



GAFILAT

Mutual  
Evaluation  
Report of the  
Republic of  
Costa Rica

GAFILAT 15 I PLEN 3



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**TABLE OF ACRONYMS AND ABBREVIATIONS**

<b>AFI</b>	Alliance for Financial Inclusion
<b>AML</b>	Anti-Money Laundering
<b>WMD</b>	Weapons of Mass Destruction
<b>DNFBP</b>	Designated Non-Financial Businesses and Professions
<b>Art.</b>	Article
<b>IDB</b>	Inter-American Development Bank
<b>CILAFIT</b>	<i>Comité Interinstitucional contra el Lavado de Activos y Financiamiento al Terrorismo</i> – Anti-Money Laundering and Terrorist Financing Inter-Institutional Committee
<b>CISTE</b>	<i>Comisión Interinstitucional sobre Terrorismo</i> – Inter-Institutional Committee on Terrorism
<b>CONASSIF</b>	<i>Consejo Nacional de Supervisión del Sistema Financiero</i> – National Council for the Supervision of the Financial System
<b>UNSC</b>	United Nations Security Council
<b>Merida Convention</b>	United Nations Convention against Corruption
<b>Palermo Convention</b>	United Nations Convention against Transactional Organized Crime
<b>Vienna Convention</b>	United Nations Convention against Illicit Trafficking of Narcotic Drugs and Psychotropic Substances
<b>CTF</b>	Combating the Terrorist Financing
<b>CC</b>	Criminal Code
<b>CCP</b>	Code of Criminal Procedures
<b>CDD</b>	Customer Due Diligence
<b>RD – ML/TF</b>	National Risk Diagnosis of Money Laundering and Terrorist Financing
<b>DIS</b>	<i>Dirección de Inteligencia y Seguridad</i> – Intelligence and Security Directorate
<b>RBA</b>	Risk-based approach
<b>FPWMD</b>	Financing of Proliferation of Weapons of Mass Destruction
<b>TF</b>	Terrorist Financing

<b>IMF</b>	International Monetary Fund
<b>FATF</b>	Financial Action Task Force
<b>GAFILAT</b>	<i>Grupo de Acción Financiera de Latinoamérica</i> – Financial Action Task Force of Latin America
<b>FI</b>	Financial Institution(s)
<b>ML</b>	Money Laundering
<b>Law 8204</b>	Law on narcotic drugs, psychotropic substances, unauthorized drugs, related activities, money laundering and financing of terrorism
<b>NCL 8204</b>	Regulation for Compliance with Law 8204
<b>SRB</b>	Self-Regulatory Body
<b>OATRI</b>	<i>Oficina de Asesoría Técnica y Relaciones Internacionales</i> – Office of Technical Assistance and International Affairs
<b>IAEA</b>	International Atomic Energy Agency
<b>OIJ</b>	<i>Organismo de Investigación Judicial</i> – Judicial Investigation Agency
<b>OPCW</b>	Organization for the Prohibition of Chemical Weapons
<b>NPO</b>	Non-Profit Organization(s)
<b>PW</b>	Proliferation of Weapons
<b>PWMD</b>	Proliferation of Weapons of Mass Destruction
<b>PCD</b>	<i>Policia de Control de Drogas</i> – Drug Control Police
<b>PCF</b>	<i>Policia de Control Fiscal</i> – Fiscal Control Police
<b>PEP</b>	Publicly Exposed Persons
<b>PND</b>	<i>Plan Nacional sobre Drogas, Legitimación de Capitales y Financiamiento al Terrorismo 2013-2017</i> – National Plan on Drugs, Money Laundering and Terrorist Financing
<b>STR</b>	Suspicious Transactions Report(s)
<b>MLD</b>	Money Laundering Division
<b>MVTS</b>	Money and Value Transfer Services
<b>SUGEF</b>	<i>Superintendencia General de Entidades Financieras</i> – General Superintendence of Financial Entities
<b>SUEGESE</b>	<i>Superintendencia General de Seguros</i> – General Insurance Superintendence



<b>SUGEVAL</b>	<i>Superintendencia General de Valores</i> – General Securities Superintendence
<b>SUPEN</b>	<i>Superintendencia de Pensiones</i> – Pension Superintendence
<b>FIU</b>	Financial Intelligence Unit
<b>UNODC</b>	United Nations Office on Drugs and Crime
<b>IPU</b>	Intelligence Programs Unit
<b>URA</b>	<i>Unidad de Recuperación de Activos</i> – Money Recovery Unit
<b>URC</b>	<i>Unidad de Registro y Consultas</i> – Units of Records and Consultations

## EXECUTIVE SUMMARY

1. This report summarizes the Anti-Money Laundering and Counter-Terrorist Financing (AML/CTF) measures in place in Costa Rica as of the date of the on-site visit (January 19- 30, 2015). It analyzes the level of compliance with the 40 Recommendations of the Financial Action Task Force (FATF) and the level of effectiveness of the AML/CTF system in Costa Rica, and issues recommendations on how to strengthen some aspects of the system.

### *A. Key Findings*

2. In general terms, Costa Rica has a number of legal and regulatory tools and structures that enable Costa Rica to fight against ML/TF. Notwithstanding that, some technical deficiencies were identified that should be addressed in order to ensure a strong AML/CTF system.

3. Costa Rica has conducted the National Risk Diagnosis of Money Laundering and the Terrorist Financing (RD-ML/TF) and, in general terms, Costa Rica presents an appropriate level of understanding of its Money Laundering (ML) risks, highlighting that in its development, an appropriate level of coordination and cooperation was observed between the relevant authorities and the private sector.

4. The country is in the process of developing a National Strategy aimed at implementing policies and activities based on the risks identified, including measures and resource allocation to address and mitigate the ML/TF risks. These are part of the action plan being developed as part of said Strategy. As to the level of understanding of the risks associated to terrorist financing (TF), Costa Rica has a low risk level of TF, mainly because terrorism is not considered a direct threat to the country.

5. The financial intelligence generated by the Financial Intelligence Unit (FIU) of the Costa Rican Institute on Drugs (ICD in Spanish) is used by the competent authorities in ML investigations, although the usefulness of said financial intelligence could be increased with a greater feedback by the authorities using it. The creation of the financial intelligence by the FIU uses different databases that provide added value to the STRs received by reporting entities, however, it is limited by the lack of information provided by Designated Non-Financial Professions and Activities (DNFBPs). In the case of TF, there was not enough evidence to evaluate the use of the financial intelligence associated to this offense, since there are no cases related with this behavior.

6. The different bodies involved in ML prevention seek to work in constant contact from the beginning of the investigations, so as to achieve an efficient exchange of information and experience, in addition to the bi-monthly meetings held by the Money Laundering Prosecutor's Office and the FIU in terms of coordination. Likewise, the efforts made by the law enforcement institutions are recognized, which could benefit from the allocation of more economic, human and technological resources sufficient to carry out their duties in a more effective manner.

7. Costa Rica shows fight against the ML predicate offenses, specially against the trafficking of narcotic drugs and psychotropic substances, in prosecutions and convictions. With regards to the ML offense, it is understood that priority is given to the prosecutions and convictions associated to drug trafficking, given the few initiatives identified to fight ML resulting from other types of predicate offenses, even in offenses identified in the RD-ML/TF as ML threats (e.g. human smuggling and trafficking, frauds, forgery and piracy of products, tax evasion, etc.).

8. Most of the goods seized and confiscated in the country are originated from cases related to drug trafficking and, in the case of ML, from activities whose predicate offense is drug trafficking. Additionally, the country has a system of administration of assets empowered to manage and dispose of these assets.
9. The country has managed different mechanisms to perform the repatriation, distribution and restitution of goods and/or assets. However, the initiatives for the use said mechanisms should be increased, so that the country may efficiently and effectively act upon cases requiring joint efforts among the national authorities and other cooperating countries. Nevertheless, the impossibility of applying the seizure of goods of equal value was identified.
10. The deficiencies in the adequate criminalization of the TF offense may affect the effectiveness of the fight against TF. At the time of the on-site visit, in Costa Rica there were no cases of TF under investigation, or cases submitted to the Criminal Courts of the country. Additionally, there have been few training initiatives in terms of TF in the country for the personnel of the OIJ, the Public Prosecutor and Criminal Courts and most of the members of the country's repressive system do not have enough specific training to deal with potential threats and particular trends of TF. The FIU is in charge of ordering the retention and freezing of funds and financial products, as well as of requesting the judge the relevant restrictive measures and those fundamental measures necessary to carry out TF investigations; however, the FIU has not used this faculty for TF cases yet.
11. Costa Rica has carried out a first development to implement Resolutions 1267/1989 and 1988 of the United Nations Security Council (UNSC) for compliance with FATF Recommendation 6. Nevertheless, this framework is not enough to apply the targeted financial sanctions set in Recommendation 6. In turn, Costa Rica lacks a regulatory framework for the appropriate implementation of FATF Recommendation 7.
12. The Financial Institutions (FI) of the financial system are aware of the nature and level of ML/TF risks of the sector and, in general terms, have appropriate policies and procedures to mitigate and control these risks. However, that same level of understanding of the risks is not seen in the DNFBPs. Particularly, the real estate and construction markets are of concern. Likewise, the lack of understanding and commitment by the lawyers, who require a greater awareness of the country's AML/CTF regulations, should be noticed.
13. The ML/TF risk-based approach (RBA) of the superintendencies is in different development phases, where some superintendencies are generally implementing it in their supervision processes and others are in process of implementing it in the short or medium term. The superintendencies have imposed few monetary sanctions.
14. As regards DNFBPs, in spite of the recent rapprochement with DNFBPs, there is currently no competent authority regulating and supervising the AML/CTF system in physical and online casinos, or the other DNFBPs, except for those supervised by the General Superintendence of Financial Entities (SUGEF in Spanish).
15. There is available information on legal persons in the Registry of Legal Persons, which registration provides legal security in the trade activity. Additionally, Costa Rica implemented the definite removal of bearer shares in public corporations, as a measure to prevent legal persons from being improperly used. Nevertheless, there are difficulties to access the basic information on beneficial owners of legal persons, on an accurate and updated manner. The existing mechanisms basically lie on the registry information that, in this sense, has certain limitations. Some initiatives intended to overcome these limitations have been submitted, such as the establishment of a shareholders public registry, but the project was not yet approved at the time of the on-site visit. As to trusts, the absence of a registry and the limited supervision of trust

service providers, are deficiencies that limit the accuracy and transparency of the individuals that exercise an effective beneficial control on this type of legal structures.

16. Costa Rica has a broad range of legal and administrative instruments that promote cooperation at an international level by all the relevant agencies involved in the prevention and fight against ML/TF, which is of particular importance in Central America, where said cooperation framework is strengthened. Along this line, Costa Rica has regulations that enable for the provision of broad levels of cooperation with foreign authorities. However, the development of mechanisms to provide, in an informal manner, feedback on the information or assistance delivered, which may be useful to improve the quality and timeliness of the cooperation provided, is required.

### ***B. Risks and General Situation***

17. Costa Rica conducted the RD–ML/TF where the main risks in terms of ML were adequately identified. These are mainly related to threats of drug trafficking, smuggling, trafficking of human beings, fraud and tax evasion activities. The geographic location of the country should be highlighted, within the drug trafficking route from the southern countries to North America, being located in the Central American corridor used as bridge.

18. As regards vulnerability, the criminal organizations use FIs, specially the money transfer services and bureaux de change, to transfer funds of illicit origin, these being sectors of greater ML vulnerability. The managers of third parties' funds and the creation of legal persons in order to legitimate proceeds of illicit origin are a concern for the authorities. With regards to DNFBPs, the use of real estate, high value properties for business initiatives mainly related to tourism sectors, are of concern, along with the activities of the casinos (including online casinos), also taking into account the apparent lack of a specific regulation and supervision in terms of AML/CTF.

19. As regards TF, Costa Rica considers the threat of terrorism and financing thereof as low.

### ***C. General Level of Compliance and Effectiveness***

#### ***C.1 National Risk Evaluation***

20. Costa Rica has appropriately identified and understood its ML risks at a national level, identifying drug trafficking as the main threat faced by the country, focusing most of its efforts on this scourge. However, evidence does not indicate that the understanding of the TF risks is at the same level. Moreover, measures have not been yet implemented and resources have not been allocated in order to mitigate the identified risks. Nevertheless, it is important to note that at the moment of the evaluation, the country was developing a National Strategy derived from the RD-ML/TF carried out. For the preparation of the RD-ML/TF, all the national authorities participated along with representatives from the private sector, in thematic working groups that joined the relevant sectors, showing a high level of commitment in the fight against ML/TF by the different actors involved in the ML/TF prevention, detection and repression system. The level of understanding of the ML/TF risks by the FIs is considered as appropriate; however, in case of DNFBPs, the need to employ greater efforts and relations is evident.

#### ***C.2 ML Investigation and Prosecution***

21. In general, the financial intelligence generated by the FIU is used by the competent authorities for ML investigations. The FIU has access to different databases that enable it to provide added value to the

suspicious transaction reports (STRs) it receives, which results in financial intelligence products used by the competent authorities. However, the generation of financial intelligence could be improved by an increase in STRs by DNFBNs. The FIU cooperates both with competent authorities and reporting entities. Likewise, it identifies and communicates typologies, holds meeting with reporting entities to provide feedback on the quality of the STRs and publishes documents of interest in the FIU Platform, proving the efforts made by this entity. There are weaknesses as regards the confidentiality of the information, such as the informal communication between the banks and the prosecutor's office on attempted transactions, access to the databases kept by the Unit of Registry and Consultation (URC in Spanish) of the Costa Rican Drug Institute (ICD, in Spanish) and the lack of security regarding the physical archive containing the files with printed financial intelligence reports. The operational independence could be improved if the FIU would be able to issue recommendations and directives directly intended to the reporting entities, directly enter into cooperation agreements and select, remove and administratively sanction the officers of the FIU.

22. In the country, there exists a system to fight predicate offenses, particularly the trafficking of narcotic drugs and psychotropic substance. With regards to the ML offense, it is understood that priority is given to the prosecutions and convictions related to drug trafficking, with few initiatives identified in the fight against ML derived from other types of predicate offenses, even in forms of offense identified in the RD-ML/TF as ML threats.

### *C.3 Measures for the Seizure and Confiscation of goods*

23. Costa Rica is considerably structured to act in the seizure and confiscation of goods originated by predicate offenses and ML, although it shows a greater proximity in the fight against the illicit trafficking of narcotic drugs and psychotropic substance than against ML offenses. At the time of the on-site visit, most of the goods seized and confiscated were originated by cases related to drug trafficking and, in case of money laundering, by activities which predicate offense was drug trafficking itself.

24. The controls currently adopted by the bodies acting in some terrestrial and coastal borderlands do not seem to be enough to minimize the threats and risks identified in the country, thus being necessary to increase human and operational capacity for the effective performance of their duties. The initiatives for the use of repatriation, distribution and restitution of goods and/or assets related to predicate offenses and the ML offense itself should be increased, in such a way that the country may act efficiently in cases needing joint efforts among the national authorities and the cooperating countries. Moreover, the implementation of the seizure of goods of equal value is not possible.

### *C.4 Investigation and Prosecution of TF and Targeted Financial Sanctions Related to TF.*

25. TF is not perceived as a high risk offense in the country. At the time of the on-site visit, there were no TF cases identified in Costa Rica, either at investigation or prosecution stages, and even less submitted to the Criminal Courts of the country. The deficiencies in the adequately criminalization of the TF offense may affect the effectiveness in terms of awareness and fight against TF. Training initiatives regarding TF undertaken in the country for the personnel of OIJ, the Public Prosecutor and the Criminal Courts should be increased in order for them to acquire the specific knowledge necessary to address the possible threats and particular trends of TF that may be carried out in the country.

26. Costa Rica needs to make specific legal and regulatory amendments to comply with FATF Recommendations 6 and 7 for the appropriate implementation of UNSC Resolutions 1267, 1988 and 1989, and to comply with the measures established in UNSC Resolution 1373, and the implementation of UNSC Resolutions 1718 and 1737.

### *C.5 Preventive Measures and Supervision of FIs*

27. FIs are aware of the ML/TF risks to which they are exposed. The efforts made by FIs go beyond those made by the other sectors. In general terms, the entities of the financial system are aware of the nature and level of the ML/TF risks inherent to the sector and have the appropriate policies and procedures to mitigate and control those risks.

28. The risk-based ML/TF supervision is in different development phases. In some cases, it is in the first implementation phases and, in others, the development is in proper progress.

### *C.6 Preventive Measures and Supervision of DNFBPs*

29. The competent authorities, particularly the FIU, have made efforts to approach the different sectors that make up DNFBPs. Currently, there is no competent authority regulating and supervising the AML/CTF system in physical and online casinos, as well as the other DNFBPs, except for those supervised by SUGEF.

30. In general terms, DNFBPs do not seem to be aware of their exposure to ML/TF risks. The real estate and construction markets are of particular concern due to the risk level expressed regarding this industry. Likewise, the lack of understanding of lawyers regarding ML/TF risks, who require a greater awareness of their duties towards AML/CTF regulations in the country, is highlighted.

### *C.7 Legal Structures*

31. The main source of information on legal persons and other structures derives from the National Registry. Progress has been observed, such as the definite removal of bearer shares and, in general, the level of commitment of the public authorities in the adoption of good practices is quite high. Nevertheless, there are areas of concern regarding the use of some of these legal persons and the transparency on the beneficial owners thereof, such as the transfer of shares by endorsement of the public corporations and the difficulties sometimes faced by the authorities to access the shareholders record books. The far too broad interpretation of professional secrecy of the Bar Association in Costa Rica, would be affecting the normal compliance with their due diligence obligations.

### *C.8 International Cooperation*

32. Costa Rica has an adequate legal framework to effectively provide international cooperation, which is shown by the way it handles and follows-up requests for extradition, freezing and seizure of assets by third-party countries, despite the fact of the reduced number of officers working in institutions, such as the Office of Technical Assistance and International Affairs (OATRI in Spanish), the Prosecutor's Office specialized in Money Laundering or the OIJ ML division, situation which should be reviewed and improved by the authorities.

## ***D. Priority Actions***

33. Based on the deficiencies identified throughout the evaluation, the priority actions to be implemented by Costa Rica are as follows:

- Conclude the National AML/CTF Strategy in order to establish nationwide AML/CTF policies and activities, based on the identified risks, including actions, terms, coordination mechanisms, follow-up means and responsible individuals clearly established.

- Achieve an adequate level of understanding of the risks of TF and Financing of Proliferation of Weapons of Mass Destruction (FPWMD) and implement measures intended to have mechanisms and procedures that enable the authorities to take the necessary measures, as the case may be.
- Issue the regulation intended for DNFBPs related to the implementation of policies to manage the ML/TF risk to which they are exposed.
- Keep statistics that allow the quantification of the possible impact of ML/TF risks.
- Make regulatory adjustments so that the enforced measures are based on the risk levels identified in the RD-ML/TF, both for financial institutions and DNFBPs, for the appropriate compliance with their obligations and the identification of beneficial owners.
- Legal and regulatory adjustments should also be made with regards to the duties of the authorities, their powers to impose sanctions, the recovery of assets and maintenance of the information confidentiality.
- Provide greater human, financial and technological, as well as training, to the relevant authorities for the investigation and prosecution of ML/TF offenses, including the FIU, Customs authorities and the courts.
- Make more efforts to act in cases related to predicate offenses other than drug trafficking.
- Analyze the establishment of differentiated guidelines and directives for each regulated market, as per the ML/TF risks, setting strengthened and simplified DD measures, as the case may be.
- Analyze the use of informal communication mechanisms between reporting entities and authorities, in such a way that they are consistent with the law and keep the confidentiality of the information.
- Appoint the competent authorities to supervise the sectors and the activities not currently governed by a competent body.

**E. Table of Effective Implementation of Immediate Outcomes**

Effectiveness	
<b>1. Risk, Policy and Coordination</b>	<b>Moderate</b>
<p>34. Costa Rica has identified and understood, in an acceptable manner, its ML risks at a national level, identifying drug trafficking as the main threat faced by the country, focusing most of its efforts on this scourge. However, evidence does not indicate that the understanding of the TF risks is at the same level.</p> <p>35. Even though Costa Rica is working on a National Strategy, at the moment of the on-site visit, the country did not have national policies and activities to mitigate the ML/TF risks identified in the RD-ML/TF.</p> <p>36. In case of DNFBPs, a low level of understanding is evidenced on the ML/TF risks to which they are</p>	

<p>exposed.</p> <p>37. The results of the RD-ML/TF have not been used to justify exemptions and to support enhanced measures by financial institutions and DNFBPs.</p>	
<p><b>2. International Cooperation</b></p>	<p><b>Substantial</b></p>
<p>38. Costa Rica presents characteristics of an effective system in this area, and only moderate improvements are required.</p> <p>39. Thus, the country has a broad range of legal and administrative instruments that promote cooperation at an international level by all the relevant bodies involved in the prevention and fight against ML/TF.</p> <p>40. The information related to the feedback on the efficacy and quality of the cooperation and the information provided by the countries is deemed insufficient.</p> <p>41. The use of cooperation instruments at a regional level (Central America) among the different authorities is inconsistent among them. The statistical data does not accurately reflect the cases involving ML/TF offenses.</p> <p>42. Low international cooperation made by the supervisors of reporting entities.</p>	
<p><b>3. Supervision</b></p>	<p><b>Moderate</b></p>
<p>43. Very different degrees of development are shown as to the application of risk-based supervision to the financial institutions by the supervising authorities.</p> <p>44. During the on-site visit, the existence of an authority that supervises and regulates DNFBPs was not seen, or an authority that could prevent the issuance of licenses to criminals, to other associates, or them being shareholders or directors in casinos.</p> <p>45. In the supervision task, few monetary sanctions have been imposed.</p>	
<p><b>4. Preventive Measures</b></p>	<p><b>Moderate</b></p>
<p>46. The FIs of the financial system are aware of the nature and level of ML/TF risks of the sector. However, the lack of a formal policy that orders the financial inclusion efforts, as well as the lack of regulation in the subject, is observed.</p> <p>47. The current “comprehensive” or general regulation approach for the institutions does not take into consideration the particular characteristics of each financial market or institution in terms of ML/TF.</p> <p>48. There exists a proliferation of informal remittances, currency exchange and money lending activities.</p> <p>49. A lack of awareness is observed regarding ML/TF risks to which DNFBPs are exposed, especially in real estate and construction markets. As regards lawyers, not only the lack of understanding but also the lack of commitment to accept the AML/CTF regulation, is observed.</p>	
<p><b>5. Legal Persons and Structures</b></p>	<p><b>Low</b></p>

50. It is difficult for authorities to obtain beneficial ownership information, since such information is not always updated, due to lack of obligation to record the transfer of shares, or due to the refusal of representatives or notaries to submit any such information.

51. Lack of a specific registry for trusts and legal structures where the contract terms and conditions are recorded.

52. The regulation of the real estate agents and trust service providers activities is not enough, and the supervision of the reporting entities in these sectors is limited.

53. Lawyers' interpretation on the obstacle to comply with their AML/CTF obligations due to professional secrecy could reduce the effectiveness of the preventive system at the time of notifying suspicious transactions, especially within the framework of the double role as lawyer and notary public that may be exercised by the same professional in a legal act.

**6. Financial Intelligence**

**Moderate**

54. In general terms, Costa Rica has some characteristics of an effective system for the creation of financial intelligence. Thus, the financial intelligence created by the FIU is used by competent authorities to carry out ML investigations. The FIU has access to different databases that allow it provide added value to the suspicious transaction reports (STRs) received thereby, resulting in intelligence products used by competent authorities. Nevertheless, there are aspects that should be improved.

55. The work of financial intelligence carried out by the FIU is limited by the low level of registry and STRs submitted by DNFBPs. Additionally, the limited updated information on the shareholders of corporations, as well as the lack of regulation and information related to NPOs restrict the access to relevant information that could be used for the purposes of financial intelligence. The inexistence of cases related to TF made it impossible to evaluate the use of financial intelligence associated to this offense.

56. Although the FIU cooperates with competent authorities and reporting entities, feedback by competent authorities to the FIU is not observed.

57. The FIU, the Prosecutor's Office on Money Laundering and the competent authorities in charge of enforcing the provisions on cross-border transportation of cash and securities do not have the sufficient economic, human and technological resources necessary to perform their functions in an effective manner.

58. With regards to the confidentiality of the information, there is a legislative discrepancy related to the identification of the institution that serves as national center for the reception of STRs.

**7. ML Investigation and Prosecution**

**Moderate**

59. In general, Costa Rica has some characteristics of an effective system for the investigation, prosecution and conviction of predicate offenses and ML. However, in terms of ML, it was verified that focus is still on the trafficking of narcotic drugs and psychotropic substances, and few initiatives were identified to fight ML originated by other types of predicate offenses, even in types of offenses identified as ML threats in the RD-ML/TF.

60. There is a lack of physical structures and personnel in the investigation teams specialized in ML of the Judicial Police and the Public Prosecutor.

61. The teams of the Judicial Policy, the Public Prosecutor and the Criminal Courts do not yet have enough opportunities for appropriate training in terms of ML, so as to gain the specific knowledge to identify, investigate, prosecute and judge cases of money laundering practiced in the country.	
<b>8. Confiscation</b>	<b>Moderate</b>
62. Costa Rica is considerably structured to act in the seizure and confiscation of goods originated by predicate offenses and ML. However, it shows a greater proximity to the fight against the illicit trafficking of narcotic drugs and psychotropic substances than ML offenses.	
63. The country should increase the use mechanisms of repatriation, distribution and restitution of goods, so that the country may efficiently act upon cases requiring joint efforts among the national authorities and other cooperating countries. In Costa Rica, it is impossible to implement the confiscation of property of correspondent value.	
64. The controls currently adopted by the bodies acting in some terrestrial and coastal borders do not seem to be enough to minimize the threats and risks identified in the country, there being a clear lack of human and operational resources for the efficient performance of their activities.	
<b>9. Investigation and Prosecution of TF</b>	<b>Moderate</b>
65. There are deficiencies in the criminalisation of the TF offense affecting the effective knowledge and fight against TF.	
66. No TF-related case has been identified, whether in the investigation or prosecution stages, or submitted to the courts.	
67. There are no cases, whether at the investigation, prosecution stages or submitted to the courts related to TF towards the financing of terrorism, systematically evaluating the results of said confrontation.	
<b>10. TF Financial Sanctions and Preventive Measures</b>	<b>Low</b>
68. Costa Rica does not have specific regulations applying targeted financial sanctions according to FATF Recommendation 6 for the correct implementation of UNSC Resolutions 1267, 1988, 1989 and 1373. This includes the lack of communication channels to disclose the lists of the 1267/1989 and 1988 Committees to the relevant bodies.	
69. There is no regulation to prevent the misuse of non-profit organizations (NPOs) for the purposes of TF, which also lack the supervision in terms of financers or beneficiaries and guidelines by the authorities for the prevention of TF.	
70. No actions focused on combating TF were evidenced, whether in the form of sanctions or administrative, civil or criminal proceedings. This is due to the little regard of financing of terrorism as relevant to the authorities' activities.	
<b>11. Financial Sanctions of FPWMD</b>	<b>Low</b>
71. Costa Rica has no legislation and measures related to fight against the financing of proliferation of weapons of mass destruction (FPWMD). In this regard, there are no procedures set for the identification	

and freezing under the terms and conditions established by the FATF Recommendation 7 for the implementation of UNSC Resolutions 1718 and 1737.

**F. Table of Technical Compliance with the FATF Recommendations**

Compliance with the FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
1. Assessing risks and applying a risk-based approach	PC	<ul style="list-style-type: none"> <li>• Lack of national policies with a risk-based approach to ensure that the measures to prevent or mitigate ML/TF are proportionate to the risks identified in the RD-ML/TF.</li> <li>• There is no supervisor or Self Regulatory Body (SRB) of DNFBPs, in terms of AML/CTF in order to ensure they are complying with the obligations set in Recommendation 1.</li> <li>• The existing regulation does not include the obligation of DNFBPs to identify, assess and understand the ML/TF risks to which they are exposed.</li> </ul>
2. National cooperation and coordination	PC	<ul style="list-style-type: none"> <li>• Costa Rica does not have nationwide AML/CTF policies considering the risks identified in the RD-ML/TF. Along this line, there is no coordination mechanism for their implementation.</li> <li>• Costa Rica lacks legislation on combating the FPWMD; therefore, it does not have coordination mechanisms on this subject.</li> </ul>
3. Money laundering offense	LC	<ul style="list-style-type: none"> <li>• Although they are covered by the concept of serious crime and, consequently, are considered predicate offenses of ML, the offenses of TF and migrant smuggling are not properly criminalized in the Costa Rican legislation.</li> </ul>
4. Confiscation and provisional measures	LC	<ul style="list-style-type: none"> <li>• There is no legal mechanism to confiscate property of correspondent value.</li> </ul>
5. Terrorist financing offense	PC	<ul style="list-style-type: none"> <li>• Law 8204 does not cover conducts included in Art. 2.b of the Convention against TF.</li> <li>• The criminalisation of the TF offense, as set forth in Law 8204, does not cover the financing of individual terrorist.</li> </ul>
6. Targeted financial sanctions related to terrorism & terrorist financing	PC	<ul style="list-style-type: none"> <li>• Failure to develop procedures to comply with the provisions of Art. 33, 33 bis and 86 of Law 8204 so as to observe Recommendation 6, allowing for full compliance with UNSC Resolutions 1267 and 1373.</li> </ul>
7. Targeted financial sanctions related to proliferation	NC	<ul style="list-style-type: none"> <li>• Costa Rica lacks legislation related to the fight against FPWMD. In this regard, there is no procedure in place for identification and freezing under the terms set by the FATF for the implementation of UNSC</li> </ul>

Compliance with the FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		Resolutions 1718 and 1737.
8. Non-profit organizations	NC	<ul style="list-style-type: none"> <li>• There is no awareness raised on the potential danger posed by TF offense to the NPOs.</li> <li>• There is no clear knowledge regarding the composition, financers and beneficial owners of NPOs.</li> <li>• In most cases, there are no legal obligations for NPOs to keep their records up to date on the composition, financial results and those who were benefited, except for those Foundations supervised by the Comptroller of Costa Rica, which carries out an annual control of the management and use of the public funds granted (Law 5338). However, preventive or surveillance actions on ML/TF policies are not established.</li> <li>• There is no specific regulation enforcing NPOs to implement preventive measures against the TF, so their activity is not supervised on this regard.</li> </ul>
9. Financial institution secrecy laws	C	
10. Customer Due Diligence	LC	<ul style="list-style-type: none"> <li>• Not all the circumstances set in Recommendation 16 are covered (only for transactions above 10,000 USD).</li> <li>• FIs are not required to adopt CDD measures as per the criteria 10.2.d) and 10.2.e) (except at the beginning of a business relationship).</li> <li>• There are no specific CDD measures established for the beneficiaries of life insurances and other insurance policies.</li> <li>• There is no regulation requiring FIs to apply established requirements in cases where CDD cannot be satisfactorily completed (criterion 10.19), or cases where FIs suspect the existence of a ML/TF offense, and they are allowed not to carry out CDD and request a STR (criterion 10.20).</li> </ul>
11. Record Keeping	C	
12. Politically Exposed Persons	LC	<ul style="list-style-type: none"> <li>• The prominent functions of international organizations are not included as PEPs.</li> <li>• The requirements established for PEPs do not include close associates or family members beyond spouses.</li> <li>• There is no regulation included for the requirement of life insurance policies related to PEPs.</li> </ul>
13. Correspondent Banking	LC	<ul style="list-style-type: none"> <li>• There are no specific obligations for the cases of payable-through accounts in other locations.</li> </ul>
14. Money or value transfer services	C	

Compliance with the FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
15. New technologies	NC	<ul style="list-style-type: none"> <li>There are no requirements established for the countries or FIs (except for those supervised by SUGESE) in terms of ML/TF risk assessment in the development of new products/practices and the use of new technologies, or measures established to handle and mitigate risks.</li> </ul>
16. Wire transfers	PC	<ul style="list-style-type: none"> <li>The threshold set (USD 10,000) is far higher than that set by the FATF Standards (USD 1,000).</li> <li>There are no regulatory provisions to address criteria 16.3, 16.4, 16.8, - 16.12 and 16.18.</li> </ul>
17. Reliance on third parties	NC	<ul style="list-style-type: none"> <li>There are no regulatory provisions related to the reliance on third parties within the framework of AML/CTF obligations.</li> </ul>
18. Internal controls and foreign branches and subsidiaries	LC	<ul style="list-style-type: none"> <li>There is no requirement for implementing additional measures for financial groups regarding the handling of ML/TF risks and reporting their supervisors, when the country of origin does not allow for the appropriate implementation of AML/CTF measures.</li> </ul>
19. Higher-risk countries	PC	<ul style="list-style-type: none"> <li>There are no specific regulatory provisions covering criteria 19.2 and 19.3 (partially).</li> </ul>
20. Reporting of suspicious transactions	PC	<ul style="list-style-type: none"> <li>Law 8204 sets forth that STRs should be submitted to the relevant supervision and surveillance body, who sends them to the FIU; therefore, the dilemma regarding the submission of STRs persists.</li> <li>The deficiencies on the criminalisation of ML (Recommendation 3) and TF (Recommendation 5) affect the technical compliance with this Recommendation.</li> </ul>
21. Tipping-off and confidentiality	LC	<ul style="list-style-type: none"> <li>The prohibition to disclose suspicious transaction reports or FIU-related information is not explicitly established.</li> </ul>
22. DNFBPs: Customer due diligence	PC	<ul style="list-style-type: none"> <li>There are no regulatory provisions covering all CDD obligations.</li> <li>There is no regulation including the obligations set in criteria 22.3-22.5.</li> </ul>
23. DNFBPs: Other measures	PC	<ul style="list-style-type: none"> <li>There are no regulatory provisions including the obligations set in criteria 23.2-23.4</li> <li>The obligation to report suspicious transactions is not explicitly established.</li> </ul>
24. Transparency and beneficial ownership of legal persons	PC	<ul style="list-style-type: none"> <li>It is not guaranteed that the registry information on the partners or shareholders is updated, since quota or share transfers are not registered in such Registry.</li> <li>No measure has been adopted to prevent misuse of the registered shares and the nominee directors (criterion 24.12).</li> </ul>

Compliance with the FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		<ul style="list-style-type: none"> <li>Failure to comply with the obligation to identify beneficial ownership is not specifically provided in Law 8204, and the sanctions that would still be applied are not effective or dissuasive (criterion 24.13).</li> </ul>
25. Transparency and beneficial ownership of legal arrangements	PC	<ul style="list-style-type: none"> <li>There is public information in the National Registry on trust property, but only for those goods subject to registration.</li> <li>The legislation does not establish any kind of prohibition to provide competent authorities with the information related to trusts (criterion 25.4).</li> <li>This Law, and the regulatory development thereof, does not include the specific obligations to be complied by the trustees regarding the obtention and preservation of the identity of the trustor, trustee, protector and beneficiaries of the trust, as well as other regulated agents of the trust and trust service providers (criterion 25.1).</li> <li>There are no measures to ensure that trustees disclose their status to FIs and DNFBPs (criterion 25.3).</li> <li>There are no specific sanctions established for non-compliance by trustees with their information duties (criterion 25.7 y 25.8).</li> </ul>
26. Regulation and supervision of financial institutions	LC	<ul style="list-style-type: none"> <li>The country risk analyses have not been included to supervision of the FIs.</li> </ul>
27. Powers of supervisors	LC	<ul style="list-style-type: none"> <li>The specific power to require the generation of information relevant to monitoring and compliance with SUGEF AML/CTF requirements has not been established.</li> <li>The specific sanctions in terms of AML/CTF are inadequate (See R. 35).</li> </ul>
28. Regulation and supervision of DNFBPs	NC	<ul style="list-style-type: none"> <li>It is not defined that the competent authorities may take the necessary legal and regulatory measures to prevent offenders and their accomplices from having, or being beneficial owners, of a significant or majority share or holding a management position or being operators of a casino.</li> <li>The regulation does not provide which entity will be in charge of supervising casinos in terms of compliance with AML/CTF requirements.</li> <li>Except for DNFBPs supervised by the SUGEF, there is no competent authority or SRB to supervise the other DNFBPs.</li> </ul>
29. Financial intelligence units	PC	<ul style="list-style-type: none"> <li>There is a discrepancy existing in the current legislation regarding the identification of the</li> </ul>

Compliance with the FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		<p>institution that serves as a national center for the reception of STRs, where Art. 35 of the Regulations of Law 8204 sets forth that the obliged subject should submit the STRs to the FIU, while Art. 25 of Law 8204 states that suspicious transactions should be notified to the supervision and surveillance body.</p> <ul style="list-style-type: none"> <li>• The FIU does not have enough resources to carry out its functions.</li> </ul>
30.Responsibilities of law enforcement and investigative authorities	LC	<ul style="list-style-type: none"> <li>• The effective legislation does not enable the identification of the procedure to conduct simultaneous financial investigations.</li> </ul>
31.Powers of law enforcement and investigative authorities	LC	<ul style="list-style-type: none"> <li>• Law enforcement and investigation authorities have no specific power to access IT systems.</li> <li>• Art. 9 of Law 8204 establishes the procedure of “controlled delivery”; however, it is not clear if this power refers to international cases only.</li> </ul>
32.Cash couriers	C	
33.Statistics	LC	<ul style="list-style-type: none"> <li>• There are no statistics kept on the confiscation and seizure in case of crimes outside the scope of Law 8204.</li> </ul>
34.Guidance and feedback	LC	<ul style="list-style-type: none"> <li>• No guidelines have been issued for DNFBBPs (except for those supervised by SUGEF, car dealers and real estate agencies).</li> </ul>
35.Sanctions	PC	<ul style="list-style-type: none"> <li>• The sanctions do not cover all the obligations imposed by the legislation (especially NCL 8204).</li> <li>• No administrative or civil sanctions are imposed to directors and executives of FIs.</li> <li>• With the exception of DNFBBPs supervised by SUGEF, there are no sanctions established for other DNFBBPs, except for those set in Law 8204.</li> </ul>
36.International instruments	C	
37.Mutual legal assistance	C	
38.Mutual legal assistance: freezing and confiscation	LC	<ul style="list-style-type: none"> <li>• Impossibility to confiscate property of correspondent value.</li> </ul>
39.Extradition	C	
40.Other forms of international cooperation	C	



## MUTUAL EVALUATION REPORT OF THE REPUBLIC OF COSTA RICA

### *Preface*

72. This report summarises the AML/CTF measures in place in Costa Rica at the time of the on-site visit. It analyzes the level of compliance with FATF 40 Recommendations and the level of effectiveness of Costa Rica's the AML/CTF system, and recommends how to strengthen some aspects of the system.

73. This evaluation was based on the 2012 FATF Recommendations, and was prepared using the Methodology of 2013. This evaluation was based on the information provided by Costa Rica and information obtained by the assessment team during its on-site visit to Costa Rica during January 19-30, 2015.

74. The evaluation was conducted by an assessment team consisting of: Verónica Boza Santaolalla from the Financial Intelligence Unit of Peru (operational expert), Javier Cruz Tamburrino from the Financial Analysis Unit of Chile (legal/operational expert), Francisco de Asis Machado Cardoso, Prosecutor of the State of Rio de Janeiro, Brazil (legal expert), Juan Manuel Gustale Cardoni, from the Central Bank of Paraguay (financial expert), Yuri Geovani Masaya Masaya from the Special Verification Intendance of the Superintendence of Banks of Guatemala (financial expert), Santiago Muelas Ferreiro from the Notaries Public Council of the Kingdom of Spain (legal expert) and Guillermo Hernández Rodríguez and Alejandra Quevedo Quevedo from the Executive Secretariat of GAFILAT. This report was reviewed by Laura Gómez from the Financial Intelligence Unit of Argentina and Emily (Reinhart) Adeleke from the World Bank.

75. The previous mutual evaluation of Costa Rica was conducted on July 3-14, 2006, as per the FATF Methodology of 2004. The evaluation of May 2007 was published and is available on [www.gafilat.org](http://www.gafilat.org).

76. The Mutual Evaluation of Costa Rica of May 2007 concluded that the country was compliant (C) with one (1) of the Recommendations, largely compliant (LC) with ten (10) of the Recommendations, partially compliant (PC) with eighteen (18) of the recommendations and non-compliant (NC) with nineteen (19) of the Recommendations. One (1) Recommendation was considered non-applicable. It was concluded that Costa Rica was compliant, or largely compliant, with four (4) of the sixteen (16) Key and Core Recommendations. In 2010, when Costa Rica acquired the status of member of GAFILAT, it was submitted to an enhanced follow-up process, and in GAFILAT XXIX Plenary Meeting held in Cartagena, Colombia, on July 10-11, 2014 the exit from the enhanced follow-up and the move to a regular follow-up of Costa Rica were approved.

## I. ML/TF RISKS AND CONTEXT

77. The Republic of Costa Rica is located in Central America, with a total surface of 51,100 square kilometers, with coasts in the Pacific Ocean and the Caribbean Sea. Costa Rica borders on the North with Nicaragua and on the South with Panama. It has coasts in the Caribbean and the Pacific Ocean. As to the coastal boundaries, it borders with Panama, Colombia, Nicaragua and Ecuador. The country is subdivided in seven (7) provinces, eighty one (81) cantons and four hundred and seventy four (474) districts. In 2013, it had a population of 4,872,166 inhabitants.

78. Costa Rica is a democratic and presidential republic. Its legal system is based in the Spanish civil law system. The legislative branch is exercised by the Unicameral Legislature, made up of fifty seven (57) members, and is the body in charge of passing the laws. One of the special standing committees is the Security and Drug Trafficking Committee, in charge of dealing with money laundering issues and their implications in the country, among others.

79. The Executive Branch is exercised by the President of the Republic, elected by a direct popular vote for a period of four (4) years. The Judicial Branch resides in the Supreme Court, made up of twenty two (22) Magistrates, appointed for a period of eight (8) years by the Legislative Assembly. By virtue of Art. 153 of the Constitution, the Judicial Branch is exercised by the Supreme Court and other courts as may be established by law. The Supreme Court of Justice is comprised of four chambers. The third chamber is the criminal court of last instance. There are also tribunals and courthouses (which are courts of different levels).

80. In accordance with the provisions of the National Plan on Drugs, Money Laundering and Terrorist Financing 2013-2017 (PND) of Costa Rica, a total of 385,899 foreigners are living in Costa Rica, accounting for 9% of the total population of the country. Nicaraguans are the majority immigrant population, accounting for 74.6% of the total foreigners (287,766 Nicaraguans). However, there is an increased number of immigrants from other countries, especially those who come from Colombia (4.3%), United States (4.1%), Panama (2.9%) and El Salvador (2.4%).

81. Costa Rica is a mid-income country, with a GDP of USD 67,587 Million estimated for 2013 and, in per capita terms, USD 14,340, in purchasing power parity standard (IMF, 2013). Before the 2008 crisis, Costa Rica had a period of sustained growth above 6%, but as a result of the international crisis, its GDP shrank 1% in 2009.

82. The economy is focused on the export of bananas, coffee, sugar and meat; nevertheless, services have gained a growing importance, as well as the variety of specialized agricultural and industrial products, including integrated circuits. Tourism also represents a significant sector of the economy. It has one of the largest foreign investments of Latin America, in per capita terms.

83. In the last two decades, exports of Costa Rica have diversified, since the exports to free trade zones, the manufacturing industry and non-traditional products are currently equally or more important than traditional products (coffee, banana, meat and sugar). In terms of total production, the Costa Rican economy has also diversified in such a way that services, manufacturing and tourism are relatively important activities, while the primary sector (agriculture) still has a weight of 5%”.

### *A. ML/TF Risks*

#### *Threats*

84. Drug trafficking is among the main threats identified by the country is, which worsens due to the geographic location of the country, within the drug trafficking route from the southern countries to North America, being located in the Central American corridor, used as bridge.

85. Costa Rica is the second country in the Central American route of illicit drug trafficking, particularly cocaine, and it is also the second country of the region to have performed most of the confiscations in the last years, after Panama. In this context, Costa Rica rises as a strategic point for land, air and sea illicit drug trafficking, as a drug transit and storage area (OIJ-UNODC 2013).

86. The presence of foreigners involved in international trafficking operations has been identified in the country. In principle, they are Colombian, Mexican and, to a lesser extent, Central American citizens who operate in small cells in charge of placing drug orders to groups operating in Panama or Colombia, and of supervising its transportation through the Central American corridor to Guatemala and Mexico, with the support of local groups and their contact network and means of transport (OIJ-UNODC 2013).

87. According to the information provided by Costa Rica and conducted studies, the product of traffic, especially cocaine, is an important source of ML. In 2011, the cocaine confiscated in Central America was 13 times higher than that confiscated in Mexico. The direct shipments to Mexico dropped from 174 in 2000 to 30 in 2011, while those sent to Panama, Costa Rica, Guatemala and Honduras skyrocketed, most of them visibly as from 2006 (UNODC 2012).

88. The confiscations of illicit money in borders and airports have considerably increased in the last two years; in the 2012-2013 period, USD 225,000 were confiscated, and nearly USD 7 million were confiscated in legal proceedings in the same period, as reported by the authorities of Costa Rica. The authorities are concerned about the movement of cash, especially in the border zones, in informal currency exchange activities. The frequent confiscation of suitcases with cash in airports is highlighted. As reported, in Costa Rica there seem to be mechanisms to import bank notes, but there are no strict restrictions on this practice.

89. Additionally, the product of smuggling, trafficking of human beings, fraud and tax evasion are other sources of ML. With regards to the trafficking of human beings in Costa Rica, it is mainly an intra-regional offense. Costa Rica is mainly a destination country for Human Trafficking and, to a lesser extent, a country of origin and transit (OIJ-UNODC 2013). Due to the geographic location and the porous borders of Costa Rica, there is also an important activity of trafficking of goods, money and human beings to Northern countries.

#### *Vulnerabilities*

90. As pointed out in the RD-ML/TF of Costa Rica, the criminal organizations use financial institutions (FI), money transfer services and bureaux de change to move funds of illicit origin, being these sectors the most vulnerable to ML.

91. Administrators of third-parties funds and the establishment of legal persons in order to launder proceeds of illicit origin are a concern for the authorities.

92. The use of the real estate and high value goods sector for undertakings mainly related to tourism, seem to be used by criminal organizations.

93. The operation of casinos (including online casinos) represent a significant vulnerability for ML, also taking into account the absence of specific regulations and supervision in terms of AML/CTF.

94. The authorities are concerned about virtual currencies and platforms, as the *Liberty Reserve* case (established in 2006 and dismantled in 2013). These types of platforms are highly vulnerable to ML in the country since they enable the transfer of money to other users worldwide, without actual data, and virtual currency transactions do not provide guarantees or support the investor by operating outside the Law.

*TF*

95. For Costa Rica, terrorism and financing thereof do not seem to be a threat, and there are no investigations related to TF.

### ***B. Materiality and Structural Elements***

96. Costa Rica is one of the most consolidated democracies of the American continent and does not have an army since 1948. In accordance with the 2013 governance indicators of the World Bank, Costa Rica is located above the average for Latin America, but below some countries with regards to rule of law and control of corruption. The Transparency International 2014 corruption perception index places the country in the forty-seventh (47) place out of 175 countries<sup>1</sup>.

97. According to the 2014 Global Peace Index, the country is located among the three (3) safest countries of Latin America. However, the violence rate, with regards to homicide, has duplicated in the last ten (10) years (UNODC 2012).

98. Costa Rica has shown a political commitment to fight ML/TF; this is evidenced by the development of the National Plan on Drugs, Money Laundering and Terrorist Financing 2013-2017 (PND), which within the strategic focus called “prevention and repression of money laundering and the financing of terrorism”, defines the adoption of a risk-based model including the different sectors involved in the prevention, control and repression of money laundering and the financing of terrorism as a policy. Subsequently, Executive Decree 38001-MP was issued on November 28<sup>th</sup>, 2013 on the Coordination and Execution of said National Plan, which binds the relevant institutions in its compliance.

99. According to the information provided by Costa Rica, significant efforts have been made to enhance, agree and disclose its legal framework, through coordination and rapprochement exercises with the different sectors which had the support of AML/CTF experts. Particularly, as from 2013, authorities have focused on the development of the RD-ML/TF, and once it was finished in 2014, they have worked on the AML/CTF National Strategy to implement policies based on the findings of the RD- ML/TF. Nevertheless, to date, there are economy sectors (particularly, DNFBP) which have been defined as reporting entities but, apparently, lack the effective supervision.

100. The regulatory and institutional framework developed during those years has resulted in significant changes in the financial environment. Some of the trends observed are: a greater incursion of private banks, regional banks and, more recently, international banks; mergers and acquisitions processes;

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<sup>1</sup>Where 1 is low corruption and 175 is high corruption

strengthening of the corporate and retail banking; closure of institutions that delivered high costs and low technological levels. The banking concentration indicators have remained relatively high and, at a regional level, Costa Rica shows the highest levels (BCCR 2009).

101. The situation of informal activities in Costa Rica seems to be a concern. There seems to be a growing presence of informal activities related to remittances, money exchangers and money lenders, including the sale of property with mortgage loans or the generation of loans among private individuals setting up mortgaged bonds. Additionally, the levels of financial exclusion should be considered. Even though Costa Rica is one of the countries with greatest financial inclusion in the region (World Bank 2011), 50% of the adult population still do not have, in any way, an account in the financial system, which may have an impact in the AML/CTF system of Costa Rica.

### ***C. Other Contextual Factors***

102. The situation of informal activities in Costa Rica seems to be a concern. There seems to be a growing presence of informal activities related to remittances, money changers and money lenders, including the sale of property with mortgage loans or the generation of loans among private individuals setting up mortgaged bonds. Additionally, the levels of financial exclusion should be considered. Even though Costa Rica is one of the countries with greatest financial inclusion in the region (World Bank 2011), 50% of the adult population still do not have, in any way, an account in the financial system, which may have an impact in the AML/CTF system of Costa Rica<sup>2</sup>.

### **D. Scoping of Higher-Risk Issues**

103. The following list of topics includes those that given their importance on the ML/TF risk context of Costa Rica were more thoroughly examined during the on-site visit and in the Mutual Evaluation Report (MER).

- Illicit trafficking of narcotic drugs and psychotropic substances. Drug trafficking is one of the main sources of ML in Costa Rica and is of high priority for the authorities. An analysis will be carried out of the effective response to its combat, including the tools used by the public authorities and the identification of suspicious transactions.
- Money and value transfer services (MVTs). The use of MVTs by both national and international criminal organizations is a concern in Costa Rica. Therefore, it is essential for the evaluation process to perform an analysis on how Costa Rica has addressed this situation from different angles, not only by the competent authorities, but also by the industry itself.
- Real estate and high value goods sector. Cases have been registered in which activities have been performed using these sectors by criminal organizations; therefore, an analysis should be carried out of the measures taken by the authorities, both from the preventive and repressive point of view.

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<sup>2</sup>Authorities informed about the signature on Thursday May 07<sup>th</sup>, 2015 of the Executive Decree whereby the Resolution of Law 8204 is amended, with regards to simplified file accounts (CES, in Spanish), as a policy implemented by the Central Bank to promote financial inclusion in the country and, moreover, new products were launched, such as the mobile wallet. Likewise, the Central Bank is working on the regulation of payment systems. Furthermore, at the level of the National Council for Supervision of the National Financial System (CONASSIF, in Spanish), a national strategy of financial education was approved in order to promote topics intrinsically related to financial inclusion.



- Illicit money trafficking. Cases of cash movements have been recorded, especially in border areas, so the work of the authorities, including public and particularly customs authorities, should be analyzed.
- Third-party funds administrators, including trusts, seem to be used by criminal organizations to ensure the anonymous ownership of the goods or investments and to enable the reception of money through foreign transfers through the national financial system; therefore, it is critical to perform an analysis of the application of due diligence measures and other preventive measures, specially the identification of the beneficial owner, the supervision of this sector and other tools used by the Costa Rican authorities.
- The establishment of legal persons and structures, the registry of legal representatives and shareholders is an aspect that deserves special attention, particularly the identification and verification of the beneficial owner and the access to said information.
- Additionally, the visit emphasized on topics such as: the use of casinos (including operations of online casinos) and currency exchange operations, which seem to be a risk factor in Costa Rica.

## II. NATIONAL AML/CTF POLICIES AND COORDINATION

### Key Findings

104. In general, Costa Rica has an adequate level of understanding of its ML risks and is developing a national strategy to mitigate the ML/TF risks identified in the RD-ML/TF. In turn, the perception that terrorism is not considered a direct threat for Costa Rica gives rise to a low level of understanding of the risks associated to its financing.

105. The involvement of the public and private sector, including FIs and DNFBPs, in the development of the RD-ML/TF and the national strategy against ML/TF shows an adequate level of coordination and cooperation in the abovementioned processes.

106. In general terms, the level of understanding of ML/TF risks by FIs is considered appropriate; however, there are still some sectors, as in the case of DNFBPs, in which a low level of understanding of the ML/TF risks to which they are exposed is observed.

### A. Background and Context

#### *Overview of the AML/CTF National Strategy*

107. Art. 100 of the Law on narcotic drugs, psychotropic substances, unauthorized drugs, related activities, money laundering and financing of terrorism (Law 8204) establishes that the ICD will design a National Plan on Drugs, Money Laundering and Terrorist Financing (PND). In this context, by means of Executive Decree 38001-MP, all State institutions are urged to actively participate in the execution of the PND 2013-2017.

108. As established in the PND, the Plan is considered a strategic planning instrument intended to facilitate the maximization of the available resources and coordinate the efforts and acts of the different entities performing actions in this regard, being of significant importance the active involvement of non government organizations, universities, the private sector, professional associations and the civil society.

109. This strategy was defined and based on different guiding principles, on the vision and mission, on the strategic objectives, on the framework policy and the specific policies that build up the philosophical platform as a start point of the Costa Rican State to face the problems related to the phenomenon of drugs, in all its forms.

110. The PND establishes as one of its strategic points the Prevention, Control and Repression of Money Laundering and TF, setting the following specific policies: i) the implementation of a risk-based model, ii) the creation of regulations to combat the emergence of capitals without an apparent lawful cause, iii) the creation of legal and technical instruments to prevent the illicit cross-border transportation of cash and securities, iv) the design of legal and technical mechanisms necessary to prevent TF, v) the strengthening of inter-institutional coordination mechanisms to improve the response of ML/TF prevention, control and repression entities, and, vi) the update of technical and professional capacities of public operators with regards to ML/TF. At the time of the on-site visit, concrete actions were only observed in the implementation of the first policy set out with the development of the Risk Diagnosis of ML/TF (RD-ML/TF) completed on July 2014. It is also provided that with the SIGMA technological platform of the ICD, it will be possible to monitor and evaluate the level of progress and compliance with the

commitments undertaken by the actor(s) under the RD-ML/TF, as well as the actions that will be part of the National Strategy, yet not to provide information on the risks identified by the institutions.

111. The results of this evaluation monitoring through SIGMA will enable the identification, verification and analysis of risks and the use of another tailored IT tool is being considered; however, to date, it has not been created. The FIU seeks to perform this follow-up by automated means so as to facilitate and better understand the actions.

112. Costa Rica still hasn't developed and prioritized policies and activities based on the risks identified in the RD-ML/TF, enabling the implementation of measures and the allocation of resources to prevent or mitigate such risks. At the time of the on-site visit, Costa Rica was preparing a national strategy based on the RD-ML/TF.

After the on-site visit, Costa Rica approved the National Strategy to fight Money Laundering and Terrorist Financing, which was prepared under the coordination of the FIU and the articulation of actions and joint efforts of thirty four (34) government and private sector entities. Said Strategy establishes the Action Plan based on the risks identified in the RD-ML/TF, and actions and activities will be implemented in the prevention, intelligence detection, investigation and criminal justice and coordination areas.

*(b) Institutional Framework*

113. The FIU of the ICD requests, collects and analyzes suspicious transactions reports and forms, submitted by the supervision bodies and reporting entities, in order to centralize and analyze said information to investigate the money laundering or financing of terrorism activities. This investigation is communicated to the Public Prosecutor.

114. The Public Prosecutor has different specialized Prosecutor's Offices, including the Money Laundering Prosecutor's Office, in charge of prosecuting ML offenses (both on the criminal responsibility of the offenders and the confiscation of the assets of the offender and/or the criminal organization). Likewise, to perform this function, it should carry out the function management or legal-strategic management with the Money Laundering Division of the OIJ. Moreover, it should maintain a relationship with financial entities and the compliance offices so as to order and/or coordinate on the current situations related to the subjects reported to the FIU.

115. The Judicial Branch has specialized divisions, including the Human Trafficking Division, the Narcotic Drugs Division and the Money Laundering Division. The OIJ, on its own initiative, by complaint or by the order of the competent authority, will proceed to investigate the crimes requiring public prosecution, prevent the committed crimes from causing future consequences, identify and preventively arrest the alleged perpetrators, and collect, secure and scientifically order the evidence and any other background necessary for the investigation.

116. The National Intelligence and Security Directorate (DIS, in Spanish) is in charge of detecting, investigating, analyzing and notifying the President of the Republic or the Head of the Cabinet the necessary information to prevent actions that may pose a risk to the independence or territorial integrity, or that may jeopardize the stability of the country and its institutions. Likewise, it coordinates with international bodies on external security affairs.

117. In Costa Rica, there are different Police Forces, reporting to different State Departments, based on the competencies of each of them. The Police has different divisions, including: i) the Airport Police, which provides information on money confiscations; ii) the Fiscal Control Police (PCF), in charge of protecting the State tax interests. To that end, it is responsible for the prevention and investigation of allegedly committed customs, tax and financial crimes, assisting the relevant judicial instances; iii) the Migration Police, specifically empowered to control and supervise the entry or exit of people to or from the national territory, as well as the permanence and the activities performed by foreigners within the national territory; iv) the Drug Control Police (PCD).

118. The National Council for Supervision of the Financial System (CONASSIF) issues the regulations related to ML/TF prevention, of which compliance should be supervised and controlled by the four (4) Superintendencies of the financial sector: General Superintendence of Financial Entities (SUGEF), Superintendence of Pensions (SUPEN), General Superintendence of Insurances (SUGESE), General Securities Superintendence (SUGEVAL), within the powers vested therein.

119. The National Customs Service regulates the entry to and exit from the national territory of goods, vehicles and units of transport; it also regulates the customs clearance and the facts and acts derived therefrom or from the entry and exit, in accordance with the national and international rules. The Asset Recovery Unit (URA, in Spanish) of the ICD tracks the goods of economic interest confiscated and seized that are originated by the offenses described in Law 8204; additionally, it ensures the correct administration and use of the confiscated goods and is responsible for auctioning or donating any such goods.

*(c) Cooperation and Coordination Agreements*

120. Law 8204 establishes that the ICD shall design the PND and coordinate the policies to prevent drug consumption, the treatment, rehabilitation and reinsertion of drug addicts, as well as the policies for the prevention of the crime: use, possession, sale and illicit trafficking of drugs, narcotic drugs, psychotropic drugs, inhalants, drugs or medicine that may cause physical or psychological dependence, controlled chemical precursors and substances, as per the international conventions signed and ratified by Costa Rica and in accordance with any other legal instrument approved on this matter and those included in the official listings.

121. In order to comply with the above mentioned competence, the ICD exercises the following functions, among others: a) Propose, manage, promote, coordinate and supervise the update and execution of the PND; and, b) maintain relations with the different public or private administrations, as well as with experts. In turn, Executive Decree 38001-MP sets forth that the executors of the PND and its Action Plan should coordinate its implementation with the ICD. By means of Agreement 780-2012 of the ICD the Anti-Money Laundering and Terrorist Financing Inter-Institutional Committee (CILAFIT) was created as part of the action plan established in the PND. Since its creation, the CILAFIT has only met twice (May and June 2013), addressing as the key item the participation of the CONASSIF within the Committee; however, after the abovementioned date, it has not met again.

122. On the other hand, in 2004 the Interinstitutional Committee on Terrorism (CISTE, in Spanish) was created by means of Decree 31659. However, based on the information submitted during the on-site visit, the CISTE ceased its operations after the amendment of Law 8204<sup>3</sup>.

*(d) Risk Assessments of the Country*

123. The strategic point of the PND on the Prevention, Control and Repression of Money Laundering and TF includes as a specific policy the creation and implementation of a risk-based management model. On this basis, Costa Rica requested the technical assistance of the IADB for the drafting of the RD-ML/TF, developed between August 2013 and July 2014 under the coordination of the FIU of the ICD and with the participation of forty one (41) public and private institutions, being the first exercise of national risk assessment on ML/TF performed in Costa Rica. The RD-ML/TF was disclosed through FIU Resolution DG-089-2014, on September 2014. The results of the RD-ML/TF were informed to the public and private sector in a General Meeting to which all the institutions which participated in the drafting of the RD-ML/TF were called. Additionally, the executive summary of the RD-ML/TF was prepared for the private sector, as well as a more extensive document for the public sector.

124. The RD-ML/TF of Costa Rica was prepared based mainly on the expert opinion of the representatives of the liaison institutions that make up the working sessions. The result of said diagnosis shows that the country, in general has an acceptable level of understanding of ML risks. However, it is observed that terrorism and its financing are not considered a direct threat for Costa Rica, so the risk level associated to the financing thereof is considered low.

125. As part of the methodology used for the development of the RD -ML/TF, interactive workshops were conducted made up of four (4) working groups: i) public and private financial system, ii) governmental sector, iii) institutions of the repressive and preventive sector, and, iv) the DNFBP sector. Likewise, to perform the risk diagnosis, interviews with the competent authorities and a review of the regulatory documents and the relevant statistics were conducted. The analysis performed enabled the identification of the main threats and vulnerabilities faced by the country in terms of ML. Subsequently, a ML risk matrix was prepared based on the likelihood and impact of each risk previously identified. Likewise, it is worth noting that the methodology of the RD-ML/TF considers an update of the risk diagnosis every two years.

***B. Technical Compliance (R.1, R.2, R.33)***

126. The complete analysis can be found in the Technical Compliance Annex:

- Recommendation 1 (Assessing Risks and Applying a Risk-Based Approach) is rated as Partially Compliant.
- Recommendation 2 (National Cooperation and Coordination) is rated as Partially Compliant.
- Recommendation 33 (Statistics) is rated as Largely Compliant.

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<sup>3</sup> After the on-site visit, the authorities informed that the Ministry of Foreign Affairs is working on the reactivation of the CISTE. In April 2015, the first meeting was held with all the competent authorities; however, this information is outside the scope of the Mutual Evaluation, which is limited to the date of the on-site visit.

### ***C. Effectiveness: Immediate Outcome 1 (Risk, Policy and Coordination)***

#### *Understanding of the ML/TF Risks by the Country*

127. As mentioned above, the first national risk assessment of ML/TF of Costa Rica was developed during a period of approximately one year (from August 2013 to July 2014) with the technical assistance of the IADB, under the coordination of the FIU of the ICD, and with the participation of forty one (41) public and private institutions, concluding with the RD-ML/TF. Even though this risk diagnosis of Costa Rica was performed mainly based on the expert opinion of the representatives of the liaison institutions that make up the working sessions, the results of the RD-ML/TF seem to indicate that, in general, the country presents an acceptable level of understanding of its ML risks. On the other hand, it is important to mention that the analysis on the threats of terrorism and its financing were very briefly addressed by the RD-ML/TF; therefore, the TF risk assessment in Costa Rica is not considered adequate<sup>4</sup>.

128. As to the identification of threats, it is worth mentioning that although the country has statistics about number of cases investigated, complaints and prosecutions by type of crime, as it does not have information about possible amounts associated to those cases, the threats were evaluated and prioritized according to the perception of the participants in the working sessions on the possible profits generated by offense.

129. With regards to the main vulnerabilities identified in the RD-ML/TF of ML, they were determined using the expert criteria.

130. In terms of threat and vulnerabilities, a number of risks were identified that, in turn, were classified according to their probability and impact. On this regard, it is worth noting that both the probability and impact were measured in a qualitative manner.

#### *Policies based on the ML/TF Risks*

131. At the time of the on-site visit, the country did not have AML/CTF policies and activities enabling it to mitigate the risks identified in terms of ML/TF derived from the RD-ML/TF. However, Costa Rica was developing policies at a national level to be included in the AML/CTF national strategy. Said process initiated in September 2014, with the support of the International Monetary Fund (IMF), and had the participation of the liaison institutions that participated in the RD-ML/TF.

132. Although Costa Rica still has no nationwide policy or activities against ML/TF, based on the results of the RD-ML/TF, it should be highlighted that the PND includes as one of its strategic points the Prevention, Control and Repression of Money Laundering and TF.

133. The information related to the level of progress of the programs and projects of the PND as of the end of the year 2014, showed some actions undertaken related to the national risk assessment, AML/CTF national strategy, and control of APNFDs, among others.

134. Additionally, it is important to mention Art. 15 bis of Law 8204 which includes a number of economic activities that even include activities other than the DNFBPs pointed out by the FATF as

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<sup>4</sup>After the on-site visit, Costa Rica delivered the Draft Action Plan 2015-2017 of the National Strategy which, based on the risks identified in the RD-ML/TF, establishes activities to carry out. In this connection, said strategy includes aspects related to the terrorism offense and financing thereof, and also the issuance of a new law on these matters.

subjects obliged to report, such as the sale of vehicles, for being considered as a risky activity in terms of ML/TF for Costa Rica. On this regard, it is worth noting that Art. 126 of Law 8204 sets forth that compliance with the recommendations proposed by the Financial Intelligence Unit and endorsed by the ICD's Board of Directors, will be given priority in the public sector and, specially, in financial or commercial entities in order to comply with the policies issued to combat ML/TF. In this context, during the year 2014, the FIU issued an Administrative Resolution which provides for the mandatory use of a platform in the ICD web site, as a secure communication mechanism for the reporting by the vehicle dealers.

### *Coordination and Cooperation*

135. According to what was mentioned above, the ICD is responsible for coordinating the implementation of each and every public policy, program and project set forth in the PND; as a consequence, the FIU of the ICD was in charge of the coordination in the development process of the RD-ML/TF, which had the participation of the public and private sectors (FIs and DNFBPs), who are also participating in the development of the national strategy against ML/TF. This situation shows the commitment among the different actors involved in the ML/TF prevention, detection and repression system, and is considered as the possible starting point to have appropriate coordination and cooperation mechanisms.

136. Nevertheless, it is important to mention that although formal coordination mechanisms have been created, such as the CISTE (2004) and the CILAFIT (2012), in practice, they do not seem to have had any kind of incidence and, at the time of the on-site visit, they were inactive.

137. The FIU maintains a level of coordination and cooperation with the different competent bodies, as well as with reporting entities. In this connection, the statistical information supports the fulfillment, by the FIU, of different information requirements issued by the competent authorities, including the Comptroller General of the Republic, DIS, National Prosecutor's Offices, Specialized Prosecutor's Offices, Ministry of Treasury, Money Laundering Division of the Judicial Branch, Narcotic Drugs Division of the Judicial Branch, PCD, Police Intelligence Unit, Ministry of the Interior, Chief of Cabinet, Fraud Specialized Unit of the Public Prosecutor, among others. The information requests made to the FIU stem from those assumptions stated in Law 8204 for cases related to ML/TF, as well as those cases of drug trafficking and organized crime based on Law 8754. In turn, the FIU cooperates with the reporting entities and with the institutions involved in the fight against ML/TF providing awareness and training sessions, as well as feedback related to typologies and identification of red flags.

138. Regarding the coordination and cooperation of policies and activities to face the financing of the proliferation of weapons of mass destruction, Costa Rica lacks specific legislation on this matter. However, it is important to highlight that the country has approved, by means of Law 7571, the United Nations Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, and by means of Executive Decree 33015-S-MRE it approved the Regulation on Chemical Safety and National Enforcement of the aforementioned United Nations Convention, there is no evidence that the interinstitutional coordination mechanisms used to implement the aforementioned convention can be applied to combat the financing of the proliferation of weapons of mass destruction. Likewise, there is a National Authority for Chemical Weapons made up of the Ministry of Foreign Affairs (MinRex), Ministry of Security, Ministry of Health, Ministry of Agriculture and Livestock and the Ministry of Treasury, coordinately working with the Organization for the Prohibition of Chemical Weapons (OPCW). In addition, there is an Atomic Energy Commission in charge of safeguarding the radioactive sources and their operators. In turn, the country expressed that it maintains cooperation with the International Atomic Energy Agency (IAEA) in order to venture into the topic of weapons of mass destruction.

### *Understanding of the ML/TF Risks by the Reporting entities*

139. The RD-ML/TF was concluded on July 2014 and was presented in a General Assembly to which all the institutions that participated in its development were invited; additionally, an executive summary of the RD-ML/TF was prepared for the private sector, as well as a more extensive document for the public sector.

140. With regards to the correct use of the RD-ML/TF results to justify exemptions and support the strengthened measures by FIs and DNFBPs, the exceptions expressly stated in the Regulation of Law 8204 applicable to the financial institutions, as well as the obligation to implement enhanced due diligence procedures in the cases identified in the current regulation, do not correspond to the result obtained in the RD-ML/TF. In case of DNFBPs, except for those supervised by SUGEF (Law 8204, Art. 15.d) there is no regulation that enables the implementation of simplified or enhanced measures.

141. The interviews made to different entities of the financial system, as well as to their supervisors, evidence that they have an adequate level of understanding of the ML/TF risks to which they are exposed, specially the banking sector, considering them as an integral part of their risk assessment processes. In case of DNFBPs, the understanding of ML/TF risks is not considered adequate, not only due to the lack of regulation and supervision of the sector but also due to the little approach of the authorities to raise awareness in the different sectors, except for the recent task of the FIU with the real estate, sale of vehicles and notaries sectors.

### *General Conclusions of the Immediate Outcome 1*

142. In general terms, Costa Rica has an adequate level of understanding of its ML risks, in spite of the lack of statistical information associated to the amounts involved supporting the level of impact related to ML. However, since to date a national strategy is still being developed, it lacks policies and activities that enable the mitigation of ML/TF risks identified in the RD-ML/TF. On the other hand, the perception that terrorism is not considered a direct threat for Costa Rica, results in a low level of understanding of the risks associated to its financing.

143. The level of coordination and cooperation, at an internal level, shows a high level of commitment of the different actors involved in the ML/TF prevention, detection and repression system, both from the public and private sector, which was reflected in the development of the RD-ML/TF, and the national strategy against ML/TF being currently under development. Within this context, it is expected that the level of coordination and cooperation will be maintained during the implementation phase of the policies and activities arising from the AML/CTF national strategy.

144. The lack of regulation and supervision in terms of ML/TF for DNFBPs shows a low level of understanding of the ML/TF risks to which they are exposed. In turn, financial institutions have an adequate level of understanding of their ML/TF risks, including them as part of their risk assessment processes.

145. Accordingly, Costa Rica presents a **moderate level of effectiveness in immediate outcome 1.**

#### *D. Recommendations on National AML/CTF Policies and Coordination*

146. Costa Rica should implement the following recommendations in order to have adequate AML/CTF policies according to the ML/TF risks, and to strengthen its level of national coordination:

147. Perform a TF risk analysis in accordance with Recommendation 1, specially taking into consideration the analysis of the NPOs and other types of business organizations that may be misused by terrorist organizations, or their financing.
148. Develop policies and activities based on the ML/TF risks identified, at a national level, including targeted actions with terms set and responsible parties appointed, as well as to establish coordination mechanisms for its implementation and follow-up.
149. Issue the relevant regulation targeted to DNFBPs on the application of management policies of the ML/TF risk to which they are exposed.
150. Keep statistics, in order to include more quantitative elements supporting the analysis within a RD-ML/TF.
151. As per the results of the RD-ML/TF, perform an analysis of the relevant regulation to evaluate and justify exemptions, and develop enhanced measures to be implemented by financial institutions and DNFBPs.
152. Develop policies and activities to face the financing of the proliferation of weapons of mass destruction.
153. Include the use of quantitative data in the development of future RD-ML/TF.
154. Keep consolidated statistics, strategic analyses and analyses of typologies to be used in the development of the RD -ML/TF.

### III. LEGAL SYSTEM AND OPERATIONAL MATTERS

#### Key Findings

155. The financial intelligence generated by the FIU is used by the competent authorities in ML investigations. Likewise, a good level of cooperation is observed by the FIU with both competent authorities and reporting entities. However, a feedback by competent authorities to the FIU is not observed. In this context, it is considered that the level of reciprocal exchange of information and financial intelligence of the relevant authorities should be improved. In case of TF, the inexistence of related cases made it impossible to evaluate the use of financial intelligence associated to this offense.

156. Even though the FIU has access to different databases that enable the provision of added value to the STRs received, its financial intelligence duty is limited by the lack of registry and report of suspicious transactions by DNFBPs, estimated at more than 37,700. Additionally, the lack of timely access to the updated information regarding the companies' shareholders, as well as the lack of regulation and information related to NPOs, limit the access to relevant information that may be used for the purposes of financial intelligence.

157. The FIU, the Money Laundering Prosecutor's Office, the Airport Police, Customs, and any other institutions in charge of enforcing compliance with the provisions related to the cross-border transportation of cash and securities do not have the necessary economic, human and technological resources to perform their duties in a more effective manner.

158. There are deficiencies with regards to the confidentiality of the information, including a legislative discrepancy related to the identification of the institution that serves as a national center for the reception of STRs.

159. Costa Rica shows evidence of combat against the different ML predicate offenses, particularly to the trafficking of narcotic drugs and psychotropic substances, in prosecutions and convictions. Nevertheless, it does not yet have a system that allows for the investigation and prosecution of the types of ML activities based on the threats and risk profile of the country. Very few initiatives have been identified to increase the combat against ML originated by other types of predicate offenses different from drug trafficking, even in criminal forms identified in the RD-ML/TF as ML threats (e.g. trafficking of human beings, frauds, forgery and piracy of products, tax evasion, etc.). Therefore, almost all the ML cases recorded in the country have drug trafficking as the predicate offense. Likewise, the combat against ML resulting from illicit trafficking of narcotic drugs and psychotropic substances is limited, considering the importance of this matter within the context of criminal activities in the country.

160. There is a lack of physical structures and personnel in the ML specialized investigation teams of the Judicial Police and the Public Prosecutor. The human and technical resources currently available in the Money Laundering Division of the OIJ and in the Money Laundering Prosecutor's Office itself are not compatible with the existing demand.

161. The teams of the OIJ, the Prosecutor's Offices and the Departments of the Criminal Courts still do not have enough ongoing training opportunities in terms of ML, so all the structures in charge of the prosecuting and exercising criminal actions may have the specific knowledge to identify, investigate, prosecute and judge the money laundering activities practiced in the country.

162. Although the country is considerably structured to act in the confiscation and seizure of goods originated by predicate offenses and ML, the cases recorded in the country up to the moment of the

evaluation did not reflect, in a comprehensive manner, the results of the RD-ML/TF. The activities of seizure and confiscation are more closely related to the fight against the offenses of illicit trafficking of narcotic drugs and psychotropic substances than to the offenses of ML. Most – if not all – of the goods confiscated and seized in the country are product of cases related to drug trafficking and, in case of money laundering, from activities with drug trafficking itself as the predicate offense.

163. The country has handled different mechanisms for repatriation, distribution and restitution of goods and/or assets considered as instruments and proceeds of predicate offenses and of the ML offense itself. However, the initiatives for the use of said mechanisms should be increased, in such a way that the country may efficiently act in cases requiring joint efforts between national authorities and other cooperating countries. Likewise, it is still not possible to implement the confiscation of property of correspondent value.

164. Furthermore, Costa Rica does not have an effective system to control cross-border movements in land and maritime borders that are compatible with the threats and risks identified in the country. Despite the progress registered and the efforts made by the authorities to increase the cross-border control systems, the controls currently adopted by the bodies acting in some border areas do not seem to be enough to minimize the problem, with the lack of human and operational resources to perform their duties being evident. Thus, based on the context presented, the assessment team understands that some of the maritime and land borders of Costa Rica are vulnerable to the entry of drugs, cash and other illicit goods.

165. During the on-site visit, initiatives were identified within the scope of the OIJ and the Prosecutor's Offices so that, when a criminal investigation is initiated, an effective financial investigation may also be initiated with a view to the confiscation of the goods involved in the ML cases. However, the methodologies currently used still need further progress, in such a way that they may be duly adjusted and operating in an efficient manner, in accordance with the risks identified in the country.

### A. Background and Context

#### Legal System and Offenses

166. The Law on narcotic drugs, psychotropic substances, drugs of unauthorized use, related activities, money laundering and terrorist financing (Law 8204) criminalises the ML offense in Art. 69, as follows:

***“The following shall be sentenced with eight (8) to twenty (20) years of imprisonment:***

***a) Anyone who purchases, converts or transfers goods of economic interest, knowing that they are originated by a crime that, within its range of penalties, may be sentenced with four (4) years of imprisonment or more, or performs any other act to conceal or hide the illicit origin, or to help the individual who participated in the infringements to evade the legal consequences of his/her acts.***

***b) Anyone who conceals or hides the true nature, origin, location, destination, movements or rights on the goods, or the ownership thereof, knowing that they are originate, directly or indirectly, from a crime that, within its range of penalties, may be sentenced with four (4) years of imprisonment or more.***

***The penalty shall be from ten (10) to twenty (20) years of imprisonment, when the goods of economic interest are originated by any of the offenses related to the illicit traffic of narcotic drugs, psychotropic substances, money laundering, diversion of precursors, essential chemical substances and related offenses, conducts criminalised as terrorist according to the current legislation or when the purpose is the financing of terrorist acts and terrorist organizations.***

167. In accordance with the foregoing criminalised ML offense, sentences of imprisonment from eight (8) to twenty (20) years are set for the agents involved in any of the typical conducts provided in the criminal code. The sentences is from ten (10) to twenty (20) years of imprisonment when the goods of economic interest are originated by any of the offenses related to the illicit traffic of narcotic drugs, psychotropic substances, money laundering, diversion of precursors, essential chemical substances and related offenses, conducts criminalised as terrorist according to the current legislation or when the purpose is the financing of terrorist acts and terrorist organizations.

168. According to the abovementioned Art. of Law 8204, ML predicate offenses are considered to be those that “*within their range of penalties may be sentenced with four (4) or more years of imprisonment.*”

169. The ML offenses are investigated by the Judicial Police, through a Specialized Division in Money Laundering within the structure of the Judicial Investigation Body (OIJ). All the investigation stages are supervised and supported by the Public Prosecutor. Within the functional structure of the Public Prosecutor, there exists the Coordination of the Deputy Prosecutor’s Office of Organized Crime, which includes the Money Laundering Prosecutor’s Office, responsible for ML investigations. After the conclusion of the preliminary investigations, the Public Prosecutor should submit the accusation and the request for trial with the competent court. In cases of ML, the criminal courts are competent for prosecution of cases according to the practice of the criminal behavior. In Costa Rica there are still no Specialized Courts to handle money laundering cases, and the same happens with cases involving the participation of organized crimes or financial offenses. Thus, the accusations of ML are submitted by the prosecutors to the Criminal Courts, where they are randomly assigned to one of the competent Courts.

#### ***B. Technical Compliance (R.3, R.4, R.29-32)***

##### **Money Laundering and Confiscation:**

170. The complete analysis can be found in the Technical Compliance Annex:

- Recommendation 3 (Money Laundering Offense) is rated as Largely Compliant.
- Recommendation 4 (Confiscation and Provisions Measures) is rated as Largely Compliant.

##### **Legal and Operational Implementation**

171. The complete analysis can be found in the Technical Compliance Annex::

- Recommendation 29 (Financial Intelligence Unit) is rated as Partially Compliant.
- Recommendation 30 (Responsibilities of Law Enforcement and Investigative Authorities) is rated as Largely Compliant.
- Recommendation 31 (Powers of Law Enforcement and Investigative Authorities) is rated as Largely Compliant.
- Recommendation 32 (Cash Couriers) is rated as Compliant.

**C. Effectiveness: Immediate Outcome 6 (Financial Intelligence)**

*Use of the Financial Intelligence and other Relevant Information*

172. The Regulation of Law 8204 provides the reception of STRs by the FIU, which carries out the analysis the information, provides added value using different sources of information to which it has access, and investigates the possible existence of ML transactions. This investigation is communicated to the Public Prosecutor. It is worth pointing out that the FIU has a processes and procedures handbook that standardizes the treatment given to the STRs received. With regards to the number of STRs received, in the period from the year 2010 to 2014, 1.417 STRs were received, of which 38% (543) were submitted to the Public Prosecutor. Below is a table showing the progress in the number of STRs received by the FIU, analyzed and submitted to the Public Prosecutor:

**Total STRs received and cases sent to the Public Prosecutor**

Year	STRs Received		No. of Reports submitted to the Public Prosecutor*
	Number	% Variation against the previous year	
2010	267	12%	267
2011	363	36%	62
2012	217	-40%	38
2013	273	26%	86
2014	297	9%	90

\* The reports submitted to the Public Prosecutor include information of the STRs received during the year stated in the table; however, the submission year may be subsequent to the year in which the STR was received.

173. With regards to the STRs received by type of subject obliged to report, it is observed that during the period from 2010 to 2014, only 0.71% of the STRs were submitted by DNFBPs. On this regard, those DNFBPs which submitted STRs were trust administrators (6 STRs), third party’s fund administrators (2 STRs) and vehicle dealerships (2 STRs). Moreover, even though DNFBPs are subjects obliged to report, to date it is observed that the lack of specific regulation for the activities pointed out in Art. 15 bis of Law 8204 causes DNFBPs not to have registered with the FIU<sup>5</sup> and, consequently, the number of STRs sent by these activities is very low. According to the statistics provided by the Treasury Department, there are approximately 37,700 DNFBPs under Art. 15 bis of Law 8204. Additionally, although at the time of the on-site visit by the assessment team there were 117 reporting entities, as stated in Art. 15 of Law 8204, that were registered with the SUGEF, the statistics show that they are not submitting STRs. Along this line, the access and use of the information on suspicious transactions that might be obtained from DNFBPs is limited.

<sup>5</sup>After the on-site visit, Costa Rica delivered the Draft Action Plan 2015-2017 of the National Strategy which, based on the risks identified in the RD-ML/TF, establishes activities to carry out. In this connection, it is worth mentioning that one of the strategic objectives considers the strengthening of the supervision and control of DNFBPs, as well as specific actions to comply with any such objective.

**Total number of STRs submitted by type of sender**

Type of Obligated Subject	2010	2011	2012	2013	2014	Total
Supervised by SUGEF	241	281	196	254	276	<b>1248</b>
Supervised by SUGESE	22	47	16	10	13	<b>108</b>
Supervised by SUGEVAL	3	3	5	3	3	<b>17</b>
Supervised by SUPEN	0	1	0	1	1	<b>3</b>
DNFBPs	1	0	0	5	4	<b>10</b>
Supervisors	0	31	0	0	0	<b>31</b>
<b>Total</b>	<b>267</b>	<b>363</b>	<b>217</b>	<b>273</b>	<b>297</b>	<b>1417</b>

174. The FIU has access to additional information to analyze and add value to the STRs. In this connection, the FIU has currently access to thirty one (31) databases, fourteen (14) of which are of direct access and seventeen (17) of which are accessed through a query via de URC Portal of the ICD. The databases to which it has direct access include local PEPs, UNSC lists, people who finance political parties and money disclosure forms in Customs, among others. The information accessed through the system of the URC of the ICD includes the Civil Registry, Police Registry, Interpol, Migration and Alien Status, Criminal Archive, Driving Licenses, Weapons and Explosives, Criminal Population, among others.

175. Even though the FIU has access to the information contained in the disclosure of cross-border movements of money, it is observed that, based on the information provided throughout the on-site visit, most of them are declarations of entry from the Juan Santamaría Airport. Likewise, there is evidenced that, to date, there is no effective mechanism to implement the obligation to declare upon leaving the airport, or on arriving and leaving ports, marinas and land checkpoints. This situation would mainly result from the lack of appropriate economic and human resources and equipment (such as freight and body scanners).

176. It should be noticed that, at the time of the on-site visit, direct access to the database of the Business Registry and the Public Registry of Property for the FIU was disabled, since the ICD was managing with the National Registry the access in order for the FIU to be able to enter and directly consult the legal persons. Additionally, it is important to mention that at the time of the on-site visit, there were no mechanisms to access information related to the beneficial owners of companies<sup>6</sup>.

177. The Public Prosecutor and the Money Laundering Division of the Judicial Branch use the financial intelligence generated by the FIU.

178. In this regards, the Money Laundering Prosecutor’s Office receives the reports of the FIU, which are distributed to the prosecutors to be analyzed and to prepare a presentation of the case to be held in a group working session; this allows for all the prosecutors to be aware of the information being generated and to create a consistent decision system about the future or destination of the information. Within this context,

<sup>6</sup> At the time of the on-site visit, a Resolution project was being prepared that included that entities registered with the Business Registry should quarterly submit a “Declaration of Shareholders in Companies” with complete and updated information whenever changes occur in the ownership of shares.

as it may be seen in the following chart, from July 2013 when said prosecutor’s office started to work, it is observed that 21% of the cases originated an investigation, 21% were used to be included in an existing case and 20% of the cases were forwarded to the Money Laundering Division of the Judicial Branch (OIJ) for intelligence purposes.

**Treatment of the Financial Intelligence Reports  
Sent by the FIU to the Money Laundering Prosecutor’s Office  
(July 2013 – July 2014)**

Treatment of the Report	No. of Cases	%
Added to an existing case	21	21.43%
Investigation initiated	21	21.43%
OIJ Intelligence	20	20.41%
Analysis	14	14.29%
Filed	9	9.18%
Delivery	5	5.10%
Others	5	5.10%
Extension	3	3.06%
<b>TOTAL</b>	<b>98</b>	<b>100.00%</b>

179. Before the creation of the Money Laundering Prosecutor’s Office, the financial intelligence information was sent to the Drug Trafficking Prosecutor’s Office, the Prosecutor's Office of Organized Crime and the Prosecutor's Office of Economic Offenses.

YEAR	RECEIVED	OPEN TO DATE	CASES IN INTERNAL MONITORING (*)	SENT TO JUDICIAL OR ADMINISTRATIVE INSTANCE	JUDICIAL OR ADMINISTRATIVE INSTANCE WHERE IT WAS SENT	NUMBER OF CLOSURES IN THE PERIOD	NUMBER OF CLOSURES IN OTHER PERIODS
2008	183	0	n/a	183	Public Prosecutor, Drug Trafficking Prosecutor's Office	89	68 (2009); 16 (2010); 10 (2011)
2009	238	0	n/a	238	Public Prosecutor, Drug Trafficking Prosecutor's Office	29	60 (2010); 149 (2011)
2010	267	0	n/a	267	Public Prosecutor, Prosecutor's Office of Organized Crime	38	228 (2011); 1 (2012)
2011	363	0	301	62 (50 sent with report and 12 with judicial notice)	Public Prosecutor, Prosecutor's Office of Economic Offenses	347	16 (2012)

2012	217	0	179	38	Public Prosecutor, Prosecutor's Office of Economic Offenses	200	17 (2013)
2013 (***)	273	0	187	86	Public Prosecutor, Money Laundering Prosecutor's Office	187	83 (2014); 3 (2015)
2014	297	20	187	90	Public Prosecutor, Money Laundering Prosecutor's Office	243	34 (2015)

*Cooperation and Exchange of Information*

180. The organizational structure of the ICD includes an Intelligence Program Unit (UPI in Spanish) in charge of the coordination of actions against the illicit drug trafficking with the police departments, both at a national and international level. Furthermore, Art. 120 of Law 8204 sets forth that said unit will provide tactical and strategic information to the different bodies and institutions involved in the fight against drug trafficking, in order to help them achieve their goal and recommend them actions and policies. Additionally, said Law establishes that such unit will collect and analyze the information related thereto and will gather it in a fully confidential database, to be exclusively used by police officers and judicial authorities; it should also create commissions of technical advisors specialized in the investigation of the crimes included in Law 8204. However, based on the information obtained during the on-site visit, the projects of the UPI are focused on the preventive scope in terms of drug trafficking, organized crimes and money laundering.

181. According to the information provided to the assessment team, it would seem that the FIU is not receiving feedback by the competent authorities. Nevertheless, the FIU identifies typologies and as part of its financial intelligence analysis, it includes them in the reports sent to the Public Prosecutor. Likewise, it provides training sessions to the competent authorities in which it shares the typologies it detects as well as those identified in other countries.

182. The FIU cooperates with the competent authorities handling different information requests. In the period between 2010 and 2014, the FIU handled 720 information requests sent by different competent authorities. With regards to the main institutions which submitted requests to the FIU, it is observed that 44% of said requests were submitted by the Money Laundering Division of the Judicial Branch (OIJ), 30% from different specialized prosecutor's offices (not including the Money Laundering Prosecutor's Office that, from its creation in 2013, has only submitted two (2) requests to the FIU in that year and sixteen (16) in 2014), while 8% corresponds to other prosecutor's offices from different areas of the country.

**Number of Request Submitted to the FIU  
By Requesting Entity**

Requesting Entity	2010	2011	2012	2013	2014	Total
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Money Laundering Division, OIJ	136	74	38	27	33	308
Specialized Prosecutor's Offices	47	59	32	53	41	232
Prosecutor's offices from different areas of the country	18	9	11	16	7	61
ICD/FIU	10	3	8	3	10	34
Drug Control Police, PCD	11	15	3	1	2	32
OIJ (different areas of the country)	13	8	2			23
Money Laundering Prosecutor's Office				2	16	18
Ministries			2			2
Intelligence and Security Directorate (DIS)				1	1	2
Fiscal Police				1	1	2
OIJ, Narcotic Drugs Unit				1		1
INTERPOL		1				1
Unit Specialized in Fraud, Public Prosecutor	1					1
Police Intelligence Unit, IPOL		1				1
Other Police Forces					1	1
OATRI					1	1
<b>Total</b>	<b>236</b>	<b>170</b>	<b>96</b>	<b>105</b>	<b>113</b>	<b>720</b>

183. In addition, the FIU cooperates with the reporting entities in compliance with their duties of awareness and training to the reporting entities and the different actors of the AML/CTF system, for which purpose, it organizes workshops and training sessions. In turn, the FIU has published several documents in its FIU Report Platform (to be accessed by the reporting entities pursuant to Art. 15 bis of Law 8204), including a list of countries by risk level, the current legislation, presentations made to the reporting entities, as well as different publications related to the ML/TF risk in DNFBPs.

184. Among the cooperation mechanisms implemented with the entities obliged to report to the FIU, the Money Laundering Prosecutor's Office has developed coordination strategies with financial entities, especially with compliance officers. On this regard, bi-monthly meetings are held with the representatives of the Banking Association to strengthen the tasks performed, address issues of timeliness in the report to carry out investigations, as well as specific matters of information access. It is worth mentioning that with the meetings held with the representatives of the banking sector information was obtained related to the communication maintained between the banks and the Public Prosecutor. In this line, the banks stated that in cases where a suspicious transaction is attempted, they directly orally notify the prosecutor's office so that it may immediately initiate the relevant investigations; however, it was not mentioned that any such cases give rise to a STR, which may affect the generation of financial intelligence by the FIU.

185. With regards to the FIU, granted the powers provided in Law 8204, there are no impediments to access the information; however, the low number of registration and report of suspicious transactions by DNFBPs (ten in total) would be limiting the access to relevant information for the generation of financial intelligence. As to the quality of the information contained in STRs, during 2011, the FIU carried out different workshops with the reporting entities in order to train them regarding the content of the STR, the delivery of complete information, as well as the appropriate qualification of a transaction to determine if it should indeed be reported as suspicious. Additionally, pursuant to the provisions of the manuals of processes and procedures of the FIU, individual meetings are held with the reporting entities to address

specific matters related to specific cases where the reports did not have the sufficient quality. As a result of the workshops and meetings held, the FIU considers that the quality of the STRs has significantly improved.

#### *Resources and Confidentiality of the Information*

186. At the moment of the on-site visit, the FIU was made up of fourteen (14) officers, including the Director, thirteen (active) officials, since the deputy director is supporting the FIU of Honduras. Along this line, it is considered that the FIU does not have enough economic, human and technological resources, mainly due to the following factors: i) the number of reporting entities registered under the scope of Sections 15 and 15 bis of Law 8204 will be considerably increased, and with them, the number of STRs sent to the FIU, and the need to generate a greater number of financial intelligence reports will also be increased; ii) the duties being carried out by the FIU besides the financial intelligence, including: training and awareness of reporting entities, competent bodies and institutions involved in the AML/CTF system, as well as the supervision and registry, in terms of ML/TF, of the individuals who perform the activities stated in Art. 15 bis of Law 8204; iii) increase of duties pursuant to the international standards (e.g., strategic analysis); and, iv) manual entry of information in the databases (e.g., information contained in the disclosure forms of cross-border movements of money, and the information contained in STRs to the SICORE system).

187. In addition to the above, given the lack the adequate technical resources, the entry of information in the FIU databases is performed manually. The same situation with the information contained in the disclosure forms of cross-border movements of money, which is manually entered by an analyst in an Excel database. Likewise, the information contained in STRs is manually entered in the SICORE system, giving raise to, as mentioned above, a limited use of information.

188. The Deputy Money Laundering Prosecutor's Office is comprised of three (3) prosecutors. As seen in the following chart regarding ML cases investigated (with and without conviction) during 2014, at the end of 2013 there were 1,588 cases, whereas at the end of 2014 there were 1,619 cases. Additionally, the Statistics Unit of the Judicial Branch provided statistical information on the number of reports submitted during 2013, where it may be observed that at the end of 2013 there were 112 active cases in the Deputy Money Laundering Prosecutor's Office, eight (8) of which were closed that year and all of which appear with dismissal petition. In turn, it is worth noting that, based on the statistics provided by the Judicial Branch, the number of individuals prosecuted for ML offense in 2013 was eleven (11), seven (7) of which obtained acquittals, three (3) were convicted from 10 to 15 years of imprisonment and one (1) with 7 to 10 years of imprisonment. As a result of the analysis of the figures presented, it may be concluded that the Deputy Money Laundering Prosecutor's Office requires a higher resource allocation that enables it to handle a greater number of ML cases.

#### **ML Cases investigated during 2014**

Month	Initial Complaints	Final Complaints	Cases Submitted	Cases Completed
January	112	114	6	4
February	114	117	7	4
March	117	122	9	4
April	122	126	5	1
May	126	136	11	1
June	136	143	10	3
July	143	145	6	4
August	145	146	11	10
September	146	139	3	10
October	138	144	5	2
November	144	145	3	2
December	145	142	2	10
<b>Total</b>	<b>1588</b>	<b>1619</b>	<b>78</b>	<b>55</b>

189. With regards to the confidentiality of the information, it can be mentioned that in practice, it is the FIU who receives the STRs through the online STR System, there is an existing discrepancy as Regulation of Law 8204 states that the reporting entities should send the STR to the FIU, while Law 8204 states that they should be sent to the supervision and surveillance body; this may affect the confidentiality of the information. Even though, to date, no case has been submitted questioning the lawfulness of the current legislation, this technical weakness may affect the confidentiality and legal validity of the information contained in STRs.

190. On the other hand, as already mentioned, the banking sector maintains a relationship with the Public Prosecutor, implying, in some cases, that the banks instead of performing a STR, informally notify (directly orally) the prosecutor's office so that it may immediately initiate investigations; therefore, the confidentiality of the information of STRs and the generation of financial intelligence by the FIU (since reports are not received) would be violated.

191. As mentioned above, the FIU has access to different databases (thirty-one [31] in total), seventeen (17) of which are accessed through the URC Portal of the ICD, being necessary for the FIU analyst to enter a justification on the reason for each query, who is even required to register the internal number of the case under analysis; therefore, the confidentiality of the investigation being performed by the FIU is affected.

192. With regards to the security of the physical facilities of the FIU, the office of the FIU is located in the third floor of the ICD, where there are units that do not have contact with the public, it has security cameras and a security officer who monitors 24/7. Nevertheless, it is considered that the security measures implemented are not sufficient, since any individual may enter the ICD office and then go to the FIU office. Additionally, a greater security was not observed in the physical archive containing the files with printed financial intelligence reports.

*Operational Independence of the FIU*

193. The FIU is part of the organizational structure of the ICD, an autonomous body reporting to the Chief of Cabinet, with instrumental legal status for the performance of its contractual activity and the administration of its resources and equity. The Board of Directors is the highest decision-making body of

the ICD, presided over by the Chief of Cabinet or vice-ministry and comprised of four additional ministries, the director or assistant director of the OIJ and the general prosecutor or deputy general prosecutor of the State. The management and administration of the ICD are performed by a general manager and a deputy general manager, appointed by the Board of Directors.

194. Based on what was stated, the FIU directly receives STRs through an online STR system which, thereafter, submits its investigations directly to the Public Prosecutor, without any participation whatsoever of the ICD Management. However, it is considered that there are aspects that should be improved in order to maintain a greater operational independence of the FIU:

- Art. 126 of Law 8204 sets forth that the fulfillment of the recommendations proposed by the FIU should be guaranteed by the Board of Directors of the ICD, which, as mentioned above, is presided over by the chief or deputy chief of Cabinet and comprised of four additional ministries, the director or deputy director of the OIJ and the general prosecutor or deputy general prosecutor of the State. In this regard, it is recommended to implement a communication mechanism so that the FIU may directly provide directives, in order to speed up certain processes, such as the issuance of recommendations to the reporting entities under Art. 15 bis of Law 8204.
- The duties of the Board of Directors include the establishment of cooperation agreements with the national and international, administrative and judicial authorities. In this sense, it would be recommendable to grant express powers to the FIU Director to enter into the cooperation agreements deemed pertinent for the appropriate compliance with its financial intelligence duties.
- The General Management of the ICD is, among other functions, in charge of the appointment, removal and implementation of disciplinary measures to the ICD officers. In this regard, it would be recommendable to grant express powers to the FIU Director to decide on staff selection processes, removal and administrative sanctions of the FIU officers.

#### ***General Conclusions of Immediate Outcome 6***

195. In general terms, the financial intelligence generated by the FIU is used by the competent authorities in ML investigations. In case of the TF, the inexistence of related cases did not allow to evaluate the use of financial intelligence associated to this offense.

196. In order to perform its intelligence tasks, the FIU has access to different databases that enable the provision of added value to the STRs received. Nevertheless, the access and use of the information on suspicious transactions is limited by the low level of registration (although the process has started) and the low number of reports by DNFBPs and, consequently, the generation of financial intelligence by the FIU is also limited.

197. With regards to the cooperation and exchange of financial intelligence information, the FIU cooperates with both competent authorities and reporting entities. The FIU receives requests from different competent authorities and provides training and raises awareness to the reporting entities and different actors of the ML/TF system. Likewise, it identifies and notifies typologies, holds meetings with reporting entities to provide feedback on the quality of the STRs received and publishes documents of interest in the FIU Report Platform accessed by entities obliged to report under the scope of Art. 15 bis of Law 8204. In turn, feedback is not observed by the competent authorities to the FIU.

198. The FIU does not have enough economic, human and technological resources to perform its duties. In turn, the statistical information on the cases investigated and resolved shows that the Deputy Money

Laundering Prosecutor's Office requires a greater resource allocation that enables it to handle more ML cases.

199. As to the confidentiality of the information, even though in practice it is the FIU who receives the STRs through the online STR system, the discrepancy existing in the legislation (Law 8204 and the Regulation thereof) may potentially violate the confidentiality of the information. In addition, informal communication by the banks to the prosecutor's office regarding attempted transactions, the access to the databases kept by the Unit of Records and Consultations of the ICD and the lack of security of the physical archive containing the files with the printed financial intelligence reports were observed.

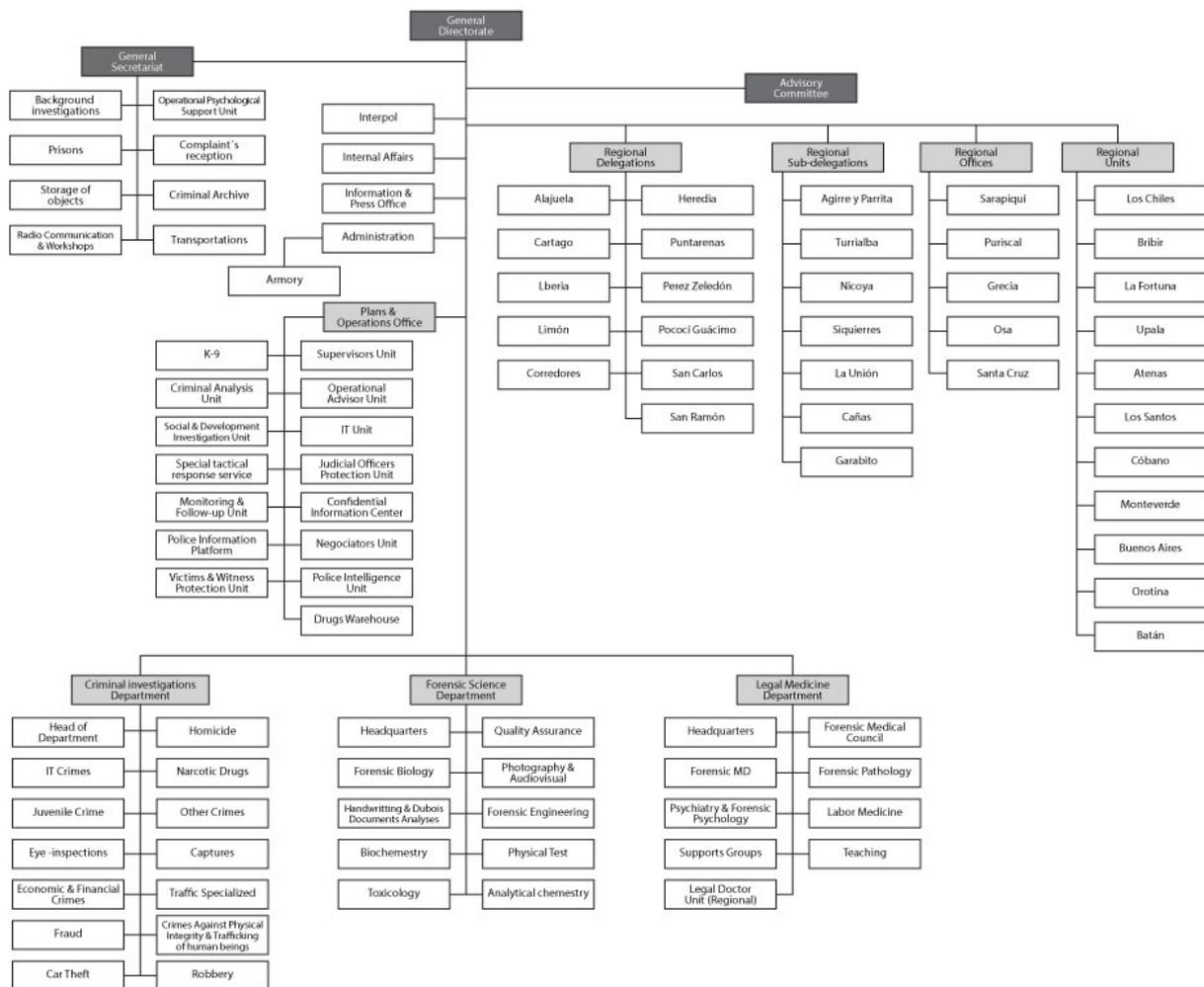
200. There seems to be no participation of the ICD Management in the reception and analysis of STRs, as well as in the submission of financial intelligence reports to the Public Prosecutor. However, it is considered that there are aspects that could be improved in order to maintain a greater operational independence of the FIU, such as: empowering the FIU to directly give directives to reporting entities, granting express powers to the FIU Director to enter into cooperation agreements and empowering the FIU Director to decide on staff selection processes, removal, and administrative sanctions of the FIU officers.

201. Accordingly, Costa Rica presents a **moderate level of effectiveness in immediate Outcome 6.**

***D. Effectiveness: Immediate Outcome 7 (ML investigations and prosecution)***

202. According to the Costa Rican criminal justice system, investigations of publicly prosecutable offenses are carried out by the Judicial Investigation Body (OIJ), which carries out the functions of the judicial police and assists Criminal Courts and the Public Prosecutor in criminal prosecutions. Criminal investigations carried out by the OIJ begin on its own initiative, with a complaint or with a request of a competent authority, authorizing all the acts deemed appropriate to prove the offense and identify the offender.

203. In the organizational structure of the OIJ, there is the Criminal Investigations Department, in which there are different specialized divisions of the judicial investigation police, such as the Narcotic Drugs Division, the Economic and Financial Offenses Division, the Trafficking of Human Beings Division and the Money Laundering Division (SLC, in Spanish), as shown in the following diagram:



204. According to the information provided by the interviewed authorities, money laundering investigations are generally started and carried out directly by the Money Laundering Division of the OIJ. Nevertheless, reports of cases were presented in which the cases of money laundering derived in investigations of predicate offenses in other specialized units of the judicial police (ie. Narcotic Drugs Division, Trafficking of Human Beings Division<sup>7</sup>, etc.) and that were conducted by the original unit in cooperation with the Money Laundering Division.

205. The Money Laundering Division consists of twenty eight (28) work posts in the following manner; one (1) chief of the division, one (1) supervising auditor, nine (9) expert auditors, two (2) administrative officers, one (1) investigation chief and fourteen (14) investigators.

206. As regards training, in the period from 2013 to 2015 (January), sixty-eight (68) workshops and training courses were carried out in Costa Rica and abroad. However, the analysis of the following charts

<sup>7</sup> In accordance with the information provided by the Money Laundering Division of the OIJ, there are currently two (2) cases being conducted together with the Division of Offenses against Physical Integrity and Human Trafficking, which are in the investigation stage.

shows that only thirteen (13) of them were directly or indirectly related to ML/TF, while most of them were related to general training of the officers of the judicial branch.

**Table 2: List of courses carried out during 2013/2014**

<b>Year</b>	<b>Training</b>	<b>Date</b>	<b>No. of people</b>	<b>Headquarter</b>
2013	Operative annual plan		7	
2013	Internal control		3	
2013	No paper program		1	
2013	Terrorist Financing talk	April	16*	
2013	Regional training workshop on money laundering control and prevention	March	3*	
2013	Cybernetic hackers	March	4	
2013	Caribbean and Americas Program on Financial Crime Prevention Fostering Growth and meeting international standards		3*	
2013	Father cares and affection	November	1	
2013	Money Laundering Prevention	October	3*	
2013	VI Encounter of Policewomen	October	2	
2013	Talk: Son of the Bride	October	1	
2013	Regional workshop-encounter on best practices of intelligence, investigation, litigation and sanction of money laundering, terrorist financing and asset forfeiture	October	1*	
2013	Use of fire extinguishers	October	1	
2013	Telephone tapping	April	14	
2013	Principles of emerging capitals as a tool to fight money laundering and related offenses	September	1*	
2013	Basic self-defense	April	1	
2013	Subregional workshop on the investigation process and international cooperation	September	1*	
2013	Organized crime and asset recovery	September	8*	
2013	Talk: Wall of understanding	August	1	
2013	Day of reflection on gender violence	August	2	
2013	Administrative controls	July	19	
2013	Adjustment program		1	
2013	SEVRI workshop	June	4	
2013	Basic use of CZ 75 9mm pistol	May	1*	
2013	Organized crime	June	2	
2013	Gender, diversity and democracy in civil service, dress code	April	2	
2013	Use of technology and terrorism	April	1*	
2013	ECU training	July	7	
2013	Talk: Disability	Nov 19 <sup>th</sup> 2013	1	
2013	Workshop on money laundering through insurance	Nov 18-20	3*	
2013	Financial approach of criminal investigation, money laundering and terrorist financing	May 21 <sup>st</sup> 2013	1	
2013	Security measures in new bills	Dec 18 <sup>th</sup> 2013	2	
2014	Cigarette smuggling	Feb 19 <sup>th</sup> 2014	1	
2014	Analysis of communications	March 10-14 2014	4	

**\* Activities related to ML/TF.**

207. The Public Prosecutor of Costa Rica is a body that belongs to the Judiciary Branch and carries out its functions within the scope of Criminal Justice, having the function of requesting the enforcement of the law to criminal courts, carrying the appropriate acts to promote and exercise public criminal proceedings.

208. In the functional structure of the Public Prosecutor, there is a Coordination of the Deputy Prosecutor's Office against Organized Crime, located in the different Specialized Prosecutor's Offices by area of activity, such as the Prosecutor's Office against Drug Trafficking, the Prosecutor's Office against Economic Offenses, the Prosecutor's Office against Trafficking of Human Beings, the Prosecutor's Office of Probity, Transparency and Anti-corruption and the Money Laundering Prosecutor's Office.

209. According to the information provided during the on-site visit, there are currently twenty-five (25) prosecutors designated to act in the Deputy Prosecutor's Office against Organized Crime, most of which act in the Prosecutor's Office specialized in Drug Trafficking, in the Economic Offenses Prosecutor's Office and in the Money Laundering Prosecutor's Office.

210. According to the information provided by authorities, the Coordination carries out regular meetings with prosecutors acting in the Specialized Prosecutor's Offices, in order to exchange information and cooperate with the different areas of the Public Prosecutor. Moreover, the different bodies acting in the area of ML combat (FIU, OIJ, prosecutor's offices, etc.) make efforts to work in a cooperation system since the beginning of the investigations, being in constant contact for an efficient exchange of information and experiences. Additionally, during the interviews, authorities informed that meetings are carried out every two months among the members of the Money Laundering Prosecutor's Office and the FIU, to analyze the cases that, according to the FIU, were not disclosed to the Public Prosecutor due to the lack of the minimum elements of communication. Nevertheless, the information was later clarified by the country, informing that said meetings were aimed at addressing other coordination matters, in the search for an efficient integration in AML/CTF proceedings.

211. Likewise, the Coordination is in charge of promoting the participation of the different prosecutors in training activities. In the last three years, prosecutors/officers of the Specialized Prosecutor's Offices participated in twelve (12) training activities. However, the information provided by authorities did not include information to verify the names of the courses, the names and number of prosecutors/officers who participated in each course, in order to know the specific training areas and their scope.

212. According to the information provided, the General Prosecutor's Office against Money Laundering was created in July 2013 and currently has three (3) designated prosecutors in its structure, who work exclusively on ML cases. Before the creation of the General Prosecutor's Office against Money Laundering, the General Prosecutor's Office against Tax Economic Offenses and Money Laundering would deal with money laundering cases. The competence to conduct investigations regarding ML offense is assigned on the grounds of the implementation of the territorial criterion, both for the Money Laundering Prosecutor's Office, with headquarters in San José, and for Regional Prosecutor's Offices, located in the seven (7) provinces of the country.

213. STRs are directly forwarded to the Specialized Prosecutor's Offices, which carry out the analysis of the information provided and decide whether to start a ML investigation. When, right from the beginning, there are indications of the occurrence of an autonomous ML offense, STRs are directly sent to the Money Laundering Prosecutor's Office. When this is not clearly verified, STRs are forwarded to the other Specialized Prosecutor's Offices according to the nature of the criminal indications presented. Authorities have affirmed that, even in these cases, the Specialized Prosecutor's Offices are in constant contact with

the Money Laundering Prosecutor’s Office to carry out the verification of the occurrence of the ML offense.

214. After the conclusion of the preliminary investigations, the Public Prosecutor should submit the accusation and the request for trial to the competent Court. In cases of ML, the criminal courts are competent for prosecution of cases according to the practice of the criminal behavior. In Costa Rica there are still no Specialized Courts to handle money laundering cases, and the same happens with cases involving the participation of organized crime or financial offenses. Thus, the accusations of ML are submitted by the prosecutors to the Criminal Courts, where they are randomly assigned to one of the competent Courts.

215. During the on-site visit, judges informed on having knowledge of the existence of different ML cases at the investigation stage; however, few cases reached the courts, so this matter is not a regular matter of judicial bodies. Judges expressed that the Judiciary Branch still lacks a ML training system, so that they can be adequately prepared to understand ML causes.

216. On this matter, it is important to mention that during the interviews, it was expressed that in the Costa Rican criminal justice system the accusation of the ML offense to the agent of the predicate offense (self-laundering) is completely possible. However, the interviewed judges did not have knowledge about cases in which there was an accusation of money laundering imputable to the same person regarding the product of the predicate offense, so as to know the jurisprudential treatment given to the matter.

217. According to the statistics of the Criminal Courts of Costa Rica, from 2010 to 2013, from the forty-three (43) ML cases, thirty-three (33) were convictions and ten (10) were acquittals. From the cases of 2011 and 2012 that were convictions – *no specific data was provided regarding the other years* –, twelve (12) were convictions of 7 to 10 years; seven (7) were convictions of 10 to 15 years, and one (1) was a suspended sentence.

**People acquitted/convicted according to type of offense – 2010**

	OFFENSE	TOTAL	TYPE OF SENTENCE: CONVICTION	TYPE OF SENTENCE: ACQUITTAL	
	<b>INFRINGEMENT OF THE PSYCHOTROPIC DRUGS LAW</b>	<b>1078</b>	<b>843</b>	<b>235</b>	
	Drug storage	8	5	3	
	Drug trade	15	12	3	
	Cultivate/Produce/Extract drugs	3	2	1	
	Distribute/Provide/Posses drugs	12	12	0	
	Introduction of drugs in correctional facilities	59	39	20	
	Money Laundering	12	9	3	
	Possession of drugs	107	76	31	
	Holding drugs	57	40	17	
type	Drug trafficking/transportation	202	156	46	
	International trafficking of drugs	48	42	6	
	Selling drugs	451	372	79	
	Infringement of the psychotropic drugs law	104	78	26	
	<b>OFFENSE</b>	<b>TOTAL</b>	<b>7 YEARS – LESS THAN 10 YEARS</b>	<b>10 YEARS – LESS THAN 15 YEARS</b>	<b>EJECUCION CONDICIONAL</b>
	<b>INFRINGEMENT OF THE PSYCHOTROPIC</b>	<b>965</b>	<b>360</b>	<b>63</b>	<b>16</b>

**People convicted according to offense and conviction – 2011**

DRUGS LAW				
Drug storage	1	1	0	0
Drug trade	32	7	2	0
Process/manufacture/refine/transform/prepare drugs	6	2	2	0
Introduction of drugs in correctional facilities	79	26	2	0
Money Laundering	8	5	2	1
Possession of drugs	103	41	5	0
Holding drugs	52	23	1	0
Drug trafficking/transportation	109	35	14	3
International trafficking of drugs	65	28	15	1
Selling drugs	432	162	11	6
Infringement of the psychotropic drugs law	78	30	9	5

People convicted according to type of offense and conviction – 2012

People to type and – 2013	OFFENSE	TOTAL	7 YEARS – LESS THAN 10 YEARS	10 YEARS – LESS THAN 15 YEARS	convicted according of offense conviction
	INFRINGEMENT OF THE PSYCHOTROPIC DRUGS LAW	1077	360	68	
	Drug storage	2	1	0	
	Drug trade	18	2	1	
	Cultivate/Produce/Extract drugs	8	4	1	
	Introduction of drugs in correctional facilities	77	20	1	
	Money Laundering	12	7		
	Possession of drugs	97	20		
	Holding drugs	59	23	5	
	Drug trafficking/transportation	1367	1085	295	72
	International trafficking of drugs	49	21	13	
	Drug storage	5	5	2	2
	Selling drugs	590	161	24	
	Infringement of the psychotropic drugs law	80	37	7	0
	Cultivate/Produce/Extract drugs	12	2	10	2
	Distribute/Provide/Posses drugs	1	0	1	1
	Process/manufacture/refine/transform/prepare drugs	4	1	3	1
	Introduction of drugs in correctional facilities	106	26	80	13
	Money Laundering	11	7	4	3
	Possession of drugs	97	15	82	19
	Holding drugs	37	6	31	3
	Drug trafficking/transportation	201	65	136	68
	International trafficking of drugs	46	8	38	10
	Selling drugs	775	141	634	162
	Infringement of the psychotropic drugs law	65	11	54	15

218. As regards the 2014 period, there is still no information. According to the information provided by authorities, specifically the Planning Unit of the Judiciary Branch, they are in process of implementing a new platform for the management and consolidation of all the information at a national level. As this is in the process of adaptation, it is not possible to extract data.

219. From the formal viewpoint, it was verified that ML offense has one of the sanctions which minimum is one of the highest of the Costa Rican criminal system (imprisonment from 8/10 years to 20 years). This shows that, at least in theory, the sanctions established by the lawmaker of the country for ML offense are proportional in comparison to the limits of sanctions of the main predicate offenses. According to the data on sanctions imposed by the Criminal Courts in ML cases, it was proved that most of the convictions were established in the threshold of 7 to 15 years of imprisonment. However, according to the authorities interviewed, in view of the few existing convictions for ML offenses, the current dissuasive impact of the implementation of sanctions cannot be verified in the reduction of this crime in the country.

220. Moreover, considering that no statistical data was provided on the number of ML cases by type of predicate offense at investigation stage in the judicial police and in prosecutor’s offices, it was not possible to carry out an analysis, based on specific data, of the most usual forms of ML in Costa Rica. However, authorities informed that the form of ML with the highest incidence in the country is money laundering by third parties of profits made abroad, mainly in other countries of Central America, which are characterized as international drug trafficking routes.

221. Likewise, there are no available statistics that can show which are the most incidental types of predicate offenses and the forms of introducing ML cases (by reception of STRs, parallel financial investigation, among others) in the investigation stage in the OIJ and in the process of formal accusation before the Criminal Courts of the country. Nevertheless, according to the information provided by the authorities during the on-site visit, almost all of the ML cases registered in the country have drug trafficking as predicate offense.

222. Thus, the efforts of the bodies and public authorities are directly aimed at combating drug trafficking. Indeed, it seems that the efforts identified with the combat against ML originated from other types of predicate offenses apart from drug trafficking are not many, especially the crime forms identified in the RD-ML/TF as ML threats (ie. trafficking of human beings, fraud, forgery and piracy of products, tax evasion, etc.). Authorities inform that there are cases in which the predicate offense is related to fraud and computer crimes. However, no information or statistics were provided on this regard.

223. Moreover, even when addressing ML offense for illicit trafficking of narcotic drugs and psychotropic substances as predicate offenses, the cases are limited considering the importance of this issue in the context of criminality in the country. In fact, from the analysis of the statistical data of people convicted for the sale of drugs, traffic/transportation of drugs and international trafficking of drugs –main forms related to drug trafficking that generate illicit profits that can be object of ML cases – the number is considerably higher than the number of people convicted for ML offense over the same period of time, if we take into consideration the number of cases of traffic/transportation/sale of drugs with convictions that could have been object of specific ML investigations.

**\* Total amount of people convicted according to type of offense (2009- 2013)**

Type of offense	2009	2010	2011	2012	2013	Total	% 2009-2013
Sale of drugs	321	372	432	550	775	2450	+ 141.43%
Traffic/transportation of drugs	89	156	109	125	201	680	+ 125.84%
International trafficking of drugs	32	42	65	49	46	234	+ 43.75%

**\* Total amount of people convicted for ML (2009- 2013)**

Type of offense	2009	2010	2011	2012	2013	Total
Money Laundering	4	9	8	12	4	37

224. According to what the assessment team verified, this phenomenon can be the result of the lack of physical and personnel structures in the specialized investigation teams of the OIJ (SLC) – especially to carry out initiatives of parallel financial investigations –, as well as in the Money Laundering Prosecutor’s Office. According to the information provided by the interviewed authorities, the currently available human and technical resources are not compatible with the existing demand in the area of combat against ML.

225. Although initiatives have been carried out for members of the Judicial Police and the Public Prosecutor to participate in specific training on ML, the teams of the OIJ and the Prosecutor’s Offices (Specialized Prosecutor’s Office and other Regional Prosecutor’s Offices), in general terms, still lack an adequate training as regards ML in order to identify and investigate possible ML cases in the country. Likewise, judges of the Criminal Courts need more opportunities of specific ML training, typologies studies and forms of characterization of the money laundering offense, in order to have the adequate training and knowledge on the matter.

226. Nevertheless, it is important to mention the effort made by all the authorities of the Judicial Police, the FIU and the Public Prosecutor to maintain a constant contact among the members that act in the ML sector, in order to exchange information and perform typologies of cases, to have an efficient identification and investigation of ML cases in the country, including initiatives of rapprochement of the representatives of said bodies with the judges of the Criminal Courts, so that these could also identify themselves as members of the system combating this form of crime. Moreover, it is important to add that Costa Rica hosts the Executive Secretariat of the Network of Prosecutors of Central America (REFCO, in Spanish), which was created in 2011 with the purpose of having a direct contact among prosecutors, personal knowledge, trust and the possibility of transferring data, sharing information, experiences, knowing the investigations and carrying out joint cases.

*General Conclusions of Immediate Outcome 7*

227. Although the country has an effective system for combating predicate offenses, especially trafficking of narcotic drugs and psychotropic substances, Costa Rica still does not have a repressive system that enables the investigation and prosecution of ML activities in keeping with the threats and risk profile of the country. Few initiatives were identified to increase the combat against ML originated by other types of predicate offenses apart from drug trafficking, even in criminal forms identified in the RD-ML/TF, such as ML threats (i.e. trafficking of human beings, fraud, forgery and piracy of products, tax evasion, etc.). That is why, almost all the ML cases registered in the country have drug trafficking as predicate offense. Moreover, it is still perceived that the combat against ML originated by the illicit trafficking of narcotic drugs and psychotropic substances as predicate offense is limited, considering the importance of the matter in the context of criminality of the country.

228. There is a lack of physical and personnel structure in the investigation teams specialized in ML of the Judicial Police and the Public Prosecutor. The human and technical resources currently available in the SLC of the OIJ and even in the Money Laundering Prosecutor’s Office are not compatible with the existing demand.

229. The teams of the OIJ, the Prosecutor's Offices and the Judges of Criminal Courts still do not have sufficient opportunities for them to obtain permanent training on ML, so that more members of the police force, prosecutors and judges could have a specific knowledge to carry out the identification, investigation, prosecution and judgment of ML cases carried out in the country.

230. Accordingly, Costa Rica presents a **moderate level of effectiveness in immediate outcome 7**.

***E. Effectiveness: Immediate Outcome 8 (Confiscation)***

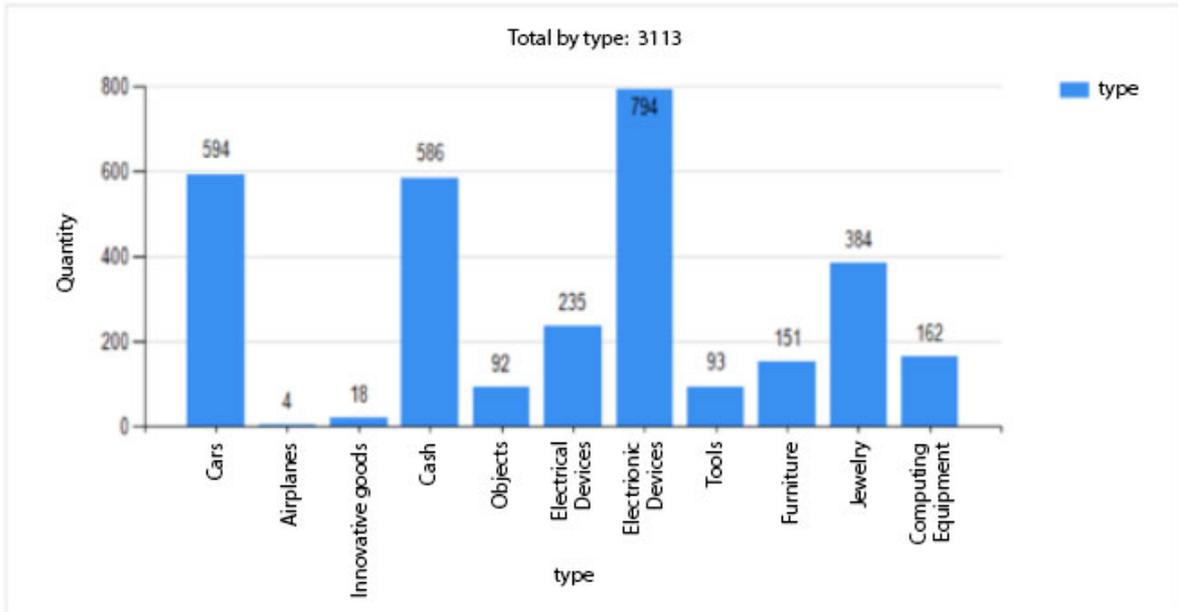
231. In accordance with Law 8204, the URA of the ICD is the responsible body of the country to carry out the judicial deposit and administration of the assets confiscated (cautionary measure) and seized (definitive measure, final sentence) during ML causes, as well as other crimes typified in Law 8204.

232. According to Art. 83 of Law 8204, all movable and immovable goods, securities, money and other objects used in the commission the crimes set forth in the Law above mentioned will be confiscated by the competent authority, and if they have economic value they will be sent for their administration in judicial deposit by the URA. However, as drug trafficking offenses are also criminalized in Law 8204, the URA is also in charge of the administration of the goods confiscated and seized in the offense related to the illicit trafficking of narcotic drugs and psychotropic substances.

233. The URA is currently located in the headquarters building of the ICD and has a physical and personnel structure assigned to carry out its activities, with the director of the Unit having; six (6) lawyers, who are responsible for the control and procedure of causes related to confiscated and seized goods, and other officers that carry out administrative functions. Nevertheless, as the URA is within the organizational structure of the ICD, it does not have its own budget and all the other administrative activities –that are not strictly related to the administration of goods– are subject to the specific rules and procedures applicable to the other units and departments of the ICD.

234. Based on the statistics provided by the URA, from 2011 to January 2015, a total of 3,113 goods were confiscated for causes related to the offenses included in Law 8204 –including ML–, being mostly cars (594), cash (586 cases) and general electronic devices (794). However, several properties (18), airplanes (2) and jewelry (384) were also confiscated, according to the data provided by the following chart:

Goods of the psychotropic substances law by type of good with registration date after 2011: 3113



235. While administrating the goods, the URA can lease or lend the confiscated movable goods or properties stored in judicial deposit. Moreover, the URA can also sell, auction or dispose of the confiscated goods that it administrates.

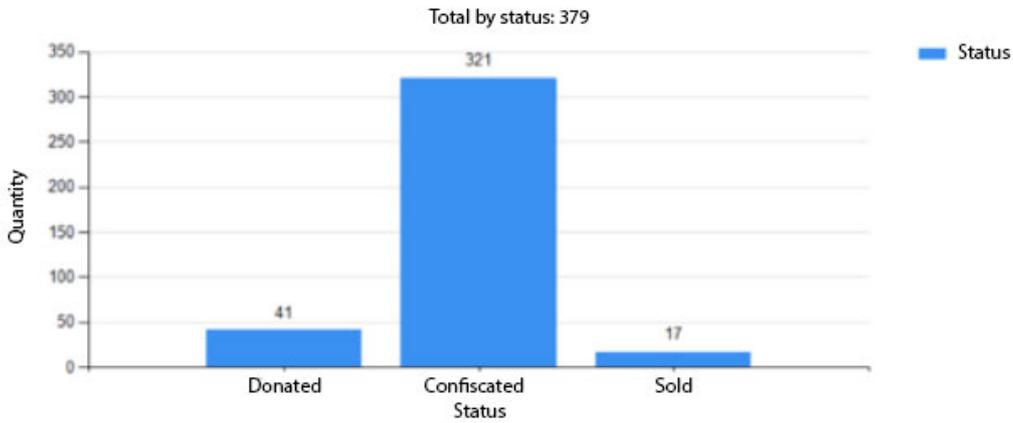
236. In accordance with Law 8204, once the confiscation of movable and immovable goods, securities, financial products and cash is judicially ordered in favor of the ICD, this body can keep them or dispose of them, use them or give them due destination, as well as donating them to entities of public interest or to bodies which purpose is the prevention and repression of drugs.

237. In accordance with the procedures adopted by the URA, once the loan applications of the confiscated goods that are in the administration of the Unit are received, the availability of the required goods is verified in the computer database of the body (SAB in Spanish), quickly adopting all the established administrative measures to finally prepare the loan agreement of said goods for the applicant bodies.

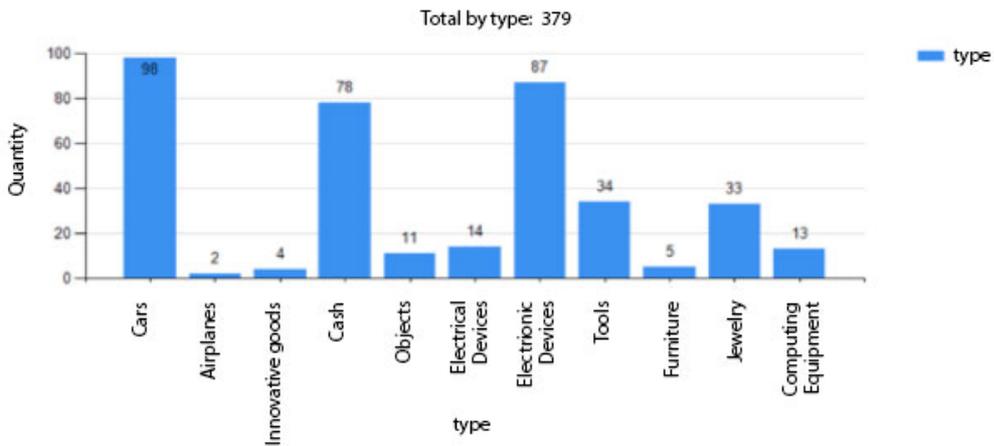
238. In the cases of requests for donation of confiscated goods, a similar procedure is implemented. In these cases, there is a valuation mechanism for the goods that will be object of donation, taking the case to the assessment of the Board of Directors of the ICD, the administrative body in charge of said approvals.

239. In the case of anticipated sale of confiscated and seized goods, the URA, after identifying the goods that will be object of sale, carries out the valuation of such goods and prepares the process for the goods to be sold to the general public through the exhibition and submission of offers by interested parties.

240. As the following chart shows, from the total amount of 3113 goods confiscated in cases related to Law 8204, 379 were subject to sale, (17), donation (41) and definite confiscation (321), with the implementation of the destinations established in the law:



Goods of the Psychotropic Substances Law with registration date after 2011  
Donated, Sold, Confiscated State: 379



241. Moreover, from 2011 to January 2015, a total of CRC 108,178,280 (619 cases), USD 3,878,367 (171 cases) and € 5,565.00 (13 cases) were confiscated, which according to Law 8204 were sent for financial administration by the URA.

242. According to the information provided by the URA, once the cash is received, the judicial authority deposits the sums obtained in the ICD’s bank accounts, which remain under the administration of the ICD’s treasury. The investment of such values is possible under any financial form offered by state banks that maximizes returns and minimizes risks. The same system is implemented for the sale of confiscated goods, which sums obtained are also sent to be deposited in the ICD’s bank accounts.

243. In accordance with Art. 87 of Law 8204, in the case of cash, financial products, securities or the product of sold goods, the ICD must allocate:

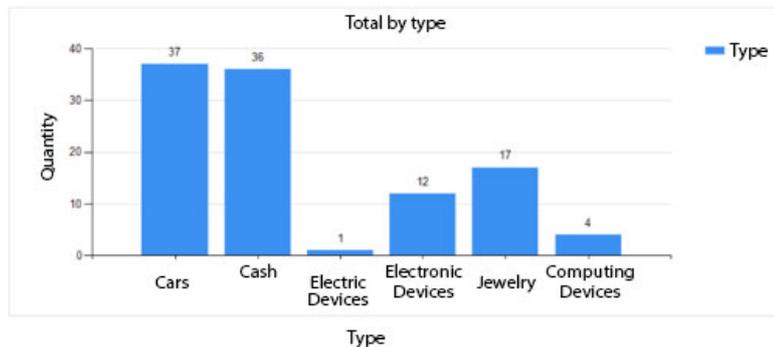
- a) Sixty percent (60%) to preventive programs; from this percentage, at least half will be for programs of consumption prevention, treatment and rehabilitation carried out by IAFA;

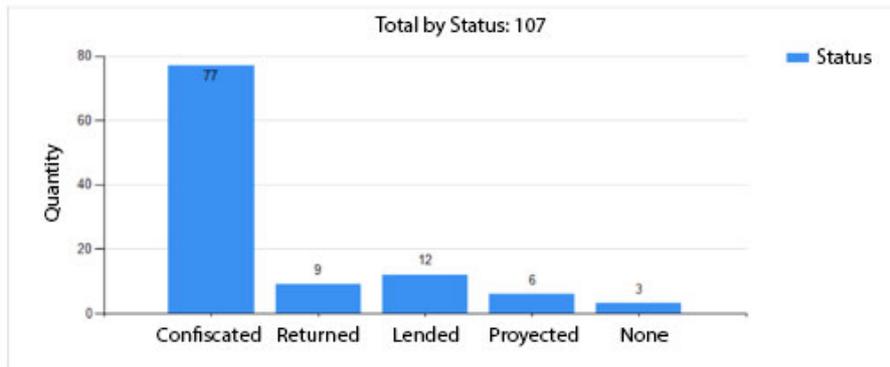
- b) Thirty percent (30%) to repressive programs;
- c) Ten percent (10%) to the follow-up and maintenance of the goods confiscated and seized.

244. According to the current system, the Board of Directors of the ICD is in charge of the final destination of the sums of money corresponding to the percentages above mentioned, according to the analysis of the applications to send funds and acquire equipment to be used in activities of prevention and repression of drug trafficking offenses by other State entities. Nevertheless, according to the information obtained during the on-site visit, specifically regarding the drug enforcement area, the sums of money that result from the implementation of Art. 87 of Law 8204 are not enough to meet the needs of all the bodies that work in the area of combating drug trafficking, and they seem to be allocated to programs and initiatives carried out by the ICD.

245. Although there are no data by type of predicate offense, according to the URA, from 2011 to January 2015, a total amount of 107 goods confiscated during ML investigations were sent to judicial deposit for its administration. Most of them were cars (37 cases) and cash (36 cases). From the 107 goods confiscated in this period of time, seventy-seven (77) still have the status of “confiscated”, as they still have not been object of seizure by a definitive judicial sentence, and twelve (12) goods were object of loans to institutions that have agreements with the ICD.

Goods of the Psychotropic Substances Law - Money Laundering by type of good with registration date after 2011 : 107





246. As a conclusion, comparing the relative data regarding the globalized action of the URA with the specific data on confiscations in money laundering cases, it can be observed that the activity of the Unit is still much closer to the area of combating the illicit trafficking of narcotic drugs and psychotropic substances than to ML offenses. Thus, although the URA does not have available data on the predicate offenses of ML cases that resulted in the confiscation of 107 goods from 2011 to January 2015, it can be deduced, according to the information provided by the authorities and to the low number of investigations/convictions for ML offenses during that period of time, that most of these goods –if not all of them– come from ML cases which predicate offense was the illicit trafficking of drugs.

247. Although the country is considerably structured to act in the confiscation and seizure of goods originated by predicate offenses and money laundering, the cases registered in the country up to the moment of the evaluation do not reflect, in a comprehensive manner, the results of the RD-ML/TF. The activity of confiscation and seizure of goods is seen much closer to the area of combating the illicit trafficking of narcotic drugs and psychotropic substances than to ML offenses. Most of the goods confiscated and seized in the country –if not all of them– are originated by cases related to drug trafficking and, in the case of money laundering, by activities in which the trafficking of drugs is the predicate offense.

248. Moreover, it was not possible to verify the existence of effective mechanisms that enable the repatriation, distribution and restitution of goods and/or assets that are considered instruments and products of ML offenses. Likewise, the confiscation of goods of correspondent value is still not possible, given the lack of legal instruments that enable said practice.

249. As regards the implementation of confiscation of cash related to cross border movements, both customs and migration authorities have procedures for the entry of travelers and their goods, especially, they have a system of control of entries and exits by air –at least in the Juan Santamaría International Airport, in which there are surveillance procedures implemented by the Airport Police, Customs, PCD, PCF and other bodies working in the airport and in the Limón Customs, which according to the information provided by authorities has one (1) scanner for the revision of transportation units– unlike terrestrial and maritime borders, where the control systems are incipient and, in other cases, inexistent.

250. During the on-site visit, the previously mentioned authorities confirmed the porosity of the borders of the country, being highly vulnerable to the entrance of drugs, cash and other illicit goods. The controls

currently implemented by the mentioned bodies are of concern, as they do not seem to be enough to minimize the problems, and the lack of human and operational resources to carry out these activities is clear. Special attention should be paid to Puerto de Caldera – one of Costa Rica’s most important ports – as it does not count with an adequate system of physical verification of containers that enter and exit the country. There is no equipment to carry out inspections of the goods that pass through the port<sup>8</sup>, except for the random inspections in which customs can select transport units leaving the port by means of a system of traffic lights towards the facilities of customs officers depositors, with the purpose of physically checking the goods that enter the country and that have been declared by companies.

251. Likewise, as regards the seizure of goods by the Judicial Police and the Public Prosecutor, there does not seem to be a methodology implemented in the scope of the OIJ or the Prosecutor’s Offices, so that when a criminal investigation begins, a simultaneous parallel financial investigation is carried out aimed at confiscating the goods involved in ML cases. Moreover, it was not possible to identify the existence of a policy adopted by the competent authorities to pursue assets and instruments originated by the threats identified in Costa Rica. This can be the result of the inexistence of an adequate training of the members of the different bodies that work in all the stages of the process, from the identification of the goods originated by predicate offenses and from ML itself, to the implementation of institutes of confiscation and seizure of the goods that are originated by these.

#### ***General Conclusión of Immediate Outcome 8***

252. Although the country is considerably structured to act in the confiscation and seizure of goods arising from predicate offenses and from ML, the registered cases in the country up to the moment of the evaluation do not reflect, in a comprehensive manner, the results of the RD – ML/TF. The activities of confiscation and seizure of goods are evidenced as much closer to the areas of combating crimes of illicit traffic of narcotic drugs and psychotropic substances rather than ML offenses. Most of the goods confiscated in the country, if not all of them, originate from cases related to drug trafficking and in the case of money laundering they originate from drug trafficking as a predicate offense.

253. Likewise, Costa Rica does not count with an effective cross border control system in land and maritime borders compatible with the threats and risks identified in the country. Notwithstanding the advances registered and the efforts of authorities to increase cross border control systems, the current controls adopted by the bodies working in some of the cross border areas are not enough to minimize the problem. This shows a clear lack of human and operational resources to carry out these activities. Therefore, given this situation, the assessment team considers that some of Costa Rica’s land and maritime borders are vulnerable to the entry of drugs, cash and other illicit goods.

254. The country has adopted different mechanisms to carry out the repatriation, distribution and restitution of goods and/or assets considered instruments and products of predicate offenses and from ML.

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<sup>8</sup> According to the information provided by authorities after the on-site visit, the General Customs Directorate is making progress on the IT development that will enable the automatic selection of manifests of maritime entrance, so that customs can participate in the supervision of port discharge, also enabling the registration of the actions of customs officers. It is expected that said requirement will be implemented in June of this year.

However, the initiatives for the use of said mechanisms must be increased, so that the country can have an efficient performance in cases that need joint efforts between national authorities and other cooperating countries. Nevertheless, the seizure of goods of an corresponding value is still not possible. Moreover, the statistical data of the joint asset investigations carried out, as well as the system adopted by the different bodies involved, were not submitted to the assessment team.

255. Accordingly, Costa Rica presents a **moderate level of effectiveness in Immediate Outcome 8**.

*F. Recommendations regarding the legal system and operational issues*

256. Costa Rica should implement the following recommendations aimed at strengthening its legal system and its operating capacity:

257. Regulate and implement the corresponding mechanisms to obtain relevant information about the real beneficial owners of companies, as well as information related to NPOs, so that it can be used for financial intelligence purposes.

258. Equip the FIU and the Money Laundering Prosecutor's Office with the necessary economic, human and technological resources to achieve a higher level of effectiveness in the compliance of its functions.

259. Equip authorities in charge of enforcing the regulations regarding the cross border movement of money and value, economic and human resources and adequate equipment that enable the intensification of the revision controls of luggage and passengers to achieve a greater effectiveness in the detection and withholding of cash and value.

260. Modify the relevant legislation in order to overcome the existing discrepancy related to the identification of the institution that works as national center for the reception of STRs.

261. Regulate and establish clear mechanisms regarding the access to the information included in STRs by third parties other than the FIU, and regarding the system of reporting attempted transactions.

262. Establish formal mechanisms and procedures that ensure that the access of the FIU to the different databases used for investigations does not allow the identification of information related to cases investigated by owners of the databases.

263. Implement more security measures where the FIU operates, both for the access to people and for the physical record where the files with financial intelligence reports are kept.

264. Offer a higher level of operational Independence to the FIU, broadening the powers of its Director in matters related to the issuance of guidelines for reporting entities, the entry into agreements and the management of the unit's human resources.

265. Address more efforts to increase the activity in cases originated by other types of predicate offenses apart from drug trafficking, and even those cases which predicate offense is drug trafficking. The activity must be extensive to all the types of offenses identified by the country, in the RD – ML/TF, as being of high risk for the practice of ML.

266. Strengthen the physical and human resources structures of the equipment of the Money Laundering Division and of the Money Laundering Prosecutor's Unit. This way, the members of the Judicial Police

and of the Public Prosecutor will have the capacity to look for significant improvements in the task of identification and investigation of ML cases carried out in the country.

267. Increase training initiatives of the teams of the Judicial Police, of the Prosecutor's office, of the judges of criminal courts and of every other member of bodies who act in the AML sector. This way, they will have full capacity to identify and effectively investigate ML cases carried out in the country.

268. Address efforts for cases of confiscation and seizure of goods to be entirely consistent with the threats identified in Costa Rica.

269. Increase the initiatives for the use of mechanisms that enable the repatriation, distribution and restitution of goods and assets involved in ML crime investigations, so that the country can have an efficient activity in cases that need joint efforts between national authorities and other cooperation countries. Likewise, search for the adoption of legal initiatives and regulations, for the seizure of goods of corresponding value to be possible.

270. Adopt mechanisms of effective control in border areas. Likewise, Costa Rica must increase the human and operational resources of the different bodies that act in border areas.

271. Direct resources originated by the seizure of cash, of financial products, of values or originated by the product of goods sold by Costa Rica's Drug Institute (ICD in Spanish), so that they can address more effectively the needs of other bodies that act in the area of combating crimes.

272. Carry out training programs so that all the relevant bodies have complete knowledge to identify goods originated by predicate offenses and ML, for their confiscation and seizure.

#### IV. FINANCING OF TERRORIST AND FINANCING THE PROLIFERATION OF WMD

##### *Key findings*

273. The deficiencies in the correct criminalisation of TF can affect the effectiveness in terms of knowledge and fight against TF.

274. Costa Rica's bodies that are part of the TF combat system have not adopted measures for potential TF cases carried out in the country to be effectively identified and investigated.

275. There have been few training initiatives in the country in terms of TF for the personnel of the OIJ, the Public Prosecutor and the Criminal Courts. The members of the repressive system of the country still do not have the necessary knowledge to handle possible threats and specific TF trends that could be implemented in the country.

276. Costa Rica has a limited framework to address, in an adequate and effective manner, Recommendation 6 that enables for the adequate enforceability of specific sanctions determined by the UNSC in Resolutions 1267/1989, 1988 and 1373.

277. Costa Rica lacks legislation related to the fight against the financing of proliferation of weapons of mass destruction. There are no procedures for the identification and freezing under the terms established by FATF for the implementation of UNSC Resolutions 1718 and 1737.

##### *A. Background and Context*

278. On March 16<sup>th</sup>, 2009 the new Law for the Strengthening of the Legislation against Terrorism 8719 came into force, which amended the Law on drugs, psychotropic substances, unauthorized drugs, related activities, money laundering and financing of terrorism (Law 8204).

279. Art. 69 bis of Law 8204 establishes the criminalisation of the offense of TF as follows: “whoever, through any means, directly or indirectly collects, conceals, provides, fosters, enables or cooperates in any other way with the collection or delivery of funds, financial products, resources or instruments in the country or abroad, with the intention or knowledge that these will be used or allocated to the financing of terrorist acts, even if these are not executed, or to organizations declared as terrorist, according to International Law, or for terrorist purposes shall be punished with imprisonment from five (5) to fifteen (15) years. The case may be judged in Costa Rica regardless of where it was committed”.

280. Within the Ministry of Foreign Affairs, the CISTE works as an internal instance for the disclosure of information regarding international efforts related to security and the fight against terrorism. Nevertheless, at the moment of the on-site visit, the authorities informed that CISTE was not active.

281. Art. 33 of Law 8204 establishes the following:

*“When investigating an offense of money laundering or terrorist financing, the Public Prosecutor will request the corresponding court or authority, at any time and without prior notice or hearing, a, order for the confiscation, seizure or any other precautionary measure aimed at preserving the availability of the goods or related instruments for their eventual seizure.*

*This regulation includes the freezing of all the financial products that are being investigated in institutions, national or foreign, shown in Articles 14, 15 and 15 bis of this Law, in compliance with the relevant legal regulations.*

*In the case of people or organizations determined by the UNSC as connected to terrorism, acting in compliance with Chapter VII of the United Nations Charter, the FIU of the ICD, or the Public Prosecutor will manage the withholding or freezing of funds, financial products and the recording of the registry freezing of other assets. When, for investigation purposes, the lists of people and organizations linked to terrorism by the UNSC are circulated between the national or foreign institutions set in Art. 14, 15 and 15 bis of this Law, said institutions will be obliged to review them and inform the FIU of the ICD and the Public Prosecutor, if the people and organizations included in the lists have resources or assets on them (Art. 33).”*

282. Similarly, Art. 86 establishes the following:

*“If an illicit act included in this Law gives rise to an investigation by the competent authorities, whether judicial or administrative, every financial entity or entities that belong to a financial group will have the obligation of safeguarding the information, the documents, the value and cash that could be used as evidence or proof within the investigation or legal proceeding; as regards the money or value deposited or in custody, they will have to proceed to their freezing or deposit in the Central Bank of Costa Rica and report the authorities of the actions taken. The previous obligations begin when entities receive from the authorities a formal notification regarding the existence of an investigation or legal proceeding, or when entities lodge the corresponding complaint.*

*In the case of investigations carried out by the FIU of the ICD, in the same act of notifying the financial entities or entities that belong to a financial group the existence of an investigation, said Unit will have to inform the Public Prosecutor about the procedure in order to request to the corresponding judge, in a period of five (5) calendar days, the precautionary measure stated under Art. 33 of this Law. Once this period of time set has elapsed without an order of the judge to repeat the precautionary measure, the financial entities will lift the adopted measures.*

*These actions will not result in an administrative, civil, criminal or any other type of responsibility to entities or officers as long as they have acted in good faith”.*

283. The measures previously described are fundamental to carry out TF investigations. The FIU’s power to request the retention or freezing of *funds and financial products* is considered of special importance, as well as the safeguard of *information, documents, value and money*. The freezing measures are temporary for up to five (5) days, after which the Public Prosecutor can decide to request the precautionary measure stated under Art. 33 to the corresponding judge.

284. Although the measures in terms of precautionary measures for TF investigations and legal proceedings previously mentioned are important, these are not enough to adequately implement the requirements of Recommendation 6 to effectively comply with Resolutions 1267/1989, 1988 and 1373. Art. 33, 33 bis, and 86 of Law 8204 are the first developments to establish a legal framework for the implementation of the mentioned resolutions. However, this is not considered enough to comply with the requirements to promptly freeze the funds or assets of people and entities designated by the lists of Committees 1267/1989 and 1988 of the UNSC or to meet the freezing requests of third countries in the context of Resolution 1373. Therefore, targeted financial sanctions cannot be applied.

285. Costa Rica’s legislation lacks the mechanisms and procedures required by FATF Recommendation 7 to fight the financing of proliferation of weapons of mass destruction.

### ***B. Technical Compliance (R.5-8)***

286. The complete analysis can be found in the Technical Compliance Annex:

- Recommendation 5 (Terrorist financing offense) is rated as Partially Compliant.
- Recommendation 6 (Targeted financial sanctions related to terrorism and terrorist financing) is rated as Partially Compliant
- Recommendation 7 (Targeted financial sanctions related to financing of proliferation of weapons of mass destruction) is rated as Non-Compliant.
- Recommendation 8 (Non-profit organizations) is rated as Non-Compliant.

### ***C. Effectiveness: Immediate Outcome 9 (TF Investigation and prosecution)***

287. At the moment of the on-site visit, no TF cases were identified in Costa Rica, either in stage of investigation or prosecution, as well as no actions that reached the Criminal Courts of the country.

288. As established in the Technical Compliance Annex, the TF criminalisation has deficiencies that affect the scope on the possibility of TF prosecution and combating, as specific conducts are not criminalised. However, it is important to highlight the precautionary measures established, especially the FIU's power to temporarily freeze assets for five (5) days in the context of an investigation or criminal proceeding. Even though these measures have not been used in the practice for TF cases, according to what was observed during the on-site visit, they have worked in other cases where the FIU works with the Prosecutor's office and, if necessary, with the relevant FI, always within the scope of an investigation.

289. Even though during the development of RD- ML/TF, and during some interviews of the on-site visit, authorities have expressed that the terrorism and its financing are considered to be of low risk, as it has been previously expressed, there has been a lack of TF analysis in the development of the RD- ML/TF for the conclusions established regarding TF<sup>9</sup>. This can be explained by the fact that during the on-site visit, the DIS mentioned the development of analysis of the possible presence of the Revolutionary Armed Forces of Colombia (FARC, in Spanish) and jihadi groups. However, they explained the lack of consultation and statistical contributions during the process of RD- ML/TF to the DIS. Notwithstanding the foregoing, the assessment team agrees with Costa Rica's perception that TF can be considered of low risk given the context of the country.

290. The authorities stated that the country has developed the methodology of the discussion tables without losing sight of the reality of the country and the region, and the fact that after the end of RD- ML/TF the issue of TF has gained strength and the international agenda considers this issue to be a priority.

291. Within the organizational structures of the Judicial Police, the Public Prosecutor and the Criminal Courts, the teams of people or specialized units to act in the area of TF should be strengthened. There have been few training initiatives in the country in terms of TF for the personnel of the OIJ, the Public

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<sup>9</sup> According to what authorities informed, after the on-siteon-site visit, within the AML/CTF National Strategy, it is stipulated to address the issue of TF and a legislative reform is envisaged.

Prosecutor and the Criminal Courts. The members of the repressive system of the country still do not have the necessary knowledge to handle possible threats and specific TF trends that could be implemented in the country.

#### *General Conclusions of Immediate Outcome 9*

292. The deficiencies on the adequate criminalisation of the TF offense can affect the effectiveness in terms of knowledge and fight against TF. Likewise, Costa Rica has not adopted measures for possible TF cases carried out in the country to be effectively identified and investigated. No TF cases were identified in Costa Rica, either in stage of investigation or cases that reached the Criminal Courts of the country.

293. Within the organizational structures of the Judicial Police, the Public Prosecutor and the Criminal Courts, the teams of people or specialized units to act in the area of TF should be strengthened. There have been few training initiatives in the country in terms of TF for the personnel of the OIJ, the Public Prosecutor and the Criminal Courts. Most members of the repressive system of the country still do not have the necessary knowledge to handle possible threats and specific TF trends that could be implemented in the country

294. Accordingly, Costa Rica presents a **moderate level of effectiveness in immediate outcome 9**.

#### *D. Effectiveness: Immediate Outcome 10 (Financial sanctions and TF preventive measures)*

##### *Implementation of targeted financial sanctions*

295. Costa Rica does not have the necessary legislation or internal mechanisms that enable the implementation of Recommendation 6 as well as an adequate implementation of the UNSC Resolution 1267 (and successor resolutions) and 1373 both at a national and international level. This keeps the country from carrying out effective measures aimed at withholding resources and means to finance or support terrorist activities or organizations, in accordance with the requirements established in said Resolutions. Law 8204 establishes that: “(...) *In the case of people and organizations determined by the UNSC as connected to terrorism, acting in compliance with Chapter VII of the United Nations Charter, the FIU of the ICD, or the Public Prosecutor will manage the withholding or freezing of funds, financial products and the recording of the registry freezing of other assets. When, for investigation purposes, the lists of people and organizations linked to terrorism by the UNSC are circulated between the national or foreign institutions shown in Art. 14, 15 and 15 bis of this Law, said institutions will be obliged to review them and inform the FIU of the ICD and the Public Prosecutor, if the people and organizations included in the lists have resources or assets on them (Art. 33).*”

296. Moreover, the FIU has the power to order the temporary freezing for up to five (5) days (Art. 86). As mentioned before, this is the first development towards the implementation of UNSC Resolutions 2367/1989 and 1988.

297. However, as detailed in the Technical Compliance Annex, there are technical deficiencies that hinder an effective implementation of UNSC Resolutions. Specifically, there are no procedures to request individuals and legal persons to review UNSC lists due to the fact that freezing measures and the obligation to review the lists only operate when there is an investigation. It was not possible to verify the existence of formal mechanisms through which the lists issued by the UNSC on this regard reach relevant prevention and combat organizations, such as the Superintendences and the FIU itself, or the private sector. This also represents an obstacle for the adequate knowledge of the obligations that this sector has. Authorities agree on the need to design a procedure for the official circulation of the lists, since at the

moment of the on-site visit the access to the lists was based on the decision of the entity. Nevertheless, it is important to remark that as a result of the diagnosis, new commitments were taken on to achieve this.

298. Authorities informed that among the supervision procedures, in the specific case of registration, subjects supervised by the SUGEF are requested to consult external databases available in SUGEF, which corresponds to Equifax. The latter uses and updates international lists, such as OFAC, Interpol, FBI, DEA, etc., monthly and bimonthly. The lists of the United Nations are among this group of lists. However, it is important to mention that the fact that the lists are updated every month or every two months shows that if they are consulted by reporting entities, they will not have access to timely and updated information since the lists have very short update periods. Moreover, the consultations of some reporting entities, particularly the banking sector, are made by internal guidelines, but it cannot be ensured that said revision will operate permanently because the obligation only exists in investigation cases (so far, this has not happened).

*Abuse of Non-Profit Organizations:*

299. Costa Rica does not have specific laws or regulation that prevent the abuse of NPOs by organizations that finance terrorism or a risk analysis of NPOs as regards TF that enables an adequate understanding of the risk to which NPOs are exposed in Costa Rica. Moreover, these organizations do not have a supervision that controls their behavior or that explains their current financiers or beneficiaries. There was no indication of recommendations issued by authorities to instruct NPOs to prevent TF, what is consistent with the perception of public and private entities of the country that terrorism and its financing do not constitute relevant threats that need to be prevented and fought.

*Measures to withhold assets and means of terrorists, terrorist organizations and terrorist financiers:*

300. As mentioned above, Costa Rica does not have an adequate risk evaluation as regards terrorist financing, that is why the implementation of effective measures to prevent terrorist financing are limited. There are no actions focused on the fight against terrorist financing together with the financial sector or with any other relevant sector of economy, which adds to the mentioned lack of control of NPOs. Since the risk of terrorist financing does not have a special relevance to authorities, all the control rests on potential self-regulatory actions carried out by reporting entities.

*Consistency of the measures implemented by the country as a result of the TF risk evaluation:*

301. The limited specific regulations and actions of authorities to achieve an effective compliance of the prevention and prosecution of the financing of terrorist activities are reflected in the little understanding of the risk that TF represents to the country. Moreover, the lack of understanding of its characteristics leads to the broadest range of actors of the public and private sector to confuse terrorism with terrorist financing, which results in an absence of TF supervision, investigation and sanctioning.

***General Conclusions of Immediate Outcome 10***

302. Costa Rica does not have an effective system on this matter. It therefore requires specific legal and regulatory modifications both for compliance with UNSC Resolutions 1267, 1988 and 1989 and for compliance with the measures established in Resolution 1373.

303. It is extremely important that the Costa Rican regulation considers an effective method to freeze funds or other assets strictly related to what is established in Recommendation 6, different from those assets in

the framework of a criminal investigation, always including measures aimed at protecting the rights of bona fide third parties who can be affected by these implementations.

304. Moreover, regulations must be enforced and responsible authorities must be appointed to designate people to the UN lists above mentioned, which will have to comply with the specific requirements as regards their solvency and theoretical and practical foundation, and also for national designations and answer to third country requests in accordance with Resolution 1373.

305. Finally, it is necessary to modify the registry, supervision and monitoring of NPOs, which have to be supervised constantly to ensure the implementation of anti-TF preventive measures and to ensure that their funds, objectives and beneficiaries are consistent with the foundations of their creation.

306. Accordingly, Costa Rica presents a **low level of effectiveness in immediate Outcome 10**.

#### *E. Effectiveness: Immediate Outcome 11 (FP Financial Sanctions)*

307. As mentioned in the Technical Compliance Annex for Recommendation 7, no procedures have been established to identify and freeze designated people and entities in the implementation of UNSC Resolutions 1718 and 1737 in the terms established by FATF. Therefore, it was not possible to verify the effectiveness of this immediate Outcome.

#### *General Conclusions of Immediate Outcome 11*

308. Costa Rica lacks procedures established for the identification and freezing under the terms established by FATF in the implementation of Resolutions 1718 and 1737

309. Accordingly, Costa Rica presents a **low level of effectiveness in immediate Outcome 11**.

#### *F. Recommendations on terrorist financing and financing the proliferation of weapons of mass destruction*

310. Costa Rica must implement the following recommendations aimed at adequately combating TF and proliferation financing:

311. Costa Rica must address the deficiencies evidenced in the criminalisation of TF offense, so that the criminal aspect comprises all the aspects of Recommendation 5, particularly that TF offense includes the behaviors provided in Art. 2.b. of the Convention against TF and that TF offense includes the individual financing of terrorism.

312. The country must adopt measures either to create new teams or to adapt the existing units in the organizational structures of the Judicial Police and the Public Prosecutor for these to work on TF.

313. Likewise, Costa Rica must increase the number of training initiatives on TF carried out for the personnel of the OIJ, the Public Prosecutor and Criminal Courts, so that they have the necessary knowledge to handle possible threats and specific TF trends that could be implemented in the country by carrying out the necessary investigations and giving them due treatment in the Criminal Courts of the country.

314. Implement a specific regulatory framework both to comply with FATF Recommendation 6 for the adequate implementation of UNSC Resolutions 1267, 1988 and 1989 and to comply with the measures established in UNSC Resolution 1373.

315. Consider an effective method for the freezing of funds or other assets strictly related with what is established in Recommendation 6, always including measures aimed at protecting the rights of innocent third parties who can be affected by these regulations.

316. Enforce regulations and appoint responsible authorities to designate people to the UN lists above mentioned, which will have to comply with the specific requirements as regards their solvency and theoretical and practical foundation.

317. Modify the registry, supervision and monitoring of NPOs, which have to be supervised constantly to ensure the implementation of anti-TF preventive measures and to ensure that their funds, objectives and beneficiaries are consistent with the foundations of their creation.

318. Enforce relevant regulations and implement the necessary mechanisms to enable people and entities designated by UNSC Resolutions on proliferation of WMD to be identified, deprived of resources and prevented from collecting, moving and using funds or other assets for proliferation financing.

319. Enforce relevant regulation and implement the necessary mechanisms to impose full and effective focused financial sanctions without delay in the framework of UNSC Resolutions on WMD; to monitor their compliance and to have an adequate cooperation and coordination among relevant authorities to prevent the evasion of sanctions and to develop and implement policies and activities aimed at combating the FPWMD.

## V. PREVENTIVE MEASURES

### *Key Findings*

320. In relation with the other sectors, financial institutions are more advanced on these efforts. In general terms, entities of the financial system are more aware of the nature and the risk level of ML/TF of the sector and have adequate policies and procedures to mitigate and control these risks.

321. The level of financial exclusion and the lack of a formal State policy that orders financial inclusion efforts, as well as the lack of regulations on the matter make this element a matter that should be addressed by authorities since it could help the AML/CTF system, and the proportionality between preventive policies and those aimed at promoting financial inclusion.

322. The markets of insurance, securities and pensions are also carrying out important efforts on this matter, but most of them have expressed concerns regarding the current “comprehensive” regulation system and this converges in the need to analyze –along with authorities– the possible enforcement of regulations which are more suitable to the nature and characteristics of each market.

323. The proliferation of informal activities related to remittances, money exchangers and money lenders is also of concern.

324. There are concerns regarding other activities considered risky in Costa Rica, such as the provisional administration of funds and escrow operations.

325. DNFBPs do not seem to be aware of their exposure to ML/TF risks. The real estate market and the construction market are of particular concern given the growth of the real estate sector and the risk level perceived in this industry. Moreover, it is important to note the lack of understanding and commitment of the lawyers regarding ML/TF risks, who are particularly reluctant to accept the AML/CTF regulations of the country.

### *A. Background and Context*

#### *(a) Financial Sector and DNFBP*

326. Costa Rica has a financial system that is widely controlled by the banking sector and, within this sector, public banking has a significant weight. Assets of financial institutions account for 86.43% of GDP, figure that has increased in comparison to 2012 (78.81%).

327. The leading position shown by the financial system becomes understandable, especially given its size and complexity, as well as the material importance that it has for the Costa Rican economy, and taking into consideration the growing exposure this market has experienced at a regional and international level.

328. In Costa Rica, a degree of banking concentration is observed, and several of the most important banking entities are part of conglomerates or financial groups with international exposure, and they offer a wide range of products and services, even expanding their operations to the securities or insurance market.

329. The banking concentration in Costa Rica is significant and has commercial banks of the State as the most important actors of the sector as regards amount of assets, followed by private banks and banks

created by special laws, while the relative importance of non-banking financial companies and credit and savings cooperatives is considerably lower.

330. Currently, the system groups three (3) state banks, two (2) banks created by special laws and twelve (12) private banks, while two (2) mutual organizations, five (5) non-banking financial entities, twenty-nine (29) credit and savings cooperatives and three (3) bureaux de change are also part of the system.

331. In Costa Rica, the supervision of the financial system is in charge of four (4) superintendencies: the General Superintendence of Financial Entities (SUGEF), the General Securities Superintendence (SUGEVAL), the General Insurance Superintendence (SUGESE) and the Pension Superintendence (SUPEN). They authorize, regulate and supervise financial entities and act under the direction of a professional body called National Council for Supervision of the Financial System (CONASSIF). One of the functions of the latter is to adopt regulations regarding the authorization, regulation, supervision, control and monitoring which the respective superintendencies must enforce in accordance with the law, as well as ensure the uniformity and integration to the regulation and supervision activities of the financial system of Costa Rica.

**Table 1**  
**National financial system: some indicators regarding GDP (%)**  
**2012-2014**

Year	2012	2013	2014
<b>Total assets</b>	<b>86.84%</b>	<b>91.01%</b>	<b>94.58%</b>
Financial Entities	78.81%	83.04%	86.43%
Securities Market	1.32%	1.18%	1.15%
National Pension System (administrators)	0.20%	0.20%	0.20%
Insurance Market	6.51%	6.59%	6.80%
<b>Total investments</b>			
Financial Entities	13.24%	14.62%	14.54%
Securities Market	1.17%	1.04%	1.00%
National Pension System (contributors)	25.50%	25.90%	26.23%
Insurance Market	4.37%	4.37%	4.42%
<b>Credit Given (Financial Entities)</b>	<b>52.17%</b>	<b>54.04%</b>	<b>57.58%</b>
<b>Administration of third parties funds</b>			
Pension and labor capitalization funds[1] (contributors)	28.00%	29.70%	30.71%
Investment funds and brokerage firms	20.67%	22.40%	22.42%

332. The country has regional and international banking, which represents risks that must be addressed. Several of the most important banking entities are part of conglomerates or financial groups with cross border exposure and offer a wide range of products and services, even expanding their operations to the securities or insurance market. Figures regarding existing trusts in financial institutions must also be taken into consideration; their assets account for 26.71% of the Costa Rican GDP.

333. In general terms, banks converge in the criterion that currently substantial improvements can be observed in the AML/CTF system, particularly due to the fact that they have been given the chance to exercise a more active role regarding the prevention of these scourges. Even though the banking sector perceives an important change in the approach being developed by SUGEF, its representatives consider

that there still is work to be done to adequately fulfill the risk-based supervision model, since once the pilot plan of supervision is finished in 2014, its implementation still remains.

334. As regards the terrorist financing policies and procedures, although there is an important degree of awareness, both the banking sector and the rest of the regulated segments agree on the fact that these do not represent a significant risk for the country, since there are no terrorist events.

335. The insurance sector is composed of thirteen (13) insurance companies, including international insurance companies, intermediaries such as brokers and insurance broker agencies, insurance agencies, self-issued insurance agents linked to one or several insurance companies to sell insurance policies registered under the self-issued modality (massive sale). Its assets account for 6.80% of Costa Rica's GDP, while the Technical Provisions account for 3.00% of the GDP (figures up to December 2014).

336. According to the data provided by SUGESE, approximately thirty percent (30%) corresponds to mandatory insurance. From the remaining 70% of the market, only 18% corresponds to life insurance and there are ten (10) insurance companies authorized to offer them. The supervision of the sector is relatively new, since SUGESE started working in 2010. Initially, the efforts of the supervisor were centered on the process of entity licensing, but currently SUGESE is in the first stage of what will be the ML/TF risk-based supervision model.

337. Entities have expressed their intention to work jointly with regulatory authorities in the analysis and possible creation of a regulation which is closer to the needs of the segment, as they consider that the current "comprehensive" regulatory regime refers mostly to matters that do not concern the insurance market.

338. Basically, the idea is migrating towards a regulation that considers specific matters of the insurance market and that can draw up policies and procedures that are shown in accordance with the nature of the segment and its customers, products and services. Currently, the entities of the sector fairly support the international guidelines of IAIS for the identification of products of greater risk in this segment.

339. The pension sector is supervised by SUPEN. By the end of 2013, the National Pension System was administrating resources equal to US\$14,902 million (including the labor capitalization fund or FCL). From these resources, 45% corresponded to Basic Regimes. By December 31<sup>st</sup> 2013, the assets administered in the National Pension System amounted to more than 30% of the GDP.

340. "Individual capitalization" pension agencies are those subjected to the preventive model of money laundering and terrorist financing, while "collective capitalization" agents work under a scheme of collective fund which does not allow availability. In individual capitalization, voluntary funds are particularly important, as their assets account to \$411.2 million.

341. In the securities sector, the total assets that belong to this market amount only to 1.15% of the country's GDP, while Investment Funds and Brokerage Firms amount to 22.42% of the GDP.

342. Entities of the securities sector are obliged to carry out a self-assessment to detect which are the main risks. Most of the risks identified are currency exchange through the stock market and currency income. Likewise, the representatives of this sector have also expressed that it would be convenient to establish specific regulations on ML/TF risks inherent to the sector, since the current regulation is more focused on other markets, such as the banking market.

343. In this regards, there are many conglomerates and financial groups in Costa Rica that are registered before the SUGEF and several more important banking entities which are immersed in them.

344. The bureaux de change sector combines three (3) exchange entities that offer different services, but that seem relatively conservative in their business as that they do not carry out remittance or transfer operations. Nevertheless, they are still classified as high risk by the other actors of the AML/CTF system.

345. Fund remittance companies authorized by SUGEF in the light of Art. 15 of Law 8204 are seventeen (17). In this segment, funds are transferred mainly to destinations such as Nicaragua and Colombia, as well as other Central American countries. The companies that offer these services partially operate with their own stores and also use agencies from different points of the country that offer their products.

346. As regards DNFBPs, there are many reporting entities who operate as DNFBP in Costa Rica.

Sector	Treasury	MPS	INTERNET (Only new cars)	Bar Association	NND	According to CPC website	SUGEF
Vehicles	1768 <sup>1</sup>		26 <sup>2</sup>				
Casinos and gaming rooms	41	93					
Real estate, real estate activities, property sales	17868						
Legal activities, Law firms, Lawyers, Notaries, Legal advisors	10597			24553	Active <sup>3</sup> 7971 Enrolled 1743		
Accountants						7256	
Weapons		45 <sup>4</sup>					
Jewelry	154 <sup>5</sup>						
Trust administrators or any type of resources administrators							117

1- The Treasury category includes retail sales and wholesale of new and used cars.

2- Only agencies of new vehicles according to the Association of Machinery and Vehicles Importers (AIVEMA in Spanish) and INTERNET (26 agencies)

3- The difference between active and enrolled is that those enrolled are part of the Record but are not licensed to practice law.

4- There are 30 companies that import and commercialize firearms, munitions and accessories, plus 14 that only commercialize in the national territory by distributing the goods imported by the first group.

5- Manufacturing of primary products of precious metals and non-ferrous metals, manufacturing of jewelry and related articles, wholesale of jewelry, smelting of non-ferrous metals (includes several categories).

347. In the case of DNFBBs regulated and supervised by SUGEF, by December 2014, according to data provided by SUGEF, there were 117 people registered under Art. 15.d of Law 8204, corresponding to those who are involved in the administration of trusts or any other kind of administration of resources carried out by individuals or legal persons who are not financial intermediaries. There are currently thirteen (13) subjects applying for registration. All those people are under the supervision scope of the SUGEF.

348. Provisional fund administrators, also called “escrow”, are of special concern. These operate mainly as third parties who temporarily support a transaction for buying and selling until the parties entering into the contract finalize the operation. Although there are many people who work in this business segment, there are only eight (8) companies gathered in the guild, which are registered before the SUGEF despite Art. 15 of Law 8204, according to the information provided by the representatives of said guild during the on-site visit. The professionals who exercise this role have policies and procedures to mitigate ML/TF risks, as the sector is aware that this is a platform that may be used for money laundering apart from the fact that a high percentage of their customers come from abroad.

349. Accountants, lawyers and notaries, engineers and architects are regulated by Art. 15 bis of Law 8204, which establishes that independent professions are reporting entities, what is developed in Art. 51 of decree-law 8204. In Costa Rica, there are approximately twenty four (24) thousand lawyers, eight (8) thousand of which also exercise the role of notary public, as the legislation does not make a distinction between the two and allows the free exercise of both professions at the same time. As regards engineers and architects, the guild gathers twenty seven (27) professions that are mainly involved in construction and there are no laws or regulations that distinguish between these two professions.

350. Agents in charge of buying and selling cars are also identified as a vulnerable area for money laundering. Therefore, the sector has developed specific protocols for the cases of customers who appear with sums of money above ten thousand US dollars, while strategic alliances are sought to be forged with banks to channel fund transfers through them. Despite the fact that a machinery and vehicles association does exist, it is not necessary to become a member of it, although the main agencies of the country are currently registered and gathered in it.

351. In Costa Rica, real estate agents generally have customers with a high profile of income or transactions with commercial properties, industrial properties or offices. These agents exercise as non-regulated subjects, as there are no laws that regulate the real estate sector or that describes the work of the sector itself. According to the estimations of the guild, there are approximately seven thousand people who regularly carry out this activity, 500 of which would operate within the formal sector. An important ignorance is perceived, as this sector is not regulated and is supported almost entirely on the ethics of each professional. In the case of transactions of coastal properties or popular touristic properties, a high percentage of investments are originated by foreign capitals and the sector awaits for a legislation on the real estate system to be enforced to determine who is the person allowed to buy and sell, to define the actors and to regulate the business in order to minimize the current informality<sup>10</sup>.

352. As regards casino companies, it must be said that this business segment carries an important stigma and that it is classified as high risk by the rest of the actors of the AML/CTF system given the lack of specific regulation and supervision of AML/CTF measures, what makes it considerably difficult to operate with the banking system, according to the information provided during the on-site visit.

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<sup>10</sup> It is important to mention that, according to the information provided, after the on-site visit Costa Rica has started to work on a National Strategy framework towards actions aimed at supporting the creation of a law that includes this sector.

*(b) Preventive Measures*

353. Since the last Mutual Evaluation in 2007, Costa Rica has modified its AML/CTF preventive regime and has begun an improvement process that considers an important commitment to fight ML/TF. This can be reflected in the PND, which has as one of its strategic aspects the “prevention and repression of money laundering and terrorist financing”, establishing the need to adopt a risk-based model that includes the different sectors that participate in the prevention, control and repression of money laundering and terrorist financing as policy.

354. There have been significant efforts to carry out improvements and to disseminate the legal and regulatory framework through coordination and exercises to engage with the different sectors. However, it cannot be ignored that there are economic sectors that even if they have been defined as reporting entities still lack supervision, particularly in the case of some DNFBPs, credit card operators that are not part of a financial group, and alternative means of financial transfers (Art. 15 bis, Law 8204). Moreover, as explained in the following chapter regarding the supervision level of FIs, their effectiveness varies per each of the Superintendencies.

355. The main preventive obligations are outlined in Law 8204 and in its regulations. The regulatory and institutional framework developed during the years has resulted in important changes in the financial, insurance, securities and pension systems, as well as in many DNFBP sectors. In accordance with Art. 14 of Law 8204, all financial institutions established in said Art. are subjects obliged to AML/CTF measures in Costa Rica.

356. In accordance with said legal provision, the entities subject to the obligations of the law are those which are regulated, supervised and controlled by the following bodies, accordingly: SUGEF, SUGEVAL, SUPEN and SUGESE. Moreover, the legal obligations apply to all the entities or companies that are part of financial groups supervised by the mentioned bodies, including financial transactions made by banks or financial entities domiciled abroad by means of a financial entity domiciled in Costa Rica.

357. Art. 15 of Law 8204 states that those who should be subject to legal regulations are those carrying out activities of systematic or substantial operations of money exchange and transfers, through means, such as checks, money orders, bills of exchange or similar means; systematic or substantial operations of issuance, sale, redemption or transfer of traveler checks or postal orders; systematic substantial fund transfers carried out by any means; administration of trusts or any kind of administration of resources carried out by individuals or legal persons that are not financial intermediaries, and money transfers from one country to another.

358. The regulation of Law 8204 establishes that financial institutions have the obligation to implement policies and procedures on products and services that are considered of high risk, such as international transfers, products of high volume of cash, transactions in which there is no physical presence of the customer and safe-deposit boxes, among others (Art. 32), and it also establishes the obligation of implementing enhanced due diligence in the cases of high risk customers (Art. 19).

359. Although the essential legal and regulatory obligations on customer due diligence and record keeping are outlined, there are no regulatory provisions regarding the reliance on third parties for CDD<sup>11</sup> or that

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<sup>11</sup> After the on-site visit, Authorities have informed that the issues of dependence on third parties for the implementation of the Know Your Customer Policy, as well as related risks regarding new products and services are being taken into consideration for

address the topic of new technologies, including the proliferation of electronic money, electronic wallet or others. Moreover, it is important to mention that there are no regulations on issues related to financial inclusion, both regarding the risks related to products and services and possible new distribution channels that aim at encouraging financial inclusion. Although SUGEF has been a member of the Alliance for Financial Inclusion (AFI) since 2013, it is important to mention the lack of specific policies, at a national level, aimed at promoting efforts to financially include more sectors of the Costa Rican society<sup>12</sup>.

360. The same AML/CTF regulation applies to all the entities supervised by the four (4) Superintendencies, what is considered a vulnerability by many actors of the system, mainly because this “comprehensive” scheme does not focus on special features or characteristics of several markets or business segments, such as insurance companies, securities companies, pension companies and bureaux de change.

361. The monitoring and supervision of financial institutions (unlike DNFBPs) includes the ML/TF risk-based supervision and, in accordance with NCL 8204, the ML/TF risk management of financial institutions must be a comprehensive part of the risk evaluation process (Art. 3). In this regard, both the evaluation process and the reviews and corrective plans must be registered in the minutes of the board of directors of financial institutions to enable the later verification of its compliance (NCL 8204, Art. 3).

362. For the ML/TF risk evaluation of financial institutions, risk factors must be taken into consideration, for example, type of customer, products and services, distribution channels and geographic location (NCL 8204, Art. 3). Also, the ML/TF risk evaluation processes of financial institutions must be reviewed at least once every twelve months (Art. 3).

363. The regulation of Law 8204 also establishes the implementation of enhanced due diligence in the cases of high risk customers (Art. 19). Financial institutions must classify each customer within a risk category: high, moderate or low (NCL 8204, Art.4). To do this, they have to design a methodology for their risk classification (NCL 8204, Art. 5) and the regulation establishes criteria for the analysis of the risk profile of the customer (NCL 8204, Art. 6).

(c) *Exemptions based on risk or extensions of the preventive measures.*

364. In accordance with Art. 6 of the Regulations of Law 8204, the basic pension regimes and pension funds created by special laws, the compulsory occupational risk insurance and the compulsory automobile

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the amendments that will be done in the short term to Agreement SUGEF 12-10 “*Regulation for the Compliance with Law 8204*”. However, this information is out of reach of the Mutual Evaluation, which limits to the date of the on-site visit.

<sup>12</sup> On May 7<sup>th</sup> of the current year, authorities informed that an Executive Decree was signed to amend the regulation of Law 8204, regarding simplified file accounts (CES in Spanish), as a policy created by the Central Bank to promote financial inclusion in the country and also new products were launched, such as the mobile wallet. Moreover, the Central Bank is working on the regulations of the payment system. Also, at a CONASSIF level, with the purpose of boosting matters intrinsically related to financial inclusion, a national strategy of financial education was approved. This strategy is developed by three main bodies: 1) a “*High Level Committee*”, formed by the superintendents of the four financial superintendencies of the country (SUGEF, SUGEVAL, SUPEN and SUGESE) and two directors of CONASSIF; 2) a “*Technical Committee*” formed by technical representatives of the four superintendencies and CONASSIF; and 3) the “*Costa Rican Financial Education Network*” formed by the mentioned “*Technical Committee*” and representatives of more than 30 of the supervised financial entities. This strategy is based on three main pillars: Information, Orientation and Education. The objective is to create competences in individuals that will enable them to adequately perform as users of the financial products and services. However, this information is out of reach of the Mutual Evaluation, which limits to the date of the on-site visit.

and issuers insurance are exempted from the implementation of what is established by Law 8204, the Regulations and Provisions issued by CONSASSIF<sup>13</sup>.

365. As regards simplified measures, it seems that the only measures approved are established in Articles 8.n<sup>14</sup> and 9.m<sup>15</sup> of the Provisions for compliance with Law 8204 (NCL 8204) of the CONASSIF, regarding the description of the origin of funds that justifies the transactions to be made by the customer and the support which has to be documentary, through information of databases of public or commercial entities, social security employer's slips, income certifications, salary certifications, employers' listing, accounting books certifications, financial statements of the last fiscal year audited or internal dully held back by the accountant or legal representative.

### **B. Technical Compliance (R.9-23)**

366. The complete analysis can be found in the Technical Compliance Annex:

- Recommendation 9 (Financial Institution Secrecy Law) is rated as Compliant.
- Recommendation 10 (Customer Due Diligence) is rated as Partially Compliant.
- Recommendation 11 (Record Keeping) is rated as Compliant.
- Recommendation 12 (Politically Exposed Persons) is rated as Largely Compliant.
- Recommendation 13 (Correspondent Banking) is rated as Largely Compliant.
- Recommendation 14 (Money Transfer Services) is rated as Compliant.
- Recommendation 15 (New Technologies) is rated as Non Compliant.
- Recommendation 16 (Wire Transfers) is rated as Partially Compliant.
- Recommendation 17 (Reliance on Third Parties) is rated as Non Compliant.

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<sup>13</sup> It is important to mention that after the on-site visit, the Authorities informed that the Simplified File Accounts established in the amendment being worked on the Regulations of the Payment System of the Central Bank of Costa Rica will make necessary the amendment of NCL 8204, thus enabling the exemption of some requirements to said accounts.

<sup>14</sup> "Supervised subjects are exempted from requiring documentation supporting the origin of funds when customers carry out monthly transactions of amounts inferior to two base salaries or one base salary in the case of remittance companies (in accordance with Law 7337) in colons or its equivalent in another currency (currently a base salary equals to \$730 approximately). If a customer modifies his transactional pattern or increases the monthly amount above the limit established in the Art., the supervised subject is obliged to immediately request to the customer the documentation that supports the new transactional pattern".

<sup>15</sup> "If the partners are legal persons with a share that is equal or above ten percent (10%) of the capital stock, information must be provided about all the partners that appear in the property structure up to the final level of individuals (at the very least, the information established in Subsections c) to l) of Art. 8 must be required). The following cases exempt this last requirement: when the legal person or its partners are a public or government institution or a financial entity subject to the surveillance of the Superintendencias regarding money laundering and terrorist financing, an intergovernmental body or companies which total shares are quoted in an organized national or foreign market".

- Recommendation 18 (Internal Controls and Foreign Branches and Subsidiaries) is rated as Largely Compliant.
- Recommendation 19 (Higher-Risk Countries) is rated as Partially Compliant.
- Recommendation 20 (Suspicious Transaction Reports) is rated as Partially Compliant.
- Recommendation 21 (Tipping-Off and Confidentiality) is rated as Largely Compliant.
- Recommendation 22 (DNFBP – Customer Due Diligence) is rated as Partially Compliant.
- Recommendation 23 (DNFBP – Other Measures) is rated as Partially Compliant.

### ***C. Effectiveness: Immediate Outcome 4 (Preventive Measures)***

367. The most important strengths of the Costa Rican AML/CTF preventive system are observed in the sector of financial institutions, which is in a strengthened position in relation to the other reporting entities and stands as one of the flagships of the system. The financial entities segment is aware of the risks related to money laundering –unlike, up to a certain point, the risks related to TF, as it will be shown later– and has preventive policies and procedures that proportionally and adequately mitigate them, in virtue of a risk-based approach. For this to be possible, FIs carry out a self-assessment of risks and there is an important involvement of the directive and executive officers of the institutions.

368. FIs seem to adequately implement controls, and have internal policies and procedures to ensure the compliance with AML/CTF requirements, most of which go even beyond the Costa Rican regulations, given the regulatory deficiencies identified as regards technical compliance. Thus, there are significant legal deficiencies regarding new technologies, financial inclusion products and operations that involve higher-risk countries identified by FATF.

369. Likewise, it is important to mention that regulations on banking secrecy in Costa Rica do not seem to stand as an obstacle for the AML/CTF system and do not hamper the work of reporting entities who operate in the financial market, unlike some DNFBPs, especially the lawyers guild.

370. Banks, together with financial entities and cooperatives, have formed the “interbank forum” more than a year ago; this forum gathers compliance officers and other representative actors for the discussion of matters related to AML/CTF, which seems to be favorably contributing to the understanding of the risks of the sector itself.

371. Similarly, financial institutions have an active participation in the drafting of AML/CTF regulations and are consulted by authorities during the process of issuing regulations.

372. Inside FIs, risk matrixes have been developed; these include ML/TF risk only as one more component, and entities gather different sources of information for them, such as criminality indexes and statistics created by the FIU. In this framework, representatives of the financial system agree on the affirmation that there still is high expectation towards the statistics that SUGEF could provide in order to contribute with this task. Under the current scheme, FIs include an assessment and segmentation of risks according to the factors established in FATF’s international standards.

373. According to the information provided by entities, there is information related to risks and there are also some reports on trends and typologies that the FIU provides to reporting entities. The FIU also

provides information on the quality of STRs and even provides examples of STR that are weak or completed with mistakes. In this sense, there seems to be an interesting level of feedback and training.

374. FIs implement monitoring and checks against OFAC, UN and similar listings; they have automated systems and create timely alerts while implementing due diligence consistent with the cases of higher-risk customers, such as PEPs and others, also taking into consideration higher-risk jurisdictions. There is an important process of awareness and training, mostly in the financial, insurance and securities systems, while the pension system still has difficulties, mostly due to the lack of suitable human resources that have full knowledge on the matter.

375. Naturally, FIs have greater resources to adequately implement their policies and proceedings in accordance with their sizes, dimensions, target market, complexity and risk profile.

376. Entities offer a wide range of products and services that are considered to be of special risk, such as checking and electronic accounts, transfers, safe-deposit boxes, credits, trusts, administration of third parties funds, as well as activities of casinos, real estate and electronic means of payment, among others. Therefore, different preventive measures are implemented on them.

377. At the same time, FIs are generally reluctant to operate with customers such as bureaux de change, pawn shops, casinos, bearers of checks, private loaners, companies of precious metals or weapons, night clubs, foundations, travel agencies and independent professionals. In this sense, some FIs do not operate with this type of businesses and in the exercise of enhanced due diligence control they close the accounts in the absence of the required information.

378. As regards foreign trade operations, although there are well-established preventive mechanisms to manage the ML/TF risk, there is no way for checking the veracity of what the customer declared or of the documents provided by him, for example, through an exchange mechanism that enables the sharing of information between financial institutions and tax or customs authorities.

379. The levels of financial exclusion and the lack of formal financial inclusion policies at a country level are of special concern and could have a significant impact in the AML/CTF system. Despite the initial and vague efforts to promote financial inclusion in Costa Rica, authorities still have to carry out coordinated efforts to find a balance between the possible financial inclusion policies and the public policies for the prevention and combat of money laundering led by the Central Bank and SUGEF. Although authorities are aware of the existence of companies that offer products of electronic money, there are no regulations on them.

380. To a lesser extent, the sectors of insurance companies, the stock market and pensions, as well as the sector of credit and savings cooperatives, are well aware of the nature and dimension of the risks of their sector and have been carrying out important efforts to improve their corresponding AML/CTF prevention systems as a way of implementing the risk-based approach, although still relatively lagged behind in relation to financial institutions.

381. Likewise, it is important to mention the efforts of bureaux de change and remittance companies to improve their preventive frameworks and implement proportional measures to mitigate their ML/TF risks. In that sense, companies that offer money transfer services seem to understand their risks and have a conservative business policy, although this segment appears to be one with the highest risk.

382. Regarding the sector that groups the bureaux de change, it should be mentioned that although they have to comply with a series of requirements by the Central Bank and SUGEF, both for their registration

and operation, the sector does not seem to be adequately supervised by the authorities and, according to the information provided by their representatives, it did not participate in the risk diagnosis, although this is an activity that is naturally presented as high risk for any AML/CTF system.

383. The Costa Rican exchange market seems to have evolved towards a more sophisticated scheme, as currently one has to be registered in order to operate in the currency exchange, and those who carry out transactions in this market consider that risks have been reduced. Moreover, there are no stock brokers and the competition created by the participation of banks has had a favorable result in making the sector more professional.

384. The situation regarding the wide range of DNFBPs that currently coexist in Costa Rica, is of concern mainly in relation to the poor level of understanding of its risks, as well as the mechanisms they have to mitigate these risks<sup>16</sup>.

385. Said concern is further stressed as it is related to preventive measures for terrorist financing, since the country –and particularly the DNFBP sector– generally lack policies and regulations to address this issue, mainly due to the fact that the different sectors involved consider that terrorism does not imply a significant threat for Costa Rica, simply because there are practically no terrorist acts.

386. The preventive measures adopted by some DNFBPs, such as provisional fund administrators, escrow, lawyers and notaries, accountants, casinos, real estate and construction agents, are still lagged behind despite the recent rapprochements, particularly by the FIU, to raise awareness on their obligations of registering and reporting suspicious transactions and CDD minimum obligations. The Costa Rican real estate sector has had a growth that is higher than that of other economic activities, what is a significant attention call for the other sectors. This has a significant influence given the importance of the sector in the context of ML in Costa Rica.

387. Although there are several schemes of internal control and internal procedures aimed at knowing the customer and complying with AML/CTF requirement, and there are efforts to migrate towards a risk-based approach, the DNFBP sector is poorly supervised and no preventive measures are observed to adequately address ML/TF risks. Therefore, there are important improvements to be done, especially regarding the above mentioned sectors.

388. A special concern is the reluctant stance adopted by the lawyers sector, given the fact that the representatives of the guild have openly expressed their decision of judicially appealing the constitutional validity of AML/CTF regulations. As regards notaries, given their civil service and since they are ruled by the principle of petition, there is a confusing dilemma because the notary is obliged to provide the service to the citizen, so in the case of –a suspicious transaction– it seems that the notary must abstain from executing the act but legally he cannot act in such way, thus creating an important doubt and causing a behavior that could collide with the compliance of AML/CTF regulations.

389. As regards the activity of administrators of third parties funds, although there is regulation on the matter, it is also considered of high risk as it is difficult to identify the beneficial owner on the transactions carried out, and also given the proliferation of the construction sector and the buying and selling of properties.

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<sup>16</sup> Costa Rican authorities are in the process of draTFing an effective regulation model, and different events of rapprochement, training and awareness have been carried out.

390. This sector seems to be very vulnerable and can be used to enable anonymity in the ownership of goods or investments and to enable money transfers through the financial system. Under this scheme, the effective identification of the beneficial owner becomes a difficult task.

391. As regards the real estate, construction and real estate agents sector, there is no institution in charge of regulating money laundering, except for the figure regulated by SUGEVAL, which includes negotiations in the real estate sector corresponding to real estate investment funds and real estate development investment funds.

392. It is worth repeating the lack of importance given to preventive measures regarding terrorist financing, as it is considered that allegedly terrorism and its financing do not imply a threat to the country, what creates an important concern that could have a negative impact in the AML/CTF system conceived as a whole. However, it must be clarified that FIs and some DNFBPs (those under the supervision of SUGEF – Art. 15.d) implement extended due diligence measures when they operate with customers who are NPOs, in which case special emphasis is made on both the origin and destination of the funds.

393. Moreover, it is important to highlight that there are no regulatory provisions related to the reliance on third parties for CDD, although it seems that said scheme takes place with non-banking correspondents in the case of the financial system, as well as with agencies that work supporting fund remittance companies in remote places of the country.

394. Finally, as regards suspicious transaction reports, although there is a regulatory difference regarding the submission of STRs, where the regulation of Law 8204 is clear when establishing that obliged subject must directly submit STRs to the FIU, the legal provision that establishes that the communication must be done to the corresponding supervision and surveillance body (which, according to the law, is also obliged to submit the report to the FIU) still exists. In practice, STRs are directly submitted by reporting entities to the FIU. The following table summarizes the STRs sent by reporting entities to the FIU:

**STRs received by the FIU / 2011 -2014**

Entity/Year	2011	2012	2013	2014
Insurance agencies	47	16	10	13
Banks	219	145	204	233
Cooperatives	17	13	13	14
Finance companies	5	3	1	10
Mutual organizations	23	22	14	10
Investment fund administrators	2	6	0	0
Pension agents	1	0	1	1
Remittance companies	15	7	22	9
Brokerage/Security firms	3	5	3	3
Third party fund administrators	0	0	1	0
Automobile agencies	--	--	--	2
Trust/ Escrow	0	0	4	2
Superintendencies	31	0	0	0
Total	363	217	273	297

395. As it can be seen, the highest number of STRs comes from entities supervised by SUGEF; the highest number of STRs corresponds to the banking sector, considering the information provided during the on-site

visit. It is important to note the low number of STRs sent by DNFBPs, which was expected given the lack of regulation and supervision of the sector.

396. Moreover, although it can be said that FIs adequately comply with their obligations of notification of STR and record keeping, it is important to mention the special situation of banks, which have established an “informal mechanism” of reporting to authorities, through which a responsible person of the entity communicates to the Public Prosecutor a specific operation that presents suspicious signals or characteristics by telephone.

397. Although banks consider that this mechanism is dynamic and effective for the timely communication to authorities, the confidentiality of the information is a concern and this creates an important doubt on the suitability of the procedure, as it could damage the prohibition against tipping off due to the fact that it is an informal channel of communication, with its related vulnerabilities, and may hamper possible criminal investigations given the lack of formality of the mechanism<sup>17</sup>.

#### *General Conclusions of Immediate Outcome 4*

398. FIs are aware of the ML/TF risks to which they are exposed. FIs are more advanced in these efforts in relation to the other sectors. In general terms, entities of the financial system are aware of the nature and ML/TF risk level of the sector and have adequate policies and procedures to mitigate and control these risks.

399. The level of financial exclusion and the lack of a policy to order financial inclusion efforts, as well as the lack of regulation on the matter, create a significant concern that may have a significant impact in the AML/CTF system.

400. FIs express their concern on the current “comprehensive” regulation system and consider the issuance of regulations that are more adequate to the nature and characteristics of each market and especially regarding ML/TF risks to be appropriate.

401. The proliferation of informal activities related to remittances companies, money exchangers and money lenders is also of concern, to which other concerns are added regarding other activities considered risky in Costa Rica, such as the administration of provisional funds and escrow activities.

402. DNFBPs are not aware of their exposure to ML/TF risks. The real estate and construction markets are of special concern given the notorious growth shown by the real estate sector and the risk level expressed about this industry. Moreover, it is important to highlight the lack of understanding and commitment of lawyers regarding ML/TF risks, who are specifically reluctant to accept the AML/CTF regulations of the country.

403. Accordingly, Costa Rica presents a **moderate level of effectiveness in immediate Outcome 4.**

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<sup>17</sup> After the on-site visit, authorities informed that as regards tipping off, NCL 8204 will be amended in the short term, which will specifically prohibit FIs to inform a customer of a suspicious transaction related to him is being reported. However, this information is out of reach of the Mutual Evaluation, which limits to the date of the on-site visit.

#### ***D. Recommendations on Preventive Measures***

404. Costa Rica should implement the following recommendations in order to increase the effectiveness of the preventive measures within the SML/CTF system:

- The identified deficiencies regarding the technical compliance with the preventive measures Recommendations should be addressed.
- Authorities should create mechanisms to accelerate the implementation of the risk-based approach in all FIs and DNFBPs.
- The risks related to the bureaux de change sector should be taken into consideration. This sector was not considered in the risk diagnosis of the country despite the risk it represents. Given the nature of its activities, it could be relevant for the AML/CTF scheme and the preventive measures that take place in it.
- Superintendencies should analyze the possibility of establishing different guidelines for each regulated market according to the ML/TF risks, establishing enhanced and simplified DD measures according to each case.
- In the short term, Costa Rica should review the analysis carried out on the threats of terrorist financing and should address the matter taking into consideration the current situation at a regional level, in order to obtain a thorough and adequate knowledge and to understand the threats, vulnerabilities and consequences of TF, and to implement the corresponding measures.
- At a country level, the current draft policies and regulations should be completed to promote financial inclusion, also taking into consideration the relevance of the financial exclusion factor in the framework of AML/CTF policies, and being compatible and proportionate with the efforts of the money laundering preventive system while promoting the introduction of specific regulations regarding products that are aimed at financially including the population, including matters related to ML/TF risks.
- Banking entities should analyze along with the authorities of regulation, supervision and the Public Prosecutor the legality and convenience of continuing with the alternative mechanisms of communicating suspicious transactions carried out with the Prosecutor's office through informal reporting channels such as telephone calls, as there is the doubt of whether the procedure is really effective, and at the same time it could visibly hamper the nature of STRs and infringe matters related to the confidentiality of the information and the legal provisions that prohibit tipping off, even reducing the possible effectiveness of a criminal investigation.
- It should give priority to the implementation of measures aimed at strengthening the regulation and supervision of DNFBPs, particularly those considered as high risk by the country.
- Competent authorities and the guild that gathers lawyers should urgently coordinate the necessary mechanisms to create a greater awareness of ML and TF risks, and of their AML/CTF obligations.
- The supervision of several DNFBP sectors should be urgently strengthened, especially the following segments: construction, real estate agents and real estate developments, provisional fund administration and buying and selling vehicles agents so that awareness is raised on ML/TF threats and on the importance of having policies and procedures that can adequately mitigate them with a risk-based approach.
- Increase the efforts aimed at supervising, controlling and mitigating the activities carried out by provisional fund administrators or escrow, given their vulnerability and the risk they could represent for the system.
- Strengthen the regulation and ensure a more rigorous control over the increasing real estate market, taking into consideration the proliferation of constructions in Costa Rica and the dissemination of actors related to the segment, including real estate agents, engineers, architects, assistants and intermediaries, especially given the identified ML risk level.

**VI. SUPERVISION**

**Key Findings**

405. There is no authority that can prevent the issuance of the corresponding license in order for criminals or their associates not to have a significant part of casinos or to hold executive positions.

406. Although Costa Rican authorities are in a phase of rapprochement to the different sectors that are part of the DNFBPs, there are currently no competent authorities to regulate and supervise the AML/CTF system in both physical and online casinos, as well as the rest of DNFBPs that are not supervised or regulated by the Superintendencies.

407. In practice, supervisors require an action plan or another improvement procedure for the FIs they supervise. However, few sanctions have been observed in their supervision work.

408. Supervisors explain that they do not have a wide range of proportional and dissuasive sanctions, either criminal, civil or administrative, to apply to individuals or legal persons that do not comply with AML/CTF requirements.

409. The ML/TF risk-based analysis of superintendencies is in different stages of development, since some of them are still implementing or improving it.

**A. Background and Context**

410. In Costa Rica, the supervision of the financial system is in charge of four (4) superintendencies: the General Superintendence of Financial Entities (SUGEF), the General Securities Superintendence (SUGEVAL), the General Insurance Superintendence (SUGESE) and the Pension Superintendence (SUPEN). They authorize, regulate and supervise the financial entities that are shown in the following table. Said supervision bodies act under the direction of a professional body called National Council for Supervision of the Financial System (CONASSIF). One of the functions of the latter is to adopt regulations regarding the authorization, regulation, supervision, control and monitoring, which the respective superintendencies must enforce in accordance with the law, as well as ensure the uniformity and integration to the regulation and supervision activities of the financial system of Costa Rica.

**Table 6.1 Types of Entities Supervised by Superintendencies**

CONASSIF			
SUGEF	SUGEVAL	SUPEN	SUGESE
1. Financial groups and conglomerates. <b>(a)</b> 2. Banking entities. 3. Cooperatives. 4. Entities of Art. 15 of AML regulation. <b>(b)</b> 5. Entities created by special laws. 6. Bureaux de change. 7. Mutual organizations.	1. Brokerage firms. 2. Funds companies. 3. Issuers. 4. Custodians. 5. Financial groups.	1. Pension agents. 2. Basic regimes and special funds.	1. Insurance agencies. 2. Insurance broker agencies. 3. Insurance brokers. 4. Insurance companies. 5. Financial groups. 6. Self-issued insurance agents. 7. Insurance agents.

**NOTES:**

(a) Among financial groups, there are entities that are FIs and are not supervised by the

Superintendencies.

- (b) Refers to the following activities:
- a. Systematic or substantial operations of money and transfer exchange, by means such as checks, money orders, bills of exchange or similar means.
  - b. Systematic or substantial operations of issuance, sale, redemption or transfer of travelers' checks or postal orders.
  - c. Systematic or substantial fund transfers carried out by any means.
  - d. Administration of trusts or any kind of administration of resources carried out by individuals or legal persons that are not financial intermediaries. (c)
  - e. Money transfers from one country to another.
- (c) According to the methodology used to evaluate the technical compliance with FATF's Recommendations and the effectiveness of AML/CTF systems, this activity is considered within the Designated Non-Financial Businesses and Professions. That is to say, that in accordance with the Costa Rican legislation, the General Superintendence of Financial Entities (SUGEF) would be in charge of this sector of DNFBP, regarding AML/CTF.

411. As regards the situation of DNFBPs, it is important to mention that AML/CTF regulations oblige those mentioned in the notes of Chart 6.1 (Administration of trusts or any kind of administration of resources carried out by individuals or legal persons that are not financial intermediaries) to be registered in SUGEF to be supervised by it as regards AML/CTF.

412. The rest of DNFBPs have the obligation of registering with the FIU. However, this process is still on an early stage, as it was evidenced during the on-site visit that the FIU is currently on a phase of rapprochement and awareness with different sectors that are part of DNFBPs. Moreover, in accordance with Art. 15 bis of Law 8204, the FIU has the power to issue regulations on reporting entities; however, as mentioned before, this task does not seem to have started given the lack of personnel and resources of the FIU.

413. Additionally, the following system for authorizations, registration and supervision was established for DNFBPs and other financial activities that are not subject to the regulation and supervision of the above mentioned Superintendencies:

**Table 6.2 Authorization, registration and supervision of DNFBPs and some FIs**  
414.

	ACTIVITIES	NEEDS AUTHORIZATION		NEEDS REGISTRATION		AML/CTF SUPERVISED	
		YES/NO	ENTITY	YES/NO	ENTITY	YES/NO	ENTITY
1	Buying, selling or transferring immovable and movable property subject and not subject to registration, such as weapons, precious stones and metals, Works of art, jewelry, automobiles and insurances <i>(d)</i> . (Buying and selling immovable property, selling of jewelry, precious stones and metals, buying and selling works of art) <i>(a) (b)</i>	No	---	Yes	FIU	No	---
2	Credit card operators who are not part of a financial group <i>(a) (b)</i>	No	---	Yes	FIU	No	---
3	Professional services <i>(a)</i> (Lawyers and Public Accountants who exercise their profession independently) <i>(b)</i>	No	---	Yes	FIU	No	---
4	Alternative means of financial transfer <i>(b) (c)</i>	No	---	Yes	FIU	No	---
5	Manufacture, sale and distribution of arms <i>(b)</i>	Yes	Ministry of Public Security <i>(c)</i>	Yes	FIU	No	---
6	Buying and selling new or used vehicles <i>(b)</i>	No	---	Yes	FIU	No	---
7	Individuals or legal persons creditors of credit operations of any nature <i>(b)</i>	No	---	Yes	FIU	No	---
8	Any other activity established by the FIU through a grounded resolution <i>(b)</i> Engineers	No	---	Yes	FIU	No	---

**NOTES:**  
*(a)* Art. 15 bis of Law 8204 on drugs, psychotropic substances, unauthorized drugs, related activities, money laundering and financing of terrorism.  
*(b)* Art. 51 of the General Regulation on legislation against drug trafficking, related activities, money laundering, financing of terrorism and organized crime, Executive Decree 36948. It is important to mention that, according to the information provided by Costa Rica, there are no weapons or ammunition factories up to date.  
*(c)* The Ministry of Public Security authorizes the marketing of weapons through the Department of Arms and Explosives of the Ministry of Public Security.  
*(d)* In the case of the insurance activity, as this activity is carried out by insurance companies, it must be authorized, registered and supervised by the General Insurance Superintendence.

415. As regards casinos with a physical presence, although they need a license issued by the Ministry of Security to operate, they only need to complete formal requirements for its operation (infrastructure or investment).

416. As regards online casinos, there is no authority designated for the AML/CTF supervision, and it is not defined which authority will authorize them. It is important to mention that in the process of RD-ML/TF, this sector is identified as a sector of concern although there is no clear dimension of the magnitude of this type of business.

**B. Technical Compliance (R.26-28, R.34, R.35)**

417. The complete analysis can be found in the Technical Compliance Annex:

- Recommendation 26 (Regulation and Supervision of Financial Institutions) is rated as Largely Compliant.
- Recommendation 27 (Powers of Supervisors) is rated as Largely Compliant.
- Recommendation 28 (Regulation and Supervision of DNFBPs) is rated as Non-Compliant
- Recommendation 34 (Guidance and Feedback) is rated as Largely Compliant.
- Recommendation 35 (Sanctions) is rated as Partially Compliant.

**C. Effectiveness: Immediate Outcome 3 (Supervision)**

418. The supervisors of the financial sector have measures to prevent criminals and their accomplices from obtaining licenses or possessing a significant participation in FIs. The process implemented by the Superintendencies of financial institutions can prevent FIs from obtaining a license to operate. Thus, SUGEF showed actions for cases in which financial intermediation was established, carrying out verifications to determine if there was financial intermediation being carried out by a significant number of entities. Likewise, SUGEVAL evidenced a significant amount of accusations when it established cases of unauthorized public offer (OPNA, in Spanish).

419. Notwithstanding the foregoing, financial activities acknowledged by legislation as reporting entities were identified, but the responsible body that authorized the licenses to operate or prevents criminals from having a participation in these activities was not identified. The Costa Rican law establishes credit card operators that are not part of a financial group, as well as alternative means of financial transactions as reporting entities, for which there is no evidence of a body that issues licenses to operate, apart from the registry before the FIU. However, it is important to mention that during the on-site visit, in conversations with the private sector, the almost inexistent operation of cards that are not part of a financial group was mentioned.

420. As regards DNFBPs, it was established that casinos do not have a body that prevents criminals from having a significant participation in them. It is important to mention that Costa Rica considers Trust Administration or any type of administration of resources carried out by individuals or legal persons, that are not financial intermediaries and to whom regulations require the registration with SUGEF as reporting entities; to that end, information is required on the applicant or partners, directors and legal representatives related to criminal records. The following table shows the registrations with the SUGEF carried out from 2010 to 2014

**Table 6.3 Reporting entities – Art. 15**

2010-2014	
Year	Total registrations
2010	78
2011	114
2012	114
2013	121

2014	117
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421. As regards physical casinos, the Ministry of Public Security cannot prevent criminals from having a significant participation in them. To operate in Costa Rica, casinos must be authorized by the Ministry of Public Security, although to get this authorization they only have to comply with formal aspects, so the Ministry cannot prevent criminals from having a significant participation in them. The situation is even more complicated with online casinos, considered (together with casinos with a physical presence) in the RD-ML/TF to have a high level of exposure to ML/TF risk, as they are not subject to regulation and they do not require any type of authorization.

*(b) Identification and comprehension of ML/TF risks by the supervisor*

422. Financial supervisors have different levels of progress in the identification and comprehension of ML/TF risks of reporting entities that carry out supervision. The implementation of a supervision scheme with a ML/TF risk-based approach varies in each Superintendencia. For example, SUGEF is starting a process of implementation of a methodology to carry out ML/TF risk-based supervision. SUGESE is also implementing this supervision approach. In the case of SUPEN, the methodology of risk-based supervision has been implemented since 2003 and is currently in process of revision and improvement with the assistance of the World Bank. In the case of SUGEVAl, it is important to highlight that this is the Superintendencia that has showed the most progress in the implementation of the ML/TF risk-based supervision approach.

423. SUGEF has been working on a pilot plan to carry out ML/TF risk-based supervisions, which has concluded in 2014. To date, the ML risk-based approach is in process of implementation, which is expected to conclude during the first semester of 2016. On this regard, during the on-site visit, the FIs that were included in the pilot plan and that were interviewed expressed positive comments regarding the new approach being implemented by SUGEF. The verifications carried out from 2010 to 2014 refer to the supervision of regulation compliance, which are detailed in the following table.

**Table 6.4 Entities supervised by SUGEF**

Year	ENTITIES		BANKS		Total
	Cooperatives and finance companies	Private Banks and financial groups	State banks, special laws, mutual organizations and other	Subjects of Art. 15	
2010	7	3	2	4	16
2011	5	4	3	2	14
2012	2	2	3	6	13
2013	3	1	2	2	8
2014	1	3	--	2	6
<b>Total</b>	<b>17</b>	<b>10</b>	<b>10</b>	<b>14</b>	<b>51</b>

424. In the case of SUGESE, it was evidenced that it is currently in the development phase of a risk-based model of supervision evaluation, and that so far a compliance supervision approach has been implemented,

in which different aspects were assessed, such as the structure and the work of the compliance officer, record keeping, KYC policy, etc.

425. SUPEN is in process of reviewing the ML/TF risk-based approach, which has been implemented since 2003 and has currently carried out audits specifically on AML/CTF. The following table shows the audits carried out (Visits Law 8204 and Follow-up visits Law 8204), which refer to compliance audits. SUPEN considers that the products offered by pension operators are not of high or moderate risk, regarding the materialization of facts related to the financing of terrorism or money laundering. However, the analysis carried out to get to this conclusion was not shown, as well as whether it has procedures to carry out regular evaluations regarding the risk they represent. The detail of the audits is shown in the following table:

**Table 6.5 Entities supervised by SUPEN**

Year	TIPOS DE SUPERVISIÓN					Total
	Visits Law 8204	Follow-up visits Law 8204	Operational risk evaluation Visits	Third parties reports	Action plans	
2010	0	2	16	4	14	36
2011	1	0	8	5	6	20
2012	0	1	6	8	5	20
2013	2	0	6	6	12	26
2014	0	2	6	6	0	14
<b>Total</b>	<b>3</b>	<b>5</b>	<b>42</b>	<b>29</b>	<b>37</b>	<b>116</b>

426. SUGEVAL is the superintendence that shows the most progress in the implementation of the ML/TF risk-based approach in the supervisions carried out. During the on-site visit, SUGEVAL presented its methodology used to qualify the ML/TF risk of the FIs it supervises, showing that different information is taken into consideration, enabling the identification of ML/TF risks to which their FIs are exposed. That is why, at the moment of the on-site visit, it was the only superintendence that showed the risk level with which it qualifies their FIs. In the second semester of 2013, it designed a matrix to prioritize its inspections based on the risk identified. On this regards, the matrix is as follows.

OBLIGED SUBJECT	RISK PROFILE				TOTAL
	HIGH	MEDIUM-HIGH	MEDIUM-LOW	LOW	
Brokerage firms	5	3	5	3	16
Funds companies	5	4	2	3	14
<b>Total</b>	<b>10</b>	<b>7</b>	<b>7</b>	<b>6</b>	<b>30</b>

427. The authorities that will carry out the supervision of DNFBPs are not appointed yet, except for those that are registered and supervised by SUGEVAL. At the moment of the visit, only DNFBPs registered before SUGEVAL were supervised by this entity.

428. The rest of DNFBPs established as reporting entities by Art. 15 bis of Law 8204 do not seem to have a supervisor who, among other aspects, identifies the risks to which they are exposed and supervises accordingly.

429. Neither the Ministry of Public Security nor any other authority supervises if casinos comply with their AML/CTF obligations. It was established that neither the Ministry of Public Security nor any other authority has, among its obligations, that of supervising if casinos comply with their AML/CTF obligations. It was also established that casinos with a physical presence have not registered with the FIU either, therefore they are not complying with reporting obligations, among other obligations established by the Law. Moreover, no measures have been implemented regarding online casinos.

*(c) Supervision of AML/CTF compliance based on ML/TF risks*

430. Supervision has been carried out to verify the compliance with the obligations without taking into consideration ML/TF risk. From the different progress made in the ML/TF risk-based approach, it was established that the audits carried out by SUGEF, SUGESE and SUPEN are focused on the compliance with regulations, instead of having a risk-based approach.

431. No authority has been designated to carry out the supervision related to AML/CTF matters in DNFBPs established as reporting entities by Art. 15 bis of Law 8204, with the exception of DNFBPs that are registered with SUGEF and that are supervised by it (Art. 15.d, Law 8204).

432. At the moment of the on-site visit, there was no authority designated to supervise casinos on AML/CTF, as the Ministry of Public Security only supervises physical casinos regarding compliance with the regulation that governs them, and is limited to inspecting compliance with the requirements established to authorize their operation. It is important to mention that during the on-site visit, the FIU showed to be in process of rapprochement and awareness with different sectors that are part of DNFBPs, among which there are casinos.

*d) Sanctions regime and remedial action implemented for non-compliance with AML/CTF requirements*

433. The technical deficiencies of the Costa Rican sanction regime significantly affect the effectiveness on this point, as the Technical Compliance Annex shows that there are few sanctions available to supervisors. Therefore, the sanction regime has barely been implemented by Superintendencies. As shown in the following table, Superintendencies have jointly imposed three (3) sanctions to FIs in the last four (4) years. Moreover, according to the information gathered in the on-site visit, CONASSIF intervenes in the last part of the process of imposition of sanctions, which resolves the appeals presented by FIs in response to an imposition of a sanction. On this regards, SUGEF mentioned that CONASSIF has been appealing a sanction for more than two (2) years without being resolved.

**Table 6.6 Sanctions imposed by Superintendencies**

	2010		2011		2012		2013		2014		TOTAL	
	Amount US\$	Number	Amount US\$	Number	Amount US\$	Number	Amount US\$	Number	Amount US\$	Number	Amount US\$	Number
SUGEF	0,00	0	0,00	0	0,00	0	0,00	0	0,00	0	0,00	0
SUGESE	0,00	0	0,00	0	0,00	0	0,00	0	0,00	0	0,00	0
SUGEVAL	0,00	0	0,00	0	0,00	0	11,020.09	2	0,00	0	11,020.09	2
SUPEN	0,00	0	0,00	0	9,177.31	1	0,00	0	0,00	0	9,177.31	1
<b>TOTAL</b>	<b>0,00</b>	<b>0</b>	<b>0,00</b>	<b>0</b>	<b>9,177.31</b>	<b>1</b>	<b>11,020.09</b>	<b>2</b>	<b>0,00</b>	<b>0</b>	<b>20,197.40</b>	<b>3</b>

NOTE: Sanctions imposed by SUGEVAL amounted to ₡4,459,938 and ₡1,050,105, while sanctions imposed by SUPEN amounted to ₡4,588,655.35. For the calculation in US\$, the exchange rate considered was ₡500.00 per US\$1.00.

434. The authority that will impose sanctions to DNFBPs that do not comply with the AML/CTF regulation has not been designated. With the exception of DNFBPs that are registered with SUGEVAL and that are supervised by it, no sanctions have been imposed to DNFBPs, as the authority/authorities in charge of the supervision and imposition of sanctions for the rest of DNFBPs has not been designated.

*(d) Impact of supervision in the compliance with AML/CTF requirements.*

435. SUGEVAL and SUGEVAL are the only institutions that have shown the impact of their supervisions as regards AML/CTF, as they showed the decrease of findings identified in their supervisions regarding AML/CTF (see the following tables). SUGESE and SUPEN have not shown such impacts, as they are in process of implementing or improving the ML/TF risk-based supervision approach.

**Table 6.7 Findings of supervisions carried out by SUGEVAL**

	FIRST VISIT		LAST VISIT		+ INCREASE/ - DECREASE	
	Physical	Legal	Physical	Legal	Physical	Legal
	Findings	Findings	Findings	Findings	Findings	Findings
Entity A	14	13	3	6	-11	-7
Entity B	5	11	1	4	-4	-7
Entity C	3	5	4	1	1	-4
Entity D	1	4	1	3	0	-1
Entity E	6	15	0	0	-6	-15
Entity F	10	16	0	0	-10	-16
Entity G	1	5	2	2	1	-3
Entity H	10	8	6	11	-4	3
Entity I	1	5	2	2	1	-3
Entity J	1	5	2	2	1	-3
Entity K	14	13	3	6	-11	-7

**Table 6.8 Findings of supervisions carried out by SUGEF**  
**Impact of the supervision carried out by SUGEF 2011-2014**  
 (Aggregated data)

EVALUATED AREA	PRIVATE BANKS			PUBLIC/OTHER			COOPERATIVES/FINANCE COMPANIES			ART. 15		
	/1	/2	/3	/1	/2	/3	/1	/2	/3	/1	/2	/3
External Audit	3	2	-1	3	0	-3	4	2	-2	12	6	-6
Internal Audit	10	6	-4	4	0	-4	4	2	-2	13	5	-8
Compliance Committee	5	3	-2	5	0	-5	3	1	-2	11	3	-8
Risk Management (Art. 3)	10	6	-4	5	1	-4	9	4	-5	12	3	-9
Board of Directors	7	5	-2	5	0	-5	9	3	-6	11	3	-8
Compliance Handbook	9	5	-4	4	1	-3	9	2	-7	13	3	-10
Customer Classification Methodology (Art. 4-6)	8	5	-3	6	0	-6	6	2	-4	12	3	-9
Compliance Office	9	5	-4	7	0	-7	9	4	-5	12	6	-6
Know your Customer Policy	10	6	-4	8	4	-4	11	3	-8	13	5	-8
Know your Collaborator Policy	8	5	-3	6	1	-5	9	3	-6	11	3	-8
Suspicious Transaction Reports	3	1	-2	4	1	-3	6	2	-4	11	3	-8
Operations Report (SICVECA)	5	4	-1	6	0	-6	0	0	0	11	3	-8
Monitoring System	10	6	-4	8	2	-6	10	4	-6	13	4	-9
<b>TOTAL</b>	<b>97</b>	<b>59</b>	<b>-38</b>	<b>71</b>	<b>10</b>	<b>-61</b>	<b>89</b>	<b>32</b>	<b>-57</b>	<b>155</b>	<b>50</b>	<b>-105</b>

**Notes:**

/1 Number of entities in which the evaluated area shows one or more findings

/2 Number of entities in which the detected finding must be corrected

/3 - Decrease of findings / + Increase of findings

436. In the case of DNFBPs, it was not possible to observe the impact of supervision, as at the moment of the on-site visit there was no authority designated to supervise them, except for those registered and supervised by SUGEF.

*(f) Promotion of a clear understanding of ML/TF risks and AML/CTF obligations*

437. Superintendencies have carried out efforts to hold meetings with the guilds of the reporting persons they supervise. They have also made efforts to carry out training for the guilds of reporting persons, in order to promote a clear understanding of ML/TF risks.

438. The contribution of Superintendencies to strengthen the AML/CTF system is exercised by the feedback provided to entities in the meetings carried out to communicate the findings detected in the inspection visits or in the analysis, in training activities and in the response to consultations formulated by the supervised persons.

439. In the case of SUPEN, in the meeting following the inspections, a feedback process was performed regarding the deficiencies and possibilities of improvement. Likewise, in the assessment of the operational risk (ECRO in Spanish), information was provided on the risks found in this area.

440. Superintendencies consider that providing feedback with the findings made by their supervisors promote a clear understanding of ML/TF risks. Superintendencies have informed FIs that they supervise in relation to their findings. However, as SUGEF, SUPEN and SUGESE are in the process of implementation

or improvement of their ML/TF risk-based approach, it is not possible to promote the understanding of ML/TF risks to which the FIs they supervise are exposed.

441. The FIU is making efforts to get closer to those DNFBPs that are not registered before SUGEF to promote the understanding of ML/TF risks and their AML/CTF obligations. DNFBPs are in the process of being informed about their AML/CTF obligations. In accordance with the Regulations of Law 8204, the FIU seems to have the power of issuing regulations for DNFBPs (Art. 15 bis, Law 8204). However, the FIU has not issued any regulations, which can be explained by the lack of personnel and resources of the FIU. The FIU has nevertheless issued recommendations supported by the ICD for vehicle agencies and companies that buy and sell real estate regarding the basic obligations on preventive measures, particularly the obligation of reporting cash transactions and suspicious transactions. Moreover, the FIU has had a special rapprochement with accountants, who seem to be receptive and have become more aware of AML/CTF obligations, as well as promoting the registration of accountants before the FIU.

#### *General Conclusions of Immediate Outcome 3*

442. ML/TF risk-based supervision is in different phases of development, in some cases it is in the first stages of implementation and in other cases the development is in progress.

443. Even though competent authorities are in a phase of rapprochement with the different sectors of DNFBPs, there is currently no competent authority that regulates and supervises the AML/CTF system in physical casinos and in online casinos, as well as in the other DNFBPs. Particularly, there is no authority preventing the issuance of the corresponding license, for criminals and their associates not to have a significant participation in casinos or to hold executive positions.

444. Superintendencies have imposed few sanctions in their supervision work and do not have a wide range of proportional and dissuasive sanctions, either criminal, civil or administrative, to impose to individuals or entities that do not comply with AML/CTF requirements.

445. Accordingly, Costa Rica presents a **moderate level of effectiveness in Immediate Outcome 3**.

#### ***D. Recommendations on Supervision***

446. Costa Rica should implement the following recommendations in order to have an effective supervision:

- Costa Rica must strengthen the corresponding regulations for the Ministry of Public Security or other authority to prevent criminals and their associates from having a significant participation in casinos or from holding executive positions in them.
- Costa Rican Superintendencies must take into consideration the risk profile of FIs that supervise TF, as currently they only take into consideration ML.
- Costa Rica must designate a competent authority to regulate and supervise the AML/CTF system in physical casinos and online casinos, as well as the other DNFBPs that are not supervised or regulated by Superintendencies.
- Costa Rica must strengthen the AML/CTF regulation for Superintendencies or competent bodies to have a wide range of sanctions that are proportional and dissuasive, either criminal civil or

administrative, to impose to individuals and legal persons that do not comply with AML/CTF requirements.

- Once the sanction framework is strengthened, the Costa Rican Superintendencies must impose the corresponding sanctions for the deficiencies identified in their supervisory work, as, in practice, few financial sanctions have been imposed.
- SUGEF, SUGESE and SUPEN must strengthen and implement the ML/TF risk-based approach, as they currently present different stages of progress on this approach.
- Costa Rican Superintendencies must impose the corresponding financial sanctions, as, in practice, different findings have been identified. No financial sanctions have been imposed but action plans have been requested to correct them.

**VII. LEGAL PERSONS AND STRUCTURES**

**Key Findings**

447. The existing mechanisms rely mainly on the information recorded, which, in that sense, has important limitations. The transfer of shares of a public corporation by endorsement, without registration and, sometimes, the reluctance to provide record books of shareholders to authorities are important obstacles to reduce the lack of transparency regarding persons’ property.

448. The presence of trading companies with directors and nominee shareholders that are no more than apparent owners without an effective control over those companies has been verified, which facilitates the improper use of trading companies as means for international money laundering in Costa Rica.

449. As regards trusts, the lack of a registry and the lack of supervision to which trust service providers have been subject up to date are deficiencies that limit the veracity and transparency of people who exercise an effective final control over this type of legal structures.

450. The reluctance showed by some professionals, such as lawyers, to provide information on their customers by virtue of professional secrecy significantly affects the transparency of legal persons domiciled in Costa Rica. This situation is also affecting, by extension, the due compliance of notaries as obliged subjectsreporting entities.

451. The lack of supervision of legal professionals shows that, up to date, no sanctions have been imposed for the failure to provide information on beneficial ownership. On this regard, it is important to add that there are few sanctions that take regulations into consideration and that they have little dissuasive effect on offenders.

**A. Background and Context**

**(a) Overview Of Legal persons**

452. There are different types of legal persons that can be created in Costa Rica, to which the National Registry assigns its corresponding corporate identification number (there is a reduced number that do not register before the Registry of Legal persons but with different Ministries). When the on-site visit concluded, the number of legal persons registered before the Registry of Legal persons was the following:

<b>TYPE NUMBER</b>	<b>OF</b>	<b>DESCRIPTION OF TYPE</b>	<b>AMOUNT</b>
002		ASSOCIATIONS	15,579
006		FOUNDATIONS	1,751
012		BRANCHES	504
012		LETTERS OF AUTHORIZATIONS OF FOREIGN COMPANIES	1,908
101		PUBLIC CORPORATIONS	481,679
102		LIMITIED LIABILITY COMPANIES	58,260
106		CIVIL SOCIETIES	631

108	PROFESSIONAL SOCIETIES	76
	<b>TOTAL</b>	560,388 <sup>18</sup>

453. As it can be observed, trading companies are the most numerous and within trading companies, public corporations are the ones that represent the highest percentage of the total (85.95%). Public corporations require the existence of at least two partners and are incorporated in a deed authorized by a notary, which has to be registered before the Registry of Legal persons to have legal effects upon third parties (the registration has a constituent nature). The later transfer of shares, which can only be nominee shares, can be done by endorsement or by deed, the former being the option chosen in most cases. There are no legal requirements as regards the minimum or maximum share capital; therefore, it is normal to have legal persons constituted with a minimum capital of 10,000 Colones (approximately \$20).

454. In accordance with Art. 252 of the Commercial Code, all trading companies must have a record of its partners, which legalization will be in charge of the National Registry. The registration books of shareholders and assemblies of the partners, and the minute book will have to be handed together with the articles of incorporation.

455. The National Registry is a body member of the Ministry of Justice and Peace, created by Law 5695, which purpose is to be an institution that ensures the legal security of rights included in it, as well as to make those rights known. The information of the National Registry and particularly of the Registry of Legal persons is public. Any interested person can obtain truthful information of any entity registered regarding its registered name or company name, corporate identification number, exact address, purpose, duration, form of administration, legal representatives, mandates given, members of the administrative and surveillance bodies, lawsuits, complaints and even the processes of administrative nature that exist against that legal entity.

456. The notarial function is a power delegated by the State which purpose is to legitimize acts and contracts recognized as such by the State when an authorized notary intervenes at the request of a party. Notaries' intervention is mandatory for the incorporation of legal persons, and they can also intervene in later transfers of shares of trading companies. A peculiarity that exists in Costa Rica is that notaries can exercise, at the same time, as lawyers and even as fund administrators, in such a way that they can represent one of the parties as lawyers and can also authorize the legal act as notaries. Moreover, notaries are generally in charge of issuing the certification of the book of partners or shares of a trading company, when competent authorities and reporting entities need to identify the beneficial owner as regards money laundering prevention. Although it is not expressly mentioned, it is understood that notaries are subjects obliged by Law 8204 through Art. 15 bis and Art. 51 of the Regulation under the Law, as the latter includes lawyers and this is a prerequisite to exercise as notaries.

*(b) Overview of Legal Structures*

457. In Costa Rica, trusts are provided in the Commercial Code (Art. 633-662), but there is no specific regulation that further develops on them. Any type of good or right that is subject to trade can be the object of a trust, and those transfers that include the transfer of goods that are subject to trade will be registered in the Registry, such as immovable property and some movable property. At the moment of the on-site visit, there were 42,474 properties under the name of a trustee<sup>19</sup> in the Real Estate Registry, and there were 29,210 trusts on terrestrial vehicles, vessels and airplanes<sup>20</sup> in the Registry of Movable Goods. Therefore,

<sup>18</sup> Source: Registry of Legal Persons.

<sup>19</sup> Source: Real Estate Registry.

<sup>20</sup> Source: Registry of Movable Property.

there is no specific registry for trusts, as only the buying and selling contracts of goods subject to registration are registered, thus recording that one of the parties participated as trustee.

458. In accordance with Art. 15 of Law 8204, the reporting entities will be those who carry out activities of trust administration or any type of administration of resources performed by individuals or legal persons that are not financial intermediaries. These people will have to register with SUGEF, but this does not mean that they are authorized to operate, and they will be supervised as regards money laundering. However, those legal firms that provide another type of professional services must also register with the FIU for the activities included in Art. 15 bis of the same law.

*(c) International Context for legal persons and structures*

459. Costa Rica has experienced an important real estate development, mostly in coastal areas destined to the tourist market (hotels and residences), with a strong investment component from other countries, mainly from United States, Panama and Colombia. These real estate investments are frequently channeled through public corporations that do not have a commercial activity, thus being a legal instrument to appear as owners of these properties. Although commercial regulations do not take into consideration the concept of director or nominee shareholder, in practice there are offices of lawyers that offer these types of services. These practices present a high risk of ML as they can be used for the concealment of the beneficial owners of properties that are purchased with funds originated by drug trafficking or other criminal activities, and this has been proven by State bodies in charge of the investigation of these offenses, which frequently observe the presence of shell companies in the ownership of property.

460. Moreover, public corporations incorporated in Costa Rica have also been used abroad with the sole purpose of concealing the beneficial owners. These corporations are acquired by foreigners in their countries of origin through law firms that have professional contacts with lawyers or fund administrators in Costa Rica and are used for tax evasion on the income of company or professional businesses, or to launder funds originated by criminal activities, thus concealing goods of illicit property. These corporations, created in Costa Rica, can also be part of corporate structures, formed by several corporations domiciled in different non-transparent jurisdictions that enable money of criminal origin to be unlinked, through international bank transfers that make the follow-up of funds difficult for tax, police and legal authorities of the countries where the offense was made.

***B. Technical Compliance (R.24, R.25)***

461. The complete analysis can be found in the technical compliance annex:

- Recommendation 24 (transparency and beneficial ownership of legal persons) presents the qualification Partially Compliant.
- Recommendation 25 (transparency and beneficial ownership of other legal structures) presents the qualification Partially Compliant.

***C. Effectiveness: Immediate Outcome 5 (Legal Persons and Structures)***

*(a) Public Information on Legal Persons and Other Structures*

462. Public information on the creation and types of legal persons persons can be found in the Registry of Legal, which covers most types of legal persons that can be created in Costa Rica. In general terms, the assessment made during the on-site visit by competent authorities and reporting entities regarding the

information available in the registry is positive and their contribution to legal security in commercial transactions is acknowledged. Any interested person can obtain truthful information of any registered entity regarding its registered name or company name, corporate identification number, address, purpose, duration, form of administration, legal representatives, mandates given, members of the administrative and surveillance bodies, lawsuits and even the processes of administrative nature that exist against that legal entity

463. However, there is no specific Registry for other legal structures such as trusts, which are acknowledged in the commercial regulations of the country. Only the transfers of goods recordable in trusts are registered, but not the contract that established the conditions of the trust. In accordance with Art. 636 of the Commercial Code, said transfer of ownership only requires the registration of the good under the name of the trustee, but the power of establishing the legitimization of the trustor, as well as complete name and qualities of the trustor, trust beneficiary and the trustee remain in the qualification area of the registrar that records the document. It is also interesting to mention that regulations establish that the trustee cannot be trustor and trustee at the same time, and if they coincide, the trustor cannot have the benefits of the trust (Art. 656 of the Commercial Code).

*(b) Knowledge of the Risks and Vulnerabilities*

464. In the RD-ML/TF of Costa Rica, different risks and vulnerabilities that affect the country are identified, such as the use of trusts to guarantee anonymity, purchases of real estate with cash through intermediary companies or figureheads, third parties fund administrators that enable the reception of money through transfers from abroad, the use of shell companies to launder illicit money in the national territory and abroad, and an important tax evasion of the income tax of legal persons, which estimation positions Costa Rica among the countries with the highest default rates of Latin America<sup>21</sup>.

465. All the competent authorities consulted seem to have good knowledge of these risks and acknowledge some vulnerabilities in their preventive system, which are used by criminals to launder money through legal persons and trusts. However, some groups, such as lawyers, notaries and trust administrators, have evident reservations at the time of being actors in the prevention of ML, what becomes an important concern as they have a key position in the creation, development and fulfillment of these legal businesses.

466. No risk assessment has been carried out among the different corporate instruments that exist in the legal system, although everything indicates that, among the legal persons, public corporations are the most used as shell companies given their easy creation and transfer. The high number of public corporation registered in relation to the population of the country results in a very clear indication that a significant percentage of them are not carrying out a business activity, but are being used as holding companies or shell companies in the country and abroad.

*(c) Preventive Measures for the Misuse of Legal Persons*

467. The most important measure adopted by Costa Rica since the previous evaluation in 2006 as regards legal persons has been that of definite removal of bearer shares in public corporations, through Law 9068 enforced in 2012, which amends Art. 120 of the Commercial Code. Currently, shares can only be nominee and all the shareholders must be identified in the corresponding record book of the corporation.

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<sup>21</sup> Source: Inter American Center of Tax Administrations (CIAT in Spanish).

468. Moreover, there is a draft Executive Decree for the creation of a public record of shareholders that would be managed by the General Department of Taxation. This instrument could not be assessed by the evaluation team as it was not approved at the moment of the on-site visit.

469. In general terms, ML competent authorities are making progress in their training and have more legal instruments to carry out their work, but there still are regulatory and training gaps when addressing investigations on corporate structures that conceal the beneficial owners, and there is still a lack of technical and human resources that limits their effectiveness as regards prevention and investigation.

(d) *Information on Beneficial Owners*

470. Competent authorities and reporting entities can consult the Registry of Legal Persons to get basic information about the legal persons registered, who are obliged to keep a record book on partners and shareholders, which must be updated, as well as to show its content, when requested.

471. Also, reporting entities who are supervised by the different Superintendencies must request their customers that are legal persons information about their shareholders. Specifically, the Agreement SUGEF 12-10 approved by CONASSIF on December 3<sup>rd</sup> 2010 and published in the official gazette on December 22<sup>nd</sup> 2010, establishes that they should request their customers the following: *“Certification of legal status with a date of issuance which cannot be over three months at the moment of registration, which may be updated upon consultation in databases of public entities; notarial certification as shown in the book of shareholders in the case of Costa Rican legal, which date of issuance cannot be over three months at the moment of its presentation, in which detail is provided on the valid identification number of the document, the name and percentage of shares of the shareholders who own 10% or more of the shares of the customer or of the shareholder who owns the greatest shareholding stake, even if it does not exceed the percentage mentioned”*.

472. However, in practice, authorities consulted generally informed about existing difficulties to gather this type of information. The Registry does not always have updated information on beneficial owners, as shares can be transferred by the founding partners to third parties without having the obligation to record that transfer. Also, on some occasions, corporate representatives or notaries that keep guard of the books are reluctant to provide these data, requesting an injunction for it. Tax authorities even observe that some prefer to pay the fine for not having books than to comply with this request. The fine established by Art. 84 bis of the Code of Regulations and Tax Procedures for not having books of shareholders is that of one base salary (approximately \$747), an amount that does not seem to have dissuasive effects when there is an intention of concealing beneficial owners.

473. On this point, it is important to mention the lack of awareness of lawyers and notaries, who are a key part in the creation of legal and trusts, and who lack knowledge on AML/CTF obligations and of the role they play in the system, particularly lawyers. The lack of a preventive control on their customers and of due diligence measures reduces the effectiveness of the system. The interpretation that professional secrecy prevents compliance with the obligations of ML/TF prevention is an important obstacle that significantly hampers the efforts made by public institutions. Particularly, when the notary also acts as lawyer of the party in the legal business, the guarantee of impartiality of the notary can be at risk, thus limiting his capacity of legality control, which would also function as an effective mechanism of ML/TF risk control and report of suspicious transactions.

474. As regards the effectiveness on the collection of information regarding the beneficial ownership of other structures such as trusts, the system mainly relies on the information provided by the National Registry and SUGEF, which comes from trust administrators subject to Art. 15 of Law 8204. In general

terms, the registered data can provide information on the identity of the different parts of a trust, such as the trustor, the trustee and the beneficiary. However, as mentioned above, the public record is limited to those contracts of transfer of goods' ownership which record is obligatory in order to have effects upon third parties. Therefore, it does not cover other types of trusts that can be offered by trust service providers, especially those used by trading companies with directors and nominee shareholders that are only "shell owners" without an effective control on those companies, and whose real owners exercise their control through a private trust contract and/or trading authorization. As previously mentioned in this MER, a concern of the assessment team is the lack of supervision of fund administrators, since although they are reporting entities according to Art. 15 of Law 8204, most of them are still not registered with SUGEF, and the suspicious transaction reports of those fund administrators that are registered with SUGEF are testimonial in relation to the risk represented by the sector. It should not be forgotten that trust administrators and lawyers in general are perceived as risky professions by the rest of the reporting entities and authorities, and nevertheless the compliance of these sectors as regards ML/TF prevention is significantly inferior to that of other groups.

475. Law 8204 does not specify a sanction for the failure to comply with the obligations of identification of the beneficial ownership. The supervising bodies understand that a generic sanction of Art. 81 could be imposed, which only provides fines quantified based on a percentage of the assets of the offender, but the assessment team could not confirm if this type of sanction was effectively imposed in any specific case. Nevertheless, taking into consideration that in many occasions legal persons have a minimum capital stock, the applicable fine would be small, thus not resulting in an effective sanction (percentage of the assets) to dissuade the lack of compliance with these obligations.

476. Finally, as regards international assistance and cooperation, there are no specific statistics on requests of information regarding the identification of beneficial owner of legal persons, as generally these requests are framed within broader requests regarding the investigated subject. From the general analysis, it can be concluded that Costa Rica is able to cooperate on this regards, although the public body in charge of the international assistance on crime (OATRI) has expressed that sometimes it is difficult to gather this information because of the above mentioned deficiencies.

#### *General Conclusions on Immediate Outcome 5*

477. The main source of information about legal persons and other structures is the National Registry, which is a source of public information about the different entities that can register with the Registry of Legal Persons, and the trust properties of assets subject to registration. Progress has been made, such as the removal of bearer shares and, in general, the level of commitment of public authorities in the adoption of good practices is quite high. Nevertheless, there seem to be some areas of concern regarding the use of some legal persons and the transparency of beneficial owners of them, such as the following:

- The transfer of shares of public corporations by endorsement, and the difficulties often found by authorities to access the books of shareholders.
- The use of trading companies as instruments for real estate investment and international money laundering, with administration and property intermediaries.
- The lack of regulation on the activity of real estate agents and trust service providers, as well as the lack of a single register for all types of trusts.

- The broad interpretation of professional secrecy of most lawyers in Costa Rica affects the normal compliance with their obligations of due diligence. Moreover, the exercise of two professions at the same time, as lawyer and notary, would assume the extension of the interpretation of the professional secrecy of lawyers in the notarial public service, which reduces the effectiveness of the preventive system when communicating suspicious transactions.
- The lack of supervision of compliance with all the obligations of prevention, and the lack of dissuasive effect of the sanctions established by regulations in the case of lack of compliance with these obligations.

478. Accordingly, Costa Rica presents a **low level of effectiveness in Immediate Outcome 5**.

#### ***D. Recommendations on Legal Persons and Structures***

479. Costa Rica must implement the following recommendations as regards legal persons and structures:

- Regulatory changes should be implemented to ensure the transparency of legal persons in general, and particularly of public corporations, to enable a greater control on the transfer of shares and changes of ownership carried out after the incorporation.
- Design a mechanism that provides information, in a timely and updated manner, about the names of shareholders or partners, the number of shares each of them has and date of purchase of shares. At least all competent authorities regarding ML/TF and subjects obliged to ML/TF prevention should have access to this registry.
- Although the Costa Rican trading regulation does not legally recognize them, the existence in practice of nominee directors and shareholders requires the implementation of measures that oblige these people to reveal their function in these companies, such as the requirement of having a license to carry out this activity professionally, so that their nominee status is reflected in the trading records, as well as having a greater control on those individuals and legal persons that appear in the Registry as directors of several trading companies.
- The activity of trust administrators must also be subject to a better regulation and supervision that establishes and controls their obligations of providing information about the identity of the beneficial owners of trusts established with their clients. It would be convenient to create a specific public registry for trusts, or to include a special section in the current Registry of Legal Persons.
- A better regulation and supervision is recommended on the legal professions that intervene in the creation, transfer and management of legal persons. Particularly, measures should be implemented to limit the simultaneous exercise of a professional as lawyer of a party and as authorizing notary in the same legal act, in order to guarantee the impartiality and control of legality of the notary on corporate and trading transactions.
- It seems necessary to provide more resources to the supervising bodies in charge of DNFBPs, given the importance of these professional activities for the control and good use of legal persons and trusts.



- A better typification of sanctions for the lack of compliance with the obligations of providing information about the beneficial ownership is required, as well as stricter sanctions that can have a dissuasive effect on those who are reluctant to collaborate.

## VIII. INTERNATIONAL COOPERATION

### Key Findings

480. Costa Rica has a wide range of legal and administrative instruments that promote the international cooperation of all the relevant bodies in the ML/TF prevention and combat, which has a special importance in Central America, where said framework of cooperation is intensified.

481. Costa Rican institutions and authorities are aware of the importance of international cooperation both for their work and for the work of their counterparts in third countries, what is seen with a greater strength in view of cooperation or compliance requests of foreign resolutions.

482. The confiscation of goods of corresponding value is not possible; this could, in some cases, prevent international cooperation in the most adequate way.

### *A. Background and Context*

483. Costa Rica is located in a region with high rates of crime linked to ML/TF, and special relevance is given to drug trafficking and drug trafficking organizations that use the country as drug passage to third countries, as it was acknowledged by different authorities of the country. The same happens with cross border cash movements, which makes cooperation and coordination with other countries a key element in the fight against ML/TF and the predicate offense of ML.

484. Costa Rica has an internal structure that enables cooperation at different levels: at a prosecution level, the Prosecutor's office assumes a central role in the treatment and advance of diligence requests carried out by foreign counterparts through the Office of Technical Assistance and International Affairs (OATRI in Spanish); at a preventive level, both the FIU and the Superintendencies, Customs and the Tax Department carry out a continuous work of collaboration with their peers of other countries.

### *B. Technical Compliance (R.36-40)*

485. The complete analysis can be found in the technical compliance annex:

- Recommendation 36 (International Instruments) is rated as Compliant.
- Recommendation 37 (Mutual Legal Assistance) is rated as Compliant.
- Recommendation 38 (Mutual Legal Assistance: Freezing and Confiscation) is rated as Largely Compliant.
- Recommendation 39 (Extradition) is rated as Compliant.
- Recommendation 40 (Other Forms of Cooperation) is rated as Compliant.

### *C. Effectiveness: Immediate Outcome 2 (International Cooperation)*

*Search and Provision of Mutual Legal Assistance (MLA).*

486. Within the geographic and economic context in Costa Rica, the search and provision of MLA is particularly relevant, as the country is mainly used as a place of stockpile and delivery of drugs to countries in North America and Europe, illegal entry of migrants and illegal cross border transportation of money.

487. In general terms, given a regulation prone to that effect, Costa Rica’s authorities provide high levels of international cooperation to several countries as regards mutual legal assistance (MLA), which has authorities especially designated to that end. During the 2011-2014 period, Costa Rica has requested and received MLA requests of forty seven (47) countries and jurisdictions.

**Requests of international assistance in criminal matters 2011 – 2014 – The Americas**

	2011		2012		2013		2014		Total
	Active	Passive	Active	Passive	Active	Passive	Active	Passive	
<b>Argentina</b>	0	2	0	1	1	1	0	1	6
<b>Belize</b>	1	0	0	0	0	0	1	0	2
<b>Brazil</b>	0	1	1	0	1	1	0	0	4
<b>Canada</b>	1	2	2	2	2	0	2	0	11
<b>Colombia</b>	0	3	0	4	5	5	2	3	22
<b>Cuba</b>	0	0	0	0	0	1	0	0	1
<b>Ecuador</b>	0	1	0	0	0	3	0	0	4
<b>El Salvador</b>	1	11	1	6	1	7	2	7	36
<b>USA</b>	16	6	16	11	14	7	12	6	88
<b>Guatemala</b>	4	3	4	7	5	3	6	0	32
<b>Honduras</b>	1	0	0	2	2	9	2	3	19
<b>Virgin Islands</b>	0	0	0	0	1	0	0	0	1
<b>Mexico</b>	1	4	2	9	1	6	2	9	34
<b>Nicaragua</b>	13	0	14	2	22	7	16	6	80
<b>Panama</b>	8	26	16	36	16	56	9	53	223
<b>Peru</b>	2	0	0	0	1	6	2	2	13
<b>Dominican Republic</b>	0	0	0	1	0	0	1	0	2
<b>Venezuela</b>	0	0	1	1	2	2	0	3	9
<b>Total</b>	48	58	57	82	74	114	57	93	

**Requests of international assistance in criminal matters 2011 – 2014 – other regions**

	2011		2012		2013		2014		Total
	Active	Passive	Active	Passive	Active	Passive	Active	Passive	
Africa <sup>22</sup>	0	0	0	0	1	1	0	0	2
Asia <sup>23</sup>	2	1	1	1	0	1	0	0	6
Europe <sup>24</sup>	8	30	7	24	4	19	8	17	117
Oceania	0	0	0	1	0	0	0	1	2
<b>Total</b>	<b>10</b>	<b>31</b>	<b>7</b>	<b>26</b>	<b>5</b>	<b>21</b>	<b>8</b>	<b>18</b>	

488. According to the information above, there is an important level of cooperation at a regional level, especially with United States and at the level of the Central American sub-region. All these efforts have resulted in the entry into different treaties and agreements. Likewise, the cooperation with Europe is highlighted, particularly with Spain and the Netherlands. However, from the information received it is not possible to know the specific nature of requests (required action), either passive or active, or their quality and opportunity. Nevertheless, the information on international cooperation received by fourteen (14) countries shows, in general terms, a timely provision of cooperation with an acceptable level of quality.

489. From the viewpoint of active cooperation requests, there are statistics that show an active participation of some bodies in this area, especially OATRI, assuming said importance given its institutional role. However, according to the statistics provided, there is a clear difference between the amount of legal assistance requests in criminal matters related to predicate offenses of ML and active versus passive requests, the former almost doubling the latter, as it is shown in the following table.

**REQUESTS OF INTERNATIONAL ASSISTANCE IN CRIMINAL MATTERS 2011-2014**

YEAR	ACTIVE	PASSIVE
2011	61	92
2012	64	108
2013	82	141
2014	63	116

**Table 1. Graphic based on the records of the Office of Technical Assistance and International Affairs of the General Prosecutor of the Republic (January 2015).**

490. As regards predicate offenses and ML, authorities provided detailed information on the type of offense object of international criminal cooperation, the following being the highlighted categories: participation in an organized criminal group and fraud, illicit traffic of narcotic drugs, psychotropic substances, homicide and severe body injuries, robbery or theft, and money laundering.

<sup>22</sup> Algeria and Tunisia.

<sup>23</sup> China, India, Indonesia and Israel.

<sup>24</sup> Austria, Belgium, Bulgaria, Czech Republic, Finland, France, Germany, Hungary, Italy, Jersey, Lithuania, Luxemburg, the Netherland, Poland, Portugal, Rumania, Russia, Spain, Sweden, Switzerland, Ucraina and United Kingdom.

## Number of passive and active assistances in criminal matters 2011-2014 by category of offense

Offense	2011		2012		2013		2014	
	Passive	Active	Passive	Active	Passive	Active	Passive	Active
Misappropriation	0	1	1	2	1	0	4	0
Participation in an organized criminal group or racketeering	7	6	16	9	7	11	9	3
Terrorism, including terrorist financing	0	0	0	0	0	0	0	0
Trafficking in human beings and migrant smuggling	1	2	1	0	1	0	3	3
Sexual exploitations, including sexual exploitation of children	0	1	1	2	1	0	1	0
Illicit trafficking in narcotic drugs and psychotropic substances	27	12	25	7	30	11	24	13
Illicit arms trafficking	1	0	3	0	1	0	1	1
Corruption and bribery	3	0	0	1	3	0	1	2
Fraud	3	0	1	3	1	0		0
Counterfeiting of currency	0	0	0	0	1	0	0	0
Counterfeiting and piracy of products	0	0	3	0	0	0	6	0
Environmental crime	0	1	1	1	0	0	3	0
Murder, grievous bodily injury	13	6	11	7	8	8	12	5
Kidnapping, illegal restraint and hostage-taking	2	0	1	0	1	0	2	1
Robbery or theft	3	2	7	5	6	2	10	2
Smuggling (including in relation to customs and excise duties and taxes)	1	1	0	0	0	0	0	0
Tax crime (related to direct taxes and indirect taxes)	1	0	0	2	0	3	2	1
Extortion	0	0	1	1	0	1	2	0
Forgery	3	1	0	1	1	1	2	1
Money laundering	9	13	14	13	30	15	30	9

Source: OATRI statistics, 2014.

491. Within the acts of international cooperation in criminal matters, it is worth mentioning the investigation of the *Liberty Reserve* case, coordinated among authorities of Costa Rica, Spain and United States.

*Case – Liberty Reserve*

Two (2) national financial entities of Costa Rica detected unusual transactions without an adequate justification, so they communicated STRs on this to the FIU, which analyzed the corresponding STRs and started the relevant investigation on unusual transactions, complementing the information derived from different sources and finally concluded an intelligence report that was submitted to the Public Prosecutor.

Later, other investigations were carried out by the Public Prosecutor, among which the freezing of financial products of Liberty Reserve is taken into consideration, as well as the freezing of other individuals and legal persons, and coordinating meetings with North American authorities aimed at sharing information and defining a joint strategy, which resulted in the dismantling of the criminal organization.

It is important to mention that, after the STRs issued by Costa Rican financial entities, the FIU received requests from different administrative and legal authorities in North America and other countries, regarding investigations on criminal organizations that used the *Liberty Reserve* platform to transfer

funds originated by drug trafficking, credit card frauds and identity theft, among others.

492. As regards extraditions on predicate offenses, ML and TF, Costa Rica mentions that mechanisms have been implemented to answer extradition requests, both passive and active. As with other MLA requests, most requests come from the subregion of Central America and Mexico, and United States. The criminal behaviors referred to in the extradition requests are mainly related to drug trafficking crimes, fraud, rape and sexual abuse as regards active requests, and behaviors mainly related to drug trafficking crimes, fraud and conspiracy, and trafficking of human beings as regards passive requests. In terms of money laundering, in the period 2011-2014, there were one (1) passive request and seven (7) active requests. The statistics provided show, apart from the countries, beginning and end dates of the request, date of court submission and status of the file.

**EXTRADITION REQUESTS 2011-2014**

YEAR	ACTIVE	PASSIVE
2011	16	14
2012	5	11
2013	6	10
2014	19	15

**OATRI statistics**

493. It is important to highlight the small amount of professionals that must deal with the responsibilities of complying with MLA measures in a timely and effective manner. These are the same officers who have to divide themselves to comply with their usual work and also to answer these requests. This shows the need to strengthen the system with more resources and personnel to ensure a due care of the cases received.

*Search and Provision of Other Forms of International Cooperation*

494. The Costa Rican authorities have developed and agreed on other mechanisms of international cooperation, which are translated into a number of passive and active requests of information that are not indications of the importance provided by legislation on this regard.

495. There are Memorandums and agreements entered into by the police, the FIU, the General Prosecutor’s office, the superintendencies and other State bodies, such as Customs and the General Department of Taxation. These contribute to the construction of effective exchange channels. Nevertheless, the usage level of these tools varies among the institutions.

496. The FIU shows the existence of fourteen (14) MOUs with different countries, four (4) of which were proposed to countries but not entered into. According to the records provided by the FIU, the current agreements have helped create part of the 208 consultations of foreign counterparts made in the period 2008-2013.

497. Both the General Prosecutor’s office and OIJ have showed their participation in different regional agreements entered into with their regional counterparts to strengthen their capacities. However, given the lack of formal statistics on this regards, it is difficult to measure the degree of activity. According to what different authorities said, international cooperation is highly active, but in many cases is carried out informally, through telephone calls or different types of informal consultations.

498. Moreover, there is no information on international cooperation related to the activities of Superintendencies, which have a high degree of responsibility in the preventive control and surveillance of ML/TF regulations in the Costa Rican system. On this regards, SUGESE reported not having received any cooperation requests.

**Requests exchanged through GAFILAT’s Assets Recovery Network platform between January 2011 and May 2013**

COUNTRY	2011				2012				May 2013			
	Sent	Received	Answered	Pending	Sent	Received	Answered	Pending	Sent	Received	Answered	Pending
Argentina	1	5	1	4	0	3	3	0	2	4	1	3
Bolivia	21	2	2	0	3	3	3	0	1	2	2	0
Brazil	1	8	1	7	3	4	0	4	1	7	3	4
Chile	8	5	5	0	5	4	3	1	1	4	2	2
Colombia	0	11	0	11	0	4	0	4	0	4	1	3
Costa Rica	3	0	0	0	1	0	0	0	2	3	3	0
Cuba	0	0	0	0	0	0	0	0	0	0	0	0
Ecuador	5	3	2	1	4	0	0	0	26	0	0	0
Mexico	0	3	0	3	0	1	0	1	0	4	1	3
Panama	0	9	0	9	4	0	0	0	4	4	4	0
Paraguay	4	0	0	0	2	2	0	2	0	2	0	2
Peru	9	3	3	0	2	2	2	0	1	2	2	0
Uruguay	2	5	1	4	0	1	0	1	0	3	1	2
Others (CARIN)	0	0	0	0	0	0	0	0	2	1	1	0
<b>TOTAL</b>	<b>54</b>	<b>54</b>	<b>15</b>	<b>39</b>	<b>24</b>	<b>24</b>	<b>11</b>	<b>13</b>	<b>40</b>	<b>40</b>	<b>21</b>	<b>19</b>

*Exchange of Basic and Beneficial Ownership Information in Legal Persons and Other Legal Structures*

499. As regards the information analyzed, it is not possible to distinguish between the compliance with the provision or exchange of information and the legal persons or other legal structures, which can be joined with other items of requests to competent bodies. This point is highly relevant in the case of Costa Rica, given its development of services of creation and administration of trading companies and trusts.

*General Conclusions of Immediate Outcome 2*

357. Costa Rica has an adequate legal framework to provide international cooperation effectively. This can be seen in its management and follow-up of requests regarding extradition, freezing and seizure of assets coming from third countries, despite the reduced number of officers working in institutions such as OATRI, the Prosecutor’s office specialized in money laundering or the OIJ in its money laundering area. This situation needs to be observed and improved by authorities, given the strategic importance of the country due to its geographic location and the advance of its economy, which offers a significant number of financial and professional services.

358. In practice, there is no major jurisprudential resistance to the implementation of seizure and freezing measures of capital or assets, what helps in effectively combating the results of the illicit activities detected. However, the lack of mechanisms to seize or confiscate goods of corresponding value could, in some cases, prevent the provision of cooperation in an effective manner, although up to the moment of the on-site visit there was no evidence of specific problems regarding this situation.

359. The country must maintain and, if possible, increase the spaces that enable the bodies specifically involved in the prosecution and investigation of ML/TF to carry out international cooperation with their counterparts of other countries, within schemes that enable an adequate registration of said activities, thus quantifying their efficiency.

360. Given the importance of corporate and legal structures within the economy of the country, efforts must be made to detect, request and provide updated and reliable information regarding the design and composition of those structures, as well as beneficial owners, designing and implementing express mechanisms and procedures that enable an adequate collaboration and cooperation with third countries requesting said information.

361. Finally, it is necessary for the authorities to strengthen the effective use of international cooperation in administrative entities that have a key role in ML/TF prevention, such as the superintendencies of the financial sector.

362. Accordingly, Costa Rica presents a **substantial level of effectiveness in immediate Outcome 2**.

#### ***D. Recommendations on International Cooperation***

500. Costa Rica must implement the following recommendations in order to improve the effectiveness of International Cooperation in the country:

- Increase the number of officers of institutions such as OATRI, the Prosecutor's office specialized in money laundering or the OIJ in its ML area. This situation needs to be particularly addressed given the strategic importance of the country due to its geographic location and the advance of its economy, which offers a significant number of financial and professional services
- Strengthen the mechanisms for the freezing and confiscation of goods in international mutual legal assistance requests.
- Increase the spaces that enable the bodies specifically involved in the prosecution and investigation of ML/TF to carry out international cooperation with their counterparts of other countries, within schemes that enable an adequate registration of said activities, thus quantifying their efficiency
- In order to detect, request and provide updated and reliable information regarding the design and composition of those structures, as well as beneficial ownership, express mechanisms and procedures must be implemented to enable an adequate collaboration and cooperation with those countries requesting information.



## TECHNICAL COMPLIANCE ANNEX

### I. INTRODUCTION

TC1. This annex provides a detailed analysis of the degree of compliance of the Republic of Costa Rica (hereinafter Costa Rica) with the FATF 40 Recommendations. It does not include descriptive texts of the situation or risks of the country, and limits to the analysis of the technical criteria of each Recommendation. It must be read together with the Mutual Evaluation Report.

TC2. Costa Rica's AML/CTF system has not been previously evaluated by the Financial Action Task Force of Latin America (GAFILAT). Therefore, this annex provides a detailed analysis of all the criteria, according to the methodology used to evaluate the technical compliance with the FATF Recommendations and the effectiveness of AML/CTF systems for the fourth round of evaluations.



## II. NATIONAL AML/CTF POLICIES AND COORDINATION

### *Recommendation 1 – Assessing risks and applying of a risk-based approach*

TC3. *Criterion 1.1* Executive Decree 38001-MP establishes the implementation of the National Plan on Drugs, Money Laundering and Terrorist Financing 2013-2017 (hereinafter PND), in which the strategic point called “prevention and repression of money laundering and terrorist financing” defines the adoption of a risk-based model, which takes into consideration the different sectors that participate in the prevention, control and repression of money laundering and terrorist financing, as a policy. On this regard, Costa Rica worked during 2013 in the development of a Risk Diagnosis of Money Laundering (ML) and the Financing of Terrorism (TF) of the country<sup>25</sup> (hereinafter RD-ML/TF).

TC4. *Criterion 1.2* Law 8204 (Art.100) establishes that Costa Rica’s Drug Institute (ICD), under which the FIU is established, will design a National Plan on Drugs, Money Laundering and Terrorist Financing. The PND is established as part of the implementation of the action plan the creation of an Anti-Money Laundering and Terrorist Financing Inter-Institutional Committee (CILAFIT) which purpose, according to Agreement 780-2012 of the ICD, is to “*Issue criteria and recommendations, as well as to interpret those regulatory aspects regarding money laundering and terrorist financing, through the creation and operation of a commission formed by representatives of all the institutions responsible for the prevention and repression of the offenses mentioned*”.

TC5. *Criterion 1.3* The RD-ML/TF is a process that was carried out for the first time in 2013. Nevertheless, said document establishes as a recommendation its update every two years.

TC6. *Criterion 1.4* Authorities inform that as a mechanism of communicating the results, a general meeting is carried out, which includes the participation of active actors and institutional authorities, both from the public and private sector, and two versions of the document are presented, a complete version and an executive summary. Moreover, according to the updating periods established by the Risk Diagnosis, annual meetings must be carried out.

TC7. *Criterion 1.5* The PND establishes the creation and implementation of a risk-based management model to prevent and control ML and TF as a policy. On this regard, Costa Rica carried out the design and development of the RD-ML/TF. However, as regards the risks identified in the RD-ML/TF, Costa Rica has still not implemented a risk-based approach that allocates resources and implements measures aimed at preventing or mitigating ML/TF risks. It is worth mentioning that since July 2014, Costa Rica has been working on the design of a specific national strategy with a risk-based approach (RBA) to implement measures that prevent and mitigate the ML/TF risks identified in the RD-ML/TF<sup>26</sup>.

TC8. *Criterion 1.6. a)* In the case of financial institutions (FIs), the Regulations of Law 8204 establish as an exception the following:

*“the implementation of Law 8204, these Regulations and the Provisions issued by CONASSIF to issuers that place their shares through an entity authorized and regulated by a Superintendence,*

<sup>25</sup> The process of Costa Rica’s ML/TF risk diagnosis has been assisted by the technical assistance of the Inter American Development Bank.

<sup>26</sup> After the on-site visit, Costa Rica submitted the draft of the Action Plan 2015-2017 of the National Strategy, which establishes activities to be carried out regarding the risks identified in the RD-ML/TF.

*as well as the Regime of Disability, Old Age, and Death (IVM in Spanish) administered by the Costa Rican Department of Social Security, the regimes of basic pensions that substitute it, pension funds created by special laws, collective conventions or other regulations that provide to their workers complementary benefits in the case of IVM, including Art. 75 of the Workers Protection Law, that do not take into consideration the possibility of workers doing extraordinary contributions, as well as the compulsory occupational risk insurance and the compulsory automobile insurance.*

*The knowledge of the customer and other regulations established by Law 8204, these Regulations and the Provisions established by CONASSIF will be immediately implemented when issuers place their shares on the counter or through auctions, outside a stock market; as well as when the accounts of workers receive extraordinary contributions, in the cases of compulsory funds administered by Pension Agents or other agencies”. (Art. 6)*

TC9. Moreover, Art. 7 of the Regulations mentioned establishes that those who use the services of the supervised subject to cancel public services or taxes are not considered customers. In the case of Designated Non-Financial Businesses and Professions (DNFBPs), they are not taken into consideration in any legislation or regulation.

TC10. *Criterion 1.6 b)* The only exceptions allowed are those established in the previous criterion.

TC11. *Criterion 1.7* The Regulations of Law 8204 establish that FIs (unlike DNFBPs) are obliged to implement policies and procedures on products and services that are considered as high-risk, such as international transfers, products involving a high amount of cash, transfers carried out without the physical presence of the customer, safe-deposit boxes, among others (Art. 32). Moreover, the same Regulations establish the implementation of enhanced due diligence in the cases of high-risk customers (Art. 19).

TC12. The Regulations of Law 8204 establish as reporting entities those who carry out the following activities: manufacture, sale and distribution of arms, buying and selling works of art, buying and selling new or used vehicles; it leaves the possibility to include any other activity, at the discretion of the FIU (Art. 51). In addition, minimum measures are established for the identification of the customer and record keeping.

*Criterion 1.8* The Provisions for the Compliance of Law 8204 (NCL 8204) (Art. 1) establishes that, on an exceptional basis, supervised entities and subjects of Articles 14 and 15 of Law 8204 can submit to their corresponding Superintendencies a request dully supported on the risk to adapt the applicable provision in their particular case. The only simplified measures that are allowed are found in Articles 8.n<sup>27</sup> and 9.m<sup>28</sup> of NCL 8204 of the National Council for Supervision of the Financial System (CONASSIF), regarding the

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<sup>27</sup> “Supervised subjects are exempted from requiring documentation supporting the origin of funds when customers carry out monthly transactions of amounts lower than two base salaries or one base salary in the case of remittance companies (in accordance with Law 7337) in colons or its equivalent in another currency (currently a base salary is equivalent to \$730 approximately). If a customer modifies his transactional pattern or increases the monthly amount above the limit established in the Art., the supervised subject is obliged to immediately request to the customer the documentation that supports the new transactional pattern”.

<sup>28</sup> “If the partners are legal persons with a share that is equal or above ten percent (10%) of the social capital, information must be provided about all the partners that appear in the property structure up to the final level of individuals (at the very least, the information established in Subsections c) to l) of Art. 8 must be required). The following cases exempt this last requirement: when the legal person or its partners are a public or government institution or a financial entity subject to the surveillance of the Superintendencies regarding money laundering and terrorist financing, an intergovernmental body or companies which total shares are quoted in an organized national or foreign market”.

description of the origin of funds that justifies the transactions to be carried out by the customer, and the support must be documented by information of databases of public or commercial entities, social security employer's slips, income certifications, salary certifications, employers' listing, accounting books certifications, financial statements of the last fiscal year audited or internal dully held back by the accountant or legal representative. Although these measures are not the product of the results of the risk diagnosis of ML/TF, they are the product of a risk analysis carried out on the transactions reported by the most representative entities when the analysis was carried out, concluding that transactions that do not exceed two basic salaries are movements that do not represent an important risk for the entities.

TC13. *Criterion 1.9* The monitoring and supervision of FIs (unlike DNFBPs) seems to include the supervision based on ML/TF risks (see the analysis for Recommendations 26-28).

TC14. *Criterion 1.10* In accordance with NCL 8204, the ML/TF risk management of FIs (unlike DNFBPs) must be a comprehensive part of the risk assessment process (Art. 3).

TC15. *Criterion 1.10.a)* The process of evaluation, the revisions and remedial actions must be registered in the minutes of the Board of Directors of FIs (unlike DNFBPs), in order to verify their compliance (NCL 8204, Art. 3).

TC16. *Criterion 1.10.b)* For the ML/TF risk assessment of FIs (unlike DNFBPs), risk factors must be taken into consideration, such as type of customers, products and services, distribution channels and geographic location (NCL 8204, Art. 3). FIs must design a methodology for the risk classification of their customers (NCL 8204, Art. 5) and criteria or variables are established for the analysis of the risk profile of the customer (NCL 8204, Sec 6).

TC17. *Criterion 1.10.c)* The ML/TF risk assessment processes of FIs (unlike DNFBPs) must be reviewed at least once every twelve months (Art. 3).

TC18. *Criterion 1.10 d)* Among the functions of FI compliance officers (unlike DNFBPs) there is that of being a contact point between the FI and the corresponding supervising body (NCL 8204, Art. 30.a). Moreover, the information of FIs must always be available to authorities (Law 8204, Art. 22).

TC19. *Criterion 1.11 a)* For FIs (unlike DNFBPs), the elaboration and implementation of policies to prevent risks related to ML/TF is established as part of the function of the compliance office (NCL 8204, Art. 30.m); this function must be included in the compliance handbook that has to be approved by the Board of Directors or an equivalent body (NCL 8204, Art. 40). Moreover, the risk assessment process must be approved by the Board of Directors or an equivalent professional body (NCL 8204, Art. 3).

TC20. *Criterion 1.11 b)* The risk assessments of FIs (unlike DNFBPs) must be reviewed at least once (1) every year and the results must be informed to the Board of Directors or an equivalent body. The administration must define corrective plans to overcome the deficiencies observed, and show actions, responsible persons and terms for their actions (NCL 8204 Art.3).

TC21. *Criterion 1.11 c)* The Regulations of Law 8204 establish the implementation of enhanced due diligence in the cases of high-risk customers (Art.19). FIs must give a risk category to each customer: high, moderate or low (NCL 8204, Art. 4), for which they have to design a methodology for the risk classification of their customers (NCL 8204, Art. 5), and the regulations establish criteria or variables for the analysis of the risk profile of the customer (NCL 8204, Art. 6).

TC22. *Criterion 1.12* In Costa Rica, apart from the exemptions mentioned in criteria 1.10.6, there are no measures established for DNFBPs.

TC23. *Weighting and Conclusion:* Costa Rica has carried out the RD-ML/TF. However, on the basis of identification and understanding of ML/TF risks, Costa Rica has still not implemented the RBA, establishing actions to prevent or mitigate the risks identified. Moreover, DNFBPs have no supervisor or SRB to ensure the compliance with obligations of Recommendation 1. DNFBPs do not have the obligation of identifying, evaluating and understanding their risks, and they are not required to apply measures to mitigate risks. **Recommendation 1 is rated as Partially Compliant.**

### ***Recommendation 2 – National cooperation and coordination***

TC24. *Criterion 2.1* The PND established as Specific Policy #1, Intervention #1, the creation and implementation of a risk-based management model to prevent and control money laundering and terrorist financing. As mentioned above, regarding the PND, Costa Rica carried out the risk diagnosis of ML/TF and, as a result, work has been done on the design of a specific national strategy to address the risks identified in said diagnosis.

TC25. *Criterion 2.2* Law 8204 establishes the ICD function of coordinating, designing and implementing policies, plans and strategies for ML/TF prevention, among others (Art. 99).

TC26. *Criterion 2.3* Law 8204 and its corresponding regulations establish the specific obligations of the different authorities to cooperate and share information when necessary.

TC27. In order to carry out and implement the PND, there must be coordination with the ICD (DE. 38001, Art. 1). Specifically regarding the strategic point of ML/TF prevention in the implementation of the plan, the following institutions intervene and are obliged to implement the PND (DE. 38001, Art.4): the Legislative Assembly, the General Securities Superintendence (SUGEVAL), the General Superintendence of Financial Entities (SUGEF), the Pension Superintendence (SUPEN), the General Insurance Superintendence (SUGESE), the General Superintendence of Telecommunication, related professional bodies, the Ministry of Treasury, the National Notarial Directorate, the Public Prosecutor, the Legal Investigation Agency, the National Financial System, the Comptroller General of the Republic, the Banking Association and Costa Rica's Financial Institutions, the National Banking Association, Guilds and other DNFBP associations<sup>29</sup>.

TC28. Moreover, the PND establishes as part of the implementation of the action plan the formation of an Anti-Money Laundering and Terrorist Financing Inter-Institutional Committee (CILAFIT)<sup>30</sup>, which was created by Agreement 780-2012 of the ICD. Also, in 2004, Decree 31659 created the Inter-Institutional Committee on Terrorism (CISTE) "for the internal disclosure of information on international efforts related to security and the fight against terrorism".

TC29. *Criterion 2.4.* Costa Rica has a National Chemical Weapons Authority, formed by the Ministry of Foreign Affairs, the Ministry of Security, the Ministry of Health, the Ministry of Agriculture and Livestock, and the Ministry of Treasury. Moreover, there is an Atomic Energy Commission<sup>31</sup>.

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<sup>29</sup> See page 89 of the PND.

<sup>30</sup> See page 86 of the PND.

<sup>31</sup> Authorities inform that (2) preparatory meetings have been carried out to form the Authority of Biologic Weapons, as well as one meeting to form the National Authority for implementation of Resolution 1540.

Nevertheless, it lacks regulation to combat the financing of proliferation of weapons of mass destruction. Therefore, it is not clear if the existing mechanisms can coordinate and cooperate for said effects.

TC30. *Weighting and Conclusion:* At the moment of the on-site visit, Costa Rica did not have national AML/CTF policies that take into consideration the risks identified. However, it is currently working on a national strategy to address these risks. Law 8204 establishes that the ICD is in charge of the coordination, design and implementation of policies, plans and strategies against ML/TF. The PND establishes the objective of Specific Policy 5 of the strategic point of *Prevention, Control and Repression of Money Laundering and TF*: the formation of an Interinstitutional Committee against ML/TF to strengthen the interinstitutional coordination and to look for an optimal answer from entities in charge of prevention, control and repression of ML/TF. Costa Rica lacks regulations regarding the combat of the financing of the proliferation of weapons of mass destruction. **Recommendation 2 is rated as Partially Compliant.**

### ***Recommendation 33 - Statistics***

TC31. *Criterion 33.1 a)* Thanks to online STRs, the FIU keeps statistics of reports entered, processed and submitted to a judicial authority, thus creating statistic information of STRs by reporting party, nationality and geographic location, address, products involved, currency of the operation, economic activity reported, among others.

TC32. *Criterion 33.1 b) – d)* The Organic Law of the Judicial branch (Art. 179 and 180) establishes the obligation of submitting to the High Council information on matters entered, pending and resolved, as well as the final or interlocutory judgements made in a specific period, the explanation for delays, if applicable, and any other data of interest. Moreover, Costa Rica has statistical information on investigations, sentences, seizures, confiscations, mutual legal assistance and international cooperation by the Public Prosecutor - the Judicial Branch, the URA, the Fiscal Control Police, the Drugs Control Police, the Technical Assistance Office and the Office of International Affairs of the Public Prosecutor - the Judicial Branch. It is important to mention that the statistics regarding confiscations and seizures are developed by the URA, which only has power to act on offenses provided in Law 8204. There is no information on cases of confiscation and seizure in offenses outside mentioned Law.

TC33. *Weighting and Conclusion:* In general terms, Costa Rica keeps statistics regarding AML/CTF. However, there is no information on cases of confiscation and seizure in offenses outside those mentioned in Law 8204. **Recommendation 33 is rated as Largely Compliant.**

### III. LEGAL SYSTEM AND OPERATIONAL MATTERS

#### **Recommendation 3 – Money laundering offense**

TC34. *Criterion 3.1* Art. 69 of Law 8204 establishes that:

*“The following shall be sentenced with eight (8) to twenty (20) `years of imprisonment:*

*a) Anyone who purchases, converts or transfers goods of economic interest, knowing that they are originated by a crime that, within its range of penalties, may be sentenced with four (4) years of imprisonment or more, or performs any other act to conceal or hide the illicit origin, or to help the individual who participated in the infringements to evade the legal consequences of his/her acts.*

*b) Anyone who conceals or hides the true nature, origin, location, destination, movements, or rights on the goods, or the ownership thereof, knowing that they originate, directly or indirectly, by a crime that, within its range of penalties, may be sentenced with four (4) years of imprisonment or more.*

*The penalty shall be from ten (10) to twenty (20) years of imprisonment, when the goods of economic interest are originated by any of the offenses related to the illicit traffic of narcotic drugs, psychotropic substances, money laundering, diversion of precursors, essential chemical substances and related offenses, conducts criminalised as terrorist according to the current legislation or when the purpose is the financing of terrorist acts and terrorist organizations.*

TC35. Art. 69 covers all the scenarios of ML criminalisation established in the United Nations Convention against the Illicit Trafficking of Narcotic Drugs and Psychotropic Substances (Vienna Convention) and in the United Nations Convention against Organized Transnational Crime of 2000 (Palermo Convention).

TC36. *Criterion 3.2 – Criterion 3.3* According to the aforementioned Article of Law 8204, the predicate offenses of ML are those that “within their range of sanctions can be sanctioned with imprisonment of four (4) years or more”. From the predicate offenses categories required by FATF, all the offenses are criminalised in the Costa Rican legislation in several regulations. However, TF is not criminalised according to FATF Recommendation 5. Also, the offense of migrant smuggling is not criminalised in accordance with the Protocol against the smuggling of migrants by land, sea or air that considers the United Nations convention against transnational organized crime<sup>32</sup>. Moreover, not all the offenses have a range of sanctions of four (4) years; therefore, even if there is a wide range, there are also limitations in: the participation in an organized criminal group and racketeering, illicit arms trafficking, corruption and bribery, fraud, counterfeiting and piracy of products, environmental crimes, robbery and the TF, smuggling, tax crimes and forgery.

CAT.	DESCRIPTION	Sanction range of four (4) years	
		YES	NO
1	Participation in an organized criminal group and racketeering	216.2, 221, 218 Penal Code (PC)	216.1, 220, 221.1 PC

<sup>32</sup> The “Protocol against migrant smuggling by land, sea and air, that considers the United Nations convention against transnational organized crime” establishes that “*Migrant smuggling refers to enabling the illegal entrance to a person to a state to which the person is not national or permanent resident in order to get, directly or indirectly, a financial benefit or other material benefits*”.

2	Terrorism, including terrorist financing	69 BIS LFLCT <sup>33</sup> , Art. 112, 215, 246 bis, 250 third, 251, 258, 259, 260, 274 bis y 284 bis PC	
3	Trafficking in human beings and migrant smuggling	172 (only trafficking in human beings), 383,	
4	Sexual exploitation, including sexual exploitation of children	167, - 171 PC	
5	Illicit trafficking in narcotic drugs and psychotropic substances	381, PC, 58, 59, 69 LFLCT	
6	Illicit arms trafficking	93, 94 Arms and explosives act (AEA) (partially)	
7	Illicit trafficking in stolen and other goods	330 PC	
8	Corruption and bribery	167, 324 349, 350, 351, 352 PC (depending on the qualification of facts) 45, 52, 55 LCEIFP <sup>34</sup>	356, 347, 348, 350-352 (depending on the qualification of facts), 353 PC
9	Fraud	219 SUBSECTION 2, 217 BIS PC	219 SUBSECTION 1 PC
10	Counterfeiting of currency	373 PC	
11	Counterfeiting and piracy of products	44 SUBSECTIONS C AND D, 45 SUBSECTIONS C AND D, 46 SUBSECTIONS C AND D Law for Observation of Intellectual Property (LOP in Spanish)	44 (A AND B), 45 (A AND B), 46 (A AND B), LOP
12	Environmental crime	139, 140 MC, 61 Terrestrial Maritime Zone Law (LZMT in Spanish)	62 LZMT, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100 Wildlife Conservation Law (LCVS in Spanish), 58, 59, 60, 61, 62, 63 Forest Law
13	Murder, grievous bodily injury	111, 112, 113, 124 PC	
14	Kidnapping, illegal restraint and hostage-taking	192, 215, 215 BIS PC	
15	Robbery of theft	209, 212 (2 AND 3), 213 PC	212 (1), 208 PC
16	Smuggling; (including in relation to customs and excise duties and taxes)	211(B), 214(B), General Customs Law (LGA in Spanish)	211(A), 214(A) LGA

<sup>33</sup> Law to strengthen the legislation against terrorism, amended the Law on drugs, psychotropic substances, unauthorized drugs, related activities, money laundering and financing of terrorism.

<sup>34</sup> Law against Corruption and Illicit Enrichment in Civil Service.

17	Tax crimes (related to direct taxes and indirect taxes)	214(B) LGA, 92, 94, 95, 96, 98 CNPT <sup>35</sup>	214(A)LGA, 97, 98 BIS CNPT
18	Extortion	214 PC	
19	Forgery	366, 367, 369 BIS, 372 PC	
20	Piracy	265, 267 PC	
21	Insider trading and market manipulation	251, 252 PC	

TC37. *Criterion 3.4* Art. 69, Subsection b) establishes that “Anyone who conceals or hides the true nature, origin, location, destination, movement or rights on goods, or property of those goods knowing that they were directly or indirectly originated by a serious offense”. Moreover, Art. 83 of Law 8204 establishes that: “All movable and immovable goods, vehicles, instruments, equipment, securities, money and other objects used in the commission of the offenses provided in this law, as well as the different goods or values originated by such actions will be confiscated by the competent authority that follows the cause; as well as in the case of shares, capital contributions, financial products and the estate of legal persons linked to these facts (...)”.

TC38. *Criterion 3.5*. According to Art. 69, when it is proven that the goods are originated by crime, it is not necessary to condemn for the predicate offense. Also, there is jurisprudence where this is ratified.

TC39. *Criterion 3.6* ML predicate offenses include any conduct carried out in another country as if the offense would have been committed in the country (Law 8204, Art. 7 and 72).

TC40. *Criterion 3.7* The crime of money laundering can be applicable to all the persons committing the predicate offense and carrying out actions included in the criminalisation of money laundering. There is no prohibition in the country to sanction those who commit these acts for money laundering, even when different legal goods are affected.

TC41. *Criterion 3.8* The intention and knowledge required to prove a ML offense from factual circumstances will depend on the rational healthy critique principle and the probation principle (Art. 361 and 182 of the Code of Criminal Procedures – CCP).

TC42. *Criterion 3.9* Law 8204 establishes the sentence from eight (8) to twenty (20) years and from ten (10) to twenty (20) years of imprisonment as sanctions for ML offense when the goods of economic interest are originated by any of the “offenses related to illicit drugs trafficking, psychotropic substances, money laundering, precursor diversion, essential chemical weapons and related offenses, conducts criminalised as terrorist, according to the current legislation, or when the purpose is the financing of terrorist acts and terrorist organizations”.

TC43. *Criterion 3.10* In Costa Rica, no criminal sanctions are implemented for legal persons, the sanction is only administrative and civil (Law 8204, Art. 92 and CCP 368).

TC44. *Criterion 3.11* The ancillary offenses are taken into consideration in Art. 45 to 49 and 281 of the PC.

<sup>35</sup> Code on norms and tax procedures.

TC45. *Weighting and Conclusion*: The criminalisation of ML offense covers all the assumptions of ML typification established in the Conventions of Vienna and Palermo. In accordance with Art. 69 of Law 8204, the predicate offenses of ML are those that “within their range of sanctions can be sanctioned with imprisonment of four (4) years or more”. Although they are included in the concept of serious offense and, therefore, are considered predicate offenses of ML, the crimes of TF and migrant smuggling are currently not adequately criminalised by the Costa Rican legislation. **Recommendation 3 is rated as Largely Compliant.**

#### ***Recommendation 4 – Confiscation and provisional measures***

TC46. *Criterion 4.1* Law 8204 establishes confiscation as a provisional measure (Art. 83) “*All movable and immovable goods, vehicles, instruments, equipment, securities, money and other objects used in the commission of the offenses provided in this law, as well as the different goods or values originated by such actions will be confiscated by the competent authority that follows the cause; as well as in the case of shares, capital contributions, financial products and the estate of legal persons linked to these facts*”. As FATF understands it, in Costa Rica confiscation is the seizure, and Law 8204 establishes that movable and immovable goods, as well as securities or cash mentioned in the previous sections, especially in Art. 83, can be subject to seizure.

TC47. As regards goods of corresponding value, Costa Rica informs that the Bill of Asset Forfeiture<sup>36</sup> is in process, and there is the corresponding regulation on goods of equivalent value.

TC48. *Criterion 4.2* Law 8204 provides instruments to identify, track and value goods subject to confiscation. Law 8204 establishes provisional measures. Art. 33 establishes that “*When investigating a money laundering offense, the Public Prosecutor will request to the court or competent authority, at any time and without previous notice or hearing, a sequestration order, a confiscation order, or any other precautionary measure aimed at preserving the availability of the related goods, products or instruments for the confiscation. This regulation includes the immobilization of deposits under investigation, in national or foreign institutions indicated in Art. 14 and 15 of this Law, in compliance with the relevant legal regulations*”. The Civil Code also provides measures for the seizure and sequestration of immovable goods (Art. 468.4), and Laws 8204 and 8754 establish measures for the confiscation of goods (Art. 83 and Chapter V, respectively).

TC49. Law 8204 establishes mechanisms for financial entities of groups to safeguard all the information, documents, money and value that can be used as evidence or proof in an investigation or legal proceeding. As regards money and value deposited or in custody, it will be necessary to freeze or deposit them in the Central Bank of Costa Rica and to inform authorities of the actions carried out (Art. 86).

TC50. Law 8754 establishes that the Comptroller General of the Republic, the Ministry of Treasury, the Costa Rican Institute on Drugs or the Public Prosecutor will be able to file a complaint before the Treasury Civil Court of Summary Matters regarding the increase of capital without an apparent legal cause, and that is included in the offenses qualified as organized crime, which who can order as precautionary measure the sequestration of goods, their registered immobilization and of any type of financial product. The only

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<sup>36</sup> Currently submitted to the Government and Administration Commission of the Legislative Assembly. Said commission must prepare an report of approval in order to be known and put to the vote in the Plenary meeting of the Legislative Assembly to become law of the Republic.

possible action against the precautionary measure will be an appeal, which will have to be lodged within three days before the Professional Administrative Dispute Court (Art. 18)

TC51. Costa Rica has measures and authorities to investigate, according to the criteria of Recommendations 30 and 31.

TC52. *Criterion 4.3.* Law 8204 establishes measures to protect the rights of bona fide third parties (Art. 29, 93 and 94).

TC53. *Criterion 4.4* Law 8204 establishes that in the case of confiscated goods, the Asset Recovery Unit (URA) of the ICD will exclusively have, the goods considered of economic interest in judicial deposit, and a series of procedures is described depending on the type of good for the adequate administration and use of the goods (Art. 84-86). The law also states that if the seizure is ordered in favor of the ICD of movable or immovable goods, as well as securities, financial products or cash mentioned in the previous articles, the ICD will be able to either keep them, dispose of them, being able to use them, dispose of them or allocate them to the objectives of the law, as well as donate them to entities of public interest, prioritizing bodies which objective is the prevention or repression of drugs. Moreover, specific procedures are established for particular confiscated goods (Art. 87-91).

TC54. Similarly, Law 8754 establishes that the ICD, through its Asset Recovery Unit, will be in charge of the administration and use of the goods confiscated and seized (Art. 31-33).

TC55. *Weighting and Conclusion:* Costa Rica's legal system counts with adequate confiscation (precautionary measure) and seizure measures. However, as regards the confiscation of goods of corresponding value, Costa Rica still does not have a legal mechanism for it. **Recommendation 4 is rated as Largely Compliant.**

#### *Legal and operational implementation*

#### ***Recommendation 29 – Financial intelligence units***

TC56. *Criterion 29.1* Law 8204 (Art. 123, 124, 125 and 126) establishes the functions and scope of the Financial Intelligence Unit (FIU), which has the power to request, for its collection and analysis, reports, forms and suspicious transaction reports, from supervisory bodies and institutions considered reporting entities, to centralize and analyze said information to investigate the activities used for money laundering or terrorist financing.

TC57. *Criterion 29.2 a)* Law 8204 establishes that the FIU will request, compile and analyze the reports, forms and suspicious transaction reports that come from supervisory bodies and subjects obliged to report. The Regulations of Law 8204 establish in Art. 35 that entities and reporting entities must submit to the FIU, directly and confidentially, any information related to all the operations established as suspicious, by electronic means and according to the guidelines previously defined by the FIU.

However, Art. 25 of Law 8204 establishes that if it is suspected that the transactions constitute illicit activities or that are related to them, even those transactions that are derived from transactions made to or from another country, financial institutions will have to inform, confidentially and immediately, the corresponding supervision and surveillance body, which will immediately forward them to the FIU of the ICD. In this sense, there is a difference in the current legislation related to the identification of the institution that works as national center for the reception of STRs.



TC58. *Criterion 29.2 b)* The previously mentioned Article establishes that in the case of request by the FIU, the following authorities will be obliged to provide the information requested for investigations of activities and offenses regulated by the present Law: State bodies and institutions, specifically the Ministry of Treasury, the Central Bank of Costa Rica, the Public Registry and the public surveillance bodies, apart from the mentioned reporting entities. Moreover, the Regulations of Law 8204 establish that all the reporting entities and State bodies and institutions, particularly, the Treasury Department, the Central Bank of Costa Rica, the Public Registry and the public surveillance bodies must provide the FIU with all the necessary information for the investigations, in the periods of time and ways established by the FIU.

TC59. Among the information that reporting entities must provide to the FIU there are suspicious transaction reports, attempted transactions and, for the case of companies of the financial system, single or multiple cash transactions equal to or above US\$10,000 or its equivalent in another currency and transfers to or from another country equal to or above US\$10,000, even if they are not carried out in cash; while reporting entities mentioned in Art. 15 bis will have to provide information to the FIU on business operations carried out repeatedly and in cash, including transfers to or from another country, in national or foreign currency, equal to or above US\$10,000 or its equivalent in colons.

TC60. *Criterion 29.3 a) - b)* Law 8204 (Art. 32). The legal regulations regarding banking, stock market or tax information will not be an obstacle for the compliance with the present Law, when legal or administrative authorities in charge of investigations of crimes set in this Law request information. Moreover, Law 8754 against Organized Crime establishes that if an investigation is started, regarding the illicit facts established in Law 8754, by the Public Prosecutor or the FIU, all the financial entities or entities that are part of a financial group will be obliged to safeguard all the information, documents, money and value that can be used as evidence or proof within the investigation or in a legal proceeding. In the case of investigations carried out by the FIU of the ICD, in the same act of notifying the financial entities or entities that belong to a financial group the existence of an investigation, said Unit will have to inform the Public Prosecutor about the procedure in order to request to the corresponding judge, in a period of five (5) calendar days, the precautionary measure stated under Art. 33 of this Law. Once this period of time has elapsed without an order of the judge to repeat the precautionary measure, the financial entities will lift the adopted measures. Art. 123 (Law 8204) establishes that reporting entities and State bodies and institutions will have to provide any kind of information when requested by the FIU. Similarly, all the ministries and public and private institutions will provide, expeditiously, the information and documentation requested by the FIU. Said information will be strictly confidential (Art. 125, Law 8204).

TC61. Entities, bodies or people of special interest for the compliance of ICD's purposes will be obliged to collaborate as determined by the ICD, according to the available technical, human and material means (Art. 102).

TC62. *Criterion 29.4 a) y b)* As mentioned before, Art. 123 of Law 8204 establishes that the FIU will request, compile and analyze the reports, forms and suspicious transaction reports, from supervisory bodies and subjects obliged according to the Law (as well as provide any type of information to the FIU for its investigations) to centralize and analyze said information to investigate the ML or TF activities, communicating with the Public Prosecutor accordingly.

TC63. Authorities inform that the operational analysis is developed by a commission called "STR Commission", which maintains constant communication and works side by side with the Deputy Prosecutor's Office of Money Laundering and Asset Forfeiture and with the Money Laundering Division of the Judicial Investigation Agency (OIJ). This is complemented with an electronic tool of STR recording located in the FIU, also used by reporting entities to enter suspicious transaction reports. This tool automatically creates statistics of the cases entered, as well as of other data by reporting entity,

nationalities reported, financial products reported, among others. Moreover, the FIU is in process of developing a risk model that enables the classification of STRs, under a scheme of indicators, aimed at providing an expeditious proceeding and developing a deeper analysis of the STR information. The integration of this approach within SICORE system is expected by mid 2015.

TC64. As regards the strategic analysis, there are no specific legal regulations that establish the task of carrying out a strategic analysis as a function of the FIU. However, authorities inform that this type of analysis is carried out with the existing structure and personnel, and studies are performed regarding remittances, lotteries and cross border transportation of money.

TC65. *Criterion 29.5* Law 8204 establishes that once the FIU has carried out the ML/TF investigations, these will be communicated to the Public Prosecutor (Art. 123). Moreover, it establishes that the FIU may also disclose information to the Public Prosecutor, the judges of the Republic, national and foreign police forces, counterpart Financial Analysis Units and administrative and judicial authorities of other countries competent on that matter (Art. 124). Authorities inform that they have a secure communication platform called “UIF Directo”, which is used since March 2012 for STR communication, and in February 2014 the Judicial Police was incorporated in its use to exchange information, documentation and reports through this channel.

TC66. *Criterion 29.6 a)* Law 8204 establishes that the information gathered by the FIU is confidential and of exclusive use of investigations carried out by the ICD (Art. 124). Moreover, it establishes that the ICD cannot provide information that puts the secret of ML/TF investigations at risk. This Law provides criminal sanctions for officers who endeavor the impunity or evasion of the persons subject to the investigation. Also, there are prohibitions set for officers, such as violating the security and confidentiality of the information and accessing to databases without authorization, among others.

TC67. In the mentioned “UIF Directo” platform, the liaisons receive a personal password that must be updated every sixty (60) days at most. This system is a secure website and has a digital certificate, which will verify and ensure that a person is effectively entering the UIF Directo system. The system will transfer the secure data through an encryption activated by the certificate in the server. The parameters of the URLs travel encrypted to prevent detections and alterations.

TC68. The “UIF Directo” platform includes the “ROS en línea” for the reception of STRs and where all the information submitted by the reporting entities is collected, organized and analyzed. Moreover, together with the SICORE platform, it manages users and provides authentications and permissions to access and modify data, as well as to make special consultations. The different systems of access and mechanisms for the use of SICORE information have been designed by the IT Unit of the Costa Rican Institute on Drugs at the request of the FIU.

TC69. Additionally, Law 8204 establishes criminal sanctions for civil servants or officers who endeavor, in any way, the impunity or evasion of the persons under investigation, by committing any of the offenses mentioned in the Law (Art. 61 and 62), and establishes that the ICD cannot provide information that affects the investigations of drug trafficking, ML or TF, or that could infringe on the rights of a person (Art. 101).

TC70. The Regulations of organization and service of the ICD (No. 37162) establish the acknowledgement of prohibitions, such as violating the security and confidentiality of the information (Art. 32).

TC71. *Criterion 29.6 b) and c)* As mentioned above, the systems used by the FIU have levels of restricted access and also create audit trails to enable the verification of movements made by the user within the system. The systems used by the FIU have levels of restricted access and audit trails are generated; for the

submission of STRs, the “ROS e línea” is used, which is found in the “UIF Directo” platform. This platform is also used to exchange information with the Judicial Police and to keep the communications with the subjects of the financial system who are obliged to report. This platform is a secure website and has a digital certificate, in which the parameters of the URLs travel encrypted to prevent detections and alterations. Moreover, the FIU internally uses SICORE, a desktop application to which users access through certain permissions and which contain parameters of access according to the user to modify, export, import and make consultations of the information. The FIU is located on the third floor of the ICD, where units that do not have contact with the public are located, and which has security cameras as well as a security officer who monitors 24 hours.

TC72. *Criterion 29.7 a)* According to Law 8204, the FIU will request, compile and analyze reports, forms and suspicious transaction reports (Art. 123). Moreover, the information gathered by the Financial Intelligence Unit will be confidential and of exclusive use for the investigations carried out by this Institute (Art. 124). The compliance with the recommendations suggested by the Unit and endorsed by the Board of Directors of the Institute will have priority in the Public Sector and, especially, in the financial or commercial entities, to comply with the policies developed to combat money laundering and terrorist financing, and to increase the effectiveness of state and private actions on this matter.

TC73. *Criterion 29.7 b)* Law 8204 establishes that the FIU can disclose information to the counterpart Financial Analysis Units and to administrative and judicial authorities of other countries (Art. 124). Moreover, since 1998, the FIU belongs to Egmont Group, where the exchange of information is carried out directly with an officer of the FIU and of GAFILAT’s Assets Recovery Network, having answered 32 requests of cooperation in the framework of the Egmont Group during 2014 and 4 requests of cooperation in the framework of GAFILAT’s Assets Recovery Network.

TC74. *Criterion 29.7 c)* The FIU is part of the organizational structure of the Costa Rican Institute on Drugs (ICD), which is an autonomous body reporting to the Chief of Cabinet, with instrumental legal status for the performance of its contractual activity and the administration of its resources and equity. In accordance with Art. 107 of Law 8204, the Board of Directors is the highest decision-making body of the ICD, presided over by the Chief of Cabinet or vice-chief and comprised of four additional ministers, the director or assistant director of the OIJ and the general prosecutor or the assistant general prosecutor of the State. Among the functions of the Board of Directors, there is that of entering into cooperation agreements with administrative and judicial authorities, both national and international, as well as the approving of the ICD budget. A general director and a deputy general director, appointed by the Board of Directors, are in charge of the management and administration of the ICD. One of the functions of the Board of Directors of the ICD is to adopt, remove and implement disciplinary measures of ICD’s officers. Art. 126 of Law 8204 establishes that the compliance with the recommendations suggested by the FIU and supported by the Board of Directors of the ICD will have priority in the Public Sector and in the financial or commercial entities, to comply with the policies developed to combat ML/TF.

TC75. According to the Handbook of Procedures of the FIU, the management of the information (analysis, request, communication and/or disclosure) is carried out directly by the FIU, without having other ICD bodies interfering in the processes.

TC76. *Criterion 29.7.d)* The FIU does not have economic resources for the performance of its functions as it depends on the ordinary budget allocated to the ICD for all the units. The FIU has fourteen (14) positions, including the headquarters. Given the reduced structure in relation to the amount of investigation cases and the volume of work, as well as the resources available and the budgetary restrictions, no internal hierarchical structures have been created.

TC77. *Criterion 29.8* The FIU is member of the Group since 1998, during the Plenary meeting of the group which was carried out in Buenos Aires, Argentina.

TC78. *Weighting and Conclusion:* In accordance with Law 8204, STRs are sent to the supervision and surveillance body, which submits these to the FIU. However, the Regulations of the Law state that the reports will be directly submitted to the FIU. There is, therefore, a contradiction between the Law and the Regulations, where the Law takes precedence over the Regulations. Moreover, the FIU does not have enough resources to perform its functions. **Recommendation 29 is rated ad Partially Compliant.**

***Recommendation 30 – Responsibilities of law enforcement and investigative authorities***

TC79. *Criterion 30.1* Costa Rica has law enforcement authorities appointed to ensure that ML, predicate offenses and TF are adequately investigated. These authorities are the following: Public Prosecutor<sup>37</sup>, Judicial Police<sup>38</sup>, Police Force<sup>39</sup>, Airport Police<sup>40</sup>, National Customs Service<sup>41</sup> and Fiscal Control Police<sup>42</sup>, Intelligence and Security Directorate<sup>43</sup>, National Coastguard Service<sup>44</sup>, General Department of Taxation<sup>45</sup>, General Directorate of Migration and Aliens<sup>46</sup>.

<sup>37</sup> Deputy Prosecutor's Office of Money Laundering and Asset Forfeiture, created by Court Plenary by the recommendation of the General Prosecutor's Office, according to the agreement entered into by the Court Plenary, session No. 49-13 on November 25<sup>th</sup> 2013. There also exists the Deputy Prosecutor's Office against Organized Crime (FACDO in Spanish) created by the agreement entered into by the Court Plenary, session No. 16-2008 on May 19<sup>th</sup> 2008.

<sup>38</sup> The Organic Law no. 5524 of the Judicial Investigation Agency (OIJ) creates the OIJ, which depends on the Supreme Court of Justice, with jurisdiction in all the Republic, which functions as assistant of criminal courts and the Public Ministry in the discovery and scientific verification of crimes and their alleged perpetrators, as well as consultation of the other courts of the country. The OIJ will comply with the functions of the judicial police, which of its own accord, by complaint or by order of a competent authority, will investigate publicly prosecutable offenses to prevent crimes committed from leading to further consequences, to identify and to preventative capture the alleged offenders and to gather, ensure and scientifically order the proofs and other necessary background information for the investigation (Art. 1-4).

<sup>39</sup> The Organic Law of the Ministry of Public Security regulates the police forces (Art. 1, 3, 6 and 9) and are submitted to the scope determined by the Penal Code (Arts. 25, 26, 27, 28 y 29).

<sup>40</sup> The Airport Police has the following powers: to collaborate with justice courts, the Public Prosecutor, the Prosecutor General's Office of the Republic and the Comptroller General of the Republic in all the required police proceedings and to submit the evidence and reports of the case, to collaborate with crime prevention and repression and to assist other police forces, among others (General Police Law 7410, Arts. 2, 4 and 8L). Moreover, the Air Surveillance Service provides air support in security actions carried out by the police force in humanitarian missions, transportations of officers, to provide security and surveillance in airports of the country to protect national and foreign citizens. Its operation is contemplated in the Manual of Operational Procedures in Airports. It contributes to the compliance with Art. 35 and 40 of Law 8204.

<sup>41</sup> According to the information provided by authorities, the function of the General Customs Directorate is to intervene in smuggling crimes (including taxes and custom fees), customs tax evasion, illicit trafficking of narcotic drugs, psychotropic substances, forgery and piracy of products.

<sup>42</sup> The function of the Fiscal Control Police, among others, is to carry out all kinds of raids to prosecute offenses of tax nature. To carry out said raids, it must have a judicial authorization and it must comply with the other legal conditions (General Police Law, Art. 27 and 28).

<sup>43</sup> The functions of the Intelligence and Security Directorate are to detect, investigate, analyze and communicate to the President of the Republic or the Ministry of the Presidency the necessary information to prevent acts that imply a risk for the independence or the territorial integrity, or that puts the stability of the country and its institutions at risk (Law 410, Art. 14).

<sup>44</sup> The National Coastguard Service is a police force member of the public force, specialized in the safeguard of territorial waters, the continental platform, the insular shelves and the seas surrounding the Costa Rican State. Its functions are to collaborate with administrative and judicial authorities in charge of protecting natural resources, to fight against the illicit trafficking of narcotic drugs, psychotropic substances and related activities, as well as to fight against illegal migration, arms trafficking and other illicit activities (Art. 1-3, Law 8000).

<sup>45</sup> In accordance with Law 4755, the General Department of Taxation is in charge of receiving, managing and supervising the taxes, of the Tax Authority or of other public entities that are active subjects, for a tax obligation that has come up between the State and other public entities, and passive subjects or taxpayers, and that a taxable event provided in the Law happens,

TC80. *Criterion 30.2* The Policy Directive of Criminal Prosecution in Organized Crime and Functional Management of the Public Prosecutor, circular 03-PPP-2010, refers to the distribution of cases according to their typology. However, in the exercise of criminal action, each one of the Prosecutor's offices must lead the investigations of publicly prosecutable offenses, without having restrictions. Among the competent authorities, according to Art. 114 of Law 8000, the General Department of Taxation/tax administration may request authorization to the competent judicial authority for the sequestration of documents or goods which preservation is required to determine the tax obligation or to ensure the proofs of the commission of an infraction or illicit tax act. Art. 20 of Law 8754 establishes that the General Comptroller of the Republic, the Treasury Department, the ICD or the Public Prosecutor may file a complaint before the Treasury Civil Court of Summary Matters regarding the increase of capital without an apparent licit cause, with a retrospective of up to ten years, of any public officer, and once the complaint is received, the precautionary measure of sequestration of goods, their registered immobilization and of any type of financial product may be implemented. Moreover, all the different law enforcement authorities mentioned in the previous criterion, according to their competences, can initiate the corresponding investigations; however, it is not clear if they carry out parallel financial investigations.

TC81. *Criterion 30.3* In accordance with Art. 33 of Law 8204, the Public Prosecutor has the power to request to the court or competent authority, at any time and without previous notice or hearing, a sequestration order, a confiscation order, or any other precautionary measure aimed at preserving the availability of the related goods, products or instruments for the confiscation. Criterion 30.4 does not seem to apply as in Costa Rica law enforcement authorities have the responsibility of investigating and prosecuting offenses. Criterion 30.5 In Costa Rica, there is a special type of ML originated by corruption. Art. 47 of Law 8422 establishes that anyone who carries out the following will be sanctioned "conceals, ensures, transforms, invests, transfers, holds, manages, acquires or gives the appearance of legitimacy to goods or rights, knowing that they are a product of illicit enrichment or of criminal activities of a civil servant, carried out while in office or by the means and opportunities given by it". Moreover, the corruption offense is one of the most serious predicate offenses of ML and, as mentioned in the previous criteria, the Public Prosecutor can have information of any offense; therefore, it can be said that the Prosecutor's office specialized in anti-corruption, probity and transparency could file a lawsuit for money laundering from investigations carried out for corruption.

TC82. *Weighting and Conclusion:* Costa Rica has law enforcement authorities appointed to ensure that ML, predicate offenses and TF are appropriately investigated, among them there are following: the Public Prosecutor, the Judicial Police, the Airport Police, the National Customs Service and Fiscal Control Police, the Intelligence and Security Directorate, the National Coastguard Service, the General Department of Taxation and the General Directorate of Migration and Aliens. The Policy Directive of Criminal Prosecution in Organized Crime and Functional Management of the Public Prosecutor refers to the distribution of cases according to their typology. However, in the exercise of criminal action, each one of the Prosecutor's offices must lead the investigations of publicly prosecutable offenses, without having

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establishing a personal link. Said body dictates general regulations for the correct implementation of tax laws, within the limits set by the appropriate legal and regulatory provisions, granting powers of control, verification and management both to the General Department of Taxation and to the General Customs Directorate, and the General Treasury Directorate in its fields of competence (Art. 99), and has, among other, the function of requesting information to taxpayers and financial entities to carry out its functions (Arts. 104-108).

<sup>46</sup> The General Directorate of Migration and Aliens has the obligation to carry out the migratory control of people during the entry to and exit from the national territory, as well as to control the activities of foreigners who live in the country, and to carry out investigations of human trafficking offense, as well as any other offense of migration nature as assistant body of the Public Prosecutor (Art. 18, Law 8764).

restrictions. Among the competent authorities, the General Department of Taxation, according to Art. 114 of Law 8000, may request authorization to the competent judicial authority for the sequestration of documents or goods. At the same time, Art. 20 of Law 8754 establishes that the General Comptroller of the Republic, the Treasury Department, the ICD or the Public Prosecutor may present a complaint regarding the increase of capital without an apparent licit cause of any public officer, and once the complaint is received, the precautionary measure of sequestration of goods, their registered immobilization and of any type of financial product may be implemented. Moreover, all the different law enforcement authorities mentioned in the previous paragraph, according to their competences, can initiate the corresponding investigations; however, it is not clear if they carry out parallel financial investigations.

TC83. Art. 33 of Law 8204 establishes that the Public Prosecutor has the power to request to the court or competent authority a sequestration order, a confiscation order, or any other precautionary measure aimed at preserving the availability of the related goods, products or instruments for the confiscation. Moreover, Art. 83 of the mentioned Law establishes that all movable and immovable goods, vehicles, instruments, equipment, securities, money and other objects used in the commission of the offenses provided in this law, as well as the different goods or values originated by such actions will be preventatively confiscated by the competent authority that follows the cause; as well as in the case of shares, capital contributions and the estate of legal persons linked to these facts. In Costa Rica, law enforcement authorities have the responsibility of investigating and prosecuting offenses. Meanwhile, there is no evidence of the existence of other competent authorities that do not belong to law enforcement. The corruption offense is a predicate offense of ML. in this context, Law 8422 “Law against Corruption and Illicit Enrichment in the Civil Service” establishes criminal sanctions for the commission of this offense. As mentioned above, the Public Prosecutor can have information of any offense; therefore, it can be said that the Prosecutor’s office specialized in anti-corruption, probity and transparency could file a lawsuit for ML from investigations carried out for corruption. **Recommendation 30 is rated as Largely Compliant.**

### ***Recommendation 31 – Powers of law enforcement and investigative authorities***

TC84. *Criterion 31.1 a)* Law 8754 establishes that in any investigation of organized crime, the lifting of banking secrecy will apply, and in the case of investigations carried out by the Public Prosecutor or the FIU of the ICD, FIs will be obliged to safeguard all the information, documents, money and value that could be used as evidence or proof within the investigation or in a judicial proceeding. As a consequence, competent authorities will have access to everything which is safeguarded. Law 7425 establishes that the Courts of Justice will be able to authorize the registration, sequestration or examination of any private document, in cases where it is absolutely essential to clarify criminal matters submitted to them (Art. 1). Moreover, Law 5524 establishes that the OIJ can collect all the evidence and other important background information of the case (Art. 4.5), and Law 4755 establishes the access to information by the Tax Administration (Art. 105-106).

TC85. *Criterion 31.1 b) – d)* The Criminal Procedural Code establishes the power of the Public Prosecutor and of the Judicial Police to carry out raids in houses and shops (Art. 193 and 194), as well as to carry out preliminary procedures and sequestration warrant of objects linked to the offense, subject to confiscation and those that are useful as evidence (Art. 198). Moreover, these powers for the Judicial Police are established in Law 5244<sup>47</sup>. Law 8764 establishes the power to carry out inspections in hotels,

<sup>47</sup> Art. 4 “The body will have the following powers, among others legally given: (...)

5) To collect all the evidence and other background information that are important to the case (...).

9) To proceed to question all the people that could provide relevant data to the investigation, carrying out the appropriate recognitions, reconstructions, inspections and confrontations.

10) To carry out the examinations, inquiries and investigations considered appropriate for the sake of investigations (...).

boarding houses, hosting houses, guest houses, motels or similar establishments and work places, which will be defined in accordance with the regulations (Art. 18.8). Law 4755 establishes the power of the General Department of Taxation to inspect shops and proceed to carry out raids with judicial authorization, in accordance with the formalities of the CPC (Art. 113).

TC86. *Criterion 31.2* Law 8204 establishes in Chapters II and III the powers to carry out controlled deliveries and covert operations. However, it is not clear if said powers can be used in the investigations of predicate offenses not envisaged in Law 8204. Law 7425 (Art. 9) and Law 8754 (Art. 15) establish the power to intercept communications. The Law (Art. 1) establishes the “access to any private document, including letters, correspondence by fax, telex, telematics or any other means; videos, cassettes, tapes, disks, floppy disks, desks, books, memorials, records, plans, drawings, painting, x-rays, photographs and any other form of registering private information, used as a representation or declaration to show or prove something”. Nevertheless, it is not clear if there are specific powers to access computer systems.

TC87. *Criterion 31.3* Law 8204 provides mechanisms to identify in a timely manner if an individual or legal entity has or controls accounts, and if said information is available to competent authorities. Specifically, Art. 17 establishes that FIs must immediately comply with information requests made by judges, regarding the information and documents necessary for investigations and procedures. Art. 121 establishes the obligation of the Record and Consultation Unit of the ICD regarding the structure and guard of the absolutely confidential information record that is useful for investigations carried out by the police and the Public Prosecutor; this unit will have the “files containing the name and address of the customers of the Costa Rican Institute of Electricity, the criminal record of the OIJ, the labor-management file of the Costa Rican Department of Social Security (CCSS in Spanish) and any source or information system, document, instrument, account or declaration of all institutions, either public or private”. Additionally, the Public Prosecutor can request and access to financial products through the FIU (Art. 123 and 124).

TC88. *Criterion 31.3* Art. 124 of Law 8204 establishes that the information collected by the FIU can be disclosed to the Public Prosecutor, the judges of the Republic or the national and foreign police forces.

TC89. *Weighting and Conclusion:* The Political Constitution, the Criminal Procedural Code, the Law on Registration, Sequestration and Examination of Private Documents and Communication Intervention, the Organic Law of the Public Prosecutor, the Organic Law of the Judicial Investigation Agency and the Code of Regulations and Tax Procedures establish the powers to have access to documentation and information in the case of investigations, as well as to look for persons, raid places, take witness statements and confiscate and obtain evidence. Law 8204 establishes the powers to carry out covert operations and to intercept communications. However, there do not seem to exist specific powers to access computer systems. Art. 9 of the mentioned Law takes into consideration the procedure of “controlled delivery”. However, it is not clear if this power refers only to cases of international scope. Art. 16 of Law 8204 establishes regulations for reporting entities to obtain and keep information regarding the true identity of the individuals or legal persons for whose benefit an account is opened. Art. 121 of the mentioned Law establishes that the Record and Consultation Unit of the ICD will organize an information record that is useful for the investigations carried out by the police and the Public Prosecutor. Moreover, Art. 124 of the mentioned Law establishes that the information collected by the FIU can be disclosed to the Public Prosecutor, the judges of the Republic or the national and foreign police forces. **Recommendation 31 is rated as Largely Compliant.**

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12) To carry out the registration, raids and inspections that are necessary for the sake of investigations, with the formalities prescribed by the Criminal Procedural Code (...).”

### ***Recommendation 32 – Cash couriers***

TC90. *Criterion 32.1 and 32.2* Law 8204 establishes that when entering or leaving the country, all the people, both national and foreign, will be obliged to declare the amount of cash or securities they carry, if the amount is equal to or above ten thousand US Dollars (USD 10,000.00) or its equivalent in another currency (Art. 35). To carry out the declaration, they will have to use the official forms, which will be made available at the migratory points by the competent officers of Customs Administration.

TC91. *Criterion 32.3* Non applicable

TC92. *Criterion 32.4-32.5* Art. 35 above mentioned establishes that the failure to comply, either totally or partially, with the declaration of carrying amounts of money equal to or above US\$ 10,000.00 or its equivalent in another currency will result in absolute liability and the immediate loss of the money or securities in favor of the ICD. Moreover, it establishes that Customs Administration is obliged to verify, by means of the passport or any other identification document, the truthfulness of the personal data that appears in the form. For the development of this obligation, the FIU developed a protocol of action through Resolution FIU-DG-081-2014, approved by the ICD.

TC93. *Criterion 32.6.* Art. 35 of the Law above mentioned states that the disclosure shall be entered on the Sworn Declaration Form and the forms shall be forwarded to the ICD for the corresponding analysis. According to the protocol of action (Resolution FIU-DG-081-2014), for the implementation of Art. 35, Paragraph 2.5.IX, in the case of airports, it establishes that the disclosures of Money and financial instruments shall be forwarded at the beginning of each month “to the FIU headquarters to include the information on the database implemented for this purpose, in order to strengthen the strategic analysis and statistics regarding the effective compliance with Art. 35 of Law 8204”. The protocol establishes a similar regulation for cross border points.

TC94. *Criterion 32.7* Authorities provide information on activities that have been carried out and that are provided to be carried out in the framework of the PND for the compliance with Art. 35. The protocol of action of the FIU establishes the implementation of effective communication mechanisms among the authorities that intervene in the control areas in cross border and airport points, and also urges their application in control areas of the navy and ports. Moreover, the protocol establishes mechanisms for administrative and/or concessionaire companies of airports and airlines to contribute to the effective implementation of the controls.

TC95. *Criterion 32.8* As mentioned above, failure to comply, either totally or partially, with the disclosure of carrying amounts of money equal to or above US\$ 10,000.00 or its equivalent in another currency will result in full liability and the immediate loss of the money or securities in favor of the ICD.

TC96. *Criterion 32.9* As mentioned above, Art. 35 establishes the forwarding of declarations to the ICD, including declarations for carrying amounts of money equal to or above USD 10,000.00 (US dollars) and omissions to declare, or false or inexact declarations. Moreover, administrative resolution DG 081-2014 establishes that declarations will be directly forwarded to the FIU within five (5) working days of the following month, and Art. 124 empowers the FIU to share information with police forces, counterpart units and administrative and judicial authorities of other countries.

TC97. *Criterion 32.10* As regards the processes of collecting information through the declaration system, apparently this system does not limit the commercial payments between countries or the freedom of capital movement, and the information collected is kept and used for the purposes established in Art. 35.

TC98. *Criterion 32.11* As regards ML/TF cases, despite the objective administrative sanction established in Art. 35, Art. 69 and 69 bis of the same Law would be included for sanctionary effects, as well as the regulations of the applicable sections of the Law mentioned for the confiscation of goods.

TC99. *Weighting and Conclusion:* In Costa Rica, there is a system of written declaration for all the people travelling with amounts of money equal to or above USD 10,000, which contemplates sanctions for false declarations. Specifically, Art. 35 of Law 8204 establishes that when entering or leaving the country, all the people, both national and foreign, will be obliged to declare the amount of cash or securities they carry, and if the amount is equal to or above ten thousand US dollars (USD 10,000.00) or its equivalent in another currency (Art. 35). To carry out the declaration, they will have to use the official forms, which will be made available at the immigration points by the competent officers of Customs Administration. Failure to comply, either totally or partially, with this obligation will result in absolute liability and the immediate loss of the money or securities in favor of the ICD. The loss will be founded on the simple verification of the failure to comply with the obligation and will be declared by the Treasury Department. The competent officers of Customs Administration are obliged to verify, by means of the passport or any other identification document, the truthfulness of the personal data that appears in the form. The declaration shall be entered on the Sworn Declaration Form and the forms shall be forwarded to the ICD for the corresponding analysis. Moreover, administrative resolution DG 081-2014 establishes that declarations will be directly forwarded to the FIU within five (5) working days of the following month. This declaration system is currently being implemented in airports and borders, and according to the information provided, this year the project will be developed with the authorities of the Navy and with companies that offer courier services. **Recommendation 32 is rated as Compliant.**

#### IV. FINANCING OF TERRORISM AND FINANCING OF THE PW

##### *Recommendation 5 – Terrorist financing offense*

TC100. *Criterion 5.1* Art. 69 bis of Law 8204 establishes the criminalisation of TF as follows:

*“whoever, through any means, directly or indirectly collects, conceal, provides, fosters, enables or cooperates in any other way with the collection or delivery of funds, financial products, resources or instruments in the country or abroad, with the intention or knowledge that these will be used or allocated to the financing of terrorist acts, even if these are not executed, or to organizations declared as terrorist, according to International Law, or with terrorist purposes shall be punished with imprisonment from five (5) to fifteen (15) years. The case may be judged in Costa Rica regardless of where it was committed”*

TC101. *Criterion 5.1* The Penal Code (Art. 112, 215, 250 third, 246 bis, 251, 258, 259, 260, 274 bis and 284 bis) includes the behaviors contemplated in Art. 2.a of the Convention against Terrorist Financing. However, there is no regulation that includes the behavior of Art. 2.b of the Convention mentioned. Moreover, the Inter-American Convention against Terrorism is included through Law 8446.

TC102. *Criterion 5.2* The TF offense extends to any person who provides or collects funds, financial products, resources or instruments by any means, with the direct or indirect intention or knowledge of using these for: a) the financing of terrorist acts and b) terrorist organizations (Art. 69 bis). Although the regulation is not explicit on the funds being used totally or partially, the Art. covers both scenarios. The TF offense does not extend to individual terrorist financing. As regards funds, the Art. mentioned refers to “funds, financial products, resources or instruments”; therefore, it seems to cover any kind of assets of the definition of funds, according to FATF’s glossary.

TC103. *Criterion 5.3* Art. 69 bis refers to any kind of financing, i.e. without regard to whether the funds are originated by a licit or illicit source.

TC104. *Criterion 5.4* The TF offense does not require funds to be used to carry out a terrorist act or to be connected with a specific terrorist act (Art. 69 bis).

TC105. *Criterion 5.5* As in the case of ML, the intention and knowledge required to prove an TF offense will depend on the factual circumstances, according to the rational healthy critique principle and the probation principle (Art. 361 and 182 of the Code of Criminal Procedure – CCP).

TC106. *Criterion 5.6* The TF offense will be sanctioned with imprisonment from five (5) to fifteen (15) years.

TC107. *Criterion 5.7* As mentioned in the case of ML, in Costa Rica no criminal sanctions are implemented for legal persons, the sanction is only administrative and civil (Law 8204, Art. 92 and CCP 368).

TC108. *Criterion 5.8* Ancillary offenses are taken into consideration in the Criminal Code, Sections 24 (attempt), 45 (complicity) and 46 (instigation). However, it does not seem to take into consideration the behavior of collaborating with the commission of one or more TF offenses, or the attempted offense by a group of people who act with a common purpose.

TC109. *Criterion 5.9*. According to the definition of serious offense contemplated in Art. 1 of Law 8754, the TF offense is classified as a predicate offense of ML.

TC110. *Criterion 5.10*. The TF offense shall be tried in Costa Rica, independently of where it was committed.

TC111. *Weighting and Conclusion*: The criminalisation of the TF offense is established in Art. 69 bis of Law 8204. Nevertheless, the following are not covered: 1) conducts contemplated in Art. 2.b of the Convention against TF, 2) that the offense of TF extends to the individual financing of terrorism and 3) ancillary offenses of collaboration with the commission of one or more TF offenses, or the attempted offense by a group of people who act with a common purpose. **Recommendation 5 is rated as Partially Compliant.**

### ***Recommendation 6 – Targeted financial sanctions related to terrorism and terrorist financing***

TC112. *Criterion 6.1* In Costa Rica, the Costa Rican Diplomatic Mission appointed before the United Nations is relevant for the submission of proposals for designations before the Committees of the United Nations Security Council Resolutions (UNSCRs) 1267/1989 and UNSCR 1988. However, this only happens in the case a sentence is pronounced, which is the contrary of what the Recommendation requires (Criterion 6.1.c). Therefore, Costa Rica does not have a mechanism on its own to carry out the identification of recipients of a designation, according to the criteria of the UNSCRs.

TC113. *Criterion 6.2* As regards designations by virtue of the UNSCR, Costa Rica does not have an authority or mechanism to identify the recipients of the designations according to the criteria of

UNSCR 1373, or to carry out said designations on reasonable grounds, without being affected by the existence of a criminal action, or to answer to freezing requests of third countries.

TC114. *Criterion 6.3* There is (are) no competent authority (authorities) with legal powers and procedures or mechanisms to: a) collect or request information to identify people and entities that, having reasonable grounds or a reasonable basis to suspect or believe, comply with the designation criteria; and b) operate ex parte against a person or entity that has been identified and which (proposal of) designation is being considered.

TC115. *Criterion 6.4* As regards targeted financial sanctions, Law 8204 establishes that the FIU or the Public Prosecutor can handle the withholding and immobilization of funds, financial products of people and organizations considered by the UNSC to be connected with terrorism. However, it does not set the prohibition to all individuals and legal persons of providing information, directly or indirectly, for the benefit of designated people, except for the criminalisation of the TF offense and its corresponding sanction.

TC116. *Criterion 6.5* Law 8204 establishes the following:

*“(...) In the case of people and organizations determined by the UNSC as connected to terrorism, acting in compliance with Chapter VII of the United Nations Charter, the FIU of the ICD, or the Public Prosecutor will manage the withholding or freezing of funds, financial products and the recording of the registered freezing of other assets.*

*When, with investigation purposes, the lists of people and organizations connected to terrorism by the UNSC are circulated between the national or foreign institutions shown in Art. 14, 15 and 15 bis of this Law, said institutions will be obliged to review them and inform the FIU of the ICD and the Public Prosecutor if the people and organizations included in the lists have resources or assets on them (Art. 33).”*

TC117. Art. 33 bis of the Law mentioned establishes a regulation similar to the last paragraph of Art. 33. Moreover, Art. 86 empowers the FIU to request the temporary freezing measure of five (5) days, and the Public Prosecutor can request the competent judge to implement the precautionary measure of Art. 33.

TC118. These regulations show that there is a first development for the implementation of UNSCR 1267/1989. However, there are no procedures established to: 1) request all the individuals and legal persons of the country to freeze, without delay and previous notice, the funds or assets of designated people and entities, as the freezing measures of the FIU operate when there is an investigation and this measure can only last five (5) days, unless the Public Prosecutor requests the judge to consider the implementation of the appropriate precautionary measure of Art. 33, which is framed within an investigation of TF offense. Moreover, there is no mechanism established to conclude that the immobilizations will be without delay (6.5a); 2) the obligation of freezing extended to the parts i-iv of the criterion 6.5b; 3) as mentioned before, it does not take into consideration the prohibition to citizens or any individual or entity within the territory of the country of providing funds or other assets in the terms of criteria 6.5c; except when a TF offense is committed; 4) communicate designations of FIs and DNFBPs, as according to the Art. mentioned the lists will be circulated in the framework of an investigation (criterion 6.5d); 5) the requirement for FIs and DNFBPs to inform competent authorities about frozen assets or actions carried out in compliance with the prohibition requirements, although FIs and DNFBPs are obliged to review the lists and report to the FIU and Public Prosecutor the coincidences, but it is important to bear in mind that this obligation only exists in the framework of an investigation (criterion 6.5e); and 6) there

are no measures adopted to protect the rights of bona fide third parties when the obligations of Recommendation 6 are implemented.

TC119. *Criterion 6.6* Costa Rica does not have procedures of delisting or unfreezing of funds or other assets of individuals and entities that no longer comply with the designation criteria according to the procedures established by the 1267/1989 Committee, 1988 Committee and UNSCR 1373.

TC120. *Criterion 6.7* Costa Rica does not have regulations for the authorization of access to funds or other assets in accordance with the procedures established in UNSCR 1452 and in line with UNSCR 1373.

TC121. *Weighting and Conclusion:* Although there is a regulatory framework established in Art. 33, 33 bis and 86 of Law 8204 that enables the freezing in the framework of Resolution 1267, there still lacks the development of procedures for the compliance with Recommendation 6 that enables full compliance with UNSCR 1267 and 1373. **Recommendation 6 is rated as Partially Compliant.**

### ***Recommendation 7 – Targeted Financial Sanctions Related to Proliferation***

TC122. *Criterion 7.1 - Criterion 7.5 a)* Costa Rica does not have regulations on the prevention of the proliferation of weapons of mass destruction. There are no procedures established for the identification and freezing in the terms established by FATF for the implementation of Resolutions 1718 and 1737. Articles 33 and 33 bis of Law 8204 on freezing are not considered to apply to individuals or entities included in the UNSCR lists as regards the financing of the proliferation, as the mentioned sections are clear when stating that they specifically refer to “*people and organizations established by the UNSC as connected to terrorism*”.

TC123. *Weighting and Conclusion:* Costa Rica does not have mechanisms to implement targeted financial sanctions regarding the financing of the proliferation. **Recommendation 7 is rated as Non Compliant.**

### ***Recommendation 8 – Non-Profit Organizations***

TC124. Costa Rica has a wide range of non-profit organizations (NPOs), which have their own natural regulators according to the competence of each organization, where they register and, sometimes provide administrative and/or economic accountability.

TC125. There is a sector formed by non-governmental communal organizations governed by the National Department of Community Development (DINADECO in Spanish), an institution of the Executive Branch of Costa Rica in charge of the control, orientation and coordination, as well as the assessment of the process of organization of communities, which purpose is to achieve an active participation in the economic, social, cultural and environmental development of the country.

TC126. There also are other types of social organizations, the different labor organizations. The Ministry provides registration services to unions, charity associations, cooperatives, cantonal agricultural centers, regional committees of agricultural fairs and the National Fairs Committee, as well as the authorization of public labor corporations, provided they previously register with the National Registry.

TC127. *Criterion 8.1 a) – c)* It is not clear if the adequacy of laws and regulations regarding entities that can be object of abuse for the financing of terrorism, including NPOs, has been reviewed. No process of

identification and characteristics and types of NPOs that are specifically at risk of being used for TF or other forms of terrorist support has been carried out, as well as of identification of vulnerabilities in NPOs. Nevertheless, the PND takes into consideration an intervention on this matter, as NPOs are considered vulnerable to TF.

TC128. *Criterion 8.2* There has been no rapprochement with the NPO sector as regards TF.

TC129. *Criterion 8.3* Law 5338 (Art. 15) establishes that the Administrative Committee will submit on January 1<sup>st</sup> of each year an accounting report on the activities of the foundation to the General Comptroller of the Republic, who will supervise the operation of foundations, by all the means desired and when deemed appropriate. If an irregularity is detected in a study, it will report it to the General Attorney's Office to implement the corresponding action before the justice courts, if deemed necessary. On the other hand, Law 218 states regulations on the administration and management of these supervised NPOs. As regards associations registered with DINADECO, as previously described, there is a platform for the registration and control of organizations of community development, including the execution of the funds provided.

TC130. *Criterion 8.4 a)* Each development association will have to provide: "(...) b) The company name that distinguishes it from others, as well as its essential and general purposes" (Regulations of Law 3859, Art. 20). Moreover, the memorandum of association must include the complete text of the articles of association, as well as the agreements entered into, the names, family names, ID numbers and exact address of all the members of the Board of Directors (Regulations of Law 3859, Art. 15). The articles of association of all associations must express their purposes and means to achieve them (Law 218, Art. 7).

TC131. *Criterion 8.4 b)* Law 4755 establishes that corporations, associations, foundations and professional bodies shall provide the significant tax information appearing in their records, regarding their partners, associates, shareholders and members (Art. 106.b). Moreover, the Regulations of Law 3859 state the obligations of the Board of Directors of associations: to provide reports to the Management as requested on general activities and movement of bank accounts, as well as other requested documents for investigation proceedings and to provide annual economic reports and reports by economic activity carried out, and to put these in visible places for the knowledge of all the community (Art. 39 b and e).

TC132. The Administrative Committee of foundations will submit an accounting report of the activities of the foundation to the General Comptroller of the Republic every year (Art. 15 of Law 5338).

TC133. *Criterion 8.4 c)* Although obligations are established for associations and foundations, it is not clear if controls are established to ensure that funds are counted and used in accordance to the purposes and objectives of NPOs.

TC134. *Criterion 8.4 d)* The registration with the registry will authorize the association to operate and will provide full legal status, in accordance with Art. 28 of this Law. Said status can be proven before administrative and judicial bodies by means of the agreement that approves the articles of association and orders the registration, published in the official gazette, or by means of the certification of said registration that derives from the Registry mentioned (Regulations of Law 3859, Art. 17).

TC135. *Criterion 8.4 e)* It seems that no measures have been adopted to comply with the rule "know your beneficiaries and associated NPOs".

TC136. *Criterion 8.4 f)* The information on NPOs attached to Law 3859 through DINADECO is available to the authorities. As regards NPOs that are not supervised by DINADECO, the keeping of documents is regulated by the Guidelines for the elaboration of term tables for the conservation of documents, Part 8. Moreover, Regulation 24023 of Law 7202, Chapter IV, Sections 60-63 establishes that the minimum period of conservation of documents is of five years. With the exception of matters established as state secret or confidential matters, all the information is available to competent authorities. However, the specific obligation of keeping the records of local and international transactions does not seem to exist.

TC137. *Criterion 8.5* Law 218 establishes that the following people will be sanctioned with two to thirty days of fine: those who have a hidden or secret association, even with lawful purposes; the Secretary or Treasurer of an association who does not keep its books sealed or who keeps books with more than six months of delay, or who denies to submit them when required by the competent authority (Art. 33). Moreover, the following people will be punished: those who repeatedly commit the previously mentioned offenses and members of the Directorate who allow funds of the association to be destined to, or carry out, activities other than the ones stated in the articles of association, or who enable forbidden acts established in Art. 23 to be carried out in the facilities (Art. 33 bis). However, as some of the obligations of criterion 8.4 are not established, it is impossible to verify their compliance and sanctions.

TC138. *Criterion 8.6 a) – c)* As regards communal organizations under Law 3859 and governed by a State body, the information is available to the authorities that request it in the framework of an investigation. In addition, control actions could be coordinated by the Communal Audit. Law 8204 establishes that the State shall provide international technical and economic cooperation, through its competent bodies and by all their means, in order to strengthen the programs of prevention and investigation of the offenses included in the Law mentioned (Art. 70). Moreover, the FIU may request information in the framework of an investigation given its powers (Art. 123 and 124).

TC139. *Criterion 8.7* In general terms, the ICD and the General Prosecutor's Office of the Republic would answer the requests of international cooperation. However, there seems to be a contact point or specific procedures established to answer the information requests regarding NPOs for matters related to TF or any other type of support to terrorism.

TC140. *Weighting and Conclusion:* Costa Rica has a wide range of non-profit organizations duly taken into consideration in its legislation, as well as a long tradition of promotion and development of this type of organizations in its country. Notwithstanding the foregoing, there are limitations in the understanding, both of the public and private sectors, regarding the possible danger posed by the financing of terrorism offense in these organizations. This is aggravated by the fact that the country has decentralized public records of NPOs according to the purposes these have, which added to the complete lack of coordination does not help to create a clear frame regarding its formation, financiers and actual owners.

TC141. In most cases, there are no legal obligations for NPOs to keep their records updated both on their composition and on the results of their financial managements, and to whom these benefited, except for those foundations supervised by Costa Rica's Comptroller, which carries out an annual control on the management and usage of the public funds provided (Law 5338), although this control does not state preventive or surveillance measures on ML/TF policies. Therefore, there are no specific regulations that oblige NPOs to implement preventive measures against TF, so its current operation is not supervised on this regard. **Recommendation 8 is rated as Non Compliant.**



## V. PREVENTIVE MEASURES

TC142. According to Art. 14 of Law 8204, financial institutions are subjects obliged to AML/CTF measures:

*“Those entities that regulate, supervise and control the following bodies, as appropriate, are considered subject to the obligations of this Law:*

- a) The General Superintendence of Financial Entities (SUGEF).*
- b) The General Securities Superintendence (SUGEVAL).*
- c) The Pension Superintendence (SUPEN).*
- d) The General Insurance Superintendence (SUGESE).*

*Moreover, the obligations of this Law are applicable to all the entities and companies that are part of financial groups supervised by the mentioned bodies, including financial transactions made by banks or financial entities domiciled abroad, through a financial entity domiciled in Costa Rica. To this effect, entities of the financial groups mentioned are not requested to comply again with the registration stated in Art. 15 of this Law, but they are subject to the supervision of the corresponding body as regards money laundering and actions that could be aimed at financing terrorist activities or organizations”.*

TC143. Art. 15 of the same law includes the following:

*“Moreover, companies and entities that also carry out the following activities, among others, are subject to this Law:*

- a) Systematic or substantial operations of money exchange and transfer, by means of instruments such as checks, money orders, bills of exchange or similar instruments.*
- b) Systematic or substantial operations of issuance, sale, redemption or transfer of traveler checks or postal orders.*
- c) Systematic or substantial operations of funds, carried out by any means.*
- d) Administration of trusts or any kind of administration of resources carried out by individuals or legal persons that are not financial intermediaries.*
- e) Money transfers from one country to another (...).”*

### **Recommendation 9 – Financial Institutions Secrecy Laws**

TC144. Criterion 9.1 Law 8204 establishes that: *“The legal regulations regarding banking, stock market or tax information shall not be an obstacle for the compliance with the present Law, when judicial or administrative authorities in charge of investigations of crimes typified in this Law request information”* (Art. 32). Moreover, it establishes that *“entities of the national financial system will ensure they enter into international cooperation agreements within their reach, which guarantee the free exchange of data related to accounts opened in other states linked to investigations, processes and proceedings related to the offenses typified in the Law or related offenses, as well as to law infringements or financial administrative regulations”* (Art. 31).

TC145. In addition, the reporting entities mentioned in this Law must, at the request of the FIU, provide any kind of information requested for investigations of activities and offenses (Art. 123), and to share this information with foreign FIUs, the police and administrative and judicial authorities of other countries. According to the foregoing information, competent authorities seem to have access to the information they need to effectively carry out their functions in the combat against ML/TF.

TC146. *Weighting and Conclusion:* Costa Rica complies with all the criteria of this Recommendation. **Recommendation 9 is rated as Compliant.**

#### Customer due diligence and record keeping

#### ***Recommendation 10 – Customer Due Diligence***

TC147. *Criterion 10.1* Law 8204 establishes that FIs shall not keep anonymous accounts, numbered accounts or accounts under fake or inexact names; they shall only keep nominee accounts.

TC148. *Criterion 10.2 a)* Law 8204 and its corresponding regulations establish customer due diligence (CDD) obligations at the moment of establishing commercial relationships (Art. 16.a).

TC149. *Criterion 10.2 b)* In addition, CDD measures are established for transactions above the threshold of 15,000 US dollars in single transactions or multiple transactions that seem to be connected; this also applies to wire transfers (Art. 20 and 21).

TC150. *Criterion 10.2 c)* Except for cases of occasional transactions by wire transfers above 10,000 US dollars, which is not consistent with Recommendation 16 and its Explanatory Note.

TC151. *Criterion 10.2 c) – d)* FIs are not requested to adopt CDD measures when there is suspicion of ML/TF, regardless of the exemptions or threshold established in FATF Recommendations, and regardless of the cases in which FIs have doubts on the truthfulness or precision of the customer identification data previously obtained, except for NCL 8204, which states that if when starting a commercial relationship there are doubts on the existence of the business, a material verification must be carried out of the activity that generates funds, in order to verify its real existence and its capacity of producing goods or providing services (Art. 20).

TC152. *Criterion 10.3* Law 8204 establishes that FIs are obliged to obtain and keep information on the true identity of the people on whose benefit an account is opened or on whose name a transfer is carried out (Art. 16.a), as well as to register and verify, by feasible means, the identity, representation, address, legal capacity, profession or social purpose of the people, and other identity data, either of occasional or regular customers, by means of identity documents, passports, birth certificates, driver's licenses, social contracts and articles of associations, or through any other official or private document (Art. 16.c).

TC153. *Criterion 10.4* NCL 8204 establishes the obligation of identifying and verifying the identity of the person acting on behalf of the customer and his authorization. Therefore, legal representatives and authorized persons of an account, product or service, are required the following, at the very least: “*copy of current identity document and complete name, nationality, date and place of birth, profession and occupation, exact address of permanent residence (with specific indications), e-mail address, telephone, fax. In the case of other beneficiaries that are not included in the definition of customer according to this Regulation, the following information must be requested: type and number of identity document, complete name, nationality, exact address of permanent residence (with specific indications), telephone, as well as*

*the relationship they have with the account holder, either familiar, commercial, employment, among others” (Art. 10).*

TC154. *Criterion 10.5* Although NCL 8204 establishes obligations for the identification of the beneficial or actual owner (Art. 9), the definition of said regulation<sup>48</sup> is not in line with FATF’s definition on the Methodology glossary. Nevertheless, this technical weakness seems to be corrected with the obligations established in Art. 9.a, which state that information must be provided of all the partners appearing in the ownership structure up to the level of individual when this is equivalent to having a percentage of indirect share is equal to or above 10% of the share capital of the customer.

TC155. *Criterion 10.6* NCL 8204 establishes that FIs must obtain and keep as part of the customer’s information, either individuals or legal persons, the activity or nature of the business<sup>49</sup> and the purpose and nature of the commercial relationship (Art. 8.c and 9.c).

TC156. *Criterion 10.7 a)* The Regulations of Law 8204 state that FIs must implement monitoring programs based on ML/TF risk models, which take into consideration the monitoring of the transactional profile of the customer (Art. 30.1). In addition, NCL 8204 establishes the continuous monitoring of accounts and services offered to customers, in order to ensure that the transactional pattern of the customer is coherent with the estimated monthly amount indicated by the customer at the beginning of and during the commercial relationship through specialized IT programs (Art. 16).

TC157. *Criterion 10.7 b)* Law 8204 (Art.167) and its regulations (Art. 19) establish that once the business relationship has started, the supervised individual or legal entity must regularly update the information of customers. Moreover, regardless of the risk category of the customer, the information of the file must be updated whenever there is a relevant modification in the transactional profile.

TC158. NCL 8204 establishes the obligation (Art. 12) of updating the documents and data gathered during the CDD process in accordance with the policy adopted by the FI<sup>50</sup>. If there are relevant changes in the transactional pattern or if the risk category of the customer changes to a higher risk, the documents that support that change must be immediately updated. In addition, it states that for customers classified as high risk and other customers deemed necessary by the FI a reliable verification must be carried out of the

<sup>48</sup> NCL 8204 Beneficial or actual owner. “Any person or group of individuals or legal person who, directly or indirectly, by virtue of a contract or agreement is benefited from the transactions or operations made by the customer through financial entities” (Art. 2).

<sup>49</sup> In the case of individuals, NCL 8204 specifically establishes: profession and occupation; name of employer or nature of the business if they carry out independent activities (Art. 8.c).

<sup>50</sup> NCL (Art. 12) establishes that the update of information must take into account at least the following guidelines:

- a) High-risk customers: revision or update, as appropriate, of the documents and data of the customer at least every 12 months. A record must be kept of said revision or update, as well as of the date and name of the person who carried them out.*
- b) Moderate-risk customers: revision or update of the documents and data of the customer at least every 24 months.*
- c) Low-risk customers whose monthly operations are above the limit established by these Regulations, in order to be exempted from the obligation of supporting documentation regarding the origin of funds: a revision or update of the documents and data of the customer at least every 36 months*
- d) Low-risk customer whose monthly operations are not above the limit established by these Regulations, in order to be exempted from the obligation of supporting documentation regarding the origin of funds: a revision or update of the documents and data of the customer as defined in the policies and procedures of each obliged entity or individual.*
- e) The update of the information of those customers who, according to the policies and procedures of the supervised subject, have been classified as “inactive” or who are holders of inactive accounts, must be done once the condition of inactivity ends.”*

activity generating the resources. The procedures for the verification of the origin of customers' funds must provide documentary information regarding the origin of said resources (NCL 8204, Art. 11).

TC159. *Criterion 10.8* The Regulations NCL 8204 establish that FIs must be requested to know the nature, share and control structure<sup>51</sup> (Art. 9.a), and the nature of the customer's business (Art. 9.b)<sup>52</sup> if they have customers that are legal persons of structures.

TC160. *Criterion 10.9* The Regulations NCL 8204 (Art. 9 and 10) establish that, in the case of legal persons, FIs must identify and verify the identity of the customer. Thus, it establishes that the file of the customer must include, among other data, the following:

- Registered name; type of legal entity; identification number; date and place of incorporation.
- Certification of legal status with an issuance date not over three months at the moment of starting the relation, which may be updated by consulting public entities' databases; notarial certification as shown in the book of shareholders in the case of Costa Rican legal persons with an issuance date not over three months at the moment of its filing and which provides detail of the valid identification number.
- Copy of the current identification document of the legal representatives and authorized people. Complete name, nationality, date and place of birth, profession and occupation, exact address of permanent residence (with specific indications), e-mail address, telephone, fax.
- Exact address of the registered office (indicated with cardinal points, including province, canton, district and other specific signs as physical characteristics of the address); exact address of the place of business (only when it is different from the registered office); telephone number; e-mail address and fax.

TC161. *Criterion 10.10* The Regulations of Law 8204 establish that FIs must obtain, in the case of legal persons<sup>53</sup>, notarial certification of updated data of identification of its legal representatives, current composition of share capital up to individual owners of shares (Art. 20).

TC162. *Criterion 10.11 a)* The Regulations of Law 8204 establish that in the case of trusts, obliged entities and subjects must request, among other things, the corresponding certifications that show the registration, where applicable, as well as the registration and validity of corporations, and the identification of its proxies and legal representatives, so as to adequately establish and document the owner of beneficiary of the trust, either direct or indirect (Art. 27).

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<sup>51</sup> NLC Art. 9.a The file of the customer shall contain: "(...) the name and share percentage of shareholders who own 10% or more of the customer's shares, or the shareholder who owns most of the equity interest, even when it does not exceed the stated percentage. In the case of legal persons domiciled abroad, the supervised subject must request the equivalent documents, duly legalized.

*Information must be provided about all the partners that appear in the property structure up to the final level of individuals, only when this is equivalent to owning an indirect participation percentage, equal to or above 10% of the customer's share capital, regardless of actions that are kept through agents, guardians or other legal figures through which the ownership of the capital may be maintained, including the fiduciary state of the shares (...)*

<sup>52</sup> NLC 8204 Art. 9.c The file shall contain: "activity or nature of the business; purpose and nature of the business relationship"

<sup>53</sup> In the case of foreign legal persons, the certification of the information, referred to in Art. 20, will have to comply with the legal requirements of formalization of foreign documents. The certification must not exceed three (3) months of issuance at the moment of the beginning of the commercial relationship with the obliged entity of subject. In addition, if the legal representative of the legal person does not live in the country, the FI must obtain all the personal data and means of contact of the residing agent (Regulations of Law 8204, Art. 20).



TC163. *Criterion 10.11 b)* In Costa Rica, there do not seem to exist other legal structures other than trusts. Therefore, this criterion does not apply.

TC164. *Criterion 10.12 - 10.13* There do not seem to be specific CDD measures established for the beneficiaries of life insurances and other insurance policies, other than the ones established and mentioned in the previous criteria.

TC165. *Criterion 10.14 and Criterion 10.15* According to the above criteria of customer identity and verification, this is carried out when the business relationship starts; therefore, this criterion does not apply.

TC166. *Criterion 10.16* NCL 8204 establishes that FIs must define policies and procedures to “*know all their customers*”<sup>54</sup> and they are responsible for using all the information deemed trustworthy and valid” (Art. 7), that is to say that measures are adopted to implement the CDD requirements to existing customers.

TC167. *Criterion 10.17* The Regulations of Law 8204 establish that FIs must establish policies and procedures for the implementation of an enhanced DD that includes the monitoring and requesting of additional documents to customers classified as high-risk (Art. 18).

TC168. *Criterion 10.18* NCL 8204 establishes that in the case of low-risk customers whose monthly operations do not exceed the limit established in these Regulations to be exempted from the obligation of providing documentation that supports the origin of funds: an update of the documents and data of the customer as defined in the policies and procedures of each obliged entity or subject (Art. 12.d).

TC169. *Criterion 10.19* There does not seem to be a specific regulatory provision on obligations to be requested to FIs when they cannot comply with the appropriate CDD measures.

TC170. *Criterion 10.20* There are no specific regulations for the compliance of this criterion.

TC171. *Weighting and Conclusion:* FIs are subject to most of the CDD measures established in Recommendation 10. Nevertheless, not all the circumstances established in Recommendation 16 (only above 10,000 US dollars) are covered (criterion 10.2b) and FIs do not seem to be requested to adopt CDD measures in accordance with criteria 10.2.d and 10.2.e (except when a business relationship starts). In addition, there do not seem to be specific CDD measures established for beneficiaries of life insurances and other insurance policies, or for the obligations in those cases in which CDD cannot be satisfactorily completed, or when FIs suspect the existence of ML/TF and are allowed not to carry out CDD and request a STR. **Recommendation 10 is rated as Largely Compliant.**

### ***Recommendation 11 – Record keeping***

TC172. *Criterion 11* Law 8204 establishes the obligation of FIs to keep records of all documents, communications and any other means of evidence, as well as to keep these records for a period of 5 years

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<sup>54</sup> NCL 8204 understands as customer the following:

*a) A person or entity that owns an account, product or service.*

*b) A person or entity on whose name there is an account (represented).*

*c) Beneficiaries of transactions carried out by professional intermediaries (such as accountants and lawyers).*

*d) A person or entity that is not the account holder but provides financial support or regularly receives the benefits of a product or service of the supervised subject.*

*e) A person or entity related to a financial transaction that can represent an important risk for the supervised subject.”*

(Art. 22). Likewise, Art. 16.d specifically establishes the obligation of FIs to keep records of all the transactions for a period of 5 years. On this regard, the Regulations of Law 8204 establish the obligation of keeping records for a period of 5 years for the financial sector. This period is doubled in the case of STRs that have been submitted to the FIU and information requests of competent authorities (Art. 21.a and 55).

TC173. *Criterion 11.2 - 11.3* Law 8204 (Art. 16) and its Regulations (Art. 21) establish the obligation of keeping the customer's documentation for at least 5 years from the termination date of business transaction or relationship, including information on the customers identity records, files of accounts, business correspondence and financial operations that enable the reconstruction or conclusion of the transaction.

TC174. *Criterion 11.4* Law 8204 establishes that the information kept by the FI will be immediately available to the corresponding supervising bodies (Art. 22). In addition, FIs must immediately comply with the information requests of judges of the Republic, regarding the necessary information and documentation for the investigations and processes related to the crimes typified in this Law (Art. 17).

TC175. *Weighting and Conclusion:* Costa Rica complies with all the criteria of this Recommendation. **Recommendation 11 is rated as Compliant.**

#### Additional measures for specific customers and activities

#### ***Recommendations 12 – Politically exposed persons***

TC176. *Criterion 12.1–12.2* NCL 8204 establishes the obligation of FIs to establish a policy for the identification of national and foreign<sup>55</sup> PEPs (Art. 15), in accordance with the Regulations of Law 8204.

TC177. The Regulations of the Law mentioned require FIs to obtain the approval of the general management or similar office to establish or continue business relationships once the customer or beneficial owner has been identified as PEP (Art. 23). Moreover, they establish the obligation of identifying and verifying the activity or nature of the business; the purpose and nature of the business relationship; origin of funds (Art.8-9, NLC 8204). Nevertheless, they do not seem to include the requirements that oblige FIs to establish the origin of the wealth of the customer or beneficial owner (c.12.c). Finally, regulations establish the obligation of adopting enhanced due diligence measures for customers that are not considered PEPs, either national or foreign (Art. 22).

<sup>55</sup> The Regulations of Law 8204 defines PEPs as: "those who, in accordance with the Law against Corruption and Illicit Enrichment in public service, must provide an affidavit on their property situation before the General Comptroller of the Republic for having any of the following public offices: representatives of the Legislative Assembly, president of the Republic, vice-presidents, ministers, either with or without portfolio, or officers appointed with that level; vice- ministers, primary and alternate judges of the Judiciary and the Supreme Electoral Court, general comptroller and sub-comptroller of the Republic, defendant and assistant defendant of citizens, attorney general and assistant attorney general of the Republic, the general prosecutor of the Republic, rectors and vice-rectors, general regulator of the Republic, superintendents of public institutions and public services, as well as corresponding governors; National Accountant, National Treasurer, senior officers of ministries, executive presidents, primary and alternate city councilors, municipal mayors and alternate mayors or vice-mayors; as well as heads of diplomatic missions. Moreover, those foreigners who currently occupy or have occupied offices equivalent to the ones mentioned in this Art. will be considered politically exposed persons. Similar risks to those determined for PEPs should be taken into consideration for PEPs spouses" (Art. 22). In addition, it establishes that the period during which these are considered PEPs will include the period of appointment and up to eight (8) years after the end of their functions. In the case of presidents or heads of state, the condition of PEP will be indefinite (Art. 24).

TC178. *Criterion 12.3* According to the identification of PEP of the Regulations of Law 8204, the requirements established for PEPs only apply to their spouses and not to other family members. In addition, the regulations do not include as PEPs people to whom an international organization has entrusted a leading role, or the implementation of PEP requirements to associates close to these (Art. 22).

TC179. *Criterion 12.4* A regulatory provision does not seem to be included for the requirements to life insurance policies.

TC180. *Weighting and Conclusion:* FIs are demanded to adopt measures for the identification of PEPs, both national and foreign, and for the establishment of additional CDD measures and beneficiaries identified as PEPs. However, senior officials of international organizations are not included as PEPs; the requirements established for PEPs do not apply to close associates, or to family members other than spouses, and it does not seem to include regulations for the requirements of life insurance policies. **Recommendation 12 is rated as Largely Compliant.**

### ***Recommendation 13 – Correspondent banking***

TC181. *Criterion 13.1* NCL 8204 (Art. 42) establishes that those FIs that establish correspondent banking relationships should have policies and procedures, and should document the actions taken on the following:

- Regular assessment that establishes if the counterpart complies with FATF’s minimum AML/CTF standards, including information issued by international bodies regarding the country on this matter. Moreover, verify if the counterpart is subject to the supervision of the regulatory body of the country (13.1.a).
- Request to the counterpart the legal or administrative instruments, or reports related to the controls that are implemented in the country of origin of the correspondent banking, or that has adopted said entity (13.1.b).
- The Board of Directors or equivalent professional body of FIs must approve the acceptance and modifications of correspondent relationships (13.1.c).
- If transactions are carried out with correspondent banking and the product of the assessment does not comply with the minimum international standards on AML/CTF controls, FIs must assess the level of risk that they could assume for the use of this correspondent banking, determine if the situation affects the risk classification of the customers who use it and, if necessary, evaluate whether to end the relationship with said correspondent banking (13.1.d).

TC182. *Criterion 13.2* There are no specific regulations established for FIs that have correspondent relationships regarding correspondent payable-through accounts.

TC183. *Criterion 13.3* The Regulations of Law 8204 do not allow FIs to maintain direct or indirect relationships with institutions that have the characteristics of a shell bank (Art. 25). NCL 8204 establishes that those FIs that establish commercial, business or correspondent relationships with financial institutions in other countries will have to ensure that said entities do not allow their accounts to be used by shell banks. The documents that support the revision of the foregoing must be available for supervisory purposes (Art. 41).

TC184. *Weighting and Conclusion:* Although there are regulations that refer to correspondent banking relationships, there do not seem to be specific obligations for the cases of correspondent payable-through accounts. **Recommendation 13 is qualifies as Largely Compliant.**

**Recommendation 14 – Money or value transfer services**

TC185. *Criterion 14.1* Those individuals or legal persons that provide money or value transfer services (MVTS) will have to be registered with the SUGEF (Law 8204, Art. 15 and Regulations of Law 8204, Art. 8) and with the FIU (Regulations of Law 8204, Art. 51).

TC186. The registration of the institutions to be regulated by the SUGEF will be provided by CONASSIF, with a previous affirmative ruling by the SUGEF, when the applicable legal regulatory provisions are complied with. The municipalities of the country shall not issue new patents nor renew the current ones for these types of activities if they have not complied with the registration requirement mentioned (Art. 9). In the case of alternative means of transfers (Art. 51), they will have to register with the FIU through registration forms and the means established for this registration.

TC187. The agreement SUGEF 11-06 establishes the requirements, procedure and terms for the registration of individuals or legal persons of Law no. 8204 and its Regulations (Art. 14 and 8, respectively) with the General Superintendence of Financial Entities.

TC188. *Criterion 14.2* Law 8204 establishes that the SUGEF “shall ensure that individuals or legal persons, whatever their legal address or place of business, do not operate in the Costa Rican territory carrying out regular activities without an authorization”, such as MVTS. When there are reasons for the individual or legal entity to carry out some of said activities, the SUGEF will have, as regards the alleged offenders, the same powers of inspection that it has according to this Law, as regards institutions subject to this title, regarding money laundering and terrorist financing.

TC189. In addition, as obligations of FIs, it is established that if they determine that a customer carries out any of the activities mentioned in Art. 15 of Law 8204, they must request their registration with the SUGEF.

TC190. The SUGEF has internal guideline I-SU-103 on the verification of individuals and legal persons that carry out any of the activities established in Art. 15 of Law 8204 and that are not registered with the SUGEF or to whom the procedures of registration, dismissal, revocation and refusal of the registering application have been implemented.

TC191. *Criterion 14.3* According to the foregoing, especially as regards Art. 15 of Law 8204, MVTS are subjects obliged to AML/CTF measures.

TC192. By the external circular 004-2009 of the SUGEF, all the subjects registered pursuant to Art. 15, including MVTS, must provide a monthly report of all the transactions carried out equal to or above \$1,000 Colones, US dollars or other currencies, either single or multiple transactions in a calendar month.

TC193. *Criterion 14.3 and 14.4* Law 8204 establishes that obliged entities or subjects who provide remittance services under the figure of franchises, paying agents or any other similar figure will be directly responsible for the control, monitoring and follow-up of the operations carried out, as well as for the compliance with Law 8204, its regulations and the provisions issued by CONASSIF regarding those customers who use this service (Regulations of Law 8204, Art. 28). Therefore, the agents of MVTS providers, apart from complying with AML/CTF regulations, must also register with the SUGEF, according to criterion 14.1.

TC194. *Weighting and Conclusion:* MVTS are subjects obliged to AML/CTF measures, and there are legal and regulatory provisions that address the technical criteria of this Recommendation. **Recommendation 14 is rated as Compliant.**

#### ***Recommendation 15 – New technologies***

TC195. *Criterion 15.1* The Regulations of Law 8204 establish that FIs must implement an assessment system that enables the identification of ML/TF risks of each entity taking into consideration products and services, among others, as well as distribution channels (Art. 14). NCL 8204 establishes ML/TF risk assessment criteria that are similar to the regulations (Art. 3). Moreover, the monitoring systems of ML/TF risks must include the monitoring of products and services (Art. 30.2).

TC196. The General Insurance Superintendence issued regulations regarding the registration of insurance products with the SUGESE (Minutes 1131-2014), which is in process of approval by CONASSIF, and which establishes that the registration application of a product must include a statement of the compliance officer of the entity that certifies that the design of the product includes an analysis of the implications of its marketing in relation to Law 8204 (Art. 9).

TC197. Except for FIs supervised by the SUGESE, there are no obligations established for FIs regarding the identification and assessment of ML/TF risks that can arise regarding the development of new products. There are no obligations established for the identification and assessment of risks of new business practices, including new mechanisms to send and use new technologies, or technologies for the development of products. Moreover, countries do not seem to develop this kind of analysis.

TC198. *Criterion 15.2* Except for the previous criterion, there do not seem to be regulatory provisions that establish that FIs have to carry out risk assessments before launching products, practices and technologies, as well as to adopt measures to handle and mitigate the risks.

TC199. *Weighting and Conclusion:* There are no requirements established for countries or FIs (except for those supervised by the SUGEF) as regards ML/TF risk assessment in the development of new products/practices and the use of new technologies, and there are no measures to handle and mitigate the risks. **Recommendation 15 is rated as Non Compliant.**

#### ***Recommendation 16 – Wire transfers***

TC200. *Criterion 16.1* In Costa Rica, the threshold for wire transfers is of 10,000 US dollars (Law 8204, Art. 21 and 23), a threshold that is far above the one established by FATF of 1,000 US Dollars/Euros, except for companies that carry out family remittances, as described in criteria 16.16 and 16.17. In the case of this kind of transfers, FIs are obliged to register the following data (Law 8204, Art. 21):

- a) Identity, signature, date of birth and address of the person that physically carries out the transaction. Also, photocopy of an identification document. Legal persons shall provide, for their legal representative and resident agent, the same information required to individuals.
- b) Identity and address of the person on whose name the transaction is carried out.
- c) Identity and address of the beneficiary or payee, where appropriate.
- d) Identity of the accounts affected by the transaction, where appropriate.
- e) Type of transaction.
- f) Identity of the financial institution that carries out the transaction.
- g) Date, time and transaction amount.
- h) Origin of the transaction.



i) Identification of the officer who processes the transaction.

TC201. The Regulations of Law 8204 establish that for those people physically carrying out the transaction, the identification document must be validated with official databases. If it is not possible to verify the identity of the person given the absence of official databases, a copy of the identification document must be obtained (Art. 29). NCL 8204 establishes similar regulations to those mentioned in this and the previous paragraphs (Art. 20 and 21).

TC202. *Criterion 16.2* Law 8204 establishes that multiple transactions that are equal to or above the amount mentioned will be considered as unique, and the registrations established must be carried out (Art. 20).

TC203. *Criterion 16.3 – 16.4* There are no regulatory provisions for the cases of wire transfers below the threshold of 1,000 US dollars.

TC204. *Criterion 16.5* According to the regulations, the previously described requirements are applied to local transactions (Law 8204, Art. 20).

TC205. *Criterion 16.6* NCL 8204 establishes the requirements applied for wire transfers above 10,000 dollars (Art. 20 and 21).

TC206. *Criterion 16.7* In accordance with Law 8204, its regulations and NCL 8204, all the transactions equal to or above 10,000 US dollars must be registered and submitted to the corresponding superintendence.

TC207. *Criterion 16.8* There does not seem to be a regulatory provision that includes these requirements. Nevertheless, Art. 33 of the Regulations of Law 8204 states, as regards international transfers, that when an institution receives a transfer without including the name of the person who placed the order, it must request the “correspondent bank” to provide said information under penalty of returning the transfer to the bank of origin. However, it is important to mention that said regulatory provision refers to the “correspondent bank” and not to the “originating bank”.

TC208. *Criteria 16.9 - 16.12* There do not seem to be regulatory provisions that include these requirements for intermediary FIs.

TC209. *Criteria 16.13 - 16.15* The Regulations of Law 8204 establish that when a FI receives a transfer in favor of an individual or legal entity, whether it has a bank account in said entity or not, and it does not include the name of the person who placed the order, the FI must request the correspondent bank to provide said information, and if the requested information is not provided, the transfer must be returned to the originating bank (Art. 33).

TC210. On the other hand, FIs must implement enhanced due diligence in those transfers that, according to the entity, represent a higher risk given their origin (tax heavens), volume, nationality of the participants (international lists), obtaining information such as origin and destination of funds, relationship between the people ordering and receiving the transfer, either patrimonial, business or familiar, as well as the relationships with other customers or products and services within the institution (Art. 33).

TC211. *Criteria 16.16 – 16.17* As regards local remittances and remittances from or to another country, obliged entities and subjects must obtain, store, ensure and monitor the identity of the people, either



ordering or receiving the money remittances, as well as the purpose, origin and destination of the funds transferred (Regulations of Law 8204, Art. 28). The SUGEF, through external circular 004-2009, establishes for FIs that carry out family remittances the obligation to register and report operations that send or pay remittances that are equal to or above US\$1,000.00, carried out either in single or multiple transactions in a calendar month.

TC212. *Criterion 16.18* Although Law 8204 establishes that the FIU or the Public Prosecutor will manage the immobilization of funds in the case of people and organizations established by the UNSC as connected to terrorism, the UNSC lists will only be circulated in the framework of an investigation; therefore, there are no specific regulations established.

TC213. *Weighting and Conclusion:* Although there are regulatory provisions that address several matters related to wire transfers, the established threshold (USD 10,000) is far above the one established by FATF's standards (USD 1,000), except for the case of MVTS. It is important to mention that there do not seem to be regulatory provisions to address criteria 16.3, 16.4, 16.8-16.12 and 16.18. **Recommendation 16 is rated as Partially Compliant.**

#### Dependence, Controls and Financial Groups

#### ***Recommendation 17 – Reliance on third parties***

TC214. *Criteria 17.1 – 17.3* In Costa Rica, there are no regulations that establish obligations for FIs in the case of reliance on third parties for the implementation of CDD measures<sup>56</sup>.

TC215. *Weighting and Conclusion:* There do not seem to be regulatory provisions regarding the reliance of third parties in the framework of AML/CTF obligations. **Recommendation 17 is rated as Non Compliant.**

#### ***Recommendation 18 – Internal controls and foreign branches and subsidiaries***

TC216. *Criterion 18.1* Law 8204 establishes the obligation for FIs to “adopt, develop and enforce internal programs, rules, procedures and controls to prevent and detect the offenses typified in this Law” (Art. 22). NCL 8204 states the drafting of a compliance manual which purpose is to advise officers in the compliance with the corresponding regulations, and its minimum contents are established.

TC217. *Criterion 18.1 (a)* To carry out the task mentioned, FIs shall appoint officers in charge of monitoring the compliance with the internal programs and procedures (Art. 23). Moreover, NCL 8204 states the creation of a compliance committee to support the tasks of the compliance officers (Art. 31-35).

TC218. The Regulations of Law 8204 (Art. 40-45), as well as NCL 8204 (Art. 27-30), develop the appointment, requirements and powers of the compliance officer, including the provision that the compliance officer will directly depend on the Board of Directors or an equivalent body.

TC219. *Criterion 18.1 (b)* FIs shall establish procedures to ensure a high level of personal integrity of the “owner, director, administrator or employer of FIs”, including a system that assesses the personal, work

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<sup>56</sup> Authorities informed that as regards the reliance on third parties for the implementation of the policy Know your Customer, they are considering making amendments to NCL 8204 in the short term.

and financial background of the personnel (Art. 22.a). The Regulations of Law 8204 develop procedures to ensure the integrity of the personnel, such as keeping files of the personnel from their appointment and during their permanence in the institution, the ethics code that must be followed by all the members and officers of the FI and a regime of internal sanctions (Art. 46, 48, 49). Likewise, NCL 8204 establishes regulations on this regard (Art. 39).

TC220. *Criterion 18.1 (c)* FIs shall establish permanent training programs for the personnel and directives as regards the responsibilities established in Law 8204 (Art. 22.b). Likewise, the Regulations of Law 8204 and NCL 8204 develop the function of FIs of carrying out induction, training and assessment programs for the personnel as regards AML/CTF (Art. 24-26).

TC221. *Criterion 18.1 (d)* FIs must have a permanent program of internal and external audit with the purpose of verifying the effectiveness and compliance of FIs with AML/CTF measures. (Regulations of Law 8204, Art. 50 and NCL 8204, Art. 36-38).

TC222. *Criterion 18.2* The obligations of criterion 18.1 must be applied by the companies or entities that belong to financial groups or conglomerates (Law 8204, Art. 14 and NCL 8204, Art. 43). Also, specific obligations are established for the existence of a corporate compliance officer (NCL 8204, Art. 27 bis and 27 third). In addition, NCL 8204 establishes that FIs that belong to the same financial group or conglomerate may share “*the information collected in the process of knowing the customer, for which they must obtain a written authorization by the customer that must comply with the current regulations on protection of personal data, as well as handle this information as confidential and use it exclusively for the compliance with the obligations established in the legal framework on prevention of money laundering and terrorist financing*” (Art. 7).

TC223. *Criterion 18.3* Law 8204 establishes that entities or companies that are part of financial groups, including financial transactions carried out by banks or financial entities domiciled abroad, must comply with the Law mentioned. In addition, the Agreement SUGEF 8-08<sup>57</sup> establishes as requirements for the incorporation or acquisition of a company to a financial group or conglomerate that “*the company must be subject in its domicile to the laws, regulations and other provisions aimed at preventing money laundering, product of illicit activities or drug trafficking*” (Art. 43.a). Nevertheless, it is not clear if there is a requirement for financial groups to implement additional measures to handle ML/TF risks and to inform supervisors when the country does not allow the adequate implementation of AML/CTF measures.

TC224. *Weighting and Conclusion:* The legal and regulatory framework of Costa Rica has adequate regulations to address matters related to the internal control and foreign branches and subsidiaries, except for the requirement of establishing additional measures for financial groups regarding the handling of ML/TF risks and reporting to supervisors when the country does not allow the adequate implementation of AML/CTF measures. **Recommendation 18 is rated as Largely Compliant.**

### ***Recommendation 19 – Higher-risk countries***

TC225. *Criterion 19.1* The regulations of the Law establish requirements for FIs regarding the risk of customers, and one of the criteria for the analysis are the recommendations of international bodies such as FATF<sup>58</sup>. Within the profile and the analysis of risk profile of each customer, FIs must take into

<sup>57</sup> Regulations on authorizations of entities supervised by SUGEF and on authorizations and operation of financial groups and conglomerates.

<sup>58</sup> See the Regulations of Law 8204, Art. 14 and 30, and NCL 8204, Art. 14 and 16.

consideration the geographic location of the business activities of the customer, including the location of the counterparts with which they carry out transactions and makes businesses, if they are connected to countries considered as high-risk, according to the recommendations of the Caribbean Financial Action Task Force (CFATF) and the Financial Action Task Force (FATF) (Art. 6.e).

TC226. *Criterion 19.2* There do not seem to be regulatory provisions regarding the implementation of countermeasures and measures that ensure that FIs are aware of the AML/CTF deficiencies of other countries.

TC227. *Criterion 19.3* Despite the regulations taken into consideration and mentioned in criterion 19.1, no measures have been adopted to ensure that FIs know about the concern of the deficiencies of other countries' AML/CTF systems.

TC228. *Weighting and Conclusion:* There are no specific regulatory provisions for the compliance with criterion 19.2 and 19.3 of this Recommendation. **Recommendation 19 is rated as Partially Compliant.**

### ***Recommendation 20 – Reporting of suspicious transactions***

TC229. *Criterion 20.1* Law 8204 establishes that if the FI suspects that the transactions constitute illicit activities or that they are related to these, it must inform, in a confidential and immediate manner, to the corresponding supervisory and monitoring body, which will immediately forward it to the FIU (Art. 25). The Regulations of Law 8204 establish that “*in accordance with Law 8204, obliged entities and subjects must submit directly to the FIU and in a confidential manner any information related to all the operations established as suspicious. (...) When a report is made, reporting entities and entities must communicate to the corresponding Superintendence the submission of said report, only referring to the number of official letter and date of submission to the FIU*” (Art. 35).

TC230. *Criterion 20.2* The Regulations of Law 8204 establish that FIs must inform to the FIU the attempted transactions and also that these were considered suspicious (Art. 36).

TC231. *Weighting and Conclusion:* Although the Regulations of Law 8204 are clear when establishing that reporting entities must directly submit STRs to the FIU, there still exists the legal provision in Law 8204 that establishes that the report must be submitted to the corresponding supervisory and monitoring body, which submits the report to the FIU. Therefore, there is a contradiction regarding the submission of STRs, in which the Law prevails over a regulatory provision. In addition, the deficiencies in the criminalisation of ML (Recommendation 3) and TF (Recommendation 5) affect the technical compliance of this Recommendation. **Recommendation 20 is rated as Partially Compliant.**

### ***Recommendation 21 – Tipping-off and confidentiality***

TC232. *Criterion 21.1* Law 8204 establishes that FIs and their officers, when doing their suspicious transaction reports, will be protected and will not have administrative, civil or criminal responsibilities, or any other type of responsibility, as long as they act in good faith (Art. 25). In addition, it establishes that when a suspicious transaction report is done and the FI maintains the business relationship, the FI, as well as its officers, managers or directors will not have administrative, civil or criminal responsibilities for maintaining said business relationship (Art. 170).

TC233. *Criterion 21.2* Law 8204 establishes that FIs shall not communicate to any other person (...) the fact that information has been requested or provided to another court or authority with surveillance and supervision powers (Art. 18). Moreover, the criminal sanction<sup>59</sup> is established to the owner, director, administrator or employee of FIs that, according to the courts, has facilitated the commission of a ML crime in the exercise of his functions (Art. 70). Nevertheless, neither the Law nor other regulations seem to make specific reference to the prohibition of disclosing suspicious transaction reports or related information to the FIU.

TC234. *Weighting and Conclusion:* Costa Rica's regulations have legal and regulatory provisions that take into consideration the confidentiality of the information and the protection of FIs and their officers. However, there is no specific wording that takes into consideration the prohibition of disclosing suspicious transaction reports or related information to the FIU. **Recommendation 21 is rated as Largely Compliant.**

#### Designated Non-Financial Businesses and Professions

##### ***Recommendation 22 – DNFBPs: Customer due diligence***

TC235. *Criterion 22.1* Law 8204 establishes that reporting entities are those who carry out trust administration activities or any kind of administration of resources, by individuals or legal persons other than financial intermediaries (Art. 15.d). The same Law establishes the following:

*“Art. 15 bis.- Individuals and legal persons that carry out economic activities different from those included in Sections 14 and 15 of this Law shall communicate to the FIU of the Costa Rican Institute on Drugs the business operations they carry out repeatedly and in cash, including transfers from or to another country, in national or foreign currency, of amounts equal to or above ten thousand US dollars (US \$10,000.00) or its equivalent in colons.*

*Said economic activities are, among others, the following:*

- a) Buying or selling, or transfer of movable and immovable goods, registered or not, such as weapons, precious stones and metals, works of art, jewelry and cars.*
- b) Casinos, bets and other operations related to games of chance*
- (...)*
- d) Professional services.*
- (...)*”

TC236. The Regulations of Law 8204 establish the following:

*Art. 51.- Reporting entities.- According to Law 8204 and the present regulations, those individuals or legal persons that regularly carry out the following businesses or professional activities will be reporting entities:*

- a) Real Estate developers.*
- b) Buying and selling immovable goods.*
- c) Manufacture, sale and distribution of arms.*
- d) Sale of jewelry, precious stones and metals.*
- e) Buying and selling works of art.*
- f) Buying and selling new or used vehicles.*
- g) Casinos with a physical presence.*
- h) Online casinos.*

<sup>59</sup> Sanction: imprisonment from one (1) to three (3) years.

- i) *Electronic bets or by any other means.*  
(...)
- k) *Independent public lawyers and accountants.*  
(...)
- m) *Individuals or legal persons that are creditors of credit operation of any nature.*
- n) *Any other activity established by the FIU through founded resolution.*

TC237. According to the foregoing, the activities defined by FATF as Designated Non-Financial Businesses and Professions (DNFBPs), as well as other type of activities, are incorporated as subjects obliged to the compliance of AML/CTF regulations.

TC238. Law 8204 and its Regulations establish for DNFBPs some of the obligations taken into consideration 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). In the case of reporting entities who carry out trust administration activities or any other type of administration of resources, either by individuals or legal persons other than financial intermediaries, the scope of obligations taken into consideration in Recommendation 10 is broader since NCL 8204 also applies to them (see analysis of Recommendation 10).

TC239. *Criterion 22.2* The reporting entities of Art. 51 shall keep a record of each customer with the identification form of the customer, as well as the identification documents and those that support the operations carried out (Art. 54).

TC240. The reporting entities of Art. 15 bis above mentioned shall keep the record of business transactions for a period of five years, since the date the business transaction ends or since the date the service is provided, and the period of time will double when a STR has been made (c.11.1). Likewise, they shall keep in the record the identification information of the customer. However, the obligation of keeping account files, business correspondence and the results of the analysis carried out is not established (c.11.2), and it is not clear if there is an obligation to have enough transaction records to enable the reconstruction of each transaction in order to provide evidence if necessary (c.11.3). In addition, the record of the information requested will be immediately available to the FIU or the competent judicial authority when requested (c.11.4). Nevertheless, these obligations do not seem to apply to the reporting entities of Art. 51 of the Regulations of Law 8204 (Art. 55).

TC241. In the case of reporting entities who carry out trust administration activities or any other type of administration of resources, either by individuals or legal persons other than financial intermediaries, all the requirements of Recommendation 11 are established.

TC242. *Criterion 22.3 – 22.5* There are no regulatory provisions established for DNFBPs, except for some provisions as regards Recommendation 12 to those who carry out trust administration activities or any other type of administration of resources, either by individuals or legal persons that are not financial intermediaries (see the corresponding analysis). However, the incorporation of the requirements established in Recommendations 12, 15 and 17 is being taken into consideration in the project of amendment of the Law and Regulations 8204.

TC243. *Weighting and Conclusion:* DNFBPs are subjects obliged to comply with the AML/CTF regulations. Nevertheless, there do not seem to be regulations that take into consideration all the CDD obligations, and also there are no regulations that comply with criteria 22.3 - 22.5, except in some circumstances for the cases of trust administration activities or any other type of administration of

resources, either by individuals or legal persons other than financial intermediaries. **Recommendation 22 is rated as Partially Compliant.**

***Recommendation 23 – DNFBPs: other measures***

TC244. *Criterion 23.1* In the case of reporting entities who carry out trust administration activities or any other type of administration of resources, either by individuals or legal persons other than financial intermediaries, the obligations to report are established in accordance with the analysis of Recommendation 20 (see the corresponding analysis). Moreover, the subjects regulated in Art. 15 bis of Law 8204 seem to be obliged to carry out suspicious transaction reports, as a sanction is applied if they do not comply with this obligation (Art. 81.b.1), although this obligation is not established as such.

TC245. *Criteria 23.2 - 23.4* There are no regulatory provisions established for DNFBPs, except in some circumstances for the cases of trust administration activities or any other type of administration of resources, either by individuals or legal persons other than financial intermediaries (see the analysis of Recommendations 18, 19 and 21). However, the incorporation of the requirements established in Recommendations 18, 19 and 21 is being taken into consideration in the development of the National Strategy to amend Law 8204 and its Regulations.

TC246. *Weighting and Conclusion:* There is a legal framework that obliges DNFBPs to carry out reports and establishes sanctions for the cases of non-compliance, but there are still several AML/CTF measures to be established for those established in criteria 23.2 - 23.4 and to explicitly establish the obligation of reporting suspicious transactions, except in some circumstances for the cases of trust administration activities or any other type of administration of resources, either by individuals or legal persons other than financial intermediaries. **Recommendation 23 is rated as Partially Compliant.**

## VI. SUPERVISION

### *Recommendation 26 – Regulation and supervision of financial institutions*

TC247. *Criterion 26.1* Law 8204 establishes that the reporting entities will be those institutions that are regulated, supervised and monitored by the following bodies, as appropriate: a) SUGEF, b) SUGEVAL, c) SUPEN and d) SUGESE (Art. 14). Thus, the Superintendencies mentioned monitor and supervise those FIs they are in charge of, which depend on CONASSIF, which also has the power to introduce regulations as regards AML/CTF in accordance with Law 8204. The functions of CONASSIF include, among others, the approval of regulations related to the authorization, regulation, supervision and monitoring carried out by the Superintendencies according to the law (Law 7732, Art. 171).

TC248. *Criterion 26.2* In Costa Rica, all FIs subject to the Main Principles must have the due authorization to operate (license).

TC249. *Criterion 26.3* Art. 26 of Law 8204 states that all financial institutions shall have internal programs, regulations, procedures and controls that enable the assessment of personal, work and financial background, including the management level. The provision SUGEF 8-08, applicable to financial entities and financial conglomerates supervised by SUGEF, and to financial groups supervised by SUGEVAL, the Pension Superintendence (SUPEN)<sup>60</sup> and SUGEF<sup>61</sup>, as well as the requests to carry out financial intermediation activities in Costa Rica, for the creation of Costa Rican financial groups and the detection and regularization of de facto financial groups, as well as for the authorization of cooperative organizations establishes the procedures, analyses, requirements and assessment criteria for the requests to carry out financial intermediation activities. As regards the suitability of the partners up to the level of individuals, the following criteria are established:

- *“a. Economic solvency: The partner has a net equity that covers the amount of the capital contribution that corresponds for the creation of a new intermediary or financial group.*
- *b. Moral solvency: Judicial and disciplinary background of partners with a relevant share in the entity.*
- *The creation of a new intermediary or financial group, or the incorporation of a company to an incorporated financial group will not be authorized when any of the acts detailed in Art. II “Disciplinary and judicial background” of Annex 13 of these Regulation are presented in the period of time established for any partner or individual.”*

<sup>60</sup> Art. 2 of the provision SUGEF 8-08 establishes that the requests of entities supervised by SUGEVAL or SUPEN are governed by the regulations on the matter issued by those Superintendencies. Thus, SUGEVAL has issued forms that enable to know the real beneficiaries and administrators of entities subject to registration, as well as their honorableness and legal and financial solvency. Likewise, SUPEN establishes similar regulations in Art. 32-36 of the Workers Protection Law.

<sup>61</sup> In the development of Agreement SUGEF 8-08, SUGEF has established procedures for the corresponding authorizations of financial entities, groups and conglomerates: P-SU-209 Evaluation of Feasibility Studies for the authorization of financial entities, groups and conglomerates that will carry out financial intermediation activities in the national territory, P-SU-211 Evaluation of the initial and final capital of entities in process of registration or transformation, P-SU-212 Study for the merging process of financial entities, groups or conglomerates, P-SU-102 Attention to requests for the increase or decrease of capital, P-SU-609 Acceptance of financial centers abroad, (Guidelines of application of acceptance of centers abroad, P-ST-128 *Handling the authorization requests established in Agreement SUGEF 8-08, Art. 27 bis of Law 7472 and registration of bureaux de change P-ST-128*, which includes the revision of certificates of criminal records, affidavits, balance sheets and recommendation letters, with the purpose of assessing the economic and moral solvency of the partners (*Art. 47 of the Regulations on authorizations of entities supervised by SUGEF, and on authorizations and operation of financial groups and conglomerates*).

TC250. In the case of SUGESE, Agreement 1-08 applies to insurance entities, in the categories of general insurance, personal or composite insurance, reinsurance entities, insurance broker companies, insurance agency companies, insurance agents and brokers. Likewise, it applies to the registration of requests related to representative offices, cross border suppliers of insurance, intermediation and ancillary services. The authorizations applicable to financial groups will be governed by Agreement SUGEF 8-08.

TC251. As regards registration consultations and requests received from individuals and legal persons that carry out any of the activities mentioned in Art. 15 of Law 8204, *the Guidelines I-SU-102 Registration, deregistration, rejection of the registration request and revocation of the authorization of individuals or legal persons that carry out the activities described in Art. 15 of Law 8204 and its Regulations* request that once the information is received from the General Directorate of Legal Assessment, the supervisor must obtain *from the databases* of the Superintendence the information regarding trials and references of the subject under study, and on the shareholders, representatives and proxies when the applicant is a legal person. If it is determined that the subject in process of registration or any of the partners, directors and/or legal representatives have been or are convicted for a crime typified in Law 8204 or for a serious offense related to financial activities in accordance with Law 8204 (Art. 1), the subject under study must be informed about the revocation of the application, based on Art. 11 of Agreement 11-06. Finally, once the subjects under study comply with the requirements of *registration (authorization)*, the Supervision areas must implement the Procedure of on-site *supervision on money laundering and terrorist financing-P-SU-217* (applied to reporting entities of Sections 14 and 15 of Law 8204), which requires the assessment and revision of the following:

- a. That the Governing Body approves the appointment and removal of the Assistant Compliance Officer through an interview with the Compliance Officer, *assessing the abilities and suitability of this employee through his curriculum vitae, statements and the position profile. (Suitability of the Compliance Officer, Art. 28 of the Regulations for the Compliance with Law 8204).*
- b. That the Compliance Officers appointed by the supervised subjects *are not people who have been convicted* for any offense against property, public trust or *any of the offenses established by Law 8204, and do not own more than five percent (5%) of the shares of the supervised subject. (Suitability of the Compliance Officer, Art. 29 of the Regulations for the Compliance with Law 8204).*
- c. If the *Ethics Code* defines the actions of the personnel, as well as the *hiring policies*, among others. *(Suitability of the Manager, Assistant Managers, Internal Auditor and Compliance Officers, Art. 40 of the Regulations for the Compliance with Law 8204).*
- d. If the supervised subject has a supervising policy on the *life style of the employees of the supervised subject that is adequate and appropriate. (Suitability of the Manager, Assistant Managers, Internal Auditor and Compliance Officers, Art. 40 of the Regulations for the Compliance with Law 8204).*
- e. If the policies and procedures established to ensure the *transparency of relationships between the employees of the supervised subject and customers classified as PEP, NPO*, among others, are adequate. *(Suitability of the Manager, Assistant Managers, Internal Auditor and Compliance Officers, Art. 40 of the Regulations for the Compliance with Law 8204).*
- f. A sample of personnel files of *senior management* hired within the last 12 months who operate in high-risk activities, to establish *if the processes and controls for the hiring of employees, including their professionalism and suitability in relation to the position profile, their transactional profile and the origin of funds are adequate. (Suitability of the Manager, Assistant Managers, Internal Auditor and Compliance Officers, Art. 40 of the Regulations for the Compliance with Law 8204).*

- g. The existence of policies and procedures to permanently ensure a high-level of personal integrity of: owners, directors, administrators and employees of the supervised subject, which take in consideration a system to evaluate the personal, work and financial background of those people. (Suitability of the Manager, Assistant Managers, Internal Auditor and Compliance Officers, Art. 40 of the Regulations for the Compliance with Law 8204).
- h. If the hiring requirements are adequate, in order to verify if they are more stringent for people who carry out activities in areas of higher risk as regards ML/TF and people who are part of the Compliance Official Office task force. (Suitability of the Manager, Assistant Managers, Internal Auditor and Compliance Officers, Art. 40 of the Regulations for the Compliance with Law 8204).
- i. If the documents related to administrative sanctions imposed to employees during the last 3 years are adequate, to determine if those weaknesses still exist or if the appropriate actions were taken to mitigate the situations that gave place to these sanctions.

TC252. *Criterion 26.4* FIs are subject to regulation and supervision according to the Main Principles. The SUGEF has established regulations for the entities subject to its supervision in compliance with the Principles of the Basel Committee on Banking Supervision (BCBS)<sup>62</sup>. In addition, according to the assessment and follow-up carried out in 2007 and 2010 regarding the implementation of those principles in the Costa Rican stock market, the entities supervised and regulated by SUGEVAL are subject to the Main Principles of IOSCO. As regards SUGESE, the last compliance assessment of the basic insurance principles of IAIS carried out in 2012 establishes the observance of said principles. Finally, all FIs are obliged to comply with Law 8204, its Regulations and NCL 8204.

TC253. *Criterion 26.5 and 26.6* The SUGEF carries out its work under a risk-based supervision methodology, by means of an “extra situ” and “in situ” analysis to define the ML/TF risk profile and a

<sup>62</sup> Regulations for the Qualification of Debtors (SUGEF 1-05), Regulations on Comprehensive Administration of Risks (SUGEF 2-10), Regulations on Capital Adequacy (SUGEF 3-06), Regulations on the Group linked to the Entity (SUGEF 4-04), Regulations on Credit Limits to Individuals and Groups of Economic Interest (SUGEF 5-04), Regulations on Profit Distribution for the Sale of Foreclosed Assets (SUGEF 6-05), Regulations of the Credit Information Center (SUGEF 7-06), Regulations on the Authorization of Entities Supervised by SUGEF and on Authorizations and Operation of Financial Groups and Conglomerates (SUGEF 8-08), Regulations for the Authorization and Execution of Operations with Exchange Rate Derivatives (SUGEF 9-08), Regulations on the Disclosure of Information and Advertisement of Financial Products and Services (SUGEF 10-07), Rules for the registration with SUGEF of individuals or legal persons that carry out any of the activities described in Art. 15 of the Law on narcotic drugs, psychotropic substances, unauthorized drugs, related activities, money laundering and financing of terrorism, Law 8204 (SUGEF 11-06), Agreement SUGEF 12-10 Rules for compliance with Law 8204, Regulations on the management of the securitization and trust risk (SUGEF 13-10), Regulations on the management of information technology (SUGEF 14-09), Regulations for the classification of debtors with operations with resources of the banking system for development (SUGEF 15-10), Regulations of corporate government (SUGEF 16-09), Rules to determine the capital adequacy of financial groups and other conglomerates (SUGEF 21-02), Regulations to consider the financial-economic situation of supervised entities (SUGEF 24-00), Regulations to consider the financial-economic situation of mutual associations of savings and housing loans (SUGEF 27-00), Regulations regarding the financial information of financial entities, groups and conglomerates (SUGEF 31-04), Regulations of external auditors applicable to subjects supervised by SUGEF, SUGEVAL, SUPEN and SUGESE (SUGEF 32-10), Chart of accounts for approved financial entities, groups and conglomerates (SUGEF 33-07), Accounting rules applicable to entities supervised by SUGEF, SUGEVAL, SUPEN and SUGESE and to non-financial issuers (SUGEF 34-2002), Agreement AG-6 Rules that define the procedure through which the inspection visits will be carried out by officers of the General Banking Auditing to entities subject to their supervision and control, Agreement AGEF 56-95 Procedure to carry out the inspection visits by officers of the General Financial Entities Auditing to cooperatives subject to their supervision, Regulations on the Administration of Liquidity Risk (SUGEF 17-13).



supervision strategy to monitor every entity subject to supervision. This is done taking in consideration the following procedures:

- P-SU-217 On-site supervision as regards Money Laundering and Terrorist Financing.
- P-SU-218 Extra-situ supervision as regards Money Laundering and Terrorist Financing
- M-SU-003 Supervision manual of risk-based money laundering and terrorist financing.
- I-SU-207 Control of terms, approval of extensions and revision and analysis of defense and action plans suggested by the entity in view of the results of the money laundering and terrorist financing supervision.

TC254. It is important to mention that the SUGEF is currently working on a process of general evolution towards risk-based supervision (RBS)<sup>63</sup>. Likewise, current procedures which were previously mentioned are being updated towards this new RBS model.

TC255. The scope of the supervision is defined in each specific case, taking into consideration the areas identified with the highest risk (partial supervision) or according to the size and complexity of the operations of the subject under study and the risks identified. As regards the management of ML/TF risk, guidelines have been issued through External Circulars 15-2012, 18-2012-03-2013, 05-2013 and 24-2013.

TC256. For the proceedings of Art. 15, the following working procedures are established, which are object of change and adjustment towards the new RBS above mentioned:

- I-SU-102 Registration, deregistration, rejection of the registration requests and revocation of the authorization of individuals or legal persons that carry out the activities described in Art. 15 of Law 8204 and its Regulations.
- I-SU-103 Verification of individuals and legal persons that carry out any of the activities established in Art. 15 of Law 8204 and that are not registered with the SUGEF or to whom the procedures of registration, dismissal, revocation and refusal of the request have been implemented.
- P-SU-216 Annual planning of supervision visits regarding money laundering and terrorist financing of individuals or legal persons registered according to Art. 15 of Law 8204.

TC257. The SUPEN carries out supervision through on-site and extra-situ reviews. The on-site review also includes the implementation of an operational risk assessment questionnaire. The extra-situ review includes the follow-up of the current action plans, as well as an annual review of the members' database. The Supervision Division of the Individual Capitalization Scheme (RCI in Spanish) has defined three operational procedures:

- P SIO 01 Drafting of the annual visits plan.
- P SIO 02 Follow up and assessment of supervisory assistants.
- P SIO 03 Planning and carrying out visits.

TC258. In addition, as part of the provisions related to the calculation of capital adequacy of pension operators, the Qualitative Operational Risk Assessment (ECRO in Spanish) is carried out annually, which is composed of three questionnaires (Assessment of the operational risk management, Assessment of the compliance with regulatory provisions and Assessment of the quality of the information technology).

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<sup>63</sup> With the advice of Toronto Centre for prudential risks – advice of the IMF for ML/FT risks.

TC259. The SUGEVAL supervises through the implementation of a process of inspection visits, documented in the quality site. According to the document of inspection and its procedures, the semestral visit plan is drafted, communicated and the visit is carried out, the inspection report is drafted, forwarded and a correction plan is requested. Moreover, roles and responsibilities are established.

TC260. The SUGESE has a Guideline on the process of compliance with the Annual Supervision Program and the form (IT SUP 01.4), and the Annual Supervision Program (F SUP 01.4.1) through which the frequency and intensity of the internal and external supervision of insurance entities is established. Moreover, the SUGESE has supervision guidelines within the Working Guides on prevention of money laundering and terrorist financing (GT SUP 11.0.1), and the P-SUP-11 Prevention of money laundering and terrorist financing.

TC261. As from the second semester of 2014, the Superintendencies will include to their supervision plans the results of the diagnosis of the first ML/TF risk assessment carried out in Costa Rica in order to establish the frequency and intensity of the supervision of FIs.

TC262. *Weighting and Conclusion:* FIs are subject to AML/CTF regulations and supervision. However, in addition, the risk analyses have still not been included in the supervision of FIs. **Recommendation 26 is rated as Largely Compliant.**

#### ***Recommendation 27 – Powers of supervisors***

TC263. *Criterion 27.1* Law 8204 establishes as reporting entities FIs supervised by SUGEF, SUGEVAL, SUPEN and SUGESE. In accordance with Law 8204, these Superintendencies are the bodies that supervise and monitor FIs as regards AML/CTF.

TC264. The SUGEF has the function of setting out the inspection of entities and companies included in its audit field (Organic Law of the Central Bank - LOBC, 131.d).

TC265. The SUGEVAL and SUPEN adopt all the necessary actions for the effective compliance of the authorization, regulation, supervision and monitoring functions (Regulatory Stock Market Law - LRMV, Art. 8.j, Supplementary Pensions Private Scheme Law - LRPPC, Art. 38.f).

TC266. The SUGESE authorizes, regulates and supervises individuals and legal persons that intervene in the acts or contracts related to the insurance activity, reinsurance activity, public offer and insurance businesses (Regulatory Insurance Market Law - LRMS, Art. 29).

TC267. *Criterion 27.2* The SUGEF and SUGEVAL have the power of inspecting FIs for which they are responsible (Art. 131.d LOBC and Art. 8.l LRMV). Law 7523, Art. 58, establishes that the SUPEN “may carry out any direct action of supervision, verification, inspection or monitoring of the regulated entities”. As regards the SUGESE, the powers established in Art. 131 of LOBC are applied in accordance with LRMS (Art. 29).

TC268. *Criterion 27.3* The SUGEVAL, SUPEN and SUGESE are authorized to request the provision of information related to the monitoring and compliance with AML/CTF requirements (LRMV, Art. 8.j, 8.1 and 8.m, LRPPC, Art. 38.f and LRMS, Art. 25.c, 26.g). Nevertheless, it is not clear if the SUGESE has said power. Thus, the LOBC establishes that “*supervised entities are obliged to collaborate with the Superintendency to enable supervision activities*”. Therefore, the specific power of requesting information is not established.

TC269. *Criterion 27.4* Each Superintendency has the power to impose sanctions according to each of its corresponding provisions (LOBC, Art. 131.e; LRMV, Art. 8.d; LRPPC, Art. 29.1).

TC270. The CONASSIF has the power to order the suspension of operations, to suspend or revoke the authorization given to subjects regulated by superintendencies (Law 7331, Art. 171.c and d).

TC271. *Weighting and Conclusion:* AML/CTF regulations establish as reporting entities FIs supervised by SUGEF, SUGEVAL, SUPEN and SUGESE, and the corresponding laws give them the powers established in Recommendation 27, except for the specific power to request information regarding the monitoring and compliance with AML/CTF requirements of SUGEF. Although the Superintendencies have the powers to sanction, the specific AML/CTF sanctions are inadequate (See Recommendation 35). **Recommendation 27 is rated as Largely Compliant.**

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

TC272. *Criterion 28.1a* Law 9050 establishes authorization requirements for the operation of casinos. Thus, only the following will be authorized: “casinos in first-class hotels, with a qualification equal to or above four stars, as established by the Costa Rican Tourism Institute. The activity of the casino must be complementary to the accommodation service provided by the hotel. The premises destined for the casino must be located in the same infrastructure destined for the hotel, in an area that is not more than fifteen percent (15%) of the area that corresponds to the hotel” (Art. 3).

TC273. *Criterion 28.1. b)–c)* There are no apparent measures to prevent offenders and their accomplices from having or being the beneficial owner of a significant or majority share, or from holding executive positions or being operators of a casino. In addition, there is no apparent supervision of AML/CTF requirements for casinos.

TC274. *Criteria 28.2 - 28.5* In accordance with Law 8204, trust administration or any other kind of administration of resources, carried out by individuals or legal persons other than financial intermediaries, is regulated and supervised by the SUGEF.

TC275. Moreover, the Regulations of Law 8204 establish that the individuals and legal persons established in Art. 15 and 15 bis of Law 8204 “will be governed by the provisions established by the (...) FIU (...)”. Therefore, apparently the FIU has the power to issue regulations for DNFBPs; however, the FIU has not issued any regulatory provision. Nevertheless, it is important to mention that the FIU has had different rapprochements with third parties fund administrators and trust administrators, public accountants and real estate agents regarding training, registration and processes of reporting STRs through the electronic platform.

TC276. There is no apparent competent authority or SRB for the supervision of DNFBPs, except for trust administrators or any kind of administration of resources, carried out by individuals or legal persons other than financial intermediaries, who are regulated by the SUGEF.

TC277. *Weighting and Conclusion:* Although there are authorization requirements established for the operation of physical casinos, it is not established if the competent authorities can implement the necessary legal and regulatory measures to prevent offenders and their accomplices from having or being the beneficial owner of a significant or majority share, or from holding executive positions or being operators of a casino. Moreover, the regulations do not establish which entity is in charge of supervising casinos for compliance with AML/CTF requirements. Except for DNFBPs supervised by the SUGEF, there is no

apparent competent authority or SRB to supervise the remaining DNFBPs. **Recommendation 28 is rated as Non Compliant.**

### ***Recommendation 34 – Guidance and feedback***

TC278. *Criterion 34.1* The FIU can issue recommendations of priority implementation to reporting entities, in order to ensure the strengthening of the AML/CTF system (Law 8204, Art. 126). The supervisory bodies have the obligation of issuing the guidelines and establishing the content of the forms for the registration and notification of the operation included in Art. 20 of Law 8204, in order to present recommendations that support FIs in the detection of suspicious patterns in the behavior of their customers. On this regard, the FIU has issued recommendations for individuals and legal persons that carry out activities of buying and selling, and transferring of immovable goods, to vehicle agencies and to related associations aimed at generating good practices on a) STRs, b) knowledge of the customer and c) record keeping.

TC279. Moreover, the FIU forwards alert reports and statistics with information of suspicious transaction reports that include the following variables: number of reports per entity and per month, most reported types of financial products, nationalities of the reported individuals, geographical location according to the domicile of the reported subject, as well as money statements that detail the amounts declared and/or confiscated, nationalities of the individuals, among other data.

TC280. NCL 8204 provides guidelines on the treatment and content of unusual transactions and guidelines for the draTFing of suspicious transaction reports (Art. 19-23).

TC281. In addition, as regards cash transaction reports and established thresholds, the Superintendencies have issued manuals and circulars for FIs. The SUGEF has issued manuals for the use of the System for Capture, Verifications and Uploading of Data (SICVECA in Spanish) to capture and send information of reports of operations in accordance with the thresholds established, for which purpose external circulars were also issued. Likewise, the SUGEVAL implemented a virtual counter for the submission of said reports (2006), the SUPEN established a handbook (2013) for the submission of said reports, and the SUGESE issued official letters to insurance companies regarding the submission of said reports and the obligations established in Law 8204 for FIs (SGS-CE-002-2009, SGS-DES-O-0951-2014).

TC282. *Weighting and Conclusion:* Both the FIU and the Superintendencies have issued guidelines regarding the implementation of AML/CTF regulations, the submission of STRs, and the reports of transactions according to the thresholds established for FIs. However, no Guidelines have been issued for DNFBPs (except for those supervised by SUGEF, public accountants, vehicle agencies and agencies that buy and sell immovable goods). **Recommendation 34 is rated as Largely Compliant.**

### ***Recommendation 35 – Sanctions***

TC283. *Criterion 35.1* Law 8204 (Art. 81) establishes three levels of sanctions for FIs (unlike DNFBPs):

- Fine of one percent (1%) of its equity (non-compliance of: forms and submission of transactions record for more than 10,000 US dollars, identification of the customer, additional information and documentation of STRs and tipping-off).
- Fine of two percent (2%) of its equity (non-compliance of the registration with the SUGEF, of detection and reporting of suspicious transactions and when the obligations of internal control are not complied with).

- If the fine is not cancelled within the time set, it will have a three percent (3%) extra charge for late payment.

TC284. In addition, the Regulations of Law 8204 establish that in the case of non-compliance, Art. 81 of Law 8204 will apply. However, not all the obligations established in the regulation mentioned are object of sanction in case of non-compliance. Art. 81.b.2 establishes that FIs will be fined with 2% of their equity “when they do not adopt, develop or implement internal programs, regulations, procedures or controls to prevent the offenses typified in this Law; when they do not name the officers in charge of supervising the compliance with said controls, programs and procedures”. This seems to be a general regulation regarding sanctions; however, this regulation only corresponds to the non-compliance stated in Art. 26 of Law 8204<sup>64</sup>. Nevertheless, it does not seem to be related to NCL 8204 or to establish sanctions for the non-compliance of said regulations. Therefore, according to Recommendation 35, not all the obligations of Recommendations 6 and 8 - 23 have a corresponding sanction, and there is not a wide range of sanctions available, except for those established in Art. 81 above mentioned.

TC285. *Criterion 35.2* Law 8204 establishes that “the owner, director, administrator or employee of financial institutions (...) who during the exercise of his functions, according to the courts, has facilitated the commission of a money laundering or terrorist financing offense will be sanctioned with imprisonment from one (1) to (3) years” (Art. 70). However, there are no administrative sanctions established for the non-compliance of preventive obligations.

TC286. *Weighting and Conclusion:* Law 8204 establishes financial sanctions for FIs that do not comply with specific aspects of the regulation mentioned. However, these sanctions do not cover all the obligations of the regulation (specifically NCL 8204). In addition, no administrative or civil sanctions are provided for directors or senior managers of FIs. Finally, as regards DNFBPs, there are no sanctions established for them, except for those supervised by the SUGEF. **Recommendation 35 is rated as Partially Compliant.**

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<sup>64</sup> Art. 26. According to the regulations and the supervision mentioned in this paragraph, those institutions subject to them will have to adopt, develop and implement internal programs, regulations, procedures and controls to prevent and detect the offenses typified in this Law.

## VII. LEGAL PERSONS AND STRUCTURES

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

TC287. *Criterion 24.1* Costa Rica has the following types of legal persons . The different regulations that govern the legal persons mentioned below establish the processes for the creation of legal persons and for the obtention of the record of basic information. However, it is not clear if the legal provisions establish the information of the beneficial owner.

- Trading companies (Commercial Code, Art. 235, 18 and the ones that follows)
- Individual limited corporations (Commercial Code, Art. 235 and 10)
- Civil societies (Art. 466, 1196 and the ones that follows of the Civil Code)
- Companies of professional activities (Law 8260)
- Foundations (Law 5338)
- Sports organizations (Law 7800)
- Civil organizations (Law 218)
- Credit and savings mutual organizations (Law 7052)
- Branches of foreign companies (Art. 226 of the Commercial Code)
- Powers of attorney of foreign trading companies (Art. 232 of the Commercial Code)
- Cooperative, charity organizations and unions (Law 5338)
- Organizations of community development (Law 859)
- Water user organizations

TC288. Except for cooperatives, charity organizations and unions, which register with the department of social organizations of the Ministry of Labor; the organizations of community development, which register with DINADECO; or water user organizations, which register with the Ministry of the Environment, Energy and Telecommunications (MINAET in Spanish), the legal persons previously mentioned register with the National Registry (Commercial Registry) and all the information is fully published through its website to the general public.

TC289. *Criterion 24.2* Within the risk diagnosis of ML/TF of Costa Rica, the risks related to legal persons have been assessed.

TC290. *Criterion 24.3* Law 3284 – Commercial Code (Art. 235) creates the National Registry (Trade Registry). The legal persons that register with the National Registry provide information on the name, number of legal identification, status (registered, corporate term expired, liquidated, immobilized, bankrupt, etc), exact address where notifications can be delivered, as well as purpose and corporate term, form of management, including the members of the administrative bodies that exercise the judicial and extrajudicial representation and its powers. Moreover, the National Registry has updated information of the members of the administrative bodies, monitoring bodies and mandates that the legal person has issued. As regards branches and powers of foreign legal persons, either profit or non-profit, the Registry has in its database the name, number of legal identification and complete information on the mandates issued (Commercial Code, Art. 226 and 232). As mentioned before, all this information is available to the public through the National Registry’s website.

TC291. There are incentives to register, as the incorporation of a company, its modifications, dissolution, mergers and any other act that in some way modifies its structure must be recorded in a public deed, published in the official gazette and registered with the Trade Registry (Commercial Code, Art. 19). As long as this is not done, *“the agreements and social documents will not have legal effects on third parties,*

and the founding partners will be severally liable of said third parties regarding the obligations entered into by the company. Any partner can handle the registration of the deed and, if his activity is proven, the responsibility will cease from the moment formal management has been started for the registration” (Commercial Code, Art. 20).

TC292. *Criterion 24.4* The number and type of shares of a member of a company is known only when the incorporation deed is submitted to the Registry in order to be put to the legality filter provided by the procedure of qualification and registration of the document (Commercial Code, Art. 18.9 and 104). Once the company has been registered, the ownership of shares is kept in a private registry of each company, called shareholders’ registration book (Commercial Code, Art. 252), and must include the following information (Commercial Code, Art. 137):

- Name, nationality and address of shareholders; number of shares owned, including numbers, series, classes and other characteristics.
- Payments done.
- Transfers done.
- Exchanges and cancellations.
- Taxes affecting the shares.

TC293. *Criterion 24.5* There are no governmental mechanisms that ensure that the information that must be provided by trading companies in accordance with Recommendations 24.3 and 24.4 is timely updated. However, as mentioned above, the incorporation of a company and its modifications must be entered in a public deed, published in the official gazette and registered with the Trade Registry; otherwise, they will not have any legal effect. In addition, the Code of Regulations and Tax Procedures Law 4755 establishes sanctions for those companies that do not have an updated shareholders registration book with a base salary.

TC294. *Criteria 24.6 – 24.7* Legal persons must have an updated shareholders registration book. However, this does not mean that it includes information regarding the beneficial owner as defined by FATF’s Glossary.

TC295. *Criterion 24.8* The secretary of the Public Corporation or the manager of the Limited Corporation are responsible for keeping the shareholders’ book and must present it when requested by the competent authority (Commercial Code, Art. 253).

TC296. *Criterion 24.9* All the legal persons shall keep the information and its records for at least five years (5) since the moment of its dissolution (Commercial Code, Art. 270).

TC297. *Criterion 24.10* The competent authorities, specifically the FIU, have the powers to obtain access to the information of the Trade Registry (Law 8204, Art. 125).

TC298. *Criterion 24.11* In Costa Rica, the existence of quotas and bearer shares is prohibited (Commercial Code, Art. 78 and Law 9068, Art. 120), all the shares must be nominee and must be registered with the Registry of Partners for the owner to be able to exercise his rights in Assemblies (Commercial Code, Art. 120).

TC299. *Criterion 24.12* In Costa Rica, the legal figures of nominee director or nominee shareholder do not exist, i.e. those who provide the service of nominee director or administrator, or who appear as owners of the shares with the purpose of preserving the identity of the true owner of the company, and represent the latter before the authorities. The individual or legal person registered in the Shareholders’ registration

book is formally the owner of the shares and exercises all the corresponding rights (Commercial Code, Art. 137-140). Nevertheless, no legal mechanisms have been implemented to prevent the infringement of this provision.

TC300. *Criterion 24.13* See criterion 24.5

TC301. *Criteria 24.14 – 24.15* There are no apparent specific regulatory provisions for these criteria.

TC302. *Weighting and Conclusion:* Competent authorities can obtain basic information on legal persons in the Registry of Legal Persons, where all the trading companies are registered (criterion 24.3). However, there is no guarantee that the information on the partners or shareholders is updated, as the transfers of quotas or shares are not registered in said Registry. Trading companies are obliged to keep a registration book of partners and shareholders (criterion 24.4). Other mechanisms to obtain this information are set in the regulations, such as the notarial certification of the shareholders' registration book, which financial institutions must request to their customers (criterion 24.6). The trading regulations of the country prohibit bearer shares (criterion 24.11), but there are no measures established to prevent the use of nominee shareholders and directors (criterion 24.12), figures that although they are not contemplated by the Costa Rican regulations, have been proven to exist in practice by persons put in front of companies who do not exercise a real control on them. Finally, the infringement for not complying with the obligation of identifying beneficial owners is not specifically established in Law 8204, and the sanctions that could be imposed are not effective or dissuasive (criterion 24.13). **Recommendation 24 is rated as Partially Compliant.**

### ***Recommendation 25 – Transparency and beneficial ownership of legal structures***

TC303. *Criterion 25.1* The Regulations of Law 8204 (Art. 15) establish that the following individuals or legal persons shall register with the SUGEF: those domiciled in the country that carry out trust operations, provided these include the management, on behalf of and in the name of a third party, of cash or value easily convertible to cash, such as shares, bonds, investment certificates and any other type of securities. Moreover, trusts administered by individuals or legal persons registered with the SUGEF must register with the corresponding division of the National Registry (provided the administered goods are subject to registration). Likewise, the trusts which equity are goods delivered as collateral, and which contract does not establish the administration of cash and financial assets, are included in the obligation of registering with the National Registry.

TC304. Subjects obliged to the Regulations of Law 8204 (Art. 15) shall keep: a) Records of transactions made for a period of five years since the date the transaction ends and b) Records of identification of customers, files of the accounts and commercial correspondence for as many years as the customer is active within the institution and for five years after the end of the relationship between the customer and the institution (Art. 21).

TC305. *Criterion 25.2* According to the information above mentioned, those who provide trust activities shall keep the record of the transactions made.

TC306. *Criterion 25.3* FIs supervised and monitored by SUGEF, SUGEVAL, SUPEN and SUGESE, referred to in Art. 14 of Law 8204, shall establish policies, procedures and controls that enable them to conclude, in a reasonable manner, if their customers, either individuals or legal persons, carry out any of the activities established in Art. 15 of Law 8204, among which there are trust activities. FIs shall not initiate commercial relationships with individuals who carry out any trust activities unless they are registered with the SUGEF. This is without prejudice to other legal or regulatory provisions that FIs must

also comply with to carry out their activities. If these entities conclude, by the implementation of policies, procedures and controls, that a customer carries out any of the activities and is not registered with the SUGEF, they will have the obligation of carrying out the due communication to the customer, with copy to the SUGEF and its supervisory body, as appropriate, as well as of giving a term no longer than thirty working days to submit the registration with the SUGEF. Once this term has finished, if the customer does not provide evidence that he has initiated the registration process, the entity shall terminate the commercial relationship and shall communicate this to the SUGEF and its corresponding supervisory body (Regulations Law 8204).

TC307. *Criterion 25.4* Law 8204 establishes that “the legal regulations regarding banking, stock market or tax information shall not be an obstacle for the compliance with the present Law, when judicial or administrative authorities in charge of investigations of crimes typified in this Law request information” (Art. 32).

TC308. *Criterion 25.5* Competent authorities can access the information of those who carry out trust activities (Law 8204, Art. 125 and Criminal Procedural Code Art. 62, 226 and 290).

TC309. *Criterion 25.6* Law 8204 establishes that competent authorities can share information with their counterparts and other authorities on the matter (Art. 7, 8, 30).

TC310. *Criterion 25.7 and 25.8* Although Law 8204 establishes in Art. 81 sanctions for non-compliance, there are no specific sanctions established for the non-compliance with the obligations of identification of the beneficial owner.

TC311. *Weighting and Conclusion:* The National Registry has public information on trust properties, but only for those assets that are subject to registration. The legal provision does not establish any type of prohibition to submit information regarding trusts to competent authorities (criterion 25.4), although it is necessary to mention that when the complete contract of the trust is not registered, the National Registry can only provide limited information. The administrators of these trusts are reporting entities, according to Art. 15 bis of Law 8204 and must register with the SUGEF. Except for the information provided at the moment of registering with the SUGEF, this Law and its Regulations do not establish precise obligations for trustees regarding the obtention and keeping of the identity of the trustor, trustee, guardian and trust beneficiaries, as well as other regulated agents of the trust and service providers for the trust (criterion 25.1). Moreover, there are no measures established to ensure that trustees reveal their status to FIs and DNFBPs (criterion 25.3), especially in the case of trusts not subject to registration with the National Registry. The provision does not establish specific sanctions for the non-compliance of trustees with their obligations to provide information (criterion 25.7 and 25.8). **Recommendation 25 is rated as Partially Compliant.**

## VIII. INTERNATIONAL COOPERATION

### *Recommendation 36 – International instruments*

TC312. *Criterion 36.1 - Criterion 36.2* Costa Rica has approved, ratified and incorporated to its national law the Vienna Convention (through Law 7198 of September 25<sup>th</sup> 1990), the Palermo Convention (through Law 8302 of September 12<sup>th</sup> 2002), the United Nations Convention against Corruption (through Law 8557 of November 29<sup>th</sup> 2006), the Agreement for the Suppression of the Financing of Terrorism (through Law 8257 of April 18<sup>th</sup> 2002) through the figure of legislative ratification. Moreover, Costa Rica has entered into and ratified the Inter-American Convention against Terrorism (March 6<sup>th</sup> 2002 and October 5<sup>th</sup> 2006, respectively).

TC313. *Weighting and Conclusion:* Costa Rica has ratified the most important international treaties on the matter, among which there are the Palermo and Vienna agreements, the UN Agreement for the Suppression of the Financing of Terrorism, the OAS Inter-American Convention against Terrorism. Moreover, Costa Rica has issued internal regulations aimed at the effective compliance with them. **Recommendation 36 is rated as Compliant.**

### *Recommendation 37 – Mutual legal assistance*

TC314. *Criterion 37.1* Costa Rica has a legal basis that enables it to provide mutual legal assistance, which is stated in Art. 154 of the Criminal Procedural Code (requests to foreign authorities), as well as relevant regulations of the Vienna Convention, the Palermo Convention and the Merida Convention. Likewise, Costa Rica has incorporated other relevant instruments to its legal basis, such as the Inter-American Convention against Corruption, the Central American Treaty of Mutual Legal Assistance in Criminal Matters and the Inter-American Convention on Mutual Criminal Assistance in Criminal Matters, regulations that can be cited when requesting Costa Rica's assistance.

TC315. *Criterion 37.2* For the compliance with the previously mentioned instruments, Costa Rica has three central authorities, which are the Office of Technical Assistance and International Affairs of the General Prosecutor's Office of the Republic, the Costa Rican Drug Institute and the Office of the Republic's Attorney General. Although these authorities have the powers to ensure compliance with the Conventions and international legal instruments entered into by Costa Rica, according to its functions, it is the Public Prosecutor of Costa Rica the authority in charge of processing the requests, due to its role in the criminal process. The authority that receives the assistance requests and submits them to the Public Prosecutor is the one that decides which prosecutor's office within its structure will be in charge of its processing. Once the application has been processed, it is sent back through the same channel it was received.

TC316. *Criterion 37.3* There are no limited conditions established on the mutual legal assistance and other types of cooperation. The only conditions imposed on the assistance are those established in the agreements or treaties to which Costa Rica has entered into.

TC317. *Criterion 37.4* In compliance with the international instruments of which Costa Rica is part of, there are no limitations established on the collaboration in cases of secrecy or confidentiality of the information, provided the requesting country provides information that justifies the measure.

TC318. *Criterion 37.5* Costa Rica protects the requests of mutual legal assistance based on Art. 295 of its Criminal Procedural Code. Moreover, the Supreme Court of Justice of Costa Rica has issued jurisprudence

that states that the protection of files in which the international criminal assistance is processed is adhered to the law, thus protecting the confidentiality of the request.

TC319. *Criterion 37.6* Costa Rica does not require double criminality as a condition to provide international assistance, and complies with the regulations on this regard included in the international legal instruments of which it is part.

TC320. *Criterion 37.7* To these effects, Costa Rica has a mutual legal assistance instrument with El Salvador, Guatemala, Honduras and Panama, where the assistance will be provided for any offense criminalised in the requesting State and in the requested State. Moreover, the jurisprudence has addressed the matter of double criminality and different nomenclature, in the sense that the requirement will be accomplished provided the behavior is criminalised by both countries.

TC321. *Criterion 37.8 (a) - (b)* To this effect, Law 8204 states that all the international cooperation must be provided by all the means of the State. Likewise, Art. 8 of the same Law states the effects to which cooperation can be provided to and received from foreign authorities.

TC322. *Weighting and Conclusion:* Costa Rica has internal regulations that promote and actively empower said administrative bodies, as well as other powers of State, to internationally cooperate in the scope of legal functions. Moreover, the country has entered into several agreements and conventions aimed at strengthening said assistance, such as the Inter-American Convention against Corruption, the Central American Treaty of Mutual Legal Assistance in Criminal Matters and the Inter-American Convention on Mutual Criminal Assistance. At an organizational level, the Office General Prosecutor of the Republic, through the Office of Technical Assistance and Foreign Affairs (OATRI in Spanish) provides timely and effective help to most of the procedures requested by third parties, particularly as regards extradition. Said office is in charge of coordinating and following-up the progress of the assistance requests submitted.

TC323. It is important to mention the signing of different cooperation agreements at a Central American level, which Costa Rica is part of and that enable a faster processing of requests of signatory countries. **Recommendation 37 is rated as Compliant.**

#### ***Recommendation 38 – Mutual legal assistance: freezing and confiscation***

TC324. *Criterion 38.1 – 38.4* In accordance with Law 8204 and its amendments, the Costa Rican authorities have the power to identify and detect assets, products, instruments and other elements in order to favor international cooperation. In order to request the sale and liquidation of the assets confiscated, said request shall be made by means of a letter rogatory and in addition to a final judgment to proceed to the confiscation of the goods, although said sentence does not need to be a conviction. Even though this seems to be contrary to the criterion related to the possibility of confiscating or seizing goods without the need of a conviction, Art. 39 of the Political Constitution of the Republic of Costa Rica explicitly establishes that “Nobody will be convicted, except for an offense, quasi offense or misdemeanor, sanctioned by the law mentioned and by virtue of a final judgment passed by a competent authority (...)”. On this regard, the regulations established in Costa Rica are coherent with the exception established by the criterion itself to those cases in which the implementation of measures related to the confiscation not connected with a conviction are opposed to the fundamental principles of national law. Moreover, the relevant legislation on the matter does not establish the possibility of confiscating or seizing property of economic interest of corresponding value, which limits the scope of assistance that can be provided.

TC325. *Weighting and Conclusion:* Although Costa Rica has regulations that enable a timely and efficient compliance with freezing and seizing measures requested by third countries, the impossibility of

carrying out the confiscation of property of corresponding value could prevent the optimum degree of cooperation from being provided in these cases. **Recommendation 38 is rated as Largely Compliant.**

### ***Recommendation 39 – Extradition***

TC326. *Criterion 39.1 (a) - (c)* In Costa Rica, each court handles its own cases, while the Office of Technical Assistance keeps a file of all the cases that enter for extradition purposes. As regards the processes for the execution of extradition requests, the Extradition Law 4795 establishes the basic regulations to address said requests, the requirements of the requests of those countries with which there are no agreements on the matter, as well as the general procedure for the service of said requests. Moreover, the conditions established by Costa Rica for the execution of extradition requests are only those established in the legal instruments on the matter or in the Extradition Law previously mentioned.

TC327. It is important to mention that Costa Rica provided cases in which the extradition of people related to money laundering offenses has been carried out, specifically related to the “Liberty Reserve” case.

TC328. *Criterion 39.2* Costa Rica does not extradite its citizens. However, the Extradition Law states that when the individual involved is of Costa Rican nationality, either by birth or naturalization, the case shall be submitted to the competent authorities to be judged, given the case, by Costa Rican courts. This is reinforced by Art. 6 of the Penal Code, which states that the Costa Rican law may be applied to foreign cases when these have been committed by a Costa Rican citizen.

TC329. *Criterion 39.3* For the service of extradition requests from Costa Rica to another country, in the cases established by the Law, the offense in question must also be an offense in Costa Rica. Therefore, the instruments signed by Costa Rica and the jurisprudence show that the mere fact of having the offense prosecuted typified as an offense will be enough for the extradition, without the need of being criminalised in the same offense category or using the same terminology.

TC330. *Criterion 39.4* Costa Rica has a simplified extradition process, which is coherent with the regulations of the internal instruments.

TC331. *Weighting and Conclusion:* Costa Rica has regulations (Extradition Law 4795) that enable to substantiate and comply with the extradition requests of third countries, and which establish procedures and determine the basic requirements that these requests must comply with, especially if there are no special agreements on the matter. Moreover, the country has a rapid extradition procedure with countries with which it has entered into agreements on this matter. Although Costa Rica does not extradite its citizens, the regulations establish internal penal procedures in those cases which are judicially justified. Moreover, the Costa Rican legislation requires that the offense on which the request is based must also be an offense in the country, but it is not requested to be criminalised within a same offense category or to use of the same legal terminology for its description. **Recommendation 39 is rated as Compliant.**

### ***Recommendation 40 – Other forms of international cooperation***

TC332. *Criterion 40.1* In accordance with Art. 7 of Law 8204, technical and economic international cooperation must be provided by all the available means of the State. This is also established in different sections of the law, which establish that the competent authorities may share information with local authorities and authorities of other states, and even have the obligation of cooperating with the authorities in relevant investigations and processes, what is applicable to Superintendencies, the National Customs Service, the Fiscal Control Police and the Financial Intelligence Unit of the ICD. As regards supervised

entities, the SUGEF has a mechanism of quarterly exchange of information with the Superintendencies of Central America, Colombia, Panama and Dominican Republic, related to financial groups with operations in the region, which takes into consideration risks and relevant situations of different matters, including money laundering. The SUGEVAL has established written procedures that specify that the term is established in the request itself received by the different entities. Although the SUGESE has not issued specific guidelines on the matter, it follows the procedures used for legal matters P ASE 01. As regards the SUPEN, it expressed that it does not have handbooks or procedures on the matter. In addition, it is not known if there are handbooks and procedures to handle assistance requests of foreign entities by the police or customs authorities. The relevant legislation clearly establishes that cooperation must be provided, but it does not mention specific terms and it does not specify that this cooperation must be provided in a timely or rapid manner, except for the FIU, in which case the information and documentation shall be provided “in an expeditious manner”. As mentioned before, this is applied in each request received by the supervisors.

TC333. *Criterion 40.2* Authorities have a legal base to provide information, which is included in Law 7557 (General Customs Law) and its Regulations, in the Code of Regulations and Tax Procedures Law 4755 (Law on narcotic drugs, psychotropic substances, unauthorized drugs, money laundering and related activities).

TC334. As regards the use of the most efficient means of cooperation, Law 8204 establishes that agreements must be entered into, both bilateral and multilateral, to improve the efficiency of cooperation. As regards the channels and mechanisms of transmission of information, according to the authorities of Costa Rica, these are established in the agreements and treaties entered into, as well as the Secure Web of the Egmont Group of Financial Intelligence Units, the Asset Recovery Network of GAFILAT (RRAG in Spanish) and the system UIF Directo, although these latter mechanisms are not specifically established in the relevant legislation of the FIU. Moreover, although there are procedures established to answer the requests, it is not clear how they will be prioritized based on the applicable legal regulations.

TC335. As regards the confidentiality of the information, the safeguard of the information is not clearly established in the Code of Regulations and Tax Procedures or in Law 8204.

TC336. *Criterion 40.3* The relevant authorities of Costa Rica have entered into cooperation agreements, at a bilateral and multilateral level, that are relevant for the exchange of information and international cooperation, among which there are the accession of Costa Rica to the Convention on Mutual Administrative Assistance on Tax Matters of the OECD and to the Central American Convention on Legal Assistance. At a FIU level, Costa Rica has signed 11 bilateral memorandums of understanding and one memorandum at a regional level that includes seven countries of Central America. Moreover, it entered into the Cooperation Agreement between the ICD and the Financial Action Task Force of South America (GAFISUD, currently GAFILAT). However, with the exception of some specific countries, no multilateral agreements are mentioned and it is not known if there exists the need to sign treaties with countries of Africa, Asia, Europe or Oceania.

TC337. *Criterion 40.4* With the exception of Art. 115 bis of the Code of Regulations and Tax Procedures, applied to the General Tax Directorate, it is not clear if the Costa Rican legislation considers the possibility or obligation of providing feedback in international cooperation.

As informed by Costa Rican authorities, work sessions are carried out in which the relevant national authorities are reported on the usefulness and use of the information, although it is mentioned that no feedback is provided either formally or written.

TC338. *Criterion 40.5* On the basis of the applicable legislation, as regards the conditions established for the exchange of information or the provision of assistance, there are no conditions or prohibitions established, unless the matter is not in the scope of competence of the relevant authorities. Moreover, Costa Rican authorities mentioned that in the reception of requests through the cooperation channels (UIF Directo, Egmont Group and RRAG) it must be clarified that the requested information is linked to investigations parallel to ML/TF offenses. Also, Law 8204 establishes that the regulations on banking or tax information shall not obstruct the compliance with the obligation of providing information to the authorities empowered. The current legislation is also clear when establishing that information may be shared during an investigation, and no obstacles are legally established to provide information to requesting authorities on the basis of a different nature or condition.

TC339. *Criterion 40.6* Within the area of competence of the General Tax Directorate, the Code of Regulations and Tax Procedures establishes the confidential character of the information. As regards the FIU, the relevant legislation specifically establishes the confidential treatment of the information gathered by the Unit, according to Art. 124 of Law 8204. Moreover, Art. 101 of the law establishes that information that puts investigations of drug trafficking, money laundering, terrorist financing, or confidential information at risk may not be provided.

TC340. Moreover, the authorities of Costa Rica, as members of the Egmont Group, exchange information in conformity with the principles of said body, which establish that the information may only be used with intelligence purposes, and any other use shall have the express approval of the FIU that provided such information. As regards the functions of the National Customs Service, the regulations on safeguards and confidentiality of the information are established in each assistance agreement entered into, as well as the use that shall be given to the information, on the basis of the purposes of the relevant agreement.

TC341. *Criterion 40.8* In accordance with the foregoing, the current assistance agreements and treaties of the National Customs Service of Costa Rica include regulations that establish that the protection of the information received will be the same as the current protection of the country that provides the information. As regards the FIU, Art. 124 of Law 8204 establishes that all the information gathered by the FIU is “(...) confidential and of exclusive use for the investigations carried out by the Institute [Costa Rican Drug Institute]”, which applies to the information received by foreign counterparts. Moreover, the Principles for the Exchange of Information of the Egmont Group, of which Costa Rica is member, establish that the information shall be treated, at the very least, with the same confidentiality regulations of similar information of domestic sources.

TC342. According to Law 7732 that regulates the Stock Market, in the case of the confidential information that will be exchanged, the corresponding body shall be subject to disclosure restrictions that are similar to those established by said law.

TC343. *Criterion 40.8* As regards the possibility of requesting information on behalf of foreign counterparts, Law 8204 establishes that all the ministries and institutions shall provide, in an expeditious manner, information and documentation requested by the FIU for the compliance with its purposes, which empowers said authority to collect data in the country's institutions to comply with information requests.



TC344. *Criterion 40.9* Sections 7, 8 and 124 of Law 8204 establish that the Costa Rican State shall provide cooperation by all the available means, as well as facilitate investigations and police or judicial proceedings as regards the offenses typified in the Narcotic Drugs Law, which includes money laundering. Moreover, the regulations specifically establish that the information collected by the FIU can be shared with the competent national and foreign authorities on the matter.

TC345. *Criterion 40.10* Costa Rica's FIU has expressed that, in some cases, the counterparts that have provided information have later submitted surveys on the usefulness of that information, although it is not clear if the recurrent practice consists on sending said feedback. On this sense, there is no evidence that feedback is provided and obtained as regards the exchange of information.

TC346. *Criterion 40.11* In accordance with Law 8204, the information collected by the FIU can be disclosed to national authorities, their foreign counterparts and competent administrative and judicial authorities. Moreover, the Law empowers them to request information to national authorities for the compliance with their purposes.

TC347. *Criterion 40.12* In accordance with Law 8204, the ICD and the bodies empowered to carry out supervision and monitoring activities can cooperate with authorities of other States. Moreover, Law 7732 (that regulates the Stock Market) states that the General Securities Superintendence can exchange information with other counterpart supervisors of other countries, provided there is reciprocity.

TC348. *Criterion 40.13* Law 8204 establishes that the bodies empowered to carry out supervision and monitoring activities can cooperate with competent authorities of other countries. The Law establishes that the SUGEF, SUGEVAL, SUPEN and SUGESE are bodies authorized to carry out such activities.

TC349. *Criterion 40.14* The regulatory information, the general information of financial sectors and the prudential information may be easily provided, as long as it is mostly public and is available in the websites of the Superintendencies and the financial entities themselves. As regards due diligence information, files and sampling of customers' accounts, Law 8204 establishes the power of the ICD and the supervisors to cooperate with authorities of other countries.

TC350. *Criterion 40.15* According to the authorities of Costa Rica, Art. 30 of Law 8204 that establishes the power to provide cooperation includes this provision. In addition, according to Sections 123, 124 and 125 of the same law, the FIU itself has the capacity of requesting additional information to entities subject to their supervision and any other institution, which shall meet the request in an expeditious manner in order to answer the requests received by their counterparts.

TC351. *Criterion 40.16* Art. 30 of Law 8204 includes this criterion, according to the information provided by Costa Rica. Likewise, in accordance with Art. 124 of the law, the FIU has the power to share this information with authorities, both national and foreign.

TC352. *Criterion 40.17* Costa Rica refers to Resolution DGT-R-003-2013, which regulates the exchange of information at an international level on tax matters, and which establishes that the exchange of information may be done with those countries with which Costa Rica has entered into agreements on the matter. Likewise, Costa Rica is a signatory to the Convention on Mutual Administrative Assistance on Tax Matters of the OECD, which enables the exchange of tax information with other countries.

*Criterion 40.18* The information provided by Costa Rica cited Art. 182 of the Criminal Procedural Code, related to probation, as relevant in relation to this criterion. Moreover, Art. 8 of Law 8204 is mentioned, as

regards the powers of authorities to provide international cooperation, which includes the identification of products, goods and instruments of the offense with evidential purposes. On this regard, all the permitted means of evidence, according to the Criminal Procedural Code, are allowed to provide cooperation to relevant foreign authorities.

TC353. *Criterion 40.19* Art. 65 of the Criminal Procedural Code states that the Public Prosecutor can create joint investigation teams with foreign institutions when the criminal activities of the investigation are carried out, either totally or partially, outside the national territory or are connected to regional or international organizations.

TC354. *Criterion 40.20* In accordance with Art. 7 of Law 8204, the State must provide cooperation through competent authorities. However, it is not clearly established whether there is the possibility for authorities to provide cooperation to or exchange information with authorities that are not their counterparts.

TC355. *Weighting and Conclusion:* Costa Rica has several mechanisms and means to provide international cooperation to different countries requesting it, in an adequate and timely manner. The FIU, the Superintendencies, the ICD and other State bodies are fully empowered to enter into agreements of collaboration and mutual assistance with counterpart countries, complying with all the requirements established in the present Recommendation. **Recommendation 40 is rated as Compliant.**