



# THIRD ENHANCED FOLLOW-UP REPORT OF NICARAGUA



August 2019



Citing reference:

**GAFILAT (2019) – Third Enhanced Follow-up Report of Nicaragua.**

© 2019 GAFILAT. All rights reserved. No reproduction or translation of this publication may be made without prior written permission. Applications for such permission, for all or part of this publication, should be made to the GAFILAT Secretariat at the following address: Florida 939 - 10° A - C1005AAS - Buenos Aires – Telephone (+54-11) 5252-9292; e-mail: [contacto@gafilat.org](mailto:contacto@gafilat.org).

# NICARAGUA: THIRD ENHANCED FOLLOW-UP REPORT

## I. INTRODUCTION

1. The Mutual Evaluation Report (MER) of Nicaragua was adopted in July 2017. This follow-up report analyses the progress made by Nicaragua in addressing the technical compliance deficiencies identified in its MER. New ratings are granted when sufficient progress is observed. In general, the expectation is that countries would have addressed most of the technical compliance deficiencies, if not all, before the end of the third year since the adoption of their MER. This report does not address Nicaragua’s progress on effectiveness. A subsequent follow-up evaluation will analyse the progress made on effectiveness, which may eventually result in a new rating of the Immediate Outcomes.

## II. FINDINGS OF THE MUTUAL EVALUATION REPORT

2. Based on the MER and the Second Enhanced Follow-up Report of Nicaragua, it was rated as follows in relation to technical compliance:

**Table 1. Technical compliance ratings, December 2018**

R 1.	R 2.	R 3.	R 4.	R 5.	R 6.	R 7.	R 8.	R 9.	R 10.
PC	LC	LC	LC	LC	LC	NC	PC	LC	PC
R 11.	R 12.	R 13.	R 14.	R 15.	R 16.	R 17.	R 18.	R 19.	R 20.
C	PC	C	PC	PC	LC	LC	LC	LC	LC
R 21.	R 22.	R 23.	R 24.	R 25.	R 26.	R 27.	R 28.	R 29.	R 30.
LC	PC	PC	PC	NC	LC	LC	PC	C	C
R 31.	R 32.	R 33.	R 34.	R 35.	R 36.	R 37.	R 38.	R 39.	R 40.
LC	LC	LC	LC	PC	LC	LC	LC	LC	LC

*Note:* There are four possible levels of technical compliance: Compliant (C), Largely Compliant (LC), Partially Compliant (PC) and Non-Compliant (NC.)

Sources: (i) Nicaragua Mutual Evaluation Report, October 2017, [<http://www.gafilat.org/index.php/es/biblioteca-virtual/miembros/nicaragua/evaluaciones-mutuas-11/1251-informe-de-evaluacion-mutua-de-la-cuarta-ronda-de-nicaragua>], (ii) Nicaragua Second Enhanced Follow-Up Report [<https://www.gafilat.org/index.php/es/biblioteca-virtual/miembros/nicaragua/informes-de-seguimiento-11/3193-segundo-informe-de-seguimiento-intensificado-de-nicaragua>]

3. Considering the results reflected in the MER, GAFILAT placed Nicaragua under the enhanced follow-up process.<sup>1</sup> The Executive Secretariat of GAFILAT evaluated Nicaragua’s request for a new technical compliance rating and prepared this report.

4. Section III of this report summarizes Nicaragua’s progress in improving technical compliance. Section IV presents the conclusion and a table showing which Recommendations were re-rated.

<sup>1</sup> The regular follow-up is the default monitoring mechanism for all countries. The enhanced follow-up process is based on the FATF traditional policy that approaches members with significant (technical compliance or effectiveness) deficiencies in their AML/CFT systems, and it involves a more enhanced follow-up process.

### III. OVERVIEW OF THE PROGRESS MADE TO IMPROVE TECHNICAL COMPLIANCE

5. In accordance with the above, this section summarizes Nicaragua's progress in improving its technical compliance by addressing the technical compliance deficiencies identified in the MER.

#### 3.1. Progress in addressing technical compliance deficiencies identified in the MER

6. Nicaragua has worked to address its technical compliance deficiencies identified in the MER in relation to the following Recommendations:

- R. 7, rated NC,
- R. 10, rated PC,
- R. 12, rated PC,
- R. 22, rated PC,
- R. 23, rated PC,
- R. 25, rated NC,
- R. 28, rated PC, and
- R. 35, rated PC.

7. As a result of this progress, Nicaragua was re-rated in relation to Recommendations: R. 7, 10, 12 y 25. GAFILAT acknowledges the progress made by Nicaragua in improving the technical compliance of Recommendations 22, 23, 28 and 35. However, it is considered that the progress made so far does not allow raising the rating of these Recommendations.

#### ***Recommendation 7 – Targeted financial sanctions related to proliferation (originally rated NC – Re-rated LC)***

8. The second follow-up report stated that the criteria 7.2.a, 7.2.b, 7.2.d, 7.2.f, 7.4 and 7.5 were not yet address.

9. Regarding the criterion 7.2.a, the second follow-up report stated that according to Art. 41 of Law 977, the competent authorities may order Reporting Institutions (RIs) to freeze without delay the funds or assets of designated natural persons, legal persons or criminal organisations. In this context, Decree 15-2018 states the procedure for implementing the freezing without delay. Article 20 establishes that the UAF will continuously and permanently monitor the updates of the UNSC lists and communicate them to the RIs within a maximum period of 24 hours after the update has occurred. Additionally, Article 25 of the aforementioned Decree establishes that the RIs and other recipients of the lists shall not disclose to the designated persons and organizations that they will proceed or have proceeded to freeze their funds or other assets.

10. To date and since the entry into force of Decree 15-2018, no designation related to PF has been detected, therefore, Nicaragua has not made related freezing. However, in June of 2019, a simulated exercise was carried out on the implementation of TFS against the PWMD in which two RIs, Relevant Public Institutions, Public Prosecutor's Office, Judiciary and the UAF participated. The objective of the exercise was to evaluate the National Prevention System against PF and identify deficiencies or weaknesses that could result in the freezing process, and thus be able to make recommendations for improvements. According to this exercise, in practice, Nicaragua has recorded the following times as average: a) the time that elapses between the moment in which the UAF detects the emission of a list of

the UNSC and the transmission of this to the RIs it is approximately one hour and thirty minutes and b) the approximate average time of response of the RIs to the UAF is fourteen hours.

11. With respect to criterion 7.2c, the previous follow up report indicated that Art. 43 of Law 977 establishes that no person who is in national territory may provide funds or other assets, economic or financial resources, other related services, directly or indirectly, to benefit natural persons, legal entities or designated organizations, unless there are licenses or authorizations provided by the UNSC or the competent domestic authority. This prohibition is extended to natural persons, legal entities or controlled organizations or those acting on behalf of those who are subject to the freezing measure.

12. RIs should perform searches in the transaction's records involving designated persons or entities. In addition, they must communicate this search to the UAF confidentially, as well as the freezing of funds and any other information held about designated persons or entities (Articles 22 and 23 of the above-mentioned Decree.) In addition, RIs should search for and freeze funds or other assets of designated persons and organizations within 24 hours after the reception of the lists submitted by the UAF (Article 24.)

13. Regarding criterion 7.2b, Decree 15-2018 provides in Article 21 that Nicaragua includes the obligation to freeze funds or other assets, which extends to: i) Assets owned or controlled by designated persons and organizations, and not just those that may be linked to a particular act, plot or threat of PWDM; ii) Assets directly or indirectly, owned or controlled in whole or in part by designated persons and organizations; iii) Assets derived or generated by funds or other assets owned or controlled directly or indirectly by designated persons and organizations; and iv) Assets that belong to persons acting on behalf of, or under the direction of designated persons and organizations. Therefore, Nicaragua has addressed the provisions relating to criterion 7.2b.

14. With regard to criterion 7.2.d, Article 20 of Decree 15-2018 provides that the UAF must continuously and permanently monitor updates to UNSC lists, consistent with the addition of, or amendments to designations. The UAF communicates updates and must notify them to RIs within 24 hours. It should also send lists to authorities that, in accordance with their legal framework, may proceed with the freezing, retention and seizure of funds or other assets. Therefore, Nicaragua has addressed the provisions relating to criterion 7.2d.

15. With regard to criterion 7.2.f, Decree 15-2018 provides in Article 30 that natural or legal persons who consider that the measures for the freezing of funds of designated persons or entities has affected funds or other assets owned by them in a manner that is not proper, they may contact the judicial authority to defend their rights and provide evidence in good faith. Therefore, it is considered that criterion 7.2.f has been addressed.

16. In reference to criterion 7.3, based on Article 17 of Decree 15-2018, FIs and DNFBPs supervisors, respectively, must verify that RIs comply with the UNSCR implementation obligations applicable to PWMD and its financing. In case of non-compliance, RIs will be subject to sanctions.

17. Resolution UAF-022-2019 and Resolution CD-CONAMI-008-01AGO07-2018, Sanctioning Regulations applicable to RIs regulated and supervised by the UAF and CONAMI respectively, which establish the types of infractions and the respective sanctions (minor, serious and very serious) against non-compliance related to the TFS implementation. Regarding the RIs regulated by the SIBOIF, Resolution No.CD-SIBOIF-980-1-ENE18-2017 issued on January 18, 2017, Regulation for the Management and Prevention of TF/PWMD Risks (Regulation GPR-TF/PWMD), establishes the

obligations of implementation of the UNSCR applicable to the PWMD and its financing. Also, the SIBOIF has the General Regulation on the Imposition of Fines and Sanctions, Resolution CD-SIBOIF-410-1 -MAR14-2006, in which Art. 12 sets that when institutions violate any of the provisions contained in the laws, regulations and resolutions of the Board of Directors of the Superintendency; as well as the orders, resolutions or instructions issued by the Superintendent, fines shall be imposed. Thus, in case of non-compliance with the specific obligations regarding FPWMD, the above-mentioned regulation with sanctions applies.

18. With regard to criterion 7.4, Nicaragua, through Article 31 of Decree 15-2018, provides that persons and organizations designated by the UNSC may submit de-listing requests, either directly or through the MINREX if it is a Nicaraguan national or resident of Nicaragua. In turn, in accordance with the same Art., the MINREX should publish the procedures to be followed and report on the offices and officials to whom it should be called upon to request the exclusion from the lists.

19. With regard to criterion 7.4 c, Decree 15-2018, under Article 28, indicates that persons and organisations affected by the freezing measure may request the judicial authority to have access to the funds or other assets necessary to cover basic expenses, including payment of food, rent or mortgages, medicines, taxes, insurance premiums, or solely to pay reasonable professional fees or reimbursement of expenses associated with the provision of legal services or charges for maintenance services for frozen funds and other financial assets or economic resources. Based on the information analysed, Nicaragua complies with criterion 7.4c.

20. With regard to criterion 7.4d, by means of Article 32 of Decree 15-2018, the UAF shall communicate to RIs within 24 hours on the UNSC Committees lists in relation to the de-listing of designated persons and organizations. Lists shall also be forwarded to other natural and legal persons who have implemented fund freezing measures.

21. Accordingly, RIs should search for the funds or other assets of the designated persons, and, in case of a match, inform the UAF of the status of the assets frozen. The UAF shall inform the Prosecutor's Office of these funds or other assets frozen in order to proceed to request to the judicial authority to terminate such measure. Once this measure has been terminated, the judicial authority shall notify Reporting Institutions and other persons or entities. Based on the information analysed, Nicaragua complies with criterion 7.4d.

22. In relation to compliance with criterion 7.5, Nicaragua informs that with respect to contracts, agreements or obligations prior to the date on which the accounts become subject to TFS:

- a) Reporting Institutions shall allow the addition to assets frozen, interests or other profits owed to them or payments due under contracts signed before the date on which those assets were frozen, provided that these interests, other gains and payments are also frozen (Article 21 of Decree 15-2018.)
- b) Designated persons and organisations may request from the judicial authority access to funds or other assets frozen to make payments relating to contracts entered prior to the application of a freezing measure, provided that they comply with the following:
  - i. That the judicial authority has been able to verify with the National Council against Organized Crime (CNCCO, as per its acronym in Spanish) that the contract is not related to any of the items, materials, equipment, goods, technologies, training, financial assistance, investment, brokerage and prohibited services referred to in UNSCR 2231 and its successor resolutions,

- ii. That the judicial authority has been able to verify with the CNCCO that the payment will not be received directly or indirectly by a designated person or entity under UNSCR 2231, and
- iii. The CNCCO, through the MINREX, notified the UNSC 10 days in advance about the intention to grant access to funds or other assets.

23. Payments received on the frozen accounts of designated persons or organizations are subject to the freezing measure. The above is in accordance with Article 29 of the above-mentioned Decree. Therefore, Nicaragua complies with criterion 7.5.

24. Based on the analysis of the information provided by Nicaragua, the obligation to freeze funds or other assets is extended in the cases established with criterion 7.2. Likewise, the supervisors are able to monitor and ensure the FIs and DNFBPs compliance of this R. Considering the above information and that Nicaragua has only pending the publication by the MINREX of the procedures for removing from the lists in the context of the nationals or residents of Nicaragua, it is considered to raise the rating to **Largely Compliant** in Recommendation 7.

#### ***Recommendation 10 – Customer due diligence (originally rated PC – Re-rated C)***

25. Nicaragua's Second Follow-Up Report, noted that the country still needed to make provisions for remittances in view of criteria 16.3 and 16.4 for the implementation of CDD measures in the context of criterion 10.2.c, and that in the case of Reporting Institutions supervised by the SIBOIF no thresholds for CDD measures for occasional customer operations were established yet.

26. Thus, in accordance with Article 12.2 and 12.3 of Resolution UAF-N-019-2019, it is established that UAF-regulated FIs shall apply CDD measures when performing an occasional transaction of a value equal to or greater than Ten Thousand Dollars (USD 10,000.00), or its equivalent in cordobas or foreign currency, even in situations where the transaction takes place in a single transaction or in several transactions throughout a month that appear to be linked, and when remittance operations are carried out, regardless of the amount.

27. Furthermore, Articles 38 to 40 of the same Resolution set forth the obligations of originating and beneficiary FIs and remittance intermediaries in compliance with the requirements set out in Rec. 16 in relation to the information to be attached to electronic transfers.

28. In addition, Circular No. DS-VSIV-DS-PLD-1721-04-2019 issued by SIBOIF sets forth CDD obligations for FIs under its supervision, for the cases of occasional customers and transactions, as well as for regular customers, and it indicates that in the cases of occasional transactions for an amount equal to or greater than Ten Thousand Dollars (USD 10,000.00) or its equivalent in any other currency, either in a single or several transactions that appear to be linked, but which separately in one month exceed that amount, FIs should apply CDD measures based on their risk level. Similarly, it sets forth the obligation of supervised entities to assess the risks of new practices, products, services or technologies before making them available to the public. In this regard, criterion 10.2.b and c is considered to be addressed.

29. Article 12.4 of Resolution UAF-N-019-2019 provides that FIs supervised by the UAF shall apply CDD measures where there is suspicion of ML/TF/PF, regardless of their value. Thus, the provisions of criterion 10.2.d are met.

30. Article 12.5 of Resolution UAF-N-019-2019 provides that FIs supervised by the UAF shall apply CDD measures where they have doubts as to the veracity or accuracy of the customer identification data obtained previously. Thus, the provisions of criterion 10.2.e are met.

31. With regard to criterion 10.3, the articles indicated by the country in accordance with Law 977 have already been discussed in Nicaragua's Second Follow-up Report against the deficiencies of the MER with respect to R. 10, so they will not be subject to further analysis.

32. However, Articles 14 – 16 of Resolution UAF-N-019-2019 refer to the duty of UAF-supervised FIs to identify and verify the identity of the customer (natural or legal person, regular or occasional, as well as the trustee) indicating the documents to be requested from the customer, the time to perform the verification, and what should FIs do to identify the authenticity of the documents submitted by customers. Thus, the provisions of criterion 10.3 are met.

33. With regard to criterion 10.4, Article 14.3 of Resolution UAF-N-019-2019 indicates that in the event that the customer, whether a natural or legal person, is represented by another person, this person must present the proof of the power of attorney. In this case, a copy of the identity document of the attorney-in-fact will be required. The RI must use reliable data or information from an independent source to verify the identity of the customer. Through verification of the customer's documents, data and information, the RI shall determine the identity, actual existence, representation, address, legal capacity and corporate purpose, as appropriate, of natural or legal persons and those of their representatives. Thus, the provisions of criterion 10.4 are met.

34. As regards to the deficiency identified in the MER relating to criterion 10.5, the obligation of financial Reporting Institutions supervised by the UAF to identify the customer's beneficial owner (BO) and verification of the BO's identity will proceed where there is evidence that the identity declared by the customer is not accurate or truthful and where circumstances are met that warrant the examination of the business or service relationship or the transaction to determine whether there are suspicions of ML/TF/PF, and on the basis of measures based on the risk internally established by the Reporting Institution. In these cases, the Reporting Institution will document the actions it has taken to determine who the BO is; it should also document the unsuccessful results of such actions (Article 24 of Resolution UAF-N-019-2019.) Therefore, criterion 10.5 is addressed.

35. In relation to criterion 10.6, Reporting Institutions will gather information on the intended purpose and nature of the business relationship. In particular, about the type of professional or economic activity of the customer, which will be recorded before the beginning of the business relationship. (Article 19 of Resolution UAF-N-019-2019.) In this sense, criterion 10.6 is addressed.

36. In relation to criterion 10.7, in the course of its relationship with the customer, the RI shall continuously monitor with a ML/TF/PF risk-based approach the transactions that the customer conducts, in order to monitor whether they correspond to the knowledge that the Reporting Institution has about the customer, its business activity and its risk profile, including the source of funds; follow-up lists, and red flags. (Article 45 of Resolution UAF-N-019-2019.) This addresses criterion 10.7.

37. With regard to criterion 10.8, Reporting Institutions will gather information about the type of professional or economic activity of the customer, which will be recorded prior to the beginning of the business relationship. It shall also identify the natural person or persons on whose behalf it carries out a transaction (Articles 19 and 24 of Resolution UAF-N-019-2019.) Thus, the provisions of criterion 10.8 are met.

38. Criterion 10.9 is addressed from the perspective of Articles 14, 15 and 20 of Resolution UAF-N-019-2019 which establishes the Reporting Institutions' obligation to identify and verify the identity of the customer, regular or occasional, legal person or legal arrangement, as well as the obligation to create a Comprehensive Customer or Associate Profile (PIC, as per its acronym in Spanish) or (PIA, as per its acronym in Spanish) that will allow them to identify and know the customer.



39. With regard to criteria 10.10 and 10.11, Reporting Institutions are required to identify and verify the identity of the person or natural persons on whose behalf a transaction is carried out or who ultimately owns or controls a legal person. Natural persons exercising control of the legal person through ownership of 25% or more of the shares shall be beneficial owners. If the holder of such percentage is a legal person, the Reporting Institution must identify the person who controls it with a percentage equal to or greater than 25% of the capital and so on until the natural person who controls the customer through the chain of ownership is identified. Where the Reporting Institution cannot determine who exercises control of the legal person even with the above information, it shall, in accordance with its resources and experiences, develop an analysis to identify who exercises control of the legal person. In cases where the Reporting Institution fails to identify the natural person who is the BO even in compliance with the above, it must verify the identity of the natural persons holding senior administrative positions in the legal person. Where the designated administrator is a legal person, control shall be deemed to be exercised by the natural person appointed by the administrator who acts as its legal representative.

40. In the case of trusts, determined or determinable trustees; trust interest certificate holders; or the members of trust Technical Committees shall be the BO. Where the trustee is a legal person, it shall be determined in accordance with the preceding paragraph (Article 14 and 24 of Resolution UAF-N-019-2019.) In this regard, the deficiency identified in criteria 10.10 and 10.11 has been overcome.

41. In accordance with criterion 10.16, Reporting Institutions shall apply CDD measures provided for in Chapter III of Resolution UAF-N-019-2019 to all new and existing customers at the time of entry into force of the legal instrument referred to, on the basis of a risk analysis. In any event, the Reporting Institution shall apply CDD measures to existing customers upon hiring new products or where a transaction occurs that is considered significant because of its volume or complexity. (Article 36 Resolution UAF-N-019-2019.) Thus, the deficiency referred to in criterion 10.16 has been overcome.

42. Nicaragua has made significant efforts by adopting Resolution UAF-N-019-2019 to overcome deficiencies in technical compliance with Recommendation 10 concerning when the CDD is required, specific CDD measures required from legal persons or arrangements, at the time of verification of the identity of customers and the demands of measures to current and existing customers. Therefore, in view of the analysis of the information presented, the deficiencies identified in the MER are considered to have been overcome. It is proposed that the rating be raised to **Compliant**.

### ***Recommendation 12 – Politically Exposed Persons (originally rated PC – Re-rated C)***

43. With regard to criterion 12.1 b, c and d, Article 34 of Resolution UAF-N-019-2019 sets forth that in the case of foreign PEPs, Reporting Institutions should apply at least the following enhanced CDD measures, regardless of the level of risk they pose: i) Obtain approval from senior management, in case the Reporting Institution has one, before establishing a business or service relationship with the customer or to continue it as soon as the customer or its BO is identified as PEP, ii) Take reasonable steps to identify the source of wealth and assets of the PEP that is the customer or beneficial owner of the business or service relationship; and iii) Conduct enhanced follow-up of the business or service relationship with PEPs, including actions such as increasing the number and timing of the business or service relationship operations revisions. Therefore, criteria 12.1.b, c and d are met.

44. With regard to criterion 12.2.b, Article 34 of Resolution UAF-N-019-2019 states that in the case of domestic PEPs and PEPs from international organizations that pose a higher risk of ML/TF/PF, in accordance with the information obtained in the implementation of CDD measures, Reporting Institutions shall apply at least the enhanced CDD measures identified in the analysis of criterion 12.1 b-d. This addresses criterion 12.2.b.

45. In view of compliance with criterion 12.3, in accordance with Article 35 of Resolution UAF-N-019-2019, PEP's relatives should be understood as persons who have a blood relationship up to the fourth degree or affinity up to the second degree with a PEP. Legal and natural persons who, without parental relationship with the PEP, have business relationships with the PEP or are their beneficial owners, will be close associates of the PEP. If a customer or beneficial owner is identified as a relative or close associate of a PEP, the CDD measures provided for in Article 34 of the same Resolution shall be applied. This has addressed the deficiency identified in criterion 12.3.

46. Based on the analysis of information provided by Nicaragua, it is considered that it has overcome the deficiencies identified in the MER in relation to FIs obligations with respect to foreign PEPs and family members or close associates of all types of PEP for senior management approval to establish or maintain business relationships, the obligation to take reasonable steps to establish the origin of wealth and the source of funds of the customers and BOs identified as PEP, as well as to develop permanent enhanced follow-up. Therefore, it is proposed that the rating be raised to **Compliant**.

***Recommendation 22 – DNFBPs: Customer due diligence (originally rated PC – not re-rated)***

47. Nicaragua's Second Monitoring Report determined that lawyers and notaries carrying out the activities set out in R. 22 remain to be included as Reporting Institutions. Moreover, according to the analysis carried out in R. 10, it is identified that there are no provisions relating to some of the obligations set out in criteria 10.2 to 10.11, as well as in criterion 10.16 for DNFBPs. The analysis developed for R. 12 is applicable to all Reporting Institutions covered under Article 9 of Law 977. Therefore, it is necessary to develop the regulation of the law establishing the obligations set out in criteria 12.1, 12.2 and 12.3. Thus, the provisions of criterion 22.3 are Partially Compliant. In view of the information provided by Nicaragua, the analysis developed in R. 15 is applicable to this criterion for Reporting Institutions covered under Article 9 of Law 977.

48. In this regard, the analysis of criteria 10.2 to 10.11 and 10.16 applicable for DNFBPs is shown below.

***Criterion 10.2.***

49. (Article 7.1 of Resolution UAF-N-020-2019 establishes cases in which **casinos** shall apply CDD measures in relation to certain products or services for or on behalf of a customer, setting a transactional threshold of one thousand dollars (USD 1,000.00.)

50. **Real estate brokers** must apply CDD measures when they engage, regularly or occasionally, in transactions for their contractors and/or customers, concerning the purchase and sale of real estate. (Article 7.2 of Resolution UAF-N-020-2019)

51. **Dealers in precious metals and/or precious stones**, shall apply CDD measures when they engage in any cash transaction or in any other means of payment equal to or greater than a thousand American dollars (\$1,000.00) or their equivalent in domestic currency or other foreign currency. (Article 7.3 of Resolution UAF-N-020-2019)

52. **Lawyers and Notaries are not yet subject to AML/CFT measures.**

53. According to Article 2 of Resolution 01-2019-JD/CCPN-PLA/FT/FP approved by the Nicaraguan Association of Public Accountants (CCPN<sup>2</sup>, as per its acronym in Spanish) Board of Directors provides

---

<sup>2</sup> In Nicaragua, to practice as an Authorized Public Accountant (CPA as per its acronym in Spanish), and to develop the functions of art. 7 of Law No. 6, Law for the Exercise of Public Accountant, published in La Gaceta No. 94 of April 30, 1959, it is mandatory to join the CCPN and later be authorized as CPA by the Ministry of Education,

that CDD measures must be applied by **accountants** who exercise the profession individually or through firms or companies; and as long as they make or prepare to transact for or with their customers, in relation to the following services or activities: a. Buying and selling of real estate. b. Management of money, securities or other assets. c. Management of bank, savings or securities accounts. d. Organisation of contributions for the creation, operation or management of companies. e. Creation, operation or management of legal persons or other legal arrangements, and buying and selling of business entities.

54. According to Article 7.4 of Resolution UAF-N-020-2019, **trust service providers**, when they develop professionally one or more of the following services:

- a) Creation of trusts;
- b) Execution of contracts establishing trust relations;
- c) Acting as a trustee of an express trust;
- d) Provision of domicile for registration purposes or physical space for trusts;
- e) Execution of escrow contracts; and
- f) Execution of ancillary services to the principal purpose of the trust.

55. Also, the numeral 6 and 7 of Article 7 of Resolution UAF-N-020-2019 states that Reporting Institutions must apply CDD measures where there is suspicion of ML/TF/PF, regardless of the value of the transaction, and where there are doubts as to the veracity or accuracy of the customer identification data beforehand.

56. In relation to **accountants (CPA)**, they shall apply RBA and CDD measures, in a separate manner, to their BOs, based on their ML/TF/PF risk level. The CDD can be simplified, standard and enhanced. (Article 10 of Resolution 01-2019-JD/CCPN-PLA/FT/FP)

57. In accordance with the information provided by Nicaragua, it appears that the accountants do not have the regulatory framework in place for the implementation of CDD measures in cases where their customers make occasional transactions, or where there is suspicion of ML/TF, or where there are doubts about the veracity or accuracy of the customer identification data previously collected. (Criterion 10.2.b)

### ***Criterion 10.3.***

58. Article 9 of Resolution UAF-N-020-2019 provides that Reporting Institutions shall identify the customer, contractor or settlor, whether usual or occasional, natural or legal person, in the situations provided for in Article 7 (analysed under criterion 10.2.) The identity of the customer, contractor or settlor shall be verified with the documents referred to in the domestic law, which must be in force at the time of application of the CDD and from which the Reporting Institution shall obtain a printed or digital copy.

59. The Reporting Institution must use reliable data or information from an independent source to verify the identity of the customer, contractor or settlor. Through verification of the customer, contractor, or settlor's documents, data and information, the Reporting Institution shall determine the identity, actual

---

pursuant to art. 3 of the same Law. The CCPN was created by art. 14 of Law No. 6 and its functions are contemplated in art. 17 of the aforementioned law. Moreover, art. 30 of Law 977, indicates that the CCPN has the power to establish administrative provisions that contributes to the compliance of the aforementioned Law and its Regulation, also, it is granted powers of supervision and sanction related to prevention of ML/TF/PF. The CCPN is a private entity of professional nature, integrated and directed by accounting professionals (Article 15 Law No. 6), with functions of public interest regulation and therefore self-regulatory guild. Pursuant to Article 30 of Law 977, the Nicaraguan Association of Public Accountants (CCPN, as per its acronym in Spanish) has the power to establish administrative provisions that execute said Law and its Regulations, and also it is endowed with ML/TF/PF prevention supervisory and sanctioning powers.

existence, representation, address, legal capacity and corporate purpose, as appropriate, of natural or legal persons and those of their representatives.

60. CPAs are required to identify all of their Customers, through the documents listed below and from which a copy must be filed. Identification documents must be in force at the time of establishing business or service relationships or executing occasional transactions. (Article 12 of Resolution No. 01-2019-JD/CCPN-PLA/FT/FP)

***Criterion 10.4.***

61. Numeral 3 of Article 9 of Resolution UAF-N-019-2019 indicates that in the event that the customer, contractor, or settlor, whether a natural or legal person, is represented by another person, this person must present the proof of the power of attorney. In this case, a copy of the identity document of the attorney-in-fact will be required.

62. CPAs must verify all the information presented by the Customer, to prevent the possibility of being in connection with shell companies, and be certain about the real existence, identity, representation, address, legal capacity, corporate purpose, economic activity, source of funds and/or assets, and purpose for the relationship. (Article 13 of Resolution No. 01-2019-JD/CCPN-PLA/FT/FP)

***Criterion 10.5.***

63. Article 15 of Resolution UAF-N-020-2019 lays down the obligation to identify the beneficial owner by means of the documents referred to in the national legislation (Article 9.)

64. CPAs will identify the BO prior to the establishment of business relationships, and they should make a declaration of BO identification, through a document or form signed by the Customer or his legal representative, including the ownership and control structure of the legal person. (Article 15 of Resolution 01-2019-JD/CCPN-PLA/FT/FP)

***Criterion 10.6.***

65. Article 13 of Resolution UAF-N-020-2019 states that where the Reporting Institution establishes a business relationship with the customer, contractor or settlor, it will obtain information on the purpose and nature of the customer. In particular, it will collect information about the type of professional or business activity.

66. The CPA will create a Comprehensive Customer Knowledge Profile (PIC) containing information on the purpose and character intended for the business relationship. (Article 10 of Resolution 01-2019-JD/CCPN-PLA/FT/FP)

***Criterion 10.7.***

67. Article 9 of Resolution UAF-N-020-2019 provides that Reporting Institutions shall periodically update the identification information and documents, data and information of the customer, contractor or settlor, and the time to update this information must be determined according to its risk level.

68. Article 20 of the same Resolution states that once the level of risk of the customer, contractor or settlor has been determined, the Reporting Institution shall apply the CDD measures and procedures provided as standard CDD measures; however, it will enhance them where the ML/TF/PF risks are greater

based on the analysis of the type of customer; the country or geographic area; and the types of products, services, transactions and marketing channels used.

69. Furthermore, Article 34 states that Reporting Institutions, in the course of their relationship with the customer, contractor or settlor, must continuously monitor with a ML/TF/PF risk-based approach the transactions carried out throughout that relationship, to ensure that these correspond to the Reporting Institution's knowledge of the customer, contractor or settlor, its business activity, level of risk and source and origin of funds.

70. For CPAs there are 2 moments to apply CDD: 1. Upon conducting the formal procedures for the beginning of the relationship, whether the relationship materializes or not (relationship CDD) and 2. The transactional or follow-up CDD, which is continuous, permanent, throughout the relationship. (Article 10 of Resolution 01-2019-JD/CCPN-PLA/FT/FP.) However, the legal framework provided does not indicate that the continuous CDD includes examining transactions carried out throughout that relationship to ensure that transactions made correspond to the accountant's knowledge of the customer, its business activity and risk profile, including the source of the funds, and to ensure that documents, data or information collected under the CDD process are kept up-to-date and relevant by reviewing existing records, in particular cases of higher-risk customers.

#### ***Criterion 10.8.***

71. Article 7.7 of Resolution UAF-N-020-2019 provides that Reporting Institutions shall apply CDD measures where they have doubts as to the veracity or accuracy of the customer identification data obtained previously. Moreover, Article 9 sets forth that through verification of the customer, contractor, or settlor's documents, data and information, the Reporting Institution shall determine the identity, actual existence, representation, address, legal capacity and corporate purpose, as appropriate, of natural or legal persons and those of their representatives.

72. In relation to CPAs, in the case of customers who are legal persons and arrangements, they shall require official and updated certificates, deed of incorporation and statutes, copy of the Official Gazette in which the incorporation was published, the document of the Unique Taxpayers Register, certificates, licenses, permits or equivalent documents issued by the competent public registries. In addition, for Trusts, in addition to the above documents, the following will be required: Trust Agreement and evidence that the Trustee is registered as a Reporting Institution. (Article 12 of Resolution No. 01-2019-JD/CCPN-PLA/FT/FP)

#### ***Criterion 10.9.***

73. Article 9 and 10 of Resolution UAF-N-020-2019 provides that Reporting Institutions shall identify and verify the customer, contractor or settlor, whether usual or occasional, natural or legal person. The identity of the customer, contractor or settlor shall be verified with the documents referred to in the domestic law, which must be in force at the time of application of the CDD and from which the Reporting Institution shall obtain a printed or digital copy. Numeral 2 of Article 9 lists the documents to be presented for customer identification.

74. CPAs shall request from their customers who are legal persons and arrangements the information referred to in Article 12 of Resolution 01-2019-JD/CCPN-PLA/FT/FP previously described in the analysis of the implementation of criterion 10.8.

**Criterion 10.10.**

75. Article 15 of Resolution UAF-N-020-2019 sets forth the obligation of Reporting Institutions to identify the BO of customers who are legal persons and arrangements.

- a) Numeral 1 of the same Article points out that natural persons exercising control of the legal person through ownership of 25% or more of the shares shall be beneficial owners. If the holder of such percentage is a legal person, the Reporting Institution must identify the person who controls it with a percentage equal to or greater than 25% of the capital and so on until the natural person who controls the customer through the chain of ownership is identified.
- b) Where the Reporting Institution cannot determine who exercises control of the legal person even with the above information, it shall, in accordance with its resources and experiences, develop an analysis to identify who exercises its control (Article 15.2)
- c) In cases where the Reporting Institution fails to identify the natural person who is the BO even in compliance with the above, it must verify the identity of the natural persons holding senior administrative positions in the legal person. Where the designated administrator is a legal person, control shall be deemed to be exercised by the natural person appointed by the administrator who acts as its legal representative. (Article 15.3)

76. CPA must verify all the information presented by the Customer, to prevent the possibility of being in connection with shell companies, and be certain about the real existence, identity, representation, address, legal capacity, corporate purpose, economic activity, source of funds and/or assets, and purpose for the relationship. (Article 13 of Resolution 01-2019-JD/CCPN-PLA/FT/FP).

77. Moreover, art. 14 of Resolution No. 01-2019-JD/CCPN-PLA/FT/FP sets that it is BO:

- a. The person or natural persons in whose name an operation is carried out.
- b. The person or natural persons who ultimately own or control a legal entity, under the following criteria:
  - i. Natural persons exercising control of the legal entity through ownership of 25% or more over the shareholding of the legal entity. When the holder of such percentage is a legal entity, it shall be identified who controls it through a percentage higher than 25% of the capital and so on until identifying the natural person who controls the customer through the chain of ownership.
  - ii. If it cannot be determined who exercises control of a legal entity according to the previous paragraph or with the information described in the previous number, still are doubts about who exercises control, the CPA, in accordance with its resources and experiences, shall develop analyses to identify who exercises control of the legal entity by different means other than ownership.
  - iii. If the BO of the legal entity is not determined in accordance with the provisions of the preceding paragraphs, the CPA must identify and take reasonable measures to verify the identity of the person or natural persons who occupy the top administrative positions of the legal entity. When the designated administrator is a legal person, it will be understood that the control is exercised by the natural person who exercises legal representation.
  - iv. When the customer is a legal entity different from the commercial ones, the BO is who has the control of these by statutory provisions. When there is no person or natural persons that meet this criterion, the members of its administrative body will be considered the BO.

**Criterion 10.11.**

78. (a) In the case of trusts, determined or determinable trustees; trust interest certificate holders; or the members of trust Technical Committees shall be the BO. Where these are legal persons, the BO shall be determined in accordance with Article 15 numeral 3. (Article 15.1 of Resolution UAF-N-020-2019)

79. (b) Where the customer is a cooperative or a Non-Profit Organization, those who have control of these by statutory provisions shall be deemed to be the BOs. Where there is no natural person or persons that comply with this criterion, the members of its administrative body shall be taken as BOs. (Article 15.2 of Resolution UAF-N-020-2019)

80. Moreover, Article 13 of Resolution 01-2019-JD/CCPN-PLA/FT/FP indicates the obligation of CPAs to verify the information provided by the customer. Moreover, art. 14.v of the same Resolution establishes that in the case of Trust Agreements, BO shall be identified as the natural persons who are entitled to the benefit of the Trust Agreement, the Trustees if they are determined or determinable; Trust participation certificate holders; and members of Trustee Technical Committees. In this case, one or several natural or legal persons could be considered as BO arrangements.

81. However, as a result of the information provided by Nicaragua, CPAs are not required to verify the identity of the BOs by the following information: (a) for trusts: The identity of the settlor, trustee(s), the protector (if any), and any other natural person exercising effective and definitive control over the trust (including through a chain of control/ownership); (b) for other types of legal: The identity of persons in equivalent or similar positions.

**Criterion 10.16.**

82. Reporting Institutions shall apply the due diligence measures provided for in Chapter III on CDD measures to all new customers, contractors and settlors, and also to those existing at the time of entry into force of this regulation, based on an analysis of risk. In any event, Reporting Institutions shall apply CDD measures to existing customers, contractors, and settlors upon hiring new products or where a transaction occurs that is considered significant because of its volume or complexity. (Article 28 of Resolution UAF-N-020-2019) In the case of CPAs, there are no provisions in relation to criterion 10.16.

83. With regard to criterion 22.3, Resolution UAF-N-020-2019 establishes in its Articles 21, 25, 26 that DNFBBs should establish and implement CDD measures to determine whether the customer, contractor, settlor or beneficial owner is a PEP. The analysis developed for Recommendation 12 is applicable to DNFBBs regulated by the UAF.

84. For CPAs, in accordance with Article 10 of Resolution 01-2019-JD/CCPN-PLA/FT/FP, an enhanced CDD procedure shall be applied for high-risk customers and their BOs (ii.)

Article 10 ii.d.- High Risk Customers: Without prejudice to the Sectoral Assessments of CPAs developed by the CCPN, and to the measures derived from them using an RBA; in the initial application of this Regulation, the following should be held as High-Risk Customers:

ii.d.2.- Politically Exposed Persons (PEPs), domestic or foreign, as defined in Law 977. ii.d.3.- Close relatives and close collaborators of PEPs, as defined in Law 977.

Article 10 iii. Create a Comprehensive Customer Knowledge Profile (PIC), in accordance with the Formats provided for in Annex 2 of said Resolution, which contains data indicating the source of the wealth or funds.

85. In this regard, the country is considered to have overcome the deficiency identified in terms of DNFBPs regulated by the UAF. However, in the case of accountants, the country did not provide information indicating that accountants have regulations in place for compliance with requirements 12.1, 12.2 (a) and (b) and that the requirements of criteria 12.1 and 12.2 should apply to members of the family or closed associates of all types of PEP. In addition, lawyers and notaries have not yet been incorporated as Reporting Institutions for the fulfilment of AML/CFT obligations.

86. With regard to criterion 22.4, Article 4 of Resolution UAF-N-020-2019 states that Reporting Institutions must identify, assess and understand their own inherent and residual ML/TF/PF risks every two years, through the risk assessment technique it deems appropriate. Reporting Institutions' ML/TF/PF risk assessment should contain at least the analysis of ML/TF/PF risks that may arise in relation to: (a) The development of new business practices; and (b) the use of new technologies or developing technologies for the provision of their products or services, particularly those that could promote the anonymity of natural and legal persons, who request or make use of their products or services. The information, analyses and conclusions of the assessments should be integrated into a report, which will also contain the overall risk level assessment of the Reporting Institution and establish the mitigation measures proportionate to the risks to be implemented. ML/TF/PF risks of new products, practices and technologies that emerge after the individual ML/TF/PF risk assessment shall be evaluated. This assessment must be made before they are made available to the customer. The results of this evaluation will be integrated into the following individual risk assessment report. In relation to the CPA, its functions are delimited by Law No. 6, in that case the R 15 does not apply. However, there are no obligations in relation to R.15 lawyers and notaries who have not been incorporated as Reporting Institutions for the fulfilment of AML/CFT obligations.

87. Therefore, Nicaragua has made significant efforts through the approval of Resolution UAF-N-020-2019 applicable to casinos, real estate brokers, dealers of precious metals and/or precious stones, dealers and distributors of new and/or used vehicles and trust service providers; and Resolution No. 01-2019-JD/CCPN-PLA/FT/FP applicable to accountants through those provisions have been created regulations for the DNFBP in relation to the implementation of R 10, 12 and 15, as indicated by R 22. However, in the case of accountants, the country does not have provisions that indicate the application of criteria 10.2.b, 10.7 (a) and (b), 10.11, 10.16, 12.1 (a) and (b), 12.2 and 12.3. Likewise, lawyers and notaries are not yet RIs with regulations on AML/CFT. Therefore, considering that moderate deficiencies noted in this Recommendation still persist, it is considered that the rating be maintained as **Partially Compliant**.

***Recommendation 23 – DNFBPs: other measures (originally PC – not re-rated)***

88. The obligations set out in criteria 23.1 to 23.3 for accountants are already covered by Law 976, as indicated in the analysis of the second follow-up report. For this period, Nicaragua approved Resolution 01-2019-JD/CCPN-PLA/FT/FP in relation to CPAs in order to include further development and guidance for the performance of obligations by accountants. However, lawyers and notaries are not yet reporting institutions subject to compliance with the preventive measures set out in this recommendation.

89. Taking into account the above analysis and considering that lawyers and notaries are not yet Reporting Institutions with regulations that establish obligations for compliance with this Recommendation, it is considered that the rating be maintained as **Partially Compliant**.



***Recommendation 25 – Transparency and Beneficial Ownership of Legal Arrangements (originally rated NC – Re-rated LC)***

90. With regard to criterion 25.1.a, the information provided by the country concerning Law 977 for overcoming the deficiency raised has already been discussed in Nicaraguan Second Follow-Up Report. Additionally, Article 15 of Resolution UAF-N-020-2019 provides that in the case of trusts, determined or determinable trustees, trust interest certificate holders; or the members of trust Technical Committees shall be the BOs. Where these are legal persons, the BO shall be determined as follows: i) Natural persons exercising control of the legal person through ownership of 25% or more of the shares shall be BOs. If the holder of such percentage is a legal person, the Reporting Institution must identify the person who controls it with a percentage equal to or greater than 25% of the capital and so on until the natural person who controls the customer through the chain of ownership is identified; ii) Where the RI cannot determine who exercises control of the legal person even with the above information, it shall, in accordance with its resources and experiences, develop an analysis to identify who exercises control of the legal person; iii) In cases where the RI fails to identify the natural person who is the beneficial owner even in compliance with the above, it must verify the identity of the natural persons holding senior administrative positions in the legal person. Where the designated administrator is a legal person, control shall be deemed to be exercised by the natural person appointed by the administrator who acts as its legal representative. Thus, the provisions of criterion 25.1a are met.

91. With regard to criterion 25.1 b, according to Article 42 of Resolution UAF-N-020-2019, in addition to the records referred to in Article 41, trust service providers shall retain for a minimum period of five years the identification information of trust service providers, including, but not limited to, advisers or investment managers, accountants and tax advisors.

92. Professional trustees, pursuant to Article 25.3 of Law 977, shall retain adequate, accurate and updated information or at least updated annually on the settlor, trustee, beneficiaries and any other natural person exercising ultimate effective control on the trust it serves. Thus, the provisions of criterion 25.1b and c are met.

93. In view of compliance with criterion 25.1 c, in accordance with Article 41 of Resolution UAF-N-020-2019, trust service providers shall keep printed or digital records of the documents below: 1. Documents obtained based on the application of CDD measures; 2. Record of national or international transactions, as appropriate; 3. Business correspondence between the trustee and the settlor; 4. Results of analyses of suspicious transactions related to their products or services; and 5. Any other information resulting from the prevention, detection and reporting of activities related to the ML/TF/PF.

94. The records referred to in this Article shall be kept for a minimum period of five years, which shall start from the end of the occasional service/transaction provided or from the termination of the business relationship.

95. With regard to criterion 25.2, the records described in the analysis of criterion 25.1.c shall be updated periodically or at least annually during the life of the business relationship with natural and legal persons who request or make use of the services/transactions of the trust service provider and shall be available to competent authorities. (Article 41 of Resolution UAF-N-020-2019).

96. Moreover, the trust service provider shall periodically update the identification information and documents, data and information of the settlor, and the time to update this information must be determined

according to its risk level. (Article 11 of Resolution No. UAF-N-020-2019). Also, professional fiduciaries, by virtue of Art. 25, numeral 3, of Law No. 977, shall keep adequate, accurate and updated information or at least annually about the trustor, trustee, beneficiaries and any other natural person who exercises effective subsequent control over the trust it serves (Art. 42 of Resolution No. UAF-N-020-2019).

97. However, the country does not have provisions indicating that the trustee has an obligation to update the beneficiary's information in cases where this is a legal person that changes its shareholding structure.

98. Moreover, the MER of Nicaragua and the analysis of the country's Second Follow-Up Report stated that *"also, the country does not have provisions relating to the sanctioning framework to ensure the availability and updating of information linked to the settlor, trustee and acts carried out in the administration of the assets in trust; and that the information held by the trust service providers be available to competent authorities when required."* In that regard, Resolution UAF-N-022-2019, laid down in its Article 8.1 that without prejudice to the appropriate criminal and civil liability, Reporting Institutions, its directors, administrative managers, and compliance officers shall incur in administrative liability where they are authors or participate in any of the related minor violations below: 11. e) Poorly preserving records and maintaining information. g) Where the trustee does not retain for a minimum period of five years the identification information of trust service providers. i) Failure to update records and files of operations and transactions. j) Where the Reporting Institution does not maintain a data archiving system that facilitates the extraction and collection of operations and transactions. The sanctions for such violations are (a) warning and (b) fines between five hundred (500) and three thousand (3,000) fine units. (Article 14.)

99. With regard to criterion 25.3, in accordance with Article 16 of Resolution UAF-N-020-2019, trustees shall have the duty to disclose their status to Reporting Institutions as set out in Article 9 of Law 977, at the time of implementation of the CDD provided for in Article 12 of Resolution UAF-N-019-2019 and in the situations in which the CDD measures provided for in Article 7 of this Resolution should be applied, as applicable. They shall also provide them with information on the residence of the beneficiaries and on the assets held or under their administration. Therefore, the deficiency identified in criterion 25.3 is considered to be met.

100. Regarding criterion 25.8, Art. 8.I.11 of Resolution No. UAF-N-022-2019 indicates minor offenses related to monitoring, red flags, record keeping and statistics by fiduciary service providers, being able to incur in warnings or fines between five hundred and three thousand units of fines (art. 14.1 of Resolution No. UAF-N-022-2019).

101. According to the information provided, Nicaragua has made significant technical progress in relation to the deficiencies identified in its MER in relation to R. 25. However, the country has no provisions indicating that the trustee has the obligation to update the beneficiary's information in cases where it is a legal person changing its shareholding structure. Therefore, it is proposed that the rating be raised to **Largely Compliant**.

***Recommendation 28 – Regulation and supervision of DNFBS (originally rated PC – not re-rated)***

102. With regard to criterion 28.5, the Nicaraguan Association of Public Accountants (CCPN)<sup>3</sup> in its recent status as a Self-Regulatory Body (SRB) through Resolution 01-2019-JD/CCPN-PLA/FT/FP creates the “Regulation on the Self-Regulation of the Nicaraguan Association of Accountants for the Prevention of Money Laundering, Terrorist Financing, and Financing of the Proliferation of Weapons of Mass Destruction applicable to Authorized Public Accountants” and notes that it aims at achieving self-regulation in ML/TF/PF Prevention among Authorized Public Accountants (CPAs) members of the CCPN, because of their status as Reporting Institutions in accordance with the appropriate Legal Framework. Thus, by the same Resolution, it creates the Compliance Directorate for the Prevention of ML/TF/PF of the CCPN, which has the function of conducting on-site and off-site inspections to CPAs in relation to compliance with the Resolution referred to; randomly inspect CPAs to determine if they are AML/CFT/CPF supervised CPAs (Article 6.d v and vi.) Art. 8 subsection "e". ii, Resolution No. 01-2019-JD / CCPN-PLA / FT / FP establishes that CPA will be supervised by the CCPN with a AML/TF/PF Risk-Based Approach.

103. Therefore, the efforts made by Nicaragua through the approval of Resolution No. 01-2019-JD/CCPN-PLA/FT/FP are recognized. However, deficiencies persist such as: i) Lawyers and notaries are not yet RI, so they are not yet supervised in the matter. ii) It is not established that the supervision of the CPA should be developed even: (a) Determining the frequency and intensity of AML/CFT supervision of the accountants based on their understanding of ML/TF risks, taking into account their specific characteristics, in particular their diversity and quantity; and (b) taking into account the ML/TF risk profile and the degree of discretion allowed under the RBA, when assessing the adequacy of the accountant’s internal AML/CFT controls, policies and procedures (criterion 28.5 a y b). Therefore, it is considered that the rating be maintained as **Partially Compliant**.

***Recommendation 35 – Sanctions (originally rated PC - not re-rated)***

104. In relation to criterion 35.1, Nicaragua may apply sanctions to natural or legal persons in case of non-compliance with the AML/CFT requirements in accordance with R. 6, 8 and 23. For the foregoing, Article 8 of Resolution UAF-N-022-2019 lays down the matters to be sanctioned in accordance with the Recommendation above. Reporting Institutions, whether natural or legal persons, their directors, administrative managers and compliance officers, who do not comply with the obligations and duties contained in the laws, regulations, circulars, instructions and other administrative provisions on the matter shall be subject to the implementation of corrective measures and/or administrative sanctions by the UAF (Article 5.)

105. In addition to the sanctions referred to in Article 15 of Law 976 referred to in the December 2018 re-rating report, and without prejudice to any administrative sanctions in place, the UAF may impose

---

<sup>3</sup> The CCPN was created by art. 14 of Law No. 6 and its functions are contemplated in art. 17 of the aforementioned law. Moreover, art. 30 of Law 977, indicates that the CCPN has the power to establish administrative provisions that contributes to the compliance of the aforementioned Law and its Regulation, also, it is granted powers of supervision and sanction related to prevention of ML/TF/PF. The CCPN is a private entity of professional nature, integrated and directed by accounting professionals (Article 15 Law No. 6), with functions of public interest regulation and therefore self-regulatory guild.

measures aimed at correcting, reverting, restoring or repairing detected deficiencies or problems and restore them. These may include changes in processes, procedures, or systems to improve their quality.

106. The corrective measures that the UAF may impose are:

1. Recommend or require action to promote better and most appropriate compliance with AML/CFT/CPF standards.
2. Warn about the need to comply with certain legal provisions under the deadlines established, which may not be less than five (5) working days.
3. Require that the necessary measures be taken to correct the deficiencies found and enforce AML/CFT/CPF regulations within a specified period, which may not be less than five (5) working days.

107. Any action or omission that goes against ML/TF/PF prevention measures by Reporting Institutions, its directors, administrative managers and compliance officers, subject to Laws 976 and 977, as well as any other laws related to AML/CFT/CPF matters, its regulations and these regulations, will be typified as violations and will be subject to administrative sanctions. Violations are divided into minor, serious and very serious (Articles 6 and 7.)

108. Article 13 of the abovementioned Resolution provides that the UAF may impose the following administrative sanctions for non-compliance with AML/CFT/CPF measures:

- a) Warning: Where deficiencies are found that do not warrant the separation of the compliance officer, fine, suspension or closure of operations.
- b) Fines: Reporting Institutions may be fined from fifteen to fifteen thousand units in favour of the tax authority.
- c) Temporary or definitive separation of compliance officer.
- d) Temporary or definitive suspension of operations to the Reporting Institution.
- e) Temporary or definitive cancellation of Reporting Institution's registration.

109. Article 14, moreover, lays down administrative sanctions for the type of violation that may be applied:

- a) Minor violation: Warning or fines between five hundred and three thousand fine units.
- b) Serious violations: Fines between 3,001 and 8,000 fine units, temporary separation of the position of compliance officer, from one to six months, temporary suspension of the Reporting Institution, from one to six months.
- c) Very serious violations: Fines between 8,001 and 15,000 fine units, permanent separation of the compliance officer, permanent suspension of the Reporting Institution, cancellation of registration as Reporting Institution.

110. The UAF has a sanctions regime for non-compliance with AML/CFT requirements. Resolution UAF-N-022-2019 describes the type of administrative sanctions for type of violation. However, the deficiency in laying down provisions for sanctions to be applicable for non-compliance in relation to the SIBOIF under the MER still persists.

111. The CCPN as regulatory entity on AML/CTF/CPF has sanctioning authority according to art. 30 of Law 977. Art. 4 subsection "b". ii of the Resolution No. 01-2019-JD/CCPN-PLA/FT/FP establishes the power of the Board of Directors of the CCPN to approve, review and amend the Code of Ethics and the Research and Discipline Regulations applicable to CPA with a sanctions component for non-compliance

on AML/CTF/CPF. However, it has not been yet developed a wide range of proportional and dissuasive sanctions, whether criminal, civil or administrative, that are available to apply to natural or legal persons (criterion 35.1).

112. With regard to criterion 35.2, pursuant to Article 2 of Resolution UAF-N-022-2019, it is established that corrective measures, violations and administrative sanctions shall be applied to Reporting Institutions regulated and supervised by the UAF on ML/TF/PF matters, as well as to its directors, administrative managers and compliance officers. However, lawyers and notaries are not DNFBPs, so the criterion is not fully met.

113. Therefore, according to the previous analysis it is considered that UAF can apply sanctions to natural or legal persons in case of non-compliance AML/CFT requirements, and the sanctions cover the directors, administrative managers and compliance officers in accordance with Resolution UAF-N-022-2019. Nevertheless, lawyers and notaries are not yet considered as RI, so there is no sanctions regime that applies to them. Also, the deficiency persists on the sanctions regime of the SIBOIF and the CCPN. Therefore, it is considered that the rating be maintained as **Partially Compliant**.

### **3.2 Progress on the Recommendations changed since the adoption of the MER**

#### ***Recommendation 2 – National Cooperation and Coordination (originally rated LC – not re-rated)***

114. Recommendation 2 was analysed since there was a change in relation to criterion 2.5; moreover, the deficiency mentioned in the MER in relation to criterion 2.4 was also analysed, given that the country lacks legislation and coordination mechanisms for the FPWMD.

115. According to Article 6 and 7 of Law 977, Law against ML/TF/PF, the National AML/CFT/CPF Commission is created, which is made up by permanent representatives and designated technical liaisons of the following institutions: The Judiciary, Ministry of Finance and Public Credit, Attorney General's Office, Public Prosecutor's Office, National Police, Superintendence of Banks and Other Financial Institutions, Financial Analysis Unit and the National Commission of Microfinance. Its functions are: To coordinate the inter-agency actions necessary to adopt ML/TF/PF international actions, recommendations and resolutions, to coordinate the development of AML/CFT/CPF national public policy proposals and strategies to be presented through the National Council Against Organized Crime to the President of the Republic for approval, and to periodically assess their compliance and effectiveness, to design and implement an information system on the prevention, detection and prosecution of ML/TF/PF between the Attorney General's Office, the Public Prosecutor's Office, the National Police and the Financial Analysis Unit.

116. Thus, the country has no limitations relating to Data and Privacy Protection and other similar provisions that prevent competent authorities from developing their cooperation and coordination mechanisms in the field of AML/CFT; it also has cooperation and coordination mechanisms in relation to PF.

117. Taking into account the analysis of the information provided by Nicaragua, it was concluded that the country does not have limitations relating to Data and Privacy Protection and other similar provisions that prevent competent authorities from developing their cooperation and coordination mechanisms in the field of AML/CFT and that it has cooperation and coordination mechanisms in place in relation to PF. However, the country did not provide information demonstrating that it overcame the deficiencies

identified in its MER relating to NRA limitations (see criterion 1.1) that impact on the design of the National Strategy. It is proposed that the rating be maintained as **Largely Compliant**.

#### IV. CONCLUSION

163. In general, Nicaragua has been making important progress in relation to addressing the technical compliance deficiencies identified in its MER and has been re-rated in relation to Recommendations 7 to Largely Compliant, 10 to Compliant, 12 to Compliant, and 25 Largely Compliant.

164. In general, based on the progress made by Nicaragua since the adoption of its MER, its technical compliance with FATF Recommendations was re-rated as follows:

**Table 2. Technical compliance ratings, July 2019.**

<b>R 1.</b>	<b>R 2.</b>	<b>R 3.</b>	<b>R 4.</b>	<b>R 5.</b>	<b>R 6.</b>	<b>R 7.</b>	<b>R 8.</b>	<b>R 9.</b>	<b>R 10.</b>
PC	LC	LC	LC	LC	LC	<b>LC</b>	PC	LC	<b>C</b>
<b>R 11.</b>	<b>R 12.</b>	<b>R 13.</b>	<b>R 14.</b>	<b>R 15.</b>	<b>R 16.</b>	<b>R 17.</b>	<b>R 18.</b>	<b>R 19.</b>	<b>R 20.</b>
C	<b>C</b>	C	PC	PC	LC	LC	LC	LC	LC
<b>R 21.</b>	<b>R 22.</b>	<b>R 23.</b>	<b>R 24.</b>	<b>R 25.</b>	<b>R 26.</b>	<b>R 27.</b>	<b>R 28.</b>	<b>R 29.</b>	<b>R 30.</b>
LC	PC	PC	PC	<b>LC</b>	LC	LC	PC	C	C
<b>R 31.</b>	<b>R 32.</b>	<b>R 33.</b>	<b>R 34.</b>	<b>R 35.</b>	<b>R 36.</b>	<b>R 37.</b>	<b>R 38.</b>	<b>R 39.</b>	<b>R 40.</b>
LC	LC	LC	LC	PC	LC	LC	LC	LC	LC

*Note:* There are four possible levels of technical compliance: Compliant (C), Largely Compliant (LC), Partially Compliant (PC) and Non-Compliant (NC).

165. Nicaragua will continue in the enhanced follow-up process and will continue to report to GAFILAT on the progress made to strengthen its implementation of AML/CFT measures.