 January 2017) re-rating of Recommendations 8, 24 and 25 is requested.
- O-UIF-243 (2 December 2016) re-rating of Recommendations 6 and 7 is requested.

2. According to the procedures of the Fourth Round, countries can request TC re-rating. Hence, it is expected to observe significant progress regarding the deficiencies noted in its Mutual Evaluation Report (MER) (paragraphs 64-66).

3. Therefore, the actions informed by Costa Rica are analysed herein below in order to determine whether re-rating is applicable or not.

### II. ANALYSIS

*Recommendation 6 – Targeted financial sanctions related to terrorism and TF.*

4. The MER of Costa Rica noted as a deficiency the lack of procedures to comply with Sections 33, 33 bis and 86 of Law No. 8204 so as to observe Recommendation 6, allowing for full compliance with the provisions of the sanction regimes set forth within the framework of the UNSCR 1267, et. seq. and 1373. By means of the legal reform of said Sections by means of Law No. 9387, especially Section 33 bis<sup>1</sup> and the regulatory

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<sup>1</sup> Section 33 bis.- The Ministry of Foreign Affairs and Worship shall notify, immediately and simultaneously, to the Public Ministry and the Financial Intelligence Unit (FIU) of the Costa Rican Drug Institute on the natural or legal persons included in:

a) International terrorist lists approved by the United Nations Security Council, in accordance with resolutions 1267 of 1999, 1989 of 2011, 1988 of 2011, 2253 of 2015 and its subsequent resolutions.

b) Lists developed by the committees created by resolutions 1718 of 2006 and 1737 of 2006 of the United Nations Security Council regarding the financing of proliferation of weapons of mass destruction, and its subsequent resolutions.

c) Designations made pursuant to resolution 1373 of 2001 of the United Nations Security Council and its subsequent resolutions.

The Financial Intelligence Unit of the Costa Rican Drug Institute shall immediately inform the institutions stated in Sections 14, 15 and 15 bis of this Law and the National Registry about the lists and designations mentioned in paragraphs a), b) and c) hereof. Once this information is received, said institutions shall proceed to freeze or withhold, without prior notification or hearing, all the financial products, cash, assets and movable or immovable property, and shall communicate the results to said Unit within a maximum period of twenty-four hours, after the United Nations Security Council communicates the listings and designations defined in the previous paragraphs.

The Financial Intelligence Unit shall notify the Public Ministry of said results so that it may request the competent judge the corresponding freezing or withholding. The judge shall make a decision within a maximum term of twenty-four hours, which will be communicated to the Financial Intelligence Unit.

The freezing and withholding established in this section will only be applicable when any of the assumptions mentioned in the previous paragraphs occurs. Otherwise, the party affected by the measure may appeal before the competent administrative authority.

development of Executive Decree No. 40018 whereby the new Section 33 bis is regulated, Costa Rica creates a new regime to comply with the Targeted Financial Sanctions related to terrorism and TF.

5. Sections 14 and 15 of Executive Decree 40018 set forth mechanisms to identify the recipients of a designation according to the UNSCR (criterion 6.1). Particularly, Section 15 states that the Presidential National Security Council shall be responsible for requesting the designation to the relevant UNSCR Committee through the Ministry of Foreign Affairs. Likewise, this Section establishes the information to be collected to support the designation proposal. In turn, Section 16 sets forth the information to be provided on designated individuals or entities (criterion 6.1.a-e).

6. Sections 23 and 24 of the above mentioned Executive Decree set out the mechanism whereby individuals or entities are designated, whether through the judicial authority or through the Presidential National Security Council, as per the provisions of UNSCR 1373 (national designation) and to submit requests to third countries. The information attached to requests to third countries shall be in accordance with Sections 15 and 16. Section 25 states that the Financial Intelligence Unit (FIU) will receive requests from third countries as per UNSCR 1373, and shall immediately make the decision to apply freezing if there are reasonable grounds or basis to suspect or believe that the individual or entity meets the designation criteria according to UNSCR 1373 (6.2.a-e).

7. Both Sections 23 and 24 are related to freezing within the framework of UNSCR 1373. However, both sections provide for its application regarding persons investigated due to “any direct or indirect link with activities related to weapons of mass proliferation”, which is not part of Resolution 1373. Nevertheless, it is considered that even though there is, in fact, an improper reference to activities related to the FPWMD, which is indeed not directly related to the specific topic of application of the criteria of Res. 1373, this inappropriateness does not directly affect the regulation's scope of application regarding Resolution 1373, which is properly included in the regulation.

8. As regards targeted financial sanctions, Law No. 9387, Section 33 bis establishes the legal basis for the implementation of targeted financial sanctions without delay (criterion 6.4). Section 33 bis requires all reporting entities (Section 14, 15 and 15 bis) to immediately freeze, without prior notice or hearing, all the funds and assets of the lists by virtue of UNSCR 1267/1989/2253 and 1988, and designations by virtue of UNSCR 1373, once the FIU informs the reporting entities of such listings and designations, sent by the Ministry of Foreign Affairs. This obligation is developed in Decree 40018, Sections 6 and 7. (criterion 6.5.a).

9. Decree 40018, Section 6, Subsection 4, expressly establishes that freezing or withholding shall be extended to all funds or assets of assumptions i-iv included in criterion 6.5.b.

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*As regards frozen or withheld financial products, cash and assets, the institutions stated in Sections 14, 15 and 15 bis hereof shall deposit them in the confiscated cash accounts, held by the Costa Rican Drug Institute to that end, and shall inform the Financial Intelligence Unit when they do so, submitting a copy of the deposit slips.*

*The institutions mentioned in Sections 14, 15 and 15 bis hereof shall be bound to permanently monitor the lists and designations referred to in this section, regardless of the communication sent by the Financial Intelligence Unit of the Costa Rican Drug Institute. The actions carried out in compliance with the provisions hereof shall not result in any administrative, civil, criminal or any other liability whatsoever for the above mentioned institutions, their officers or the officers of the Financial Intelligence Unit performing so, provided that they are not proved.*

10. Law No. 9387, Section 33 bis prohibits every citizen or any person or entity within the national territory from providing funds or other assets in cases where TF offence is committed. Additionally, Decree 40018, Sections 7 and 10 establish the general prohibition to provide funds or other assets to directly or indirectly benefit designated persons or entities (criterion 6.5.c).

11. Law No. 9387, Section 33 bis sets out how the FIU shall communicate the lists and designations to the relevant reporting entities, and establishes the freezing obligation. Moreover, Decree 40018, Section 6 provides for that the FIU shall immediately inform the listings to the reporting entities via the secure communication e-platform. Notwithstanding the foregoing, Decree 40018, Section 7 establishes that reporting entities shall directly and permanently monitor the lists (criterion 6.5.d).

12. Law No. 9387, Section 33 states that reporting entities are bound to report to the FIU on frozen assets or the actions undertaken in compliance with the prohibition requirements, which is also developed in sections 6 and 7 of Decree 40018. Furthermore, Decree 40018, Sections 11 and 30 provide for the application of sanctions to reporting entities due to non-compliance with their obligations. (criterion 6.5.e). Decree 40018, Section 10 sets forth measures to protect the rights of bona fide third parties, for instance, in cases of homonymy or false positives (criterion 6.5.f) when the obligations of Recommendation 6 are implemented.

13. Law No. 9387, Section 33 bis foresees that the party affected by the freezing measure may appeal before the competent administrative authority. In addition, Decree 40018, Sections 18 to 22 establish the procedures for delisting or unfreezing funds or assets. The judicial authority and the Presidential National Security Council may request the Ministry of Foreign Affairs the removal of any such persons or entities that no longer meet the designation criteria. Additionally, Decree 40018, Section 26 sets forth unfreezing measures before the FIU in the cases of UNSCR 1373.

14. Decree 40018, Sections 12 and 18 include the provisions for the authorization of access to funds or other assets according to the procedures set in UNSCR 1452 and in accordance with UNSCR 1373 (criterion 6.6).

15. However, it is worth noting some minor technical deficiencies. First of all, it is noted that Executive Decree 40018, Section 2 includes two different TF definitions: 2.c) *Offence typified in Law No. 77862, Section 69; and 2.l) The financing of terrorist acts and also terrorist organisations or individual terrorists, even in the absence of a link to a terrorist act or acts.* Although objections might be made as to the legislative technique, the decree refers to section 69 bis that, with the wording of Law No. 7786, as amended by Law No. 9387, has no legal restriction whatsoever, since what is established in Section 2 “l” is covered within the current wording of Section 69 bis, “b”.<sup>2</sup>

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<sup>2</sup> Law No. 9387 establishes the following:

"Section 69 bis.- The punishment of five to fifteen years of imprisonment will be applied to any person who, by any means, directly or indirectly, collects, hides, provides, promotes, facilitates or in any other manner cooperates with the collection or delivery of funds, financial products, resources or instruments, or other assets, means or services of any kind, in the country or abroad, with the intention or the knowledge that they will be used or allocated, totally or partially, to the financing of:

a) Terrorist acts, even when they are not finally executed.

b) Organisations or individuals declared as terrorists or having terrorist purposes.

c) Any act aimed at causing the death of a person who does not directly participates in the hostilities in a situation of armed conflict, when the purpose of said act, given its nature or context, is to intimidate a population or to force a government or international organisation to perform or refrain from performing any act, even if they are not finally executed.

d) Any act intended to cause minor, serious or severe injuries to a person who does not directly participate in the hostilities in a situation of armed conflict, when the purpose of said act, given its nature or context, is to intimidate a population or to force a

Executive Decree 40018, Section 15 establishes the Costa Rican criteria to propose an administrative designation: the Presidential National Security Council, through the Ministry of Foreign Affairs requests the UNSC the inclusion of individuals investigated for terrorist offences, TF offences and not for proliferation. However, *designations requested by countries pursuant to Resolutions 1267 and 1988 et. seq., must refer to Al-Qaeda, Taliban or associates (see Interpretative Note of R.6: item 4 e-f and 13) and not to those investigated for any type of terrorism.* Nevertheless, it is worth noting that in this case Sections 14 to 22 of Decree 40018 are related to the procedures foreseen in Resolutions 1267 and 1988 and subsequent ones. Chapter IV relates exclusively to the procedures to designate or remove designated individuals or entities related to terrorism, terrorist financing and to the proliferation of weapons of mass destruction as per UNSCRs 1267 (1999), 1989 (2011), 1988 (2011), 2253 (2015) 1718 (2006), 1737 (2006) and 2231 (2015) and the subsequent resolutions and they do not cover those investigated by any domestic terrorist offence.

16. Besides, Section 15, paragraph two establishes the criteria for designation proposal to the UNSC not related to investigations for internal terrorist offences:

- Specific conclusions and findings proving that the inclusion criteria are met;
- The nature of the supporting evidence (e.g., expert opinions and technical reports, reports from the intelligence services, from the police force, from judicial sources, from other media sources, statements made by the subject and any other required mechanism);
- Evidence or supporting documents;

17. As regards national designations by virtue of UNSCR 1373, Executive Decree 40018, Section 27 establishes the relevant criteria of the Presidential National Security Council. According to this section, once the designation is made, the provisions of Law 7786, Section 33 shall apply.

18. The heading of Section 33 bis refers to the immediate and simultaneous notification to the Public Ministry and to the FIU through the Ministry of Foreign Affairs. The specific part of this Section heading is not fully aligned to the national designations procedure set forth in Resolution 1373.

19. However, a teleological and systemic construction of the regulation shows that the differences in the procedure derive actually from the specific situation itself, since in practice, the first part of the procedure that reflects the international stages of the designation process is not applicable to national designation cases. Nevertheless, the second paragraph and the subsequent ones of Section 33 bis are fully applicable, since they describe the stages of submission to the FIU and the procedures to be fulfilled by the reporting entities. Once the designation is performed, the procedures of Resolution 1267 and 1373 are consistent.<sup>3</sup>

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government or international organization to perform or refrain from performing any act, even if they are not finally executed. e) The travel of an individual or many individuals to countries other than their countries of origin or residency or nationality for the purpose of committing, planning, preparing or participating in terrorist acts or providing or receiving of terrorist training, even if terrorist acts are not carried out.  
The conducts sanctioned in this section shall be judged in Costa Rica, in accordance with Section 7 of the Criminal Code.”

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Law No. 9387  
Section 33 bis. (...)

The Financial Intelligence Unit of the Costa Rican Drug Institute shall immediately inform the institutions stated in Sections 14, 15 and 15 bis hereof and the National Registry about the lists and designations mentioned in paragraphs a), b) and c) of this section. Once this information is received, said institutions shall proceed to freeze or withhold, without prior notification or hearing, all the financial products, cash, assets and movable or immovable property, and shall communicate the results to said Unit within a

20. Regarding freezing measures derived from third countries' requests, Section 25 establishes that the FIU shall receive freezing requests through Egmont Group as per UNSCR 1373. However, Law No. 7786, Section 33 bis, also applicable to Res. 1373 states that the Ministry of Foreign Affairs shall notify the Public Ministry and the FIU "c) designations made pursuant to Resolution 1373." The FIU shall serve immediate notice to the institutions and to the National Registry. Thus, although a prevalence of the legal regulation of Section 33 bis of Law No. 7786 is noted, which covers the requirements of Recommendation 6, the procedure should be adjusted so as to avoid the duplication of different procedures to receive and deal with requests of R. 1373 submitted by third countries. Therefore, Section 25 of the Regulation should be amended to adjust to the resolution whereby it is established that the Ministry of Foreign Affairs will be the recipient of cooperation requests.

21. *Conclusion:* The amendment of Law No. 7786 by means of Law No. 9387 has developed the main aspects for compliance with this Recommendation. Taking into account that the criteria of this Recommendation are largely met, it is considered that the rating should be modified from partially compliant to Largely Compliant.

*Recommendation 7 – Targeted financial sanctions related to proliferation.*

22. The MER of Costa Rica identified as a deficiency the lack of legislation related to the fight of FPWMD.

23. With the amendment of Law No. 7688, by means of Law No. 9387, and the approval of Executive Decree 40018 whereby the new Section 33 bis of Law No. 9387 is regulated, the legal and regulatory framework of Costa Rica included the implementation of Targeted Financial Sanctions in terms of FPWMD. The relevant sections about the implementation of Targeted Financial Sanctions based on the designations made by the UNSC within the regime of UNSCR 1267 analysed in Recommendation 6 are applicable to Recommendation 7, since the regulation related to the UNSC designations also covers UNSC designations in terms of FPWMD.

24. *Conclusion:* Taking into account that all the criteria of Recommendation 7 are covered by Law No. 9387 and Executive Decree 40018, it is considered that the rating should be modified from partially compliant to Compliant.

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maximum period of twenty-four hours, after the United Nations Security Council communicates the listings and designations defined in the previous paragraphs.

The Financial Intelligence Unit shall notify the Public Ministry of said results so that it may request the competent judge the corresponding freezing or withholding. The judge shall make a decision within a maximum term of twenty-four hours, which will be communicated to the Financial Intelligence Unit.

The freezing and withholding established in this section will only be applicable when any of the assumptions mentioned in the previous paragraphs occurs. Otherwise, the party affected by the measure may appeal before the competent administrative authority.

As regards frozen or withheld financial products, cash and assets, the institutions stated in Sections 14, 15 and 15 bis hereof shall deposit them in the confiscated cash accounts, held by the Costa Rican Drug Institute to that end, and shall inform the Financial Intelligence Unit when they do so, submitting a copy of the deposit slips.

The institutions mentioned in Sections 14, 15 and 15 bis hereof shall be bound to permanently monitor the lists and designations referred to in this section, regardless of the communication sent by the Financial Intelligence Unit of the Costa Rican Drug Institute. The actions carried out in compliance with the provisions hereof shall not result in any administrative, civil, criminal or any other liability whatsoever for the above mentioned institutions, their officers or the officers of the Financial Intelligence Unit performing so, provided that wilful misconduct or gross negligence is not proved, pursuant to Section 271 of Law No. 7594, Code of Criminal Procedures dated 10 April 1996, Section 199 of Law No. 6227, General Public Administration Law dated 2 May 1978."

### Recommendation 8 – Non-Profit Organisations

25. In the XXXIV FATF Plenary Meeting, a change to the Methodology of Recommendation 8 was approved. To assess technical compliance with this Recommendation rated as NC in the MER of Costa Rica, the new criteria of the Methodology approved by the XXXIV Plenary Meeting should be assessed in accordance with the 'Procedures for the Fourth Round of AML/CFT Mutual Evaluations of the Financial Action Task Force of Latin America (GAFILAT), section II on changes to the Recommendations and GAFILAT's approval during the 4th Round<sup>4</sup>. Therefore, Recommendation 8 is analysed herein below according to new Methodology criteria.

26. Technical assistance of Costa Rica is underway in order to perform a risk assessment on legal entities, where the NPOs will be included, considering TF risks. Additionally, Law No. 9416, Section 6 establishes that the Costa Rican Drug Institute (ICD in Spanish), by means of a resolution based on a sectorial risk assessment, can define other NPOs that, due to national or international factors, could be exposed to ML/TF risks and, therefore, comply with the additional requirements set in the Law (Criterion 8.1 a-d). However, full compliance with all factors of criterion 8.1 must be completed whether with the effective risk assessment of legal entities or through ICD sectorial risk assessments, proving compliance with the sub-criteria established.

27. By means of Law No. 9416, a number of measures have been established to promote transparency, integrity and public trust in NPOs administration and management (criterion 8.2.a). Thus, Section 6 of said Law establishes that the NPOs<sup>5</sup> should submit to the Central Bank of Costa Rica (BCCR in Spanish) not only the information about final beneficiaries (pursuant to Section 5), but also the purpose and objectives of their activities, the identity of the board of directors' members, management board, directors or their equivalent, as well as the governing body, details of income and expenditures, records and identification of donors and recipients or beneficiaries of contributions and donations, even if it is an individual, equal to or higher than a base salary, including the identification of the structures made up of affiliated organizations. Furthermore, Law No. 9449 in the amendment of Section 15 bis of Law No. 8204 establishes as reporting entities in the AML/CFT regime as those individuals or legal entities engaged in NPOs sending or receiving money from jurisdictions internationally considered as high-risk countries or having a link with headquarters, branches or foreign affiliates located therein.

28. Costa Rica is still expected to submit information about the other sub-criteria 8.2b-d regarding: i) promoting and undertaking outreach activities and educational programmes to raise awareness among NPOs as well as the donor community about the vulnerabilities of NPOs and about FT abuse and risks, and the measures that NPOs can implement to protect themselves from such abuse; ii) working with NPOs to develop and refine best practices to address TF risks and vulnerabilities iii) encouraging NPOs to conduct transactions via regulated financial channels (see criterion 8.2 of the Methodology).

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<sup>4</sup> "As a dynamic process, the on-going work with the FATF could lead to further changes of the Recommendations, the Interpretive Notes or the Methodology. All countries should be assessed on the basis of the FATF Recommendations, the Interpretive Notes, and the Methodology as they exist, approved by GAFILAT, at the date of the country's on-site visit. The report must clearly state if an assessment has been made in accordance with recently amended regulations. To ensure an equal treatment, and to protect international financial systems, compliance with the relevant elements of the changes must be assessed as part of the follow-up process (...), if they have not been assessed or as part of the mutual evaluation."

<sup>5</sup> "Primarily engaged in raising or disbursing funds for charitable, religious, cultural, educational, social or fraternal purposes, or to carry out other types of "good works", including associated non-profit organisations, understood as foreign branches of international non-profit organisations" (Law No. 9416, Section 6).

29. According to Law No. 9416, Section 8, the BCCR will be in charge of managing NPOs information (among others). Furthermore, Law No. 9449, Section 15 bis states that reporting entities (above mentioned NPOs) must submit to the supervision of the General Superintendence of Financial Entities (SUGEF in Spanish) in terms of ML/TF and FPWMD, under a risk-based approach established by the National Council for the Supervision of the Financial System (CONASSIF in Spanish) (Criterion 8.3).

30. As mentioned above, for the purposes of monitoring NPOs it has been established that the SUGEF shall be in charge of supervising NPOs stated in Section 15 bis under a risk-based approach to be established by CONASSIF through prudential regulation (still in progress by CONASSIF, which should include the requirements set in Recommendation 8). Likewise, the obligation to register the above mentioned NPOs before the SUGEF is established. (criterion 8.4.a).

31. With regard to the obligations established, Law No. 9416, Section 13 sets forth that in case of failure to submit the information (stated in Law No. 9416, Sections 5 and 6) the sanctions foreseen in Law No. 4755, Section 84 bis shall apply. Moreover, Law No. 9449 that amends Section 81 of Law No. 8204 defines the following sanctions, based on failure severity, magnitude of damage and repetition, in case of non-compliance of reporting entities, including the NPOs stated in Section 15 bis of the aforementioned Law: a) a fine from 5% to 50% of the amount of the transaction made and b) a fine of 2 to 100 base salaries as defined in Law 7337, Section 2; (see analysis of Recommendation 35). (criterion 8.4.a).

32. Law No. 9416, Section 8 establishes that the NPO information shall be included in the BCCR databases and shall be made available to the Ministry of Finance and the ICD, according to the legitimate reasons established and the established requirements of information request set in Law No. 9416 (Sections 9 and 10). (criterion 8.5.a).

33. Costa Rica is still expected to submit information on the other sub-criteria 8.5.b and 8.5.d, since, as already mentioned, once the BCCR database is created, the NPOs management and financial information will be available under the terms of Law No. 9416, Section 6 (criterion 8.5.c).

34. Generally, the ICD and the National General Prosecutor's Office would respond to international cooperation requirements. However, pursuant to criterion 8.6, points of contact and appropriate procedures should be identified to respond to international information requests regarding particular NPOs under suspicion of TF or involved in any other form in terrorist support.

35. *Conclusion:* Costa Rica has made progress in technical compliance with Recommendation 8, particularly faced with the recent changes in the Methodology. Costa Rica must complete the risk assessment of legal entities (including NPOs) and/or the ICD sectorial risk assessment, as well as the issuance of the risk-based prudential regulation by the CONASSIF. In addition, it must submit information regarding compliance with criteria 8.1, 8.2b-d, 8.5b, 8.5.d and 8.6. Therefore, it is considered that rating should be modified from Non-Compliant to Partially Compliant.

*Recommendation 22 – DNFBPs: Customer Due Diligence*



36. The MER of Costa Rica identified the following deficiencies: a) the lack of regulations containing all the CDD obligations; and b) the lack of regulations setting the obligations established in criteria 22.3-22.5.

37. Law No. 9449 that amends Law No. 8204 establishes the following activities as DNFBPs subject to the AML/CFT regime (Sections 15 and 15 bis):

- Resource administration through trusts or any other type of resource administration performed by legal entities other than financial intermediaries
- Casinos
- Individuals and legal entities professionally engaged in buying and selling real estate on a regular basis
- Dealers in precious stones and metals
- Individuals and legal entities, such as lawyers, notaries and accountants, except for wage-earning professionals whose employer is supervised, when they perform or intend to perform transactions for their clients related to the following activities: i) buying and selling of real estate; ii) administration of money, bank accounts, savings, securities or other assets of their client; and iii) operation and administration of the purchase and sale of legal entities or other legal arrangements.
- Trust service providers, including those who are involved in trust creation, record and management.

38. Against this background, it appears that the activities defined by the FATF as DNFBPs, except for lawyers, notaries and other legal professionals and independent accountants when they perform or intend to perform transactions for their clients regarding the creation of legal entities or other legal arrangements, are included as reporting entities in the AML/CFT regime set out in Law No. 9449.

39. Law No. 9449, Section 15 sets a number of basic obligations (shown hereinbelow) to be observed by the reporting entities included in Sections 15 and 15 bis, and states that the CONASSIF shall issue the prudential regulation according to each sector's reality. Furthermore, Section 15 *ter* sets obligations for notaries public. Additionally, the same law establishes that DNFBPs must observe on a mandatory basis every binding provision issued by the FIU of the ICD in terms of ML/TF and FPWMD prevention and fight (Sections 15, 15 bis and 15 *ter*). It is also stated that notaries public must observe on a mandatory basis every binding provision issued by the FIU (ICD) and the National Directorate of Notaries Public.

40. Law No. 9449 (Section 15.a) states that DNFBPs must identify clients and their due diligence upon establishing business relationships therewith (criterion 10.2.a). In accordance with the provisions of the MER of Costa Rica, Law No. 8204 and the Regulation of Law No. 8204 include some of the obligations foreseen in the criteria of Recommendation 10 (10.1, 10.2.a, 10.2.b, 10.3, 10.7.a, 10.7.b, 10.10, 10.11.a). For full technical compliance with criterion 22.1, the regulatory development of the remaining obligations of Recommendation 10 is still pending.

41. Law No. 9449 (Section 15.c) states that the DNFBPs must observe “the provisions and controls on politically exposed persons defined hereof.” However, this Law does not include the obligations required in technical criteria of Recommendation 12. For full technical compliance with criterion 22.3, the regulatory development of the remaining obligations of Recommendation 12 is still pending.

42. Law No. 9449 (Section 15.d) states that DNFBPs must comply with the “controls on ML or FT risks that may arise with the emergence of new technologies in new products and new business practices” (existing products are not taken into account.) The request of risk identification and assessment is still pending regarding the development of new products and new business practices (criterion 15.1). Risk assessments should also be required to be performed before the launch or use of any such business practices so that the appropriate measures can be taken for risk management and mitigation. For full technical compliance with criterion 22.4, the regulatory development of the remaining obligations of Recommendation 15 is still pending.

43. Law No. 9449 (Section 15.e) states that DNFBPs must comply with “controls when third parties perform customer identification, final beneficiary identification and regarding the purpose of the business relationship”. However, it does not state that said information must be immediately obtained to comply with criterion 17.1.a. For full technical compliance with criterion 22.5, the regulatory development of the remaining obligations of Recommendation 17 is still pending.

44. *Conclusion:* By means of Law No. 9449, Costa Rica has established some basic obligations of DNFBPs. However, legal regulation must be developed to comply with different specific criteria and sub-criteria. Thus, considering that there still are moderate deficiencies, the rating should remain as Partially Compliant.

#### *Recommendation 23 – DNFBPs: Other measures*

45. The MER of Costa Rica identified the following deficiencies: a) lack of regulatory provisions including the obligations set in criteria 23.2-23.4; and b) the STR obligation was not explicitly established.

46. As set out in the analysis of Recommendation 22, the activities defined by the FATF as DNFBPs, except for lawyers, notaries and other legal professionals and independent accountants when they perform or intend to perform transactions for their clients regarding the creation of legal entities or other legal arrangements (activity not included in Law No. 9449), are included as reporting entities in the AML/CFT regime set out in Law No. 9449.

47. Law No. 9449 (Section 15.h) requires the creation of mechanisms for STRs to be submitted to FIUs without delay. Moreover, Section 25 of Law No. 9387 that amends Law No. 8204 states that reporting entities (including those established in Sections 15 and 15 bis) should immediately and confidentially inform STRs to the FIU. Section 25 has already been analysed in the re-rating report approved by the XXXIII GAFILAT Plenary Meeting (see GAFILAT 16 | GAFILAT 4.4 Exhibit 1) whereby rating of Recommendation 20 has been modified to Compliant. Hence, criterion 23.1, as regards the DNFBPs' obligation to report suspicious transactions, is properly addressed.

48. The last subsection of both of Sections 15 and 15 bis of Law No. 9449 sets forth that the SUGEF will consider the conditions and characteristics of the reporting entities to require the inclusion of an enforcement officer within its organizational structure, or otherwise, a different structure (criterion 18.1.a). Nevertheless, the regulatory development of the remaining obligations of criteria 18.1b-d is still pending (thorough selection procedures to ensure the highest standards in the hiring of employees, ongoing training programmes for employees and an independent audit function to test the system). In addition, Law No. 9449 (Section 15.f) states that DNFBPs must comply with “ML/TF

controls when they have foreign branches or affiliates”, but it does not include the specific obligations set in criteria 18.2 and 18.3. For full technical compliance with criterion 23.2, the regulatory implementation of most obligations set in Recommendation 18 is still required.

49. Law No. 9449 (Section 15.g) states that DNFBPs must comply with “controls when they have business relationships and perform transactions with individuals, legal entities or financial institutions from countries considered as high-risk by international organisations”. However, the specific obligation to apply greater due diligence measures on a pro rata with the risks is not stated (criterion 19.1). Additionally, criteria 19.2 and 19.3 need to be addressed for full compliance with criterion 23.3.

50. *Conclusion:* Costa Rica has established the STR obligation for DNFBPs. However, compliance with criteria 23.2 and 23.3 is still pending. Therefore, it is considered that the rating should remain as Partially Compliant.

#### *Recommendation 24 – Transparency and beneficial ownership of legal persons*

51. The MER of Costa Rica identified the following deficiencies: a) there is no guarantee of updated registry information on the partners or shareholders, since quota or share transfers are not registered in such Registry; b) no measure has been adopted to prevent misuse of nominee shares and nominee directors (criterion 24.12); and c) failure to comply with the obligation to identify beneficial ownership is not specifically criminalised in Law No. 8204, and the sanctions that could still be applied are not effective or dissuasive (criterion 24.13)

52. Law No. 9417, Section 5, sets forth that legal persons or legal arrangements domiciled in the country should submit to the BCCR, through their legal representative, a record or list of the shareholders and beneficial ownership<sup>6</sup> with a significant share<sup>7</sup>. Section 7 states that the identification of all the shareholders or those who hold significant share in legal persons or arrangements may be requested, as well as the identification of their beneficial owners, as well their shareholding structure.

53. When, in the case of legal persons or legal arrangements domiciled in Costa Rica, which significant shareholding or capital stock is held, in whole or in part, by legal entities domiciled abroad, it is impossible to identify the beneficial ownership, after having exhausted the identification means and provided that there are no grounds for suspicion, it will be understood that the beneficial owner is the administrator (Section 5); the information on the ownership of shares or quotas of the capital stock of these companies should be reported and kept updated, as well as the powers of attorney granted in Costa Rica (Section 7) and in the event that these legal entities are domiciled in countries where bearer shares are allowed, the obligations to report and keep the information updated regarding all the shares should be complied with (Section 7).

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<sup>6</sup> Beneficial or effective owner is understood as the individual with significant direct or indirect control or influence over a legal person or legal arrangement, having the majority of voting rights of shareholders or partners, with powers to appoint or remove most of the administration, management or supervision bodies, or having the control over any such company by virtue of its By-Laws. Indirect control will be understood as having control over legal persons who ultimately hold an interest in the national legal person or arrangement, and direct control will be understood as the possibility to hold shares or interest enough to control the national legal person or arrangement.

<sup>7</sup> Significant interest will be understood as “holding shares and interest in a percentage higher than or equal to the limit statutorily set to that end by the Ministry of Finance, based on international parameters, and within a range from 15% to 25% shareholding of the total capital of the legal person or legal arrangement.”

54. The above-mentioned obligations to report information to the BCCR should be met on an annual basis or when any shareholder reaches or exceeds the established limit.

55. The BCCR shall ensure the integrity, authenticity, reliability and confidentiality of the information (among others) and this information will be available (via access to the database created by the BCCR to this end pursuant to Section 8) to the Ministry of Finance and ICD to be used by the FIU.

56. Section 13 states that failure to comply with the aforementioned obligation to report information shall be sanctioned in accordance with the provisions of Law No. 4755, Section 84 bis.

57. Based on the information provided, Costa Rica only needs to supply information on the measures taken to prevent misuse of registered shares and nominee directors.

58. *Conclusion:* By means of Law No. 9416, Costa Rica has established several obligations to ensure transparency of and access to legal entities' shareholders and beneficial ownership information, in a secure and updated manner, and sanctions are set in case of non-compliance with the obligation to report information (including information related to the beneficial ownership) to the BCCR. Taking into account that regarding the deficiencies identified in the MER Costa Rica only needs to submit information on the measures taken to prevent misuse of registered shares and nominee directors, it is considered that rating of Recommendation 24 should be modified from partially compliant to Largely Compliant.

*Recommendation 25 – Transparency and beneficial ownership of legal arrangements*

59. The MER of Costa Rica identified the following deficiencies: a) there is public information in the National Registry on trust property, but only for goods subject to registration (25.2), b) the legislation does not establish any kind of prohibition to provide competent authorities with information related to trusts, although it is worth mentioning that since the entire trust agreement is not registered, the National Registry might only provide limited information (criterion 25.4), c) the Law, and the regulations thereof, do not include the specific obligations to be complied by the trustees regarding the obtaining and keeping the identity of the trustor, trustee, protector and beneficiaries of the trust, as well as other regulated agents of the trust and trust service providers (criterion 25.1); d) there are no measures to ensure trustees disclose their status to FIs and DNFBPs (criterion 25.3) and e) there are no specific sanctions established for non-compliance by trustees with their information duties (criteria 25.7 and 25.8).

60. In addition to the obligations mentioned in the analysis of Recommendation 24 applicable to legal arrangements, including trusts, Law No. 9416, Section 6 sets forth that trusts should provide updated information to the BCCR on the contract purpose, trustor, trustee(s) and beneficiaries. The information mentioned in Section 7 of the Law should also be provided by the third-party resource administrators in favour of their clients (criterion 25.1).

61. As mentioned in the analysis of Recommendation 24, information provided to the BCCR should be updated and this latter shall ensure its integrity, authenticity and reliability (criterion 25.2).

62. In accordance with Law No. 9416, Section 8 the information in the BCCR database shall be available to the Ministry of Finance and the ICD, to be used by the FIU. (criterion 25.4)

63. Law No. 9416, Section 13 states that failure to comply with the aforementioned obligation to report information shall be sanctioned in accordance with the provisions of Law No. 4755, Section 84 bis.

64. There are no measures in place to ensure trustees disclose their status to FIs and DNFBPs (criterion 25.3).

65. *Conclusion:* By means of Law No. 9416, Costa Rica has established a number of obligations to ensure transparency of and access to information regarding the beneficial ownership of legal arrangements and trust participants in a secure and updated manner. Likewise, this information is available to the competent authorities and sanctions are established for non-compliance with the obligation to report information to the BCCR. Taking into account that regarding the deficiencies identified in the MER the only one pending is to take measures to ensure trustees disclose their status to FIs and DNFBPs, it is considered that rating of Recommendation 24 should be modified from partially compliant to Largely Compliant.

#### *Recommendation 27 – Powers of Supervisors*

66. The MER of Costa Rica identified the following deficiencies: a) the specific power to require the generation of information relevant to the monitoring and compliance with SUGEF's AML/CTF requirements had not been established; and b) the specific AML/CFT sanctions were inadequate (see R. 35).

67. The specific power to require the generation of information relevant to the monitoring and compliance with SUGEF's AML/CTF requirements had not been established.

68. Law No. 9449, Section 81 sets forth the sanctions regime applicable to FIs (see Recommendation 35).

69. *Conclusion:* Taking into account that there still are criteria to be addressed, it is considered that rating of Recommendation 26 should remain as Largely Compliant.

#### *Recommendation 28 – Regulation and Supervision of DNFBPs*

70. The MER of Costa Rica identified the following deficiencies: a) it is not defined that competent authorities may take the necessary legal and regulatory measures to prevent offenders and their accomplices from having, or being beneficial owners, of a significant or majority share or holding a management position or being operators of a casino; b) the legislation does not provide which entity will be in charge of supervising casinos in terms of compliance with AML/CTF requirements; and c) except for DNFBPs supervised by the SUGEF, there is no competent authority or SRB to supervise the other DNFBPs.

71. As regards the first deficiency, it has not been defined yet that competent authorities may take the necessary legal and regulatory measures to prevent offenders and their accomplices from having, or being beneficial owners, of a significant or majority share or holding a management position or being operators of a casino.

72. Law No. 9449, Section 15 bis sets forth that DNPBPs, including casinos, shall be submitted to the supervision of the SUGEF in terms of ML/TF and FPWMD, under a risk-based approach established by the CONASSIF by means of prudential regulation, including the sanction regime set out in Section 81. Moreover, Section 15 ter creates the ML/FT and FPWMD prevention area within the National Directorate of Notaries Public as the division in charge of preventing, training, supervising and controlling, as well as applying sanctions on this regard, which duties will be established by regulation by the executive branch (still pending). Necessary measures are still required to be taken to prevent offenders and their associates from being professionally qualified or having, or being beneficial owners, of a significant or majority share or holding a management position in DNFBBPs.

73. Law No. 9449, Section 81 defines the following sanctions, based on failure severity, magnitude of damage and repetition in case of non-compliance of DNFBBPs: a) a fine from 5% to 50% the amount of the transaction made and b) a fine of 2 to 100 base salaries as defined in Law 7337, Section 2; (see analysis of Recommendation 35).

74. As already mentioned, supervision by the SUGEF in terms of ML/FT and PWMD shall be carried out under a risk-based approach established by the CONASSIF. The development of items in criterion 28.5 is still pending.

75. *Conclusion:* Costa Rica has made progress in terms of DNFBBPs supervision since a supervisor was assigned for casinos and other DNFBBPs. However, addressing some criteria in full is still pending (28.1.b, 28.4.b, 28.4.c – according to the analysis of R.35 and 28.5), particularly related to a supervision on a risk-sensitive basis, since the CONASSIF has not established a risk-based regulation and the provisions of criterion 28.5 have not been determined yet. Therefore, it is considered that rating of Recommendation 28 should remain as Partially Compliant.

#### *Recommendation 29 – Financial Intelligence Units*

76. The MER of Costa Rica identified the following deficiencies: a) a discrepancy in current legislation regarding the identification of the institution that serves as national centre for the reception of STRs and b) the FIU did not have enough resources to carry out its duties.

77. The amendment of Law No. 8204, Section 25 of Law No. 9387 establishes that reporting entities must confidentially and immediately communicate STRs to the FIU. Hence, the deficiency related to the legislative discrepancy has been corrected.

78. Page 10 of the Regular Budget Report of the Budgetary Authority Technical Secretariat (STAP in Spanish) reporting to the Ministry of Finance (0672-2016) dated November 2016, acknowledges that “(...) the ICD has limited human resources, and has recently submitted a job creation request, as evidenced in official letter DG-120-2016 and in the technical report, whereby 52 job positions are required to be created within a term of 4 years (...)” Particularly, it also states that said 52 job positions would be “(...) for the Financial Intelligence and Asset Recovery Units, which lack the budget for their creation. Moreover, more officers are required to be engaged for the Administrative-Financial Unit, who would have indirectly more duties as to the administrative and technical support to be provided to the above-mentioned units (...)” When this report was drafted, the job positions had not been assigned to the FIU yet.

79. Furthermore, the Administrative-Financial Unit of the ICD (UAFI in Spanish), by means of official letter UAFI 122-2017, informs the FIU that the relevant calculations have been made that might be called “*Financial Intelligence Unit Individual Budget. Data are taken from the Total Budget allocated to the Costa Rican Drug Institute (ICD) in Programme 2 of this year and should be administered by the FIU from the second half of the year, as part of the independence, strengthening and equipping process of the Unit (...)* The remaining amounts that could be assigned to the FIU in sub-items should be distributed by this Unit, once the Administrative-Financial Unit has made prior availability calculations based on the spending limit assigned by the Ministry of Finance. The main amounts that would be exclusively assigned to the FIU would be transfers to international organizations to fulfil additional obligations to groups such as Egmont Group and GAFILAT, (...), as well as resources to purchase equipment or furniture. Note that programme 2 where the FIU is involved has currently more than €650 million allocated to the purchase of equipment or furniture to take care of punitive programmes or projects, hence it will depend on the planning and control executed by the Unit of the budgeted funds.” The 2017 budget for the FIU is about USD 332,213.50 (C. 190,096.991). Relevant actions are still pending to be performed so that indeed the FIU can execute the remaining budget for the second half of the year.

80. Taking into account the new budgetary provision, the ICD Director, by means of official letter M-DG-044-2017, requests to the Human Resources Coordination that the position held by the Vice-Head of the FIU performs the duties described in section V., “Current Duties”, “related to human resources administration” regarding the administrative tasks related to salary calculation to be carried out by the FIU before the Human Resources Coordination.

81. The FIU is seeking to include in the Extraordinary Budget Law of the Republic a budget item to increase FIU Human Resources by August of this year. Likewise, the ICD allocated a special item to the FIU of about USD 1,000,000 for programmes and projects execution. The FIU is using part of these resources to strengthen the prevention projects related to cross-border transportation of cash; thus, it is acquiring special material on the obligations to declare the possession of cash in airports, ports and borders for an amount of USD 12,000.

82. The FIU is managing the development of training in modules: Module 1 develops the comprehensive subject of STRs, specially intended for DNFBPs (about USD 8,000) and module 2 is focused on the FATF 40 Recommendations and assessment methodology (USD 25,000).

83. Likewise, the FIU will have additional resources derived from sanctions to individuals and legal arrangements, and DNFBPs as a result of the provisions of Law No. 9416 and Law No. 9449. Funds raised will be used for the development of FIU’s programmes and projects.

84. Finally, the FIU has prepared personnel selection tests and evaluation mechanisms which are directly applied by the director and vice-director’s office for the selection of its own personnel and, as a result of the process before Egmont Group of R. 29, the FIU was satisfactorily rated in the analysis made.

85. *Conclusion:* Taking into account that it cannot be verified yet that the FIU has enough resources to carry out its duties (personnel allocation, technology resources, etc.)

and that it has administrative independence, it is considered that rating should remain as Partially Compliant.

*Recommendation 35 – Sanctions:*

86. The MER of Costa Rica identified the following deficiencies: a) sanctions do not cover all the obligations imposed by the legislation (especially NCL 8204); b) no administrative or civil sanctions are imposed on directors and senior managers of FIs; and c) with the exception of DNFBPs supervised by the SUGEF, there are no sanctions established for the remaining DNFBPs, except for those set in Law No. 8204.

87. With the amendment of Law No. 8204, Law No. 9449, Section 81 sets forth a sanction regime for reporting entities stated in Sections 14, 15 and 15 bis (financial institutions and DNFBPs).

88. Reporting entities included in Section 14 who fail to comply with the obligations set in the Law, including the prudential regulation of the CONASSIF, will be sanctioned by their corresponding supervisory body, considering the failure severity, magnitude of damage and repetition, with a fine from 0.5% to 2% of equity considered as capital stock, plus capital contributions and cumulative profits and losses. In general, for sanction calculation purposes, equity upon occurrence of punishable failure is taken as reference, according to the information of the financial statements periodically (monthly and quarterly) submitted by financial institutions to Superintendencies.

89. Reporting entities in Sections 15 and 15 bis will be applied the following sanctions, based on failure severity, magnitude of damage and repetition: a) a fine from 5% to 50% the amount of the transaction made and b) a fine of 2 to 100 base salaries as defined in Law 7337, Section 2; in case of non-compliance with the obligations set in the Law and in the prudential regulation approved by the CONASSIF.

90. The salary that serves as basis to fix fines and determine some failures is ₡426,200 for 2017, equal to USD 741.00 with an increase of ₡2,000 against the previous year. By Law, the Superior Council of the Judicial Branch shall be in charge of setting that amount. This amount was set in the meeting held on December 20<sup>th</sup> and is applicable as from January 1<sup>st</sup>.

91. Accordingly, Law No. 9449, Section 81 sets forth a sanction regime. However, to verify full compliance with criterion 35.1, the adjustment of sanctions to be imposed still needs to be verified in order to determine how proportionate and dissuasive sanctions set in Law No. 9449 are (criterion 35.1).

92. The establishment of administrative or civil sanctions for directors and senior managers of FIs and DNFBPs is still pending.

93. *Conclusion:* In accordance with Law No. 9449, Section 81, Costa Rica has made progress to improve the sanction regime for financial institutions and DNFBPs. Nevertheless, the following is still pending: i) to verify the adjustment of sanctions to be imposed in order to determine how proportionate and dissuasive sanctions set in Law No. 9449 are (criterion 35.1) and ii) to establish administrative or civil sanctions for directors and senior managers of FIs and DNFBPs (criterion 35.2). Against this background, it is considered that rating should remain as Partially Compliant.



### III. CONCLUSION AND PROPOSAL

94. By virtue of the above, we hereby suggest that the GTEM proposes to the Plenary the re-rating of the following Recommendations:

- Recommendation 7 from Partially Compliant to Compliant.
- Recommendation 8 from Non-Compliant to Partially Compliant.
- Recommendations 6, 24 and 25 from Partially Compliant to Largely Compliant.



The Financial Action Task Force of Latin America (GAFILAT) is a regionally based inter governmental organization that gathers 16 countries from South America, Central America and North America in order to combat money laundering and terrorist financing by means of a commitment for continuous improvement of the national policies against both scourges, and the enhancement of different cooperation mechanisms among its member countries.

**Citing reference:**

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