



2<sup>nd</sup> Follow-Up Report

# Mutual Evaluation of the Philippines

August 2021





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## ***THE PHILIPPINES: 2nd ENHANCED EXPEDITED FOLLOW-UP REPORT 2021***

### **I. INTRODUCTION**

1. The mutual evaluation report (MER) of the Philippines was published in October 2019.
2. This FUR analyses the progress of the Philippines in addressing the technical compliance deficiencies identified in the Philippines MER. Technical compliance re-ratings are given where sufficient progress has been demonstrated. This report does not analyse any progress the Philippines has made to improve its effectiveness.
3. The assessment of the Philippines' request for technical compliance re-ratings and the preparation of this report was undertaken by the following experts:
  - *Ms Ratchawadee Fuangprang, Investigator, Anti-Money Laundering Office, Thailand*
  - *Mr Robert Milnes, Principal Advisor (AML), Department of Internal Affairs, New Zealand*
  - *Mr Glenn Muller, Criminal Assets Confiscation Taskforce, Australian Federal Police*
  - *Ms Henna Goodrick and Mr David Shannon, APG Secretariat*
4. Section III of this report summarises the progress made to improve technical compliance. Section IV contains the conclusion and a table illustrating the Philippines' current technical compliance ratings.

### **II. FINDINGS OF THE MUTUAL EVALUATION REPORT & FOLLOW-UP**

5. The Philippines' MER ratings<sup>1</sup> and updated ratings based on earlier FURs<sup>2</sup> are as follows:

R.	Rating	R.	Rating
1	LC (2019 MER)	21	C (2019 MER)
2	C (2019 MER)	22	PC (2019 MER)
3	LC (2019 MER)	23	PC (2019 MER)
4	PC (2019 MER)	24	PC (2019 MER)
5	LC (2019 MER)	25	PC (2019 MER)
6	PC (2019 MER)	26	LC (2019 MER)
7	NC (2019 MER)	27	LC (2019 MER)
8	LC (2019 MER)	28	PC (2019 MER)
9	LC (2019 MER)	29	PC (2019 MER) ↑ C (2020 Feb FUR)
10	LC (2019 MER)	30	C (2019 MER)
11	C (2019 MER)	31	LC (2019 MER)

<sup>1</sup> There are four possible levels of technical compliance: compliant (C), largely compliant (LC), partially compliant (PC), and non-compliant (NC).

<sup>2</sup> Current ratings and the year confirmed are indicated based on the original MER or follow-up re-ratings.

12	LC (2019 MER)	32	PC (2019 MER)
13	C (2019 MER)	33	LC (2019 MER)
14	LC (2019 MER)	34	LC (2019 MER)
15	C (2019 MER) ↓ PC (2020 Feb FUR)	35	LC (2019 MER)
16	LC (2019 MER)	36	LC (2019 MER)
17	C (2019 MER)	37	LC (2019 MER)
18	LC (2019 MER)	38	C (2019 MER)
19	LC (2019 MER)	39	PC (2019 MER)
20	PC (2019 MER) ↑ LC (2020 Feb FUR)	40	LC (2019 MER)

6. Given these results and the effectiveness ratings, the Philippines was placed on enhanced (expedited) follow-up<sup>3</sup>.

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

7. In keeping with the APG ME Procedures 2021, this FUR considers progress made up until 1 February 2021. In line with the FATF Methodology, the review team analysis has considered the entirety (all criteria) of each Recommendation under review, noting that this is cursory where the legal, institutional or operational framework is unchanged since the MER or previous FUR.

#### 3.1. Progress to address technical compliance deficiencies identified in the MER

8. The Philippines requested re-ratings of Recommendation 7 (which was rated Non-Compliant) and Recommendations 4, 6, 22, 23 and 24 (which were rated Partially Compliant).

9. The APG welcomes the steps that the Philippines has taken to improve its technical compliance with R. 4, 6, 7, 22, 23 and 24. As a result of this progress, the Philippines has been re-rated on each of those Recommendations to Largely Compliant.

#### *Recommendation 4 (Originally rated PC)*

10. The Philippines was rated partially compliant with R.4 in its MER. The MER identified deficiencies with seizing a wide range of property subject to confiscation, a lack of provisions to enable authorities to void or prevent actions that prejudice the ability to restrain or recover property subject to confiscation as well as practical impediments to law enforcement agencies (LEAs) other than AMLC to directly access bank records in tracing assets; and minor gaps with mechanisms for the preservation and management of assets.

11. **Criterion 4.1** is *met* (as per the MER). The analysis in the MER and available material support the criterion rating.

12. **Criterion 4.2** is *mostly met*.

13. *4.2(a)* – mostly met. The MER identified that the absence of direct empowerment for LEAs other than the AMLC to access financial information limits the identification of property potentially

<sup>3</sup> APG ME Procedures have three follow-up categories based on MER results: regular, enhanced and enhanced (expedited).

subject to confiscation. There have been no legislative amendments to address the deficiency, but the Philippines has implemented some further operational improvements as detailed below.

14. The Anti-Money Laundering Council (AMLC), the Philippines' primary AML/CFT competent authority, has entered into a large number of information sharing protocols with covered persons and memorandum of agreement (MOAs) with government agencies. LEAs can request information from the AMLC, including information that is not already held. Pursuant to s.7(2) of the *Anti-Money Laundering Act (AMLA)*, the AMLC can request records from banks, other financial institutions and DNFBPs and share it in real-time with LEAs, upon request or spontaneously, via a secure portal. This procedure assists LEAs to identify property subject to confiscation. Nevertheless, as identified in the MER, LEAs not having direct access to financial information remains a minor shortcoming.

15. The AMLC issued guidelines on target intelligence packaging (TIP) in July 2020 and this is a further measure which should aid the identification of property potentially subject to confiscation. Section 3 of the guidelines outlines TIP's objectives, including maximizing the sharing of financial intelligence (including ultimate beneficial ownership information), interagency cooperation, case prioritisation modelling and the conduct of parallel investigations.

16. 4.2(b) – met. Another deficiency in the MER concerned the AMLC and the Office of the Ombudsman (OMB) lacking powers to independently carry out seizures. Effective 30 January 2021, s.7(13) of the AMLA states that in the conduct of its investigations, the AMLC shall apply for the issuance of a search and seizure order with any competent Court. To complement this amendment, the AMLC issued regulatory guidance on the amendments to the 2018 *Implementing Rules and Regulations (IRR) of the Republic Act No. 9160* (i.e. the AMLA) by inserting clause 1.9.4(e) which aligns with the AMLA amendment. Both of these changes assist the Philippines in carrying out provisional measures. The OMB's lack of powers to carry out seizures is not considered to be a material shortcoming as the OMB can seek assistance from other LEAs, including the AMLC, to carry out seizures.

17. 4.2(c) – met. The MER identified a major deficiency with an absence of provisions that enable authorities to take steps to void or prevent actions that prejudice the country's ability to freeze, seize or recover property subject to confiscation. This deficiency has been rectified by the following:

- *Republic Act 11521* (in effect on 30 January 2021) amends s. 12 of the AMLA by inserting a new provision prohibiting the issuance of a temporary restraining order or an injunction against an asset preservation order issued pursuant to the AMLA, except by Order of the Court of Appeals or the Supreme Court. This new provision applies equally to conviction-based and civil forfeitures and is reflected in s.8 of the 2018 IRR, as amended;
- The AMLA (s. 10(a)), prohibits the issuance of any injunctive relief against a freeze order obtained by the AMLC (as amended by *Republic Act 10365*);
- The AMLA (s. 11) authorises the AMLC to inquire into bank deposits or investments, including related accounts, based on an *ex parte* application in cases of alleged violations of the AMLA; and
- The Rules of Procedures in cases of Civil Forfeiture allow *ex parte* applications for provisional asset preservation orders.

18. On a more practical level, the Philippines' legal framework provides for the forfeiture of assets of corresponding value and this is a useful tool in the arsenal of LEAs endeavouring to confiscate the proceeds of crime. Considering all of these measures, the Philippines is now in a stronger position to prevent actions that prejudice its capacity to recover property subject to confiscation.

19. 4.2(d) – met (as per the MER). The analysis in the MER and available material supports the criterion rating.

20. **Criterion 4.3** is *met* (as per the MER). The analysis in the MER and available material supports the criterion rating.

21. **Criterion 4.4** is *met*. Amendments to s. 7 of the AMLA in 2021 addresses the minor gap in the confiscation regime relating to the preservation and management of assets. The AMLA now provides for the AMLC to preserve, manage or dispose assets pursuant to a freeze order, asset preservation order or judgment of forfeiture. Rule 6 – Powers and Functions of the AMLC – of the 2018 IRR, as amended by *AMLC Regulatory Issuance (ARI) 1-2021*, was enhanced to reflect this legislative change and to provide practical measures, including the creation of an asset management unit. A Comprehensive Asset Preservation Guideline was also approved by the AMLC in January 2020.

#### *Weighting and Conclusion*

22. The additional legislative and regulatory measures address the majority of the shortcomings in the Philippines' capacity to confiscate instruments and proceeds of crime and carry out provisional measures. LEAs other than the AMLC are not empowered to directly access financial information or evidence. This remaining deficiency is considered minor, given the scope of the recommendation, the risks identified and the context of the Philippines. **Recommendation 4 is re-rated Largely Compliant.**

#### *Recommendation 6 (Originally rated PC)*

23. The MER identified several key deficiencies in the Philippines' implementation of targeted financial sanctions (TFS) relating to terrorism and terrorist financing (TF). Key deficiencies related to the standard of proof required to propose names for UNSCR 1267/1989 or 1988 designation. Further key deficiencies related to the *Human Security Act 2007 (HSA)* including an inability to operate *ex parte* and a criminal evidentiary standard required for designations under UNSCR 1373. These deficiencies significantly impacted on the Philippines' ability to implement the freeze mechanisms of its *Terrorism Financing Prevention and Suppression Act 2012 (TFPSA)*.

24. Since the MER, the Philippines has repealed the HSA and enacted the *Anti-Terrorism Act 2020, RA.11479 (ATA)* and its *Implementing Rules and Regulations (ATA IRR)*. Under this new legislative framework, the following provisions have been adopted (alongside the existing framework of the TFPSA):

- There are procedures and guidelines for identifying targets for designation, including for proposing names under UNSCR 1267/1989 or 1988. The procedures and guidelines also address identifying persons or entities for designation under UNSCR 1373, including on request from foreign jurisdictions.
- The threshold for proposing names for inclusion under UNSCR 1267/1989 or 1988, or designating under UNSCR 1373, is "probable cause", which is defined as "a reasonable ground of suspicion supported by circumstances warranting a cautious person to believe that the proposed designee meets the requirements for designation". This is not dependent upon the pendency of any criminal proceeding against the proposed designee.
- There are procedures for de-listing, unfreezing and providing access to frozen funds or other assets.
- The AMLC is authorised to issue an order to freeze without delay (under the TFPSA) in relation to persons or entities designated under the ATA.

25. Pursuant to sections 11 and 22 of the TFPSA and its IRR, the Philippines has issued *ARI No.4, series of 2020 (ARI-4 2020)*, as amended by *ARI No.2, series of 2021 (ARI-2 2021)*. These address the following:

- For UNSCR 1267/1989 or 1988 designations, the existing standing freeze order in place pursuant to *AMLC Resolutions TF-01 and TF-02* directs all covered persons and relevant government agencies to freeze without delay the property or funds, including related accounts, of designated persons or entities. This covers any subsequent updates, modifications and amendments to the relevant UNSC Resolutions, once they have been published on the AMLC website.
- For UNSCR 1373 designations, this authorises the AMLC to issue a freeze order, which shall take effect immediately upon publication on the AMLC website.

26. **Criterion 6.1** is met.

27. *6.1(a)* – met. While the MER did not identify a specific deficiency in relation to c.6.1(a), the relevant legislative framework has changed since the MER. The ATA establishes the Anti-Terrorism Council (ATC) and designates it as a competent authority responsible for proposing persons or entities to the UNSCR 1267/1989 and 1988 for designation.

28. *6.1(b)* – met. While the MER did not identify a specific deficiency in relation to c.6.1(b), the relevant legislative framework has changed since the MER. Rule 6.8 of the ATA IRR enables the ATC to propose names for inclusion under UNSCR 1267/1989 or 1988. Rule 6.3 states that the ATC shall adopt mechanisms to collect or solicit information from relevant government agencies and other sources in order to identify targets for designation.

29. *6.1(c)* – met. Rule 6.3 of the ATA IRR states the threshold for proposing names for inclusion under UNSCR 1267/1989 or 1988, or designating under UNSCR 1373, is “probable cause”. ‘Probable cause’ is defined as “a reasonable ground of suspicion supported by circumstances warranting a cautious person to believe that the proposed designee meets the requirements for designation”. This is not dependent upon the pendency of any criminal proceeding against the proposed designee.

30. *6.1(d)* – met. Rule 6.8 of the ATA IRR requires proposals for designations to be in accordance with the requirements and procedures of the UNSC. This covers the requirement to use standard forms as adopted by the relevant UNSCR 1267/1989 or 1988 Committee.

31. *6.1(e)* – met. Rule 6.8 of the ATA IRR and the *Internal Guidelines for Designation* (s.4 and 12) include the requirements for providing information, in line with c.6.1(e). This includes providing sufficient information to allow for accurate and positive identification of the proposed designee, and to the extent possible, the information required to issue a Special Notice. This also requires a detailed statement of case which is releasable upon request unless considered as confidential, and for UNSCR 1267/1989 to specify whether status as the designating state may be made known.

32. **Criterion 6.2** is met.

33. *6.2(a)* – met. For UNSCR 1373 designations, s.25 of the ATA and Rule 6.3(a) of its IRR state that the ATC may designate an individual, groups of persons, organisation or association, whether domestic or foreign, as a terrorist (individual or entity).

34. *6.2(b)* – met. Rule 6.3 of the ATA IRR states that the ATC shall adopt mechanisms to collect or solicit information from relevant government agencies and other sources to identify targets for designation under UNSCR 1373. This includes on request from foreign or supra-national jurisdictions. The *Internal Guidelines for Designation* set out the ATC’s procedures for identifying persons or entities for designation, including ensuring there is sufficient information to identify the proposed designee, and credible information to establish the criteria for designation is met. This includes through consultation with other relevant agencies.

35. *6.2(c)* – met. Section 25 of the ATA and Rule 6.2 of its IRR, state that a request for designation by other jurisdictions or supranational jurisdictions may be adopted by the ATC after determination that

it meets the criteria for designation under UNSCR 1373. The Internal Guidelines for Designation set out the procedures for request or proposals by a foreign or supranational jurisdiction.

36. The requests are coursed through the Department of Foreign Affairs (DFA) which refers the request to the ATC, who shall immediately refer it to the National Intelligence Coordinating Agency (NICA). The NICA conducts a preliminary evaluation process within ten days from receipt of the request. The requirement that any request is immediately referred from the DFA to the ATC, and that the preliminary evaluation be completed within ten working days from receipt (or the receipt of complete information and documents from the requesting jurisdiction) meets the requirement that the determination be made promptly.

37. 6.2(d) – met. The threshold for designating under UNSCR 1373 is “probable cause”. Rule 6.3 of the ATA IRR defines ‘probable cause’ as “a reasonable ground of suspicion supported by circumstances warranting a cautious person to believe that the proposed designee meets the requirements for designation”. Rule 6.4 states this is not dependent upon the pendency of any criminal proceeding against the proposed designee.

38. 6.2(e) – met. Section 25 of the ATA states that assets of a designated individual or entity shall be subject to the authority of the AMLC to freeze pursuant to s. 11 of the AMLA. The Internal Guidelines for Designation (s.12) states that the AMLC may request foreign or supranational jurisdictions to give effect to freezing actions pursuant to UNSCR 1373. It states that the ATC shall provide as much identifying information, and specific information supporting the designation, as when requesting to give effect to freezing actions taken in the Philippines.

39. **Criterion 6.3** is met.

40. 6.3(a) – met. Rule 6.3 of the ATA IRR states the ATC shall adopt mechanisms to collect or solicit information from relevant government agencies and other sources in order to identify targets for designation. The relevant mechanisms are then set out in the Internal Guidelines for Designation. This includes (s.5) enabling the ATC to consult with other relevant agencies to obtain additional information.

41. 6.3(b) – met. The MER identified it was not possible to operate *ex parte* against individuals or entities. Since the MER, the Philippines has implemented the following provisions which enable designations to be made *ex parte* and designated persons and entities are not notified in advance:

- For UNSCR 1373 designations, s. 25 of the ATA and Rule 6.2 and 6.3 of its IRR, state that the ATC may designate an individual, group of persons, organization, or association as a terrorist. Rule 6.6 of the ATA IRR states that the designation shall be immediately executory and shall be valid from the date of publication of the corresponding ATC resolution.
- For UNSCR 1267/1989 and 1988 designations, section 25 of the ATA and Rule 6.1 of its IRR, state that the ATC shall automatically adopt the UNSC Consolidated List of terrorist individuals, groups of persons, organizations or associations. Rule 6.6 of the ATA IRR states the designation shall be effective until the designated individual or entity has been removed from the UNSC Consolidated List.
- Rule 6.4 of the ATA IRR states that all designations shall not be dependent upon the pendency of any criminal proceeding against the proposed designee. As noted in the Internal Guidelines for Designation (s.8), the electronic publication of the ATC Resolution shall serve as notice to the designee as to the fact of designation.

42. **Criterion 6.4** is met. The AMLC is authorised to issue an order to freeze without delay (under the TFPSA) in relation to persons or entities designated under the ATA. The MER identified that in some circumstances, such as over a weekend, the requirement to freeze may not take effect without delay. These practices have now been updated in the new Internal Guidelines for Designation.

43. For UNSCR 1267/1989 or 1988 designations, the Internal Guidelines (s.2) state that the ATC shall subscribe to the official UNSC electronic mailing list and publish updates on the ATC website and in the official gazette within one day from UNSC publication. The Philippines advise that this means within 24 hours. This meets the requirement that TFS take effect, ideally, within a matter of hours from designation under the relevant UNSCR.

44. For UNSCR 1373 designations, the Internal Guidelines (s.11) state that the designation list shall be updated within the day of designation by the ATC. The Philippines advises this means within one day from receipt (i.e. the next calendar day). The obligation (s.13) to implement a freeze arises from the time of publication, and all persons must implement the freeze within a matter of hours from this time.

45. **Criterion 6.5** is *mostly met*.

46. 6.5(a) – met. As identified in the MER, Rule 8 of the TFPSA IRR creates an enforceable prohibition on all natural and legal persons from ‘dealing’ with the property or funds of a designated person. ‘Dealing’ is defined comprehensively at Rule 3.a.4 of the IRR. In addition, section 16 of the TFPSA and Rule 16 of its IRR require covered persons or relevant government agencies to freeze without delay, the funds or other assets of designated persons and entities upon receipt of a freeze order.

47. 6.5(b) – met. The freezing obligations under the TFPSA and its IRR, and ARI-4 2020 (as amended by ARI-2 2021) extend to: (i) all funds or other assets that are owned or controlled by the designated person or entity, and not just those that can be tied to a particular terrorist act, plot or threat; (ii) those funds or other assets that are wholly or jointly owned or controlled, directly or indirectly, by designated persons or entities; and (iii) the funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons or entities, as well as (iv) funds or other assets of persons and entities acting on behalf of, or at the direction of, designated persons or entities.

48. 6.5(c) – mostly met. The TFPSA (s.8) and Rule 8(a) of its IRR include prohibitions largely in line with c.6.5(c). However, the prohibition does not extend to a situation where property, funds, etc. are made available to an entity owned or controlled, directly or indirectly, by a designated person or entity where it is *not* for the benefit of the designated person or entity. Similarly, the prohibition does not extend to property, funds made available to a person or entity acting on behalf of, or at the direction of a designated person or entity, where it is not for the benefit of the designated person or entity.

49. 6.5(d) – mostly met. The MER did not identify a deficiency in relation to c.6.5(d), but the mechanisms for communicating designations have been amended since the MER:

- Rule 6.5 of the ATA IRR states that the ATC shall adopt a mechanism for immediately communicating designations to the public, financial sector and DNFBPs. A list of designated persons or entities shall be published in/posted on the online official gazette and the official website of the ATC.
- For UNSCR 1267/1989 or 1988 designations, Rule 6.5 of the ATA IRR states that a link to the specific list shall be provided on the ATC website. The AMLC also publishes UNSCR 1267/1989 and 1988 updates on its website. There is no dissemination by email or other messaging sent out to covered persons when designation lists are updated.
- For UNSCR 1373 designations, the Internal Guidelines for Designation (s.11) states that NICA will update the Designation list in the online Official Gazette and official website of the ATC within the day of designation. It states it shall be sufficient that a link to the specific list is provided for in the online Official Gazette and official website of the ATC. However, if the subject is a Filipino individual, organization or entity residing or with known residence in the Philippines, other identifier information and details of the designation, shall also be published. The AMLC also publishes UNSCR 1373 designations on its website. There is no dissemination

by email or other messaging sent out to covered persons when the ATC designates pursuant to UNSCR 1373.

50. Guidance to covered persons has been provided in ARI-4 2020 (as amended by ARI-2 2021). Chapter 2 sets out the legal basis, types of TFS and freeze orders, and includes links to designation lists on the AMLC website. Chapter 3 sets out the freezing obligations and Chapter 4 explains filing report obligations.

51. 6.5(e) – met. Rule 16(c) of the TFPISA IRR holds that within 24 hours, covered persons must submit by personal delivery a detailed written return specifying assets frozen or actions taken in compliance with the freeze order. Rule 16(d) of the TFPISA IRR also requires covered persons to report any and all attempted dealings with regards to the frozen property or funds within 24 hours from such attempt. In addition, real estate developers and brokers have been included as covered persons through the 2021 AMLA amendments.

52. 6.5(f) – met. While the MER did not identify a deficiency in relation to c.6.5(f), the relevant legal framework has partly changed since the MER. The measures to protect the rights of *bona fide* third parties are included under Rule 11(b) of the TFPISA IRR and Rule 18.8 of the newly implemented ATA IRR.

53. **Criterion 6.6** is *mostly met*.

54. 6.6(a) – met. The MER did not identify a specific deficiency in relation to c.6.6(a), but part of the relevant legal framework has changed since the MER. The procedures to submit de-listing requests to the appropriate UNSC Committee are set out in the IRR (Rule 23(b to d)) and the ATA IRR (Rule 6.9).

55. 6.6(b) – met. Rule 6.9 of the ATA IRR states a designated party or its assigns or successors-in-interest may file a verified request for de-listing within fifteen (15) days of publication. Further requests may be filed as often as the grounds exist, but not within six months from the time of denial of a prior request. The Internal Guidelines for Designation (s.19) sets out the review process by the ATC for requests by the designee.

56. Additionally, Rule 6.7 states that the ATC shall conduct a review every three years to determine if the basis for designation under UNSCR 1373 still exists. The Internal Guidelines (s.21) sets out the review process for the three-yearly review, which is undertaken by DOJ, with the assistance of the ATC. The Internal Guidelines also state (s.15) that a sanctions freeze order shall be lifted after a three yearly review determines the grounds for designation no longer exists, and the ATC has delisted the designee.

57. 6.6(c) – met. In addition to the three-yearly review undertaken by DOJ (as per c.6.6(b) above), the Internal Guidelines for Designation (s.20) state that an aggrieved party to a designation pursuant to UNSCR 1373 may avail of the appropriate remedy as provided under the Rules of Court.

58. 6.6(d) to (f) – met. While no specific deficiency was identified in relation to these sub-criteria, part of the relevant legal framework in the Philippines has changed since the MER. The existing provisions of Rule 23(a) and (b) of the TFPISA IRR (as identified in the MER) and Rule 6.9 and 8.11 of the new ATA IRR are in line with the requirements of c.6.6(d - f). These contain procedures to facilitate review or submit a de-listing petition of the relevant UNSCR designation, or upon verification by the AMLC, for lifting a sanctions freeze on the basis of mistaken identity. For covered persons, ARI-4 2020, as amended, mirrors the provisions of the ATA IRR and provides guidance for covered persons, including on their obligations to respect an unfreezing action.

59. The TFPISA is publicly available in the online official gazette and on the AMLC website and includes contact details for Office of Ombudsman and Focal Point. ARI-4 2020 (as amended by ARI-2

2021) is published on the AMLC website, and includes links to relevant UN webpages and contact details.

60. 6.6(g) – mostly met. Rule 23(e) of the TFPISA IRR and Rule 6.10 of the ATA IRR set out procedures for communicating de-listings and unfreezings to covered persons, immediately upon taking such actions. For covered persons, ARI-4 2020 (as amended by ARI-2 2021) includes guidance on their obligations to respect a de-listing or unfreezing action. While these mechanisms are in place, there is no dissemination by email or other messaging to covered persons when de-listings or unfreezings occur.

61. **Criterion 6.7** is *met* (as per the MER). The analysis in the MER and available material supports the criterion rating. The existing provisions of the TFPISA and its IRR (as identified in the MER) contain provisions for humanitarian exemptions and procedures to access frozen funds or assets for monthly family needs in keeping with UNSCR 1452. Rule 8.12 of the new ATA IRR states a person whose property or funds have been frozen under any freeze order may, upon a verified request before the ATC, withdraw such sums as the ATC determines to be reasonably necessary for monthly family needs and sustenance. This includes for the services of counsel and the medical needs of such person and his/her immediate family.

#### *Weighting and Conclusion*

62. Amended legal and regulatory measures, mechanisms and processes comprehensively address most of the shortcomings in the Philippines' ability to implement TFS relating to terrorism and TF. A remaining deficiency is that the prohibitions do not explicitly extend to persons and entities acting on behalf of, or at the direction of, designated persons or entities in a situation where the funds or property are not for the benefit of the designated person or entity. There are also minor deficiencies in the mechanisms to communicate listings, de-listings and unfreezings. These remaining deficiencies are considered minor, given the scope of the recommendation, the risks identified and the context of the Philippines. **Recommendation 6 is re-rated Largely Compliant.**

#### *Recommendation 7 (Originally rated NC)*

63. The MER identified R.7 as non-compliant. Since the MER, the Philippines has updated the AMLA, as amended by RA.11521, to implement TFS relating to proliferation of weapons of mass destruction (WMD) and its financing (PF).

64. **Criterion 7.1** is *met*. The amendments to the AMLA, and its 2018 IRR, as amended by *ARI No.1, series of 2021* (ARI-1 2021), declare and authorise the AMLC to implement TFS in relation to proliferation of WMD. The following provisions have been implemented:

- The AMLA (s.7) and Rule 6 of its 2018 IRR sets out that a function of the AMLC is to implement TFS in relation to proliferation of WMD. This includes *ex parte* freeze, without delay, against all funds and other assets that are owned and controlled, directly or indirectly, including funds and assets derived or generated therefrom, by individuals or entities designated and listed under UNSCR 1718 of 2006 and 2231 of 2015 and their successor resolutions.
- Consequential amendments to the 2018 IRR include:
  - The AMLC shall adopt a mechanism for immediately communicating designations and provide clear guidance, to the covered persons and other persons or entities regarding TFS obligations relating to proliferation.
  - The AMLC shall publish and/or post a link to the specific list of designated persons or entities under UNSCR 1718 (2006) and 2231 (2015) and their successor resolutions in the official website of the AMLC.

- Covered persons (FIs and DNFBPs) must, within a matter of hours from publication, comply with the *ex parte* freeze provisions relating to proliferation of WMD.
- Covered persons must, within 24 hours from freezing, report to the AMLC any assets frozen or actions taken in compliance with prohibition requirements of the relevant UNSC Resolutions, including attempted transactions.
- Pursuant to the existing provisions in the 2018 IRR, the AMLC is now able to exercise AML/CFT supervision for monitoring and ensuring compliance with TFS relating to proliferation. The AMLC is also able to impose administrative sanctions for the violations of TFS relating to proliferation of WMD and PF.
- Procedures for de-listing, unfreezing funds or assets of persons or entities with the same or similar name, authorising access to funds or other assets in accordance with exemption conditions, and mechanisms for communicating de-listings and unfreezing action.

65. In accordance with the freeze order provisions of section 11 and 22 of the TFPSA, the AMLC has also issued the following:

- *ARI No.4, series of 2020* (ARI-4 2020), as amended by *ARI No.2, series of 2021* (ARI-2 2021), include persons or entities designated under 1718 (2006) or 2231 (2015) as a designated person. It also requires all persons and entities to *ex parte* freeze within a matter of hours from the time that the designation and freeze order is published on the AMLC website. It also states the AMLC shall issue TFS to implement UNSCR 1718 (2006), 2231 (2015), successor resolutions and other resolutions relating to proliferation of WMD and PF.
- *AMLC Resolution No.30, series of 2021* (AMLC Resolution No. 30), on TFS related to proliferation of WMD and PF - This provides a standing *ex parte* freeze order without delay. This directs all persons, including private individuals, and entities, such as, but not limited to covered persons and concerned government agencies, to freeze the properties or funds of designated persons or entities designated under relevant UNSC Resolutions.

66. In addition to these updated measures in the AMLA, its IRR and pursuant to the TFPSA, the Department of Trade and Industry issued *Memorandum Circular No.21-06* on 28 January 2021. Under s.19(a)(3) of the *Strategic Trade Management Act*, it is an offence to wilfully and intentionally engage (without authorisation) in brokering activities, making available or providing funds, to facilitate the movement/flow of any strategic goods and/or related services if parties involved are designated under relevant UNSC Resolutions.

67. **Criterion 7.2** is *mostly met*. Since the MER the Philippines has issued legal authorities, responsibilities, standards and procedures largely in keeping with the FATF standards. Section 7 of the AMLA and Rule 6 of its 2018 IRR states that a function of the AMLC is to implement TFS in relation to WMD and PF.

68. 7.2(a) – met. The AMLC’s functions include to *ex parte* freeze, without delay, against all funds and other assets that are owned and controlled, directly or indirectly, including funds and assets derived or generated therefrom, by individuals or entities designated and listed under UNSCR 1718 of 2006 and 2231 of 2015 and their successor resolutions. ARI-4 2020 requires all persons and entities, within a matter of hours from publication, to comply with the *ex parte* freeze provisions relating to WMD and PF.

69. 7.2(b) – met. The freezing obligations extend to fund and assets in line with c.7.2(b), as per the 2018 IRR, ARI-4 2020 and AMLC Resolution No. 30.

70. 7.2(c) – met. Rule 10(5) of the 2018 IRR (as amended by ARI-1 2021) states that the targeted financial sanctions “prohibit any person or entity from making any funds or other assets available for the benefit of designated persons or entities, unless licensed, authorized or otherwise notified in accordance with the relevant UNSC Resolutions”. The standing freeze order applies to all persons, including private individuals, and entities, such as, but not limited to covered persons and concerned government agencies from dealing with properties or funds of designated persons or entities (AMLC Resolution No. 30).

71. 7.2(d) – mostly met. Rule 10(6) of the 2018 IRR, (as amended by ARI-1 2021) states that the AMLC shall adopt a mechanism for immediately communicating designations and provide clear guidance, to the covered persons and other persons or entities regarding TFS obligations relating to WMD and PF. It states the AMLC shall publish and/or post a link to the specific list of designated persons or entities under UNSC Resolution Nos. 1718 (2006) and 2231 (2015) and their successor resolutions in the official website of the AMLC.

72. In practice, links and updates to the UNSC lists are posted both to the AMLC website, and also in the AMLC portal for covered persons. The Philippines advises this is done in a matter of hours from receipt of the update. The Philippines notes that all registered covered persons access the AMLC portal on a daily/frequent basis as part of their transaction monitoring and submission of STR/CTRs. The Philippines does not currently send out email or other messaging to covered persons immediately upon designation updates, which means some covered persons may not review or receive this information immediately.

73. In terms of guidance, Rule 10(8) of the 2018 IRR (as amended by ARI-1 2021) states that the AMLC shall update or formulate the TFS guidelines to assist covered persons and other persons in implementing TFS relating to proliferation of WMD and PF. ARI-4 2020 (as amended by ARI-2 2021) contains guidance relating to subjects of TFS relating to WMD and PF, name and target matches, freezing and reporting to AMLC.

74. 7.2(e) – met. Covered persons must, within 24 hours from freezing, report to the AMLC any assets frozen or actions taken in compliance with prohibition requirements of the relevant UNSCRs, including attempted transactions.

75. 7.2(f) – met. Rule 10(7) of the 2018 IRR (as amended by ARI-1 2021) states that no administrative, criminal, or civil proceedings shall lie against any person or entity for acting in good faith when implementing TFS as provided under pertinent UNSC Resolutions. The same provisions are also included in ARI-4 2020, Chapter 7, s.30 (as amended by ARI-2 2021).

76. **Criterion 7.3** is met. With the amendments to the AMLA and its IRR, covered persons are now subject to monitoring and supervision of TFS relating to WMD and PF through the same mechanisms as other AML/CFT requirements. Rule 7(1.1) of the 2018 IRR states that the AMLC shall exercise general AML/CFT supervision over all covered persons. Rule 7(2) states the AMLC shall be assisted by other supervisory agencies (i.e. BSP, SEC, IC, PAGCOR, CEZA and APECO) in relation to their respective sectors. The AMLC is the supervisor of all DNFBPs except casinos. The AMLC and other supervisory agencies have authority to implement a supervisory programme to ensure compliance with TFS relating to WMD and PF, including imposing sanctions for non-compliance (see R.26, R.27 and R.35 of the MER).

77. **Criterion 7.4** is mostly met.

78. 7.4(a) – met. Provisions enabling listed persons and entities to petition a request for de-listing have been set out in the 2018 IRR (as amended by ARI-1 2021). As per Rule 10(6.1.3), the petition for de-listing may also be filed directly by the designated person pursuant to the rules established by the appropriate UNSCR Committee. The same provisions are also included in ARI-4 2020, Chapter 7, section 29 (as amended by ARI-2 2021).

79. 7.4(b) – mostly met. Rule 10(5.7) of the 2018 IRR (as amended by ARI-1 2021) states any person whose property or funds have been subject of the TFS by reason of having a similar name as the subject of designation, may apply for the lifting of the TFS with the AMLC. This may be applied for by submitting relevant government-issued identification documents or other relevant documents that would show the true identity of the aggrieved party. The same provisions are also included in ARI-4 2020, Chapter 7, s.26 (as amended by ARI-2 2021). While the steps to apply for lifting of TFS on the basis of mistaken identity are not separately published anywhere for an aggrieved party, ARI-1 2021 and ARI-4 2020 are publicly available documents on the AMLC website.

80. 7.4(c) – met. The 2018 IRR (as amended by ARI-1 2021) includes provisions authorising access to funds or other assets, where countries have determined the exemption conditions set out in UNSCR 1718 and 2231 are met, in accordance with the procedures set out in those resolutions.

81. 7.4(d) – partly met. Rule 10(6.2) and 10(6.3.2) of the 2018 IRR (as amended by ARI-1 2021) and ARI-4 2020 (as amended), require there to be mechanisms for communicating de-listings and unfreezing action. Despite the above provisions in the 2018 IRR, the Philippines has not documented its mechanism for communicating de-listings and unfreezings to covered persons immediately upon taking such actions. No guidance has been issued to covered or other persons regarding what they have to do in the event they hold funds or other assets of a person or entity that is delisted. The Philippines advises communication and guidance would individually be issued to any covered or other person that was holding targeted funds or other assets on their obligations to respect a de-listing or unfreezing action.

82. **Criterion 7.5 is met.**

83. 7.5(a) – met. Rule 10(5.4.2) of the 2018 IRR (as amended by ARI-1 2021) allows addition to frozen accounts of interest or other earnings due on those accounts or payments due under contracts, agreements or obligations that arose prior to the date on which those accounts became subject to the provisions of said resolution. This is provided that any such interest, other earnings and payments continue to be subject to these provisions and are frozen. The same provisions are included in ARI-4 2020, Chapter 7, s.23.2 (as amended by ARI-2 2021).

84. 7.5(b) – met. Rule 10(5.5.1) of the 2018 IRR (as amended by ARI-1 2021) states that designated persons or entities may apply to the AMLC for an authorization to make payment due under a contract entered into prior to the listing of such person or entity. Rule 10 (5.5.2) of the 2018 IRR states that the AMLC may grant an authorisation to the designated or entity subject to conditions in line with c.7.5(b).

### *Weighting and Conclusion*

85. Amended legal and regulatory measures, mechanisms and processes comprehensively address most of the shortcomings in the Philippines’ ability to implement TFS relating to WMD and PF. Remaining deficiencies are that no procedures have been specifically published for an aggrieved party setting out the steps to apply for lifting of TFS on the basis of mistaken identity. There are also deficiencies in the mechanisms to communicate listings, de-listings and unfreezings. Nor has guidance been issued yet to FIs, DNFBPs or other persons that may be holding targeted funds or other assets, on their obligations to respect a de-listing or unfreezing action. These remaining deficiencies are considered minor overall, given the scope of the recommendation and the context of the Philippines. **Recommendation 7 is re-rated Largely Compliant.**

### *Recommendation 22 (Originally rated PC)*

86. In the 2019 MER, Philippines was rated partially compliant for R.22. The deficiencies were the discrepancy with the coverage of CDD by casinos and record keeping (noting AMLA only covers cash transactions of casinos), and scope deficiencies in relation to third party reliance. Other shortcomings included the exclusion of the real estate sector from AML/CFT obligations, inconsistency in the definition of lawyers/accountants as covered persons with FATF standards and the absence of

requirements for DNFBPs to apply additional measures to family and associate of politically exposed persons (PEPs). Minor deficiencies in R.12 are applicable to Bangko Sentral ng Pilipinas (BSP)-regulated trust entities.

87. **Criterion 22.1** is *mostly met*.

88. *22.1(a)* – partly met. Offshore gaming operators, known as Philippine offshore gaming operators (POGOs), were added as covered person under s.3(a)(10) of AMLA. The extension of detailed AML/CFT obligations to the offshore gaming sector is significant. Since the ME onsite the Philippines online casino sector, has expanded greatly, with only a downturn during the initial period of COVID-19. POGOs offer virtual gaming services solely to foreign customers with no in-person contact.

89. At the time of the onsite, POGOs were covered by the AMLA, but detailed AML/CFT obligations had not been issued by way of regulation. The previous PAGCOR enforceable CDD guidelines (2018) issued by the regulator Philippine Amusement and Gaming Corporation (PAGCOR) related only to land-based casinos. PAGCOR issued additional CDD guidelines for POGOs in 2019 (*Regulatory Order No. RO-2019-02-003*) to cover all casinos (land-based, virtual (POGOs) and ship-based).

90. There is a concern (as identified in the MER) regarding the threshold to conduct CDD for ‘uncarded’ (occasional) customers that are not joining the casino membership programme or creating an online gaming account. The threshold is 500,000 PHP (approx. USD 10,300) or its equivalent in foreign currency which is higher than the 3,000 USD/EUR threshold under c.22.1(a).

91. There is also an additional deficiency identified in MER: the AMLA and the CIRR set out the definition of casinos as covered persons only in relation to cash transactions (s.3 (a)(8) of AMLA), despite further enforceable CDD obligations covering the fuller range of situations being set out in the AML/CFT Guidelines and the CIRR. This definition remains a minor concern as it may give rise for legal dispute in the future over serious enforcement action taken by a regulator based on apparently contradictory definitions of which casino business may be regulated for AML/CFT. Related to this, POGOs are separately defined as covered persons in the AMLA, but captured in the CIRR and AML/CFT Guidelines as casinos (virtual).

92. *22.1(b)* – met. The extension of AML/CFT obligations to real estate developers and brokers through amendments to AMLA in 2021 is significant, given the risks and context highlighted in the MER. The AMLA amendments extends the CDD requirements applicable to other DNFBPs to the real estate sector.

93. *22.1(c)* – met. The MER notes that the threshold for the coverage of dealers in precious metals and stones (DPMS) is ambiguous. This is due to the AMLA (s 3(a)(4)&(5)) prescribing a threshold of PHP 1,000,000 (approx. USD 21,000) while the 2018 IRR (Rule 18, Section 1.2) requires all covered persons, including DPMS, to conduct CDD when carrying out occasional transactions above PHP 100,000 (approx. USD 2,000). The Philippines has confirmed the lower threshold is legally enforceable. The higher threshold prescribes the amount of cash that triggers an obligation to report a covered transaction to the AMLC (as per s 9(c) of AMLA).

94. *22.1(d) and (e)* – mostly met. The definition of covered persons under section 3(a)(7) of AMLA mirrors c.22.1(d), with only the activity of “buying and selling of real estate” not included. In case of lawyers and accountants who perform services of “buying and selling of real estate”, they need to register as a real estate broker according to S.29 of Republic Act No. 9646 (*Real Estate Service Act of the Philippines*), thus they are required to comply with AML/CFT requirements as real estate brokers.

95. However, the definition of covered persons in section 3 of AMLA excludes lawyers and accountants “acting as independent legal professionals acting in relation information concerning their clients or where disclosure of information would compromise client confidences or the attorney-client

relationship” may lead to some lawyers/accountants being not subject to AML/CFT requirements. There have been no changes to the legislative framework since the MER.

96. **Criterion 22.2** is *mostly met*. The scope of covered persons has changed by the AMLA amendments in 2021. POGOs and real estate developers and brokers now have to comply with record keeping requirements in the CIRR for the casino sector and the IRR for real estate sector. The exclusion under S.3 of AMLA, as identified in the MER, may lead to some lawyers/accountants being not subject to the full record keeping obligations.

97. **Criterion 22.3** is *mostly met*. The MER identified there was no requirement for PEPs to be considered high risk by casino operators. The PAGCOR CDD Guidelines for land-based casinos (s 19) and CDD Guidelines for POGOs (s 17) require casinos to conduct EDD on PEPs, and they also need senior management approval before establishing a business relationship with a PEP. However, these guidelines do not cover internet-based casinos (other than POGOs which form the majority of internet-based casinos) and there are no specific provisions for these casinos under the PAGCOR AML/CFT Guidelines (2020).

98. For non-casino DNFBPs, the 2018 IRR has been amended through the ARI 1-2020, extending additional PEP requirements to immediate family members and close associates. The new requirements are in line with c.12.1 and c.12.2 (Rule 19, section 1, 1.2 – 1.3). The coverage of real estate developers and brokers extends the PEP requirements applicable to DNFBPs to the sector. The scope gap on casinos (as in c.22.1 (a)) and lawyers and accountants under S.3 of AMLA, as identified in the MER (as in c.22.1 (d)) remain as shortcomings for this criterion.

99. **Criterion 22.4** is *met*. The amendments to AMLA extended the new technologies requirements to real estate developers and brokers. Section 4 of the AML/CFT Guidelines for Casinos requires casinos to identify, assess and mitigate ML/TF risks that may arise from new business practices, services, technologies, and products.

100. **Criterion 22.5** is *mostly met*. The changes in the scope of coverage have extended the third party reliance requirements to POGOs and real estate developers and brokers.

101. For casinos, the MER identified issues related to outsourcing CDD obligations to counterparties, intermediaries or agents. This was considered to be broader than the exception for outsourcing and agency relationships under INR.17. The PAGCOR AML/CFT Guidelines (RO-2020-03-001) do not permit outsourcing arrangements for any casinos. Instead, revised third party reliance provisions are included at section 5.A and are aligned with R.17. Even though there is no explicit amendment to the CIRR (Section 21.D) or the PAGCOR CDD Guidelines (sections 22 to 24) permitting outsourcing, the AML/CFT Guidelines include a clause (s 18), which repeals, amends or modifies all rules and issuances which are inconsistent with the provisions of the Guidelines. The new AML/CFT Guidelines therefore repeal the earlier provisions related to outsourcing.

102. The scope gap on casinos (as in c.22.1(a)) and lawyers and accountants under S.3 of AMLA, as identified in the MER (as in c.22.1(d)) remain as shortcomings for this criterion.

### *Weighting and Conclusion*

103. Amendments to the AMLA and new regulatory instruments have addressed the majority of the deficiencies identified in the MER. However, minor deficiencies remain regarding casinos. The threshold for occasional transactions only impacts a small number of walk-in customers of land-based casinos at the time of this report, and is not weighted significantly in the analysis. Also, the scope gap in the definition on lawyers and accountants remains. ***Recommendation 22 is re-rated Largely Compliant.***

### *Recommendation 23 (Originally rated PC)*

104. In the 2019 MER, the Philippines was rated partially compliant for R.23. The deficiencies were the omission of tax crimes as predicate offences and attempted transactions subject to STRs (see R.20), the lack of coverage of real estate agents and scope deficiencies related to lawyers and accountants. In addition, there was an absence of supervisory measures imposed to casinos for high-risk countries that warranted attention by the FATF or by the supervisory authorities.

105. **Criterion 23.1** is *mostly met*. The Philippines has rectified the deficiencies by including tax crimes as predicate offences in the definition of ‘unlawful activity’ (s.3(i) of AMLA). Moreover, real estate developers and brokers are now included as covered persons through amendments to AMLA in 2021, and they are subject to STR requirements. The scope gap in relation to some lawyers and accountants under section 3 of AMLA, as identified in the MER, remains a deficiency.

106. **Criterion 23.2** is *mostly met*. The coverage of real estate developers and brokers has extended the internal controls requirements under the 2018 IRR and its amendments to the sector. The scope gap in relation to lawyers and accountants, as per the MER, remains.

107. **Criterion 23.3** is *mostly met*. The 2018 IRR requirements in relation to higher-risk countries were amended through the ARI 1-2020. The amended requirements under Rule 19, section 8 are aligned with R.19. However, it is not clear if casino supervisors have implemented the measures outlined at section 8.3 of Rule 9 of the IRR to ensure that casinos are advised of concerns about weaknesses in the AML/CFT systems of other countries. The scope gap in relation to real estate agents has been addressed, but the scope gap in relation to lawyers and accountants remains.

108. **Criterion 23.4** is *met*. The MER identified the lack of coverage of real estate brokers as a deficiency. This has been addressed through the coverage of real estate developers and brokers, which are now subject to tipping-off and confidentiality requirements.

### *Weighting and Conclusion*

109. The remaining shortcomings are the exclusion under section 3 of AMLA, as identified in the MER, which may lead to some lawyers and accountants being not subject to AML/CFT requirements, and the absence of supervisory measures imposed to casinos for high-risk countries that warrant attention by the FATF or by the supervisory authorities. Noting the change in context and materiality, the risks identified and the scope of the recommendation, these gaps are considered minor. **Recommendation 23 is re-rated Largely Compliant.**

### *Recommendation 24 (Originally rated PC)*

110. The MER identified various deficiencies in R.24, which included the Securities and Exchange Commission (SEC) not being able to provide access to beneficial ownership (BO) information. There was also no assessment of the ML/TF risks associated with the types of legal persons in the Philippines. There was also a lack of proportionate and dissuasive sanctions, and no mechanism to ensure nominee shares and nominee directors are not misused.

111. **Criterion 24.1** is *met*. The MER did not identify deficiencies under the criterion. Since the MER, the Philippines has issued the *Revised Corporation Code of the Philippines, RA.11232* (RCCP), requiring corporations to keep and carefully preserve their BO information.

112. **Criterion 24.2** is *met*. Since the MER, the Philippines has undertaken an assessment of the ML/TF risks associated with legal persons created in the Philippines. This covers all types of legal persons (and other business entities) created in the Philippines. It determines that illegal drugs, violations of e-commerce and fraud are the most common crimes involving legal persons. It assesses the overall ML risk of legal persons as medium-high. It determines the level of ML risk for corporations (stock and non-stock) to be moderately higher, compared to partnerships (both general and limited) and in

particular compared to cooperatives that are rated only medium risk. In relation to TF, the risk is assessed higher for certain types of business (i.e. construction, petroleum/gas) and non-stock corporations. There are domestic, including regional considerations, and international aspects to the analysis.

113. **Criterion 24.3** is *met* (as per the MER). The analysis in the MER and available material support the criterion rating.

114. **Criterion 24.4** is *met* (as per the MER). The analysis in the MER and available material support the criterion rating.

115. **Criterion 24.5** is *mostly met* (as per the MER). The analysis in the MER and available material support the criterion rating. In relation to cooperatives, no information was provided for the MER on ensuring the Cooperative Development Authority (CDA) registry was updated on a timely basis, or on available penalties for failing to ensure information is accurate and updated.

116. **Criterion 24.6** is *mostly met*. Since the MER, significant improvements have been made to the three mechanisms set out in the criterion so that BO information (including effective control) of legal persons may be determined in a timely manner by competent authorities.

117. **24.6(a & b)** – *mostly met*. For all corporations (including associations registered with the SEC), the SEC has implemented new BO disclosure requirements. These have been implemented through memorandum circulars, which constitute enforceable means under the RCCP. The SEC has also implemented internal procedures for the sharing of BO information with domestic and foreign competent authorities. The relevant mechanisms are:

- *SEC Memorandum Circular (MC) No.15, series of 2019*, amends the earlier *SEC MC No.17, series of 2018*, in relation to beneficial ownership of domestic corporations. This expands the definition of beneficial owner to explicitly include any natural person who ultimately owns, controls or exercises effective control, as distinguished from the legal owners. The requirement to identify this person is also set out in a documented determination process that must be adhered to.
- *SEC MC No.15, series of 2019*, also states that corporations are required to take reasonable measures to obtain and hold up-to-date information on their beneficial owners (as defined), which must be disclosed ‘in a timely manner’ in their General Information Sheet (GIS). As noted in the MER, a GIS must be submitted to the SEC on an annual basis, and within seven days of any changes to the information contained within it.
- *SEC MC No.15, series of 2019*, also states the information on the GIS for any beneficial owners includes the full name, address, date of birth, nationality, tax identification number and percentage of ownership. While this information is not uploaded to the SEC’s publicly accessible electronic database, it shall be made accessible or available in a timely manner to competent authorities for law enforcement and other lawful purposes.
- *SEC MC No.30, series of 2021*, contains the same provisions as *SEC MC No.15* above, but in relation to beneficial ownership of foreign corporations.
- *SEC MC No.1, series of 2021*, states that, without prejudice to GIS requirements, a corporation’s BO information must be “accurate”, which means “it is correct in all its details”. It also states it must be ‘timely’, which means “updated within three days from the time the information becomes available, or reasonably expected to be available...”. This applies to both domestic and foreign corporations. This MC supplements the requirements of *SEC MC No.15, series of 2019* (for domestic corporations), and *SEC No.30, series of 2021* (for foreign corporations), to provide a clear obligation on corporations to maintain accurate and updated BO information.
- *SEC MC No 1, series of 2021*, also imposes mandatory disclosures on incorporators regarding whose behalf a registration is applied for. Likewise, all nominee incorporators, directors, trustees and stockholders applying for registration must disclose their nominators and

principals. The disclosure must occur within 30 days from receipt of the registration certificate. Similarly, this information must be disclosed for existing corporations if they become nominee directors, trustees and shareholders, and within 30 days. These disclosures are separate from the GIS.

- *SEC Guidelines on the safekeeping of beneficial ownership information*, published January 2021 – The SEC have implemented procedures on the safekeeping and sharing of BO information (held on a corporation’s GIS) with domestic and foreign competent authorities. This states that competent authorities in the Philippines with existing data sharing agreements or MOAs with the SEC may request a copy of the BO declaration page from the GIS. Requests shall be immediately acted on from receipt, which meets the timeliness requirement. The SEC has 35 MOAs (including with AMLC and BSP) covering a total of 60 competent authorities and is proactively reaching out to other competent authorities to arrange further MOAs. For competent authorities without a MOA, one will need to be entered into before information can be provided. For these competent authorities, access is unlikely to be timely.

118. The new BO provisions introduced by SEC for corporations since the MER have significantly improved access to BO information by competent authorities in a timely manner. Corporations account for approximately 84% of the legal persons registered with SEC, with general partnerships approximately 14% and limited partnerships less than 2%. As per the risk assessment on legal persons, corporations are also assessed higher risk than partnerships and cooperatives. These new BO provisions are given significant weighting for c.24.6. No new provisions have been implemented for partnerships (by SEC) or cooperatives (by CDA) since the MER.

119. 24.6 (c) – mostly met. In addition to these new measures implemented by the SEC for corporations, competent authorities are also able to determine BO information from existing information held by FIs and DNFBPs. This applies to any type of legal person that is a customer of a covered person. Since the MER, there have also been improvements made to these provisions. Firstly, the scope gaps for coverage of financing and lending companies, real estate agents and remaining casino sectors have been addressed. Secondly, the AMLC has made improvements to streamline its coordination and dissemination of BO information for LEAs. This includes through direct requests to the AMLC, Targeted Intelligence Packaging (TIP) Workshops and an information sharing portal maintained by the AMLC (for LEAs and other competent authorities). These are significant improvements. However, the underlying deficiency identified in the MER remains that LEAs, with the exception of the AMLC, are not able to access BO information directly from banks. Therefore, the concern identified in the MER relating to the timeliness of access to BO information still exists. This is not materially significant overall (when considered alongside the new BO provisions that have been implemented for corporations by the SEC).

120. **Criterion 24.7** is *mostly met*. The RCCP (section 73(b)) requires corporations to keep and carefully preserve at its principal office, the current ownership structure and voting rights, including lists of stockholders or members, group structures, intra-group relations, ownership data and BO information. As outlined in c.24.6 above, various requirements have also been implemented by SEC MC No.15, series of 2019, SEC MC No. 1, series of 2021, and SEC MC. No. 30, series of 2021 to ensure BO information is as accurate and up-to-date as possible. This includes a requirement that a GIS must be submitted to the SEC within seven days of any changes to the information contained within it. There have been no changes for partnerships or cooperatives since the MER.

121. For covered persons, additional requirements have been included in the 2018 IRR since the MER. This has been updated to state that covered persons shall also ensure that BO information is updated in case of any changes (Rule 18.3 of the 2018 IRR, as amended by ARI-1 2020). In undertaking CDD for corporations, covered persons are now also able to leverage from the new SEC provisions and obtain copies of the GIS containing BO information.

122. **Criterion 24.8** is *met* (as per the MER). The analysis in the MER and available material support the criterion rating.

123. **Criterion 24.9** is *met* (as per the MER). The analysis in the MER and available material support the criterion rating.

124. **Criterion 24.10** is *partly met*. The new BO provisions introduced for corporations since the MER have significantly improved timely access to BO information, particularly for LEAs. However, for those competent authorities, including LEAs, that do not yet have MOAs with the SEC, access to BO information is not timely. In relation to access to basic information, the SEC i-view system is not currently operational, although information may still be requested through the SEC Express online system. This delays access to the basic information of legal persons registered with SEC.

125. Steps have also been taken to improve competent authorities, particularly LEAs, obtaining basic and BO information held by FIs and DNFBPs. As noted in c.24.6, the AMLC have made improvements to streamline coordination and dissemination of information for LEAs. However, the concern identified in the MER with LEAs timely access to the BO information held by banks remains. This is due to LEAs, other than AMLC, only having access to such records through the AMLC.

126. **Criterion 24.11** is *met*. Section 3 of SEC MC. No.1, series of 2021, explicitly prohibits bearer shares and bearer share warrants. It states that no person or entity shall issue, sell or offer for sale or distribution bearer shares and bearer share warrants. S.4 of the MC removes the ability of corporations to issue share warrants that can function as negotiable bearer instruments. The section is explicit that no transfer or assignment of ownership or rights over shares of stock shall be effective unless the name of the transferee/purchaser/assignee is properly identified, and the transaction is recorded. SEC Memorandums are enforceable. Pursuant to the RCCP, criminal or administrative sanctions may be imposed for violations.

127. **Criterion 24.12** is *met*. Sections 6, 7 and 8 of SEC MC. No. 1, series of 2021, impose mandatory disclosures on incorporators regarding whose behalf a registration is applied for. Likewise, all nominee incorporators, directors, trustees and stockholders applying for registration must disclose their nominators and principals. The disclosure must occur within 30 days from receipt of the registration certificate. Similarly, this information must be disclosed for existing corporations if they become nominee directors, trustees and shareholders, and within 30 days. These disclosures are separate from the GIS.

128. **Criterion 24.13** is *partly met* (as per the MER). Since the MER the RCCP has replaced the Corporations Code. There have been no changes to the sanctions under Securities Regulation Code and the Cooperative Code since the MER. The updated sanctions provisions under the RCCP and RPAC (for covered persons) do not have sufficient weighting to counter the deficiencies in the Securities Regulation Code and the Cooperative Code (as identified in the MER).

129. **Criterion 24.14** is *mostly met*. The new BO provisions introduced for corporations since the MER have significantly improved access to BO information by foreign competent authorities. It enables them to coordinate directly with the SEC to obtain the BO information (now included on the GIS), although a response is not rapid. In relation to basic information, and as noted in c.24.10, the SEC i-view system is not currently operational, although information may still be requested through the SEC Express online system. This delays timely access to basic information of legal persons registered with SEC.

130. In relation to information held by banks, the same deficiencies in c.24.6 and c.24.10 as identified in the MER are relevant here. With only the AMLC able to obtain BO information from banks, and able to share this with foreign competent authorities, this means that domestic LEAs may not be able to directly assist their foreign counterparts. This may impact on the Philippines' ability to rapidly provide international cooperation with regards to some BO information. However, when considered alongside the new BO provisions implemented for corporations, this concern is not materially significant overall.

131. **Criterion 24.15** is *mostly met*. Rule 32(2.4) of the 2018 IRR states that the AMLC, supervisory agencies, LEAs and other government agencies shall, as far as practicable, monitor and assess the quality, timeliness and usefulness of the assistance, cooperation or information obtained. This includes responses to requests for basic and BO information or requests made for assistance in locating beneficial owners residing abroad. The AMLC and the relevant agencies shall, whenever required, provide feedback to the requested parties, including foreign counterparts and non-counterparts, on the quality, timeliness and usefulness of the assistance, cooperation or information obtained.

132. The Philippines has provided examples of cases where the AMLC provided feedback (on the quality of assistance) received from foreign FIUs, including information on legal persons. The SEC also advise they monitor responses from foreign counterparts on requests for information. No information has been provided to show that the quality of assistance has been monitored by other supervisory agencies or LEAs in practice.

### *Weighting and Conclusion*

133. The new BO measures implemented by the SEC are generally comprehensive and for corporations, have addressed the majority of the shortcomings with R.24. These measures complement enhanced use of and expanded provisions in the AMLA and its IRR, by which competent authorities may obtain and share basic and BO information of legal persons held by FIs and DNFBPs. In addition, new mechanisms ensure nominee shares and nominee directors are not misused. However, there are various shortcomings that still remain with R.24. In relation to partnerships and cooperatives, no new provisions relating to BO information have been implemented since the MER. There are also shortcomings relating to the timeliness of access to information. This includes delays with access to basic information of legal persons registered with the SEC and a lack of timely access to BO information of corporations from SEC by those competent authorities without a MOA to do so. This also includes a lack of timely access by foreign or domestic competent authorities, particularly LEAs, to BO information held by banks, which must be directed through the AMLC. Lastly, limited evidence was given to demonstrate that the quality of assistance from other countries in response to request for BO information is monitored in practice. Noting the scope of the recommendation, the risks identified and the Philippines context, these gaps are considered minor overall. **Recommendation 24 is re-rated Largely Compliant.**

### **3.2. Brief overview of progress on other recommendations rated NC/PC**

134. **Recommendation 15 (rated PC)** – The Philippines has taken the following steps to address deficiencies identified in the 2020 FUR. These include:

- conducting a risk assessment on threats and vulnerabilities associated with virtual asset service providers (VASPs), with an expected release date in February 2021;
- amending the scope of covered VASP activities to include exchanges and transfers of virtual assets (VAs), and safekeeping and administration of VAs or instruments enabling control over VAs; and
- amending the wire transfer provisions applicable to VASPs to designate all VA transfer transactions as cross-border wire transfers.

135. **Recommendation 32 (rated PC)** – There are pending legislative amendments before the Philippine legislature to address deficiencies related to R.32. These include:

- improving the implementation of the existing cross-border declaration system, including authority to obtain further information from carriers in cases of a false declaration or a failure to declare;
- increasing penalties for violations of the declaration system; and
- authorising the Bureau of Customs to restrain currencies and bearer monetary instruments.

#### IV. CONCLUSION

136. The Philippines has made notable progress in addressing the technical compliance deficiencies identified in the MER. Based on the Philippines requests for re-ratings, Recommendations 4, 6, 7, 22, 23 and 24 have been re-rated to Largely Compliant.

137. Overall, in light of the progress made since its MER was adopted, the Philippines' technical compliance with the FATF Recommendations is as follows as of the reporting date 1 February 2021:

R.	Rating	R.	Rating
1	LC (2019 MER)	21	C (2019 MER)
2	C (2019 MER)	22	PC (2019 MER) ↑ LC (2021 Feb FUR)
3	LC (2019 MER)	23	PC (2019 MER) ↑ LC (2021 Feb FUR)
4	PC (2019 MER) ↑ LC (2021 Feb FUR)	24	PC (2019 MER) ↑ LC (2021 Feb FUR)
5	LC (2019 MER)	25	PC (2019 MER)
6	PC (2019 MER) ↑ LC (2021 Feb FUR)	26	LC (2019 MER)
7	NC (2019 MER) ↑ LC (2021 Feb FUR)	27	LC (2019 MER)
8	LC (2019 MER)	28	PC (2019 MER)
9	LC (2019 MER)	29	PC (2019 MER) ↑ C (2020 Feb FUR)
10	LC (2019 MER)	30	C (2019 MER)
11	C (2019 MER)	31	LC (2019 MER)
12	LC (2019 MER)	32	PC (2019 MER)
13	C (2019 MER)	33	LC (2019 MER)
14	LC (2019 MER)	34	LC (2019 MER)
15	C (2019 MER) ↓ PC (2020 Feb FUR)	35	LC (2019 MER)
16	LC (2019 MER)	36	LC (2019 MER)
17	C (2019 MER)	37	LC (2019 MER)
18	LC (2019 MER)	38	C (2019 MER)
19	LC (2019 MER)	39	PC (2019 MER)
20	PC (2019 MER) ↑ LC (2020 Feb FUR)	40	LC (2019 MER)

138. The Philippines FUR was adopted by the APG membership in July 2021. In keeping with the APG third round procedures, the Philippines will move from enhanced (expedited) to enhanced follow-up, and will continue to report back to the APG on progress to strengthen its implementation of AML/CFT measures.