



# FIFTH ENHANCED FOLLOW-UP REPORT OF COSTA RICA



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## *Costa Rica: Fifth Enhanced Follow-up Report*

### I. INTRODUCTION

1. The mutual evaluation report (MER) of Costa Rica was adopted in July 2015. This follow-up report analyses the progress made by Costa Rica in addressing the technical compliance deficiencies identified in its MER. New ratings are granted when sufficient progress is shown. This report analyses also the progress of Costa Rica in the implementation of the new requirements related to FATF Recommendations that were amended since the adoption of the MER: Recommendation 8. In general, the expectation is that countries will have addressed most of their technical compliance deficiencies, if not all, before the end of the third year since the adoption of its MER. This report does not address the progress of Costa Rica in improving its effectiveness. A subsequent follow-up evaluation will analyse the progress in improving its effectiveness, which will eventually result in a new rating of Immediate Outcomes.

### II. FINDINGS OF THE MUTUAL EVALUATION REPORT

2. The MER rated Costa Rica as follows in relation to technical compliance:

**Table 1. Technical compliance ratings, July 2017.**

<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>
LC	C	C	LC	C	LC	C	PC	C	LC
<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	LC	LC	C	C	LC	PC	LC	C	C
<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>
C	PC	PC	LC	LC	LC	LC	NC	PC	LC
<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	C	LC	LC	PC	C	C	LC	C	C

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

*Source:* Follow-up reports of August 2016 and July 2017 and Mutual Evaluation Report of Costa Rica July 2015, [www.gafilat.org].

3. In the light of these results, GAFILAT placed Costa Rica in the enhanced follow-up process<sup>1</sup>. The Executive Secretariat of GAFILAT assessed the request of Costa Rica of a new technical compliance rating and developed this report.

<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 implies a more enhanced follow-up process.

4. Section III of this report summarises the progress made by *Costa Rica* in improving technical compliance. Section IV presents the conclusion and a table that shows re-rated Recommendations.

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

5. This section summarises the progress made by *Costa Rica* to improve its technical compliance by:

- a) Approaching its technical compliance deficiencies as identified in the MER, and
- b) Implementing new requirements in the cases where FATF Recommendations were amended since the adoption of the MER:

#### 3.1 Progress in approaching technical compliance deficiencies identified in the MER

6. Costa Rica has made progress in the approach to its technical compliance deficiencies identified in the MER in relation to the following Recommendations:

- Recommendations 22, 23, 28, 29 and 35, originally rated as PC.

7. As a result of this progress, Costa Rica was re-rated in relation to Recommendations: R. 23 and 29. GAFILAT acknowledges the progress made by Costa Rica in the improvement of technical compliance of Recommendations 22, 28, and 35. However, progress is not considered to be enough to upgrade the rating of these Recommendations.

#### *Recommendation 22 (originally rated PC - no re-rating)*

8. In relation to compliance with criterion 22.1, in the previous re-rating report (GAFILAT 17 I GTEM 3.2.2) it was indicated that pursuant to the provisions of the MER of Costa Rica, Law 8204 and Regulation of the Law 8204 provide for certain obligations contemplated 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 the full technical compliance of criterion 22.1, the regulatory development of other obligations contained in Recommendation 10 is necessary.

9. In relation to criterion 22.3, Costa Rica regulated Law 9449 through Executive Order (DE) 410106. Article 7 sets forth that “the National Council for the Supervision of the Financial System (CONASSIF) shall issue the corresponding differential prudential regulations with a risk-based approach, including the development of the following obligations for reporting institutions listed in Articles 15 and 15 bis of Law 7786 and its amendments, that require different guidelines: “Provisions and controls on politically exposed persons defined under the provisions of this Law” (item c). Therefore, the development of the CONASSIF regulation to set forth the obligations for DNFBBs (except notaries) based on criteria 12.1 to 12.3 is pending.

10. In relation to notaries, Article 25 points out that notaries shall gather the information through statements by the user or person who requests the service, to determine if it is a Politically Exposed Person (PEP) or a relative up to the second degree of consanguinity or affinity or a close associate of a PEP. In case it were determined that it is a PEP, or a person related to it as described in this article, notaries should apply enhanced due diligence measures based on the parameters defined by the National Notarial Directorate. For such purpose, information on the position occupied and the origin of funds is considered relevant. In case of presidents or heads of

government, they shall be considered PEPs indefinitely. Based on the aforesaid, the corresponding Article contemplates all relating to criteria 12.1.a. and 12.2.a. However, the regulatory development of the National Notarial Directorate to contemplate the obligations set forth in criteria 12.1b-d, 12-2.b and 12.3 is pending.

11. In relation to criterion 22.4, as mentioned before, Article 7 points out that the CONASSIF shall issue the corresponding regulations that include the development of: “*Controls on the risks of legitimization of capitals or terrorist financing that may arise in relation to the development of new technologies in new products and new business practices*” (it should also contemplate the ML/TF risks that may arise from the development of new technologies in existing products) and, in the case of notaries, the obligation is only contemplated “when services, transactions or operations performed by the user or person who requests the notarial service were made using alternative payment methods through the use of new technologies, users shall make a declaration in the instrument or contract in relation to the origin of funds used to pay costs and expenses of the transactions between the parties.” It is understood that the development of the regulations that set forth the obligations for DNFbps to identify and assess the risks that may arise in relation to new products and new business practices (criterion 15.1), and that risk assessments be undertaken prior to the launch or use of such business practices (criterion 15.2.a) are pending.

12. In relation to criterion 22.5, Costa Rica continues to develop the regulation corresponding to CDD reliance on third parties. As mentioned before, Article 7 points out that the CONASSIF shall issue the corresponding regulations that include the development of: “*Controls for cases of reliance on third parties.*” However, it does not establish that the information mentioned should be obtained immediately to comply with criterion 17.1.a, and the regulatory development of other obligations of Recommendation 17 are pending. In the specific case of notaries, Article 16 of the DE 41016 sets forth the explicit prohibition of relying on third parties for the collection of due diligence information required from the user or person who requests the service.

13. Based on the previous analysis, the Regulation of Law 9449 through Executive Order 41016 sets forth basic obligations for DNFbps; however, the regulatory development that contemplates obligations for compliance with several criteria and sub-criteria specific to Recommendation 22 is still pending. Therefore, the rating should be kept as **Partially Compliant**.

#### ***Recommendation 23 (originally rated PC - Re-rated LC)***

14. In relation to technical compliance with Recommendation 23, the previous re-rating report (GAFILAT 17 I GTEM 3.2.2) concluded that compliance with criteria 23.2 and 23.3 was still pending.

15. In relation to criterion 23.2, the previous re-rating report made reference to the determination by the SUGEF of the conditions and characteristics for the requirements within the organizational structure of the reporting institution, the appointment of a compliance officer or, otherwise, a differential structure (criterion 18.1.a). In addition, Law 7786 sets forth the obligation to “*adopt, develop, and execute programmes, regulations, procedures, and internal controls to prevent and detect the crimes criminalised in this Law*” (Art. 26). Additionally, the same Article sets forth the specific obligations in relation to procedures to ensure high standards for employees and ongoing training programmes (criteria 18.1.b and 18.1.c). Moreover, Law 9449 (Art. 15.f) and

its DE 41016 (Arts. 7.f, 27 and 28) set forth that controls against the legitimization of capitals and terrorist financing should be implemented when there are foreign branches and subsidiaries (criterion 18.3). Therefore, it is considered that most of the elements relating to DNFBPs of R.18 have been addressed.

16. In relation to criterion 23.3, Article 7 of the DE 41016 points out that the CONASSIF shall issue the corresponding regulations that include the development of: “*Controls when there exist business relationships and transactions with natural or legal persons or financial institutions with risk countries as considered by international organisations.*” Therefore, it is understood that the regulatory development that sets forth the obligations for DNFBPs in relation to criteria of R.19 is still pending. In the case of notaries, Article 19 of the DE 41016 sets forth that in relation to “the effective identification of risk countries, territories or jurisdictions, the Prevention Area of the National Notarial Directorate shall trigger alerts to notaries public. This information may be supplemented with the lists issued by the Financial Intelligence Unit of the ICD. Notwithstanding the aforesaid, notaries shall check public sources, such as Mutual Evaluation Reports of the Financial Action Task Force (FATF) or its regional equivalents, or reports from other international organisations in order to supplement their risk management.” Moreover, Article 22.e sets forth that notaries are exposed to higher risk situations: “There are countries identified as risk countries or subject to sanctions by international organisations such as the Financial Action Task Force or the United Nations.” However, measures to be adopted by notaries in higher-risk events are not established; Article 24 indicates that the National Notarial Directorate shall establish the criteria in relation to the definition and response to risks.

17. Based on the analysis of the R.23, Costa Rica has made progress in relation to compliance with criterion 23.2 to reach a largely compliant level in relation to such criterion. However, in relation to criterion 23.3, it is still not compliant. Upon making a general assessment of compliance with R.23, given that criteria 23.1 and 23.4 are compliant (see Costa Rica MER and Re-rating report GAFILAT 17 I GTEM 3.2.2) and 23.2 largely compliant, it is considered that remaining deficiencies are minor. Therefore, it is suggested that the rating be upgraded to **Largely Compliant**.

***Recommendation 28 (originally rated PC - no re-rating)***

18. In relation to technical compliance with Recommendation 28, the previous re-rating report (GAFILAT 17 I GTEM 3.2.2) concluded that compliance with criteria 28.1.b, 28.4.b, 28.4.c and 28.5 was still pending.

19. In relation to criteria 28.1.b and 28.4.b, as part of compliance with Law 9416, the obligation to reveal the information on the corporate structure and beneficial ownership is established; also, in relation to owners and representatives. This information would be made available to the FIU and the Treasury Ministry; however, this information cannot be directly accessed by the supervisor, in this case the SUGEF and the National Notarial Directorate. Moreover, it is not possible to verify how said information would be used for the purpose of preventing criminals and their associates from holding (or being the beneficial owners of) a significant or controlling interest, or holding a management function, or being an operator of a casino or other DNFBP. Therefore, it is considered that criteria 28.1.b and 28.4.b are partially compliant.

20. In relation to criterion 28.4.c, the corresponding supervisors can apply sanctions established in Law 7786 to DNFBPs (see R.35).

21. In relation to criterion 28.5, supervision of the SUGEF in ML/TF and FPWMD matters shall be conducted with a risk-based approach established by the CONASSIF and the National Notarial Directorate. Based on the information provided by Costa Rica, they have performed an off-site supervision work for the identification and follow-up of accounts and financial movements of DNFBPs, taking into account casinos, and they could also identify the number of reporting institutions that operate in this sector.

22. In November 2015, the SUGEF approved the “Conceptual Supervision Framework,” a document that describes the approach, principles, methodology, and procedure applied by the SUGEF to lead its activities with supervised entities, which is developed using a risk-based approach to supervision. Additionally, in January 2016, the SUGEF approved the Risk-Based Supervision Procedures. Both inputs, given their characteristics, could be applicable by the SUGEF in supervisions to DNFBPs. The SUGEF amended its operational plan for 2017 to initiate the technological solution construction to register, manage, and supervise DNFBPs, which is underway. Finally, there is a plan for the implementation of risk-based supervision to DNFBPs. However, the risk-based supervision model is still not defined so as to contemplate the aspects set forth in criterion 28.5. In relation to the National Notarial Directorate, the Regulation to Establish the Functions of the ML/TF and FPWMD Prevention Department (AP-AML/CFT) has been approved. Said regulation includes as functions of the AP-AML/CFT, among others, to carry out assessments on the degree of implementation and performance of the ML/TF and FPWMD prevention system (Art. 5.b) in the notarial function, and to execute prevention, training, supervision, control, and sanctioning activity plans in ML/TF matters in the exercise of notarial functions (Art.5.f), both previously approved by the Higher Notarial Council. However, the way how supervision shall be conducted based on risk under the terms established by criterion 28.5 has not been defined. Therefore, criterion 28.5 is considered to be partially compliant.

23. Based on the analysis of the information submitted by the country, and after a global analysis of compliance with R.28, given that full compliance with criteria 28.1.b, 28.4.b and 28.5 is still pending, it is considered that the rating should remain as **Partially Compliant**.

***Recommendation 29 (originally rated PC - Re-rated C)***

24. The previous re-rating report (GAFILAT 17 I GTEM 3.2.2) concluded that given that it could not be verified that the FIU had sufficient resources to develop its functions (personnel, technological resources, etc.) and that it had administrative autonomy, the rating should remain partially compliant.

25. Based on the information provided by Costa Rica in relation to the Law of National Budget for the Economic Period 2018, it includes budgetary allocations (No. 60102 001 1310 1360 200) for operational expenses, said allocations include the creation of 10 new vacancies for the FIU. The FIU is well advanced in the process to hire employees, including the hiring of equipment and furniture, as well as the physical space to locate new employees. Based on this information, the increase of personnel and resources to fulfil its duties can be noticed.



26. Additionally, the ICD Board of Directors, through Agreement 056-08-2017 empowers the Head of the FIU to subscribe the recommendations issued by such Unit on matters of its competence by virtue of Law 7786, granting the FIU with a greater autonomy.

27. Based on the analysis of R.29, progress has been made by Costa Rica given the increase of resources and a greater autonomy, both for the proper performance of its duties. Therefore, it is suggested that the rating of the Recommendation be upgraded to **Compliant**.

*Recommendation 35 (originally rated PC - no re-rating)*

28. In relation to compliance with Recommendation 35, the previous re-rating report (GAFILAT 17 I GTEM 3.2.2) concluded that the i) verification of the graduation of sanctions to be imposed to determine ranges of proportionality and dissuasiveness of sanctions established by Law 9449 (criterion 35.1); and ii) contemplation of administrative or civil sanctions to directors or senior managers of FI and DNFBPs (criterion 35.2) were still pending.

29. In relation to sanctions of FI, the seriousness of the offence, the scope of damage and recidivism shall be taken into account, with fines of 0.5% to 2% of the patrimony understood as the social equity, plus capital contributions and accrued gains and losses. Costa Rica has imposed a sanction to a bank for 1170 million colones (USD 2 million) for non-compliance with AML/CFT obligations.

30. In relation to reporting institutions included in Arts. 15 and 15 bis, sanctions shall be applied as follows: a) fine from 5% to 50% of the total amount of the transaction performed; and b) fine of 2 to 100 basic wages. It should still be determined the grade of sanctions to be imposed in order to determine the range of proportionality and dissuasiveness of sanctions.

31. In relation to compliance with criterion 35.2, authorities state that Art. 70 of Law 7786 sets forth criminal sanctions for the owner, director, manager or employee. However, Art. 70 of said Law sets forth that “the owner, director, manager or employee of financial entities, the representative or employee of the supervision and surveillance body, as well as competent officers of the Customs Administration and the customs agent shall be sanctioned with a penalty of one (1) to three (3) years’ imprisonment when, in the exercise of their functions, has enabled the commission of a capitals legitimization crime or a terrorist financing crime, as considered by the court.” Therefore, the sanction does not make reference to non-compliance with AML/CFT obligations set forth in Recommendations 6 and 8 to 23, but to the enabling of the commission of the crimes of ML/TF.

32. Based on the analysis of R.35, criterion 35.2 is still pending for compliance. Therefore, the rating should be kept as **Partially Compliant**.

### **3.2 Progress on Recommendations that were amended since the adoption of the MER**

*Recommendation 8 (originally rated PC - no re-rating)*

33. In relation to technical compliance with Recommendation 8, the previous re-rating report (GAFILAT 17 I GTEM 3.2.2) concluded that compliance with criteria 8.1, 8.2b-d, 8.5b, 8.5.d and 8.6 were still pending.



34. Costa Rica has included as 1) AML/CFT reporting institutions to NPOs that *send or receive money to or from internationally considered risk jurisdictions or that have relationships with foreign headquarters, branches or subsidiaries located in them;* and 2) NPOs are bound to provide information on the beneficial owner and to register in the Platform of the Central Bank of Costa Rica when they *perform an activity related to the collection or disbursement of funds to fulfil charitable, religious, cultural, educational, social, fraternal purposes or to perform other kinds of “good works.”* Additionally, it has initiated monitoring actions on NPOs.

35. However, based on the provisions of criterion 8.1, Costa Rica still needs to: i) identify the subset of organisations that fall within the FATF definition of NPO, and use all relevant

sources of information, in order to identify the features and types of NPOs which by

virtue of their activities or characteristics, are likely to be at risk of terrorist financing abuse; ii) identify the nature of threats posed by terrorist entities to the NPOs which are at risk as well as how terrorist actors abuse those NPOs;

iii) review the adequacy of measures, including laws and regulations, that relate to the subset of the NPO sector that may be abused for terrorism financing support in order to be able to take proportionate and effective actions to address the risks identified; and periodically reassess the sector by reviewing new information on the sector’s potential vulnerabilities to terrorist activities to ensure effective implementation of measures.

36. In relation to criterion 8.2, based on the previous re-rating report (GAFILAT 17 I GTEM 3.2.2) Costa Rica was pending for compliance with sub-criteria 8.2 b-d.

37. In relation to sub-criteria 8.2.b and c, it is reported that Costa Rica, through the Financial Intelligence Unit (FIU) issued the Specific Risk-Based Approach Guide for non-financial sectors. This Guide includes a specific chapter for NPOs. The chapter on NPOs includes specific measures on internal management of NPOs, registration information, duties before authorities, application of a RBA, outreach and supervision practices for the sector. However, there is no specific evidence on: i) outreach activities and educational programmes to raise greater awareness among NPOs and the donor community in relation to the vulnerabilities of NPOs to terrorist financing abuse and risks, and the measures that NPOs can take to protect themselves against such abuse; ii) work with NPOs to develop and refine best practices to address terrorist financing risk and vulnerabilities and the measures that NPOs can take to protect themselves against such abuse. Additionally, sub-criterion 8.2.d on encouraging NPOs to conduct transactions via regulated financial channels is also pending.

38. In relation to sub-criteria 8.5.b and 8.5.d, Costa Rica reports on the progress made in monitoring NPOs by the SUGEF, and the experience the SUGEF has on supervision and control of entities. Moreover, the BCCR is working on the development of the platform for the registration of shareholders and beneficial ownership of legal persons, including NPOs. However, Costa Rica still needs to submit evidence on: i) investigative expertise and capability to examine those NPOs suspected of either being exploited by, or actively supporting, terrorist activity or terrorist organisations.

39. In relation to criterion 8.6, in the previous re-rating report, it was stated that, generally speaking, the ICD and the Public Prosecutor Office of the Republic would respond to the international co-operation requests, and at this time, Costa Rica mentions the measures that provide

for matters related to freezing and beneficial ownership information gathering in the electronic platform developed by the BCCR. However, based on criterion 8.6, countries should identify appropriate points of contact and procedures to respond to international requests for information regarding particular NPOs suspected of terrorist financing or involvement in other forms of terrorist support. Therefore, compliance with this criterion is still pending.

40. Based on the analysis of the information submitted by the country, compliance with criteria 8.1, 8.2b-d, 8.5b, 8.5d, and 8.6 is still pending, reason why the rating should be kept as **Partially Compliant**.

#### IV. CONCLUSION

41. In general, Costa Rica 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 23 and 29 to Largely Compliant and Compliant, respectively.

42. Moreover, it has shown progress in Recommendations 8, 22, 28, and 35, however, progress is not considered to be enough to upgrade the rating of these Recommendations.

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

**Table 2. Technical compliance with new ratings, July 2018**

<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>
LC	C	C	LC	C	LC	C	PC	C	LC
<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	LC	LC	C	C	LC	PC	LC	C	C
<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>
C	PC	LC	LC	LC	LC	LC	NC	C	LC
<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	C	LC	LC	PC	C	C	LC	C	C

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

44. Costa Rica 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.