



Fifth Enhanced Follow-Up Report and Technical Compliance Re-rating of Nicaragua



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NICARAGUA: FIFTH ENHANCED FOLLOW-UP REPORT

I. INTRODUCTION

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

II. FINDINGS OF THE MUTUAL EVALUATION REPORT

2. In terms of Technical Compliance, the MER—and later the Fourth Enhanced Follow-Up Report—rated Nicaragua as follows:

Table 1. Technical Compliance Ratings, December 2019

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

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

Sources: i) Mutual Evaluation Report of Nicaragua, <http://gafilat.org/index.php/es/biblioteca-virtual/miembros/nicaragua/evaluaciones-mutuas-11/1251-informe-de-evaluacion-mutua-de-la-cuarta-ronda-de-nicaragua/file>

ii) Fourth Enhanced Follow-Up Report of Nicaragua, <https://www.gafilat.org/index.php/es/biblioteca-virtual/miembros/nicaragua/informes-de-seguimiento-11/3745-cuarto-informe-de-seguimiento-intensificado-de-nicaragua/file>

3. Considering the results of the MER, GAFILAT placed Nicaragua under the enhanced follow-up process.¹ The Executive Secretariat of GAFILAT evaluated Nicaragua's request for a new

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

technical compliance rating and prepared this report. The request for re-rating was submitted by the country on February 19, 2020, and was accompanied by the necessary supporting documentation within the time limits set out in the procedures.

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

III. OVERVIEW OF THE PROGRESS MADE TO IMPROVE TECHNICAL COMPLIANCE

5. This section summarises Nicaragua's progress in improving its technical compliance by addressing the technical compliance deficiencies identified in the MER.

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

6. Nicaragua has made progress in addressing its technical compliance deficiencies identified in the MER in relation to the following Recommendations:

- Recommendation 14, originally rated PC
- Recommendation 35, originally rated PC

7. As a result of this progress, Nicaragua was re-rated in relation to Recommendations 14 and 35.

Recommendation 14 – Money or Value Transfer Services (MVTs) (originally rated PC – re-rated LC)

a. Criterion 14.2:

8. In relation to **criterion 14.2**, Nicaragua's Second Enhanced Follow-Up Report identifies the following deficiencies to be addressed:

- Determine the actions to be taken for the identification of natural or legal persons that provide remittance services.***
- Determine the types of sanctions to be applied by the Central Bank in the event of non-compliance with registration obligations by natural or legal persons.***

9. On this basis, the actions implemented to address these deficiencies are analysed below.

(i) Actions to be taken for the identification of natural or legal persons that provide remittance services and are not registered.

10. Nicaragua is implementing measures to ensure the identification of those who provide remittance services without registration.

11. Firstly, under the regulations indicated in item (ii), Nicaragua strengthened the sanctioning regime for those who provide remittance services but are not registered with the Central Bank of Nicaragua (BCN) or the Financial Analysis Unit (UAF). This increases the incentive for informal agents to regularise their registration.

12. Secondly, through UAF Resolutions No. UAF-N-019-2019 and UAF-N-020-2019 it is provided that, in the case of the reporting institutions (RIs) that have another RI as a customer, they must verify through the UAF's electronic platform that the latter is registered in the RI Registry. This verification should be conducted before initiating the business relationship or service, or executing the required operation; moreover, the information on the customer who is a RI must be updated when necessary (Articles 17 and 12, respectively).

13. In this way, Nicaragua strengthened the identification of those who provide remittance services, since they must necessarily register with the UAF to operate through the financial system, or to carry out transactions that require the intervention of a DNFBP.

14. Thirdly, the UAF keeps an updated list of registered RIs, which also covers remittance service providers, and is available at the following link: <https://www.rso.uaf.gob.ni/SOListado/#list>.

15. Fourthly, the UAF regularly publishes feedback on the registration of RIs (which includes the remittance sector) by means of newsletters posted on the web page. For instance:

- *Newsletter No. 41 (November-December 2017): Main achievements in 2017 - Increased number of RIs.*
- *Newsletter No. 42 (January-February 2018): (i) Importance of the registration of RIs with the UAF as a key role in the National ML/TF/FP Prevention System. (ii) Use of the SIREL platform for registration of RIs with the UAF. (iii) Training of RIs in the process of registration (pre-registration).*

16. It is also important to bear in mind the text of the Nicaraguan MER, which states the following regarding the size of informal remittances: "According to data from the ML/TF NRA, the BCN reported that 89.6% of remittances enter the country through formal channels (remittance agencies and commercial banks) and, to a lesser extent, through informal channels (pocket remittances and family meetings) (...) Remittances in Nicaragua are made through banking institutions that offer the service in association with other FIs specialised in financial activities, or through companies exclusively engaged in this activity. It is mentioned that, in both cases, service

providers are governed by authorities—the Superintendence of Banks and Other Financial Institutions (SIBOIF) in the case of the former and the UAF in the case of the latter—which establish obligations for the prevention and detection of ML/TF.” (See paragraph 89 of the MER)

17. Therefore, according to the information provided by the country, it has been demonstrated that banking institutions that provide remittance services are under the jurisdiction of the SIBOIF, while other institutions that provide remittance services and are not banking entities (even those that do so through informal means) are now under the jurisdiction of the BCN, which is the competent authority responsible for granting operating licences and registering natural and legal persons that provide remittance services.

18. It should also be noted that the UAF continues to develop efforts and actions for the identification and registration of entities that provide remittance services.² Without prejudice of the previous, the country should continue to adopt proactive measures in this regard.

(ii) Determination of sanctions for failure to comply with registration obligations.

19. Nicaragua adopted regulations to determine the sanctions applicable to persons engaged in remittance services who fail to comply with their registration obligations. The regime varies according to whether the person is a natural or legal person, as explained below.

20. According to Article 4 of Resolution CD-BCN-LIX-2-19, Regulation for Remittance Service Providers issued by the BCN (published in March 2020), the BCN has the power to authorise remittance service providers by granting licences for legal entities and registration for natural persons, as well as establishing the administrative violations and sanctions applicable under the regulatory framework.

21. In particular, in the case of banks subject to the supervision of the SIBOIF and microfinance institutions supervised by the National Commission of Microfinance (CONAMI) that provide remittance payment services, the BCN will not require a licence, in compliance with the provisions of its regulatory laws. Notwithstanding this, these entities must register and comply with the rest of the provisions of this regulation insofar as they are applicable, including their sanctioning regime.

22. Information on each regime is given below:

(a) Sanctions for legal persons:

² For example, through the national cooperation and coordination mechanisms, the Commercial Registries, the General Directorate of Revenues and the different Mayor offices of the country provide information to the UAF regarding elements such as the name of the natural or legal person that provides MVTS, phone number and geographic location. Therefore, the UAF sends them formal requests by writing and telephone, as well as "door-to-door" visits to urge them to register and report their obligations in the matter.

23. Article 12 of the aforementioned Regulation states that, in the event that a legal person provides remittance payment services without the respective licence and registration, a fine will be imposed on it in line with the serious violations defined, which implies the application of fines in favour of the National Treasury of 5,000 fine units,³ and the corresponding corrective measures and deadlines for remedying them will be indicated. (Article 10 of the Regulation)

24. Furthermore, Article 8.II.2 and 8.III.2 of Resolution UAF-022-2019 (Sanctions Regulations - May 2019), which is applicable to remittance service providers (Article 2.a.iv.), establish failure to register with the UAF as a serious and very serious offence. Sanctions may be imposed as follows (Art. 14):

- Serious violations: a) Fines between 3,001 and 8,000 fine units; b) temporary separation of the position of compliance officer, from one to six months; c) temporary suspension of the RI, from one to six months.
- Very serious violations: a) Fines between 8,001 and 15,000 fine units; b) permanent separation of the compliance officer; c) permanent suspension of activities; d) cancellation of registration as RI.

(b) Sanctions for natural persons:

25. In accordance with Article 21 of the Regulation, natural persons who provide remittance payment services and fail to comply with the applicable regulations and standards shall be subject to: (a) a written warning; (b) temporary suspension of registration; and (c) permanent suspension of registration.

26. Violations notified by the UAF in accordance with Law 976 shall also be considered as such. For these purposes, the Board of Directors of the BCN shall determine the respective type of sanction.

27. Furthermore, Article 8.II.2 and 8.III.2 of Resolution UAF-022-2019 (Sanctions Regulations - May 2019), which is applicable to remittance service providers (Article 2.a.iv.), establish failure to register with the UAF as a serious and very serious offence. Sanctions may be imposed as follows (Art. 14):

- Serious violations: a) Fines between 3,001 and 8,000 fine units; b) temporary separation of the position of compliance officer, from one to six months; c) temporary suspension of the RI, from one to six months.

³ Fine Unit: The value of each fine unit shall be equivalent to one US dollar and shall be converted into cordobas at the official exchange rate with respect to the United States dollar on the effective date of payment. (Article 3j) of Resolution CD-BCN-LIX-2-19, Regulation of remittance payment service providers.

- Very serious violations: a) Fines between 8,001 and 15,000 fine units; b) permanent separation of the compliance officer; c) permanent suspension of activities; d) cancellation of registration as RI.

Conclusion on the deficiencies of Criterion 14.2:

28. With regard to deficiency (i), Nicaragua has implemented measures to identify informal remittance service providers for registration with the UAF. Without prejudice of the previous, the country must continue adopting proactive measures in this regard.

29. With regard to deficiency (ii), sanctions applicable to the remittance sector are considered to have been determined. In particular, the BCN and the UAF have established a framework of sanctions that could be proportionate and dissuasive for natural and legal persons that are not licensed or registered to operate. However, given the recent adoption of the sanctioning regime in this regard, there is no evidence yet of the application of sanctions to natural or legal persons that provide remittance services without the corresponding license or registration.

30. Consequently, the remaining aspects of Criterion 14.2 were largely addressed.

b. Criterion 14.5:

31. In relation to **critterion 14.5**, Nicaragua's Second Enhanced Follow-Up Report identifies the following deficiencies to be addressed:

- i. *There are no provisions for MVTs providers who use business partners (agents) to ensure their compliance with ML/TF/FP prevention measures.*
- ii. *The obligation of MVTs providers to train their business partners has not yet been addressed in the actions taken by the country.*

32. On this basis, the actions implemented to address them are analysed below.

(i) Provisions to ensure compliance by agents with AML/CFT obligations

33. Resolution UAF-N-019-2019 (AML/CFT regulations applicable to FIs - April 2019) provides for the obligation of RIs to develop and implement a due diligence policy with regard to their business partners, with a focus on ML/TF/FP risk.

34. This regulation includes remittance service providers, in accordance with Article 2.1.d. Indeed, it is envisaged that they should: (...) "3. Include agents in their ML/TF/FP prevention programme; 4. Verify that the agents comply with the respective policies, measures, and procedures in their ML/TF/FP prevention programme". (Article 44)

(ii) Obligation to train agents

35. Resolution UAF-N-019-2019 of April 2019, which is applicable to FIs, establishes the obligation of RIs to adopt, finance, and implement training in AML/CFT/CFP matters. This resolution indicates that the general training level is aimed at all the staff, including directors, officers, employees, and business partners, and must be carried out at least once a year. (Articles 57 and 58.2)

Conclusion on the deficiencies of Criterion 14.5:

36. With regard to deficiency (i), Resolution UAF-N-019-2019 of April 2019 is considered to cover the AML/CFT obligations for business partners (agents) in the remittance sector.

37. With regard to deficiency (ii), it is considered that the regulation in question also includes the obligation to provide training in AML/CFT matters to business partners.

38. Consequently, the deficiencies that had been identified as remaining aspects of Criterion 14.5 have been fully addressed.

c. General assessment

39. Nicaragua has made significant efforts to address the remaining deficiencies in this Recommendation.

40. In particular, the approval of Resolution CD-BCN-LIX-2-19, entitled "Regulation for remittance payment service providers", and the adoption of Resolution UAF-022-2019, Sanctions Regulation, through which a sanctioning framework in principle proportional and dissuasive has been established for natural and legal persons who provide remittance services and do not have a licence to operate or are not registered as RIs.

41. In addition, through the approval of Resolution UAF-N-019-2019 (UAF-AML/CFT/CFP Regulations applicable to FIs), provisions have been created for remittance service providers who use business partners (agents) to ensure their compliance with ML/TF/FP prevention measures; and to develop training plans for their business partners.

42. It has also implemented measures aimed at identifying those who provide remittance services without a licence or registration, in order to achieve the corresponding registration with the UAF. Without prejudice to it, the country should continue to adopt proactive measures in this regard. Additionally, given the recent adoption of the sanctioning regime, there is no evidence yet of the application of proportional and dissuasive sanctions to natural or legal persons that provide remittance services without the corresponding license or registration.

43. It is therefore considered that most of the deficiencies have been addressed and it is proposed that the rating be raised to **Largely Compliant**.

Recommendation 35 - Sanctions (originally rated PC – re-rated LC)

44. With regard to criteria 35.1 and 35.2, the Fourth Enhanced Follow-Up Report of Nicaragua states in paragraph 155 that the following deficiencies persist:

- i. *The SIBOIF does not have sanctioning provisions in line with R. 35 in relation to TF within the preventive model for banks and other FIs (except insurance companies).*
- ii. *There is no sanctioning framework for the securities market sector in AML/CFT matters.*

45. As background, it should be noted that the legal framework provided by the country corresponding to Law 316 (Law on the Superintendence of Banks and Other Financial Institutions), Law 561 (General Law on Banks, Non-Banking Financial Institutions and Financial Groups), Law 733 (General Law on Insurance, Reinsurance and Bonds), Law 587 (Capital Markets Law), General Regulation on the Imposition of Fines, Resolution No. CD-SIBOIF-410-1-MAR14-2006 and Regulation on the Imposition of Fines on Insurance, Reinsurance and Bonding Companies, Resolution No. CD-SIBOIF-803-1-OCTU18-2013, and Law 734 (Law on General Deposit Warehouses), was previously analysed in the Nicaraguan MER.

46. On this basis, the actions implemented to address the deficiencies mentioned are analysed below.

a. Criterion 35.1

(i) Criterion 35.1 – SIBOIF’s sanctioning regime for TF matters

47. The SIBOIF issued Resolution No. CD-SIBOIF-1147-1-DICI 7-2019, entitled “Regulation to Amend the General Regulation on the Imposition of Fines” (January 2020), by which Article 10 of the regulation was amended and the possibility of sanctioning FIs for non-compliance with their obligations in terms of ML/TF/FP was incorporated.

48. It should be noted that the regulation is applicable to banks, non-banking financial companies, companies holding shares in financial groups, as well as second-tier banks.

49. The regulation includes, in addition to violations and penalties for non-compliance with the measures for preventing ML, violations and penalties for non-compliance with measures for preventing TF and FP. The sanctions provided for range from 5,000 to 60,000 fine units (each fine unit is equivalent to USD 1).⁴

⁴ Resolution No. CD-SIBOIF-410-1-MAR14-2006, General Regulation on the Imposition of Fines: Art. 1.b Fine Unit: In accordance with the provisions of Article 159 of the General Banking Law, the value of each fine unit shall be equivalent in national currency to one

(ii) Criterion 35.1 – Securities market sanctioning regime

50. With regard to the deficiency concerning the lack of an AML/CFT sanctioning framework for the securities market sector, Resolution CD-SIBOIF-1138-1-NOV13-2019, entitled “Regulation on the imposition of sanctions on securities market entities for non-compliance with AML/CFT/CFP matters” (December 2019), lists the sanctions applicable to non-compliance with the legal provisions and regulations of the AML/CFT system, without prejudice to other criminal, civil and administrative liabilities that may be established in accordance with the applicable laws applicable to securities market entities. (Article 4).

51. The range of fines is between NIO 25,000 to NIO 47,000 (equivalent to amounts between USD 731.63 and USD 1,375.46).⁵

52. Some of the infringements for which the penalty is NIO 47,000 are:

- Lack of an AML/CFT/CFP programme.
- Failure to send monthly cash transaction reports (CTRs).
- Failure to inform the competent authority about the failure to conduct reportable cash transactions in the month.
- Failure to have a compliance officer or ML/TF/FP prevention administrator and his or her respective deputy.
- Appointing or designating the compliance officer or ML/TF/FP prevention administrator to hold another position or functions simultaneously without prior authorization from the superintendent.
- Failure to have a code of conduct containing policies adopted by the board of directors to manage ML/TF/FP risks.

53. A regime of sanctions has been established for the securities market, as it can be seen. However, reference should be made to the proportionality and dissuasiveness of the applicable sanctions.

54. To this end, it is necessary to bear in mind, beyond the amount of the applicable fine, the range of available sanctions and the materiality of the sector, since this will help to understand whether it is a sanctioning regime that fully meets the elements required by the standard.

55. It is important to mention that, according to paragraph 84 of the Nicaraguan MER, the assets of the financial system regulated by the SIBOIF amounted to USD 6.660.472.000 (six billion

US dollar, in accordance with the official exchange rate established by the Central Bank of Nicaragua, in force on the date the penalty is imposed.

⁵ Exchange rate as of April 30, 2020: 34.17 cordobas per USD. Source: https://www.bcn.gob.ni/estadisticas/mercados_cambiarior/tipo_cambio/cordoba_dolar/index.php

six hundred sixty thousand four hundred seventy-two dollars). According to the December 2015 publications, the banks were the leaders in this category.

56. Likewise, paragraph 86 states that the assets of the securities sector as at June 30, 2016 amounted to 219,0 million cordobas⁶, which represented 0.10% of the assets of the financial system, placing it in the sixth position in the system's total assets composition. The sector is made up of 5 stock exchange firms, 1 Nicaraguan stock exchange, 1 stock market, and 1 investment fund company, with a total of 8 institutions. (See paragraph 87 of the MER).

57. As of March 31, 2020, the assets of the securities sector corresponded to USD 9.660,400 (nine million six hundred sixty thousand four hundred dollars), which represents 0.10% of the assets of the Nicaraguan financial system, with the banking sector in first place with USD 6,566,264.000 (six billion five hundred sixty-six thousand two hundred sixty-four dollars), representing 90.2% of the system's assets.⁷

58. The sector continues to be made up of 5 stock exchange firms, 1 Nicaraguan stock exchange, 1 stock market, and 1 investment fund company, with a total of 8 institutions. The products offered are government bonds, commercial paper bonds, and shares, and are classified into public, private and foreign.

59. In view of the elements described, it can be seen that Nicaragua has established a sanctioning framework for non-compliance with AML/CFT measures in the securities sector, which is a positive element. Notwithstanding this, the established sanctioning regime does not appear to have a wider range of sanctions that would allow violations to be sanctioned in a sufficiently proportionate and dissuasive manner (for example, through the application of warnings, reprimands, more onerous fines, suspension or cancellation of the licence to operate).

60. Thus, although the regulation established the possibility of sanctioning with fines of up to a certain amount for AML/CFT violations in the securities sector, the deficiency identified is not fully addressed.

61. However, considering the low materiality of the sector in terms of ML/TF, both because of its characteristics and low impact on the total volume of the country's financial assets, it is not considered to be a significant deficiency.

b. Criterion 35.2

(i) Criterion 35.2 – SIBOIF's sanctioning regime for TF matters applicable to directors and senior managers.

⁶ USD 7,654.500 (seven million six hundred fifty-four thousand five hundred dollars) (Exchange rate as of June 30, 2016: 28.61).

⁷ Amounts expressed in thousands. The figures correspond to portfolio balance. Exchange rate as of 03/31/2020: 34.0877

62. Regarding the deficiencies on sanctioning provisions applicable to directors and senior managers of FIs regulated by the SIBOIF, the “Regulation to Amend the General Regulation on the Imposition of Fines” establishes the possibility of applying a fine between 10.000 and 50.000 fine units when the director discloses or informs the customer that his/her transaction is being analysed or considered for a possible STR (associated with TF/FP) or informs him/her that such a report was submitted.

(ii) Criterion 35.2 – Securities market sanctioning regime applicable to directors and senior managers.

63. In addition, Articles 4.d and 4.i of the Regulation on the imposition of sanctions on securities market entities for non-compliance with AML/CFT matters establishes sanctions with a fine of NIO 47,000 (USD 1,375.47).⁸

- When the legal representative, director, manager, officer, compliance officer or ML/TF/FP prevention administrator or any other employee of the entity discloses, tips-off, or reports directly or indirectly to the customer that his/her transaction is being analysed or considered for a possible ML/TF/FP STR; or, informs him/her that such a report was filed. Without prejudice to the responsibilities and other criminal, civil and administrative consequences that may arise in accordance with the respective laws.
- When the person in any of the following categories: Legal representative, director, manager, official or compliance officer or ML/TF prevention administrator, in charge of the enforcement of the laws and regulations on the matter, does not comply and/or deficiently complies with his functions and/or responsibilities that the law confers on him/her and/or those that the internal policies and provisions of the institution itself confers on him/her.

c. Conclusion:

64. With regard to deficiency (i), it is considered that Resolution No. CD-SIBOIF-1147-1-DICI 7-2019 incorporated the possibility of sanctioning financial institutions for non-compliance with their TF obligations, so this element is fully addressed.

65. With regard to deficiency (ii), it is considered that Nicaragua has made progress through the publication of Resolution CD-SIBOIF-1138-1-NOV13-2019, which provides for the application of fines for the securities market sector. However, the sanctions established are not sufficient to consider that the deficiency has been addressed since it was not established a range of sanctions that allows for a fully dissuasive and proportional regime. Notwithstanding this, considering the low materiality of the sector in terms of ML/TF, both because of its characteristics and low impact on the total volume of the country’s financial assets, it is not considered to be a significant

⁸ Exchange rate as of April 30, 2020: 34.17 cordobas per USD. Source: https://www.bcn.gob.ni/estadisticas/mercados_cambiarior/tipo_cambio/cordoba_dolar/index.php

deficiency. As a consequence, it is not an obstacle to consider that the deficiency has been largely addressed.

d. General assessment

66. Nicaragua has made important efforts through the publication of Resolution No. CD-SIBOIF-1147-1-DICI 7-2019 through which the possibility of sanctioning financial institutions for non-compliance with their TF obligations was incorporated; therefore, the deficiency identified in this area has been fully addressed.

67. In addition, the country has made progress through the publication of Resolution CD-SIBOIF-1138-1-NOV13-2019, which provides for the application of fines up to a certain amount for the securities market sector for non-compliance with AML/CFT/CFP measures. However, there is no provision establishing a range of sanctions to ensure a fully dissuasive and proportionate regime. Notwithstanding this, considering the low materiality of the sector in terms of ML/TF, both because of its characteristics and low impact on the total volume of the country's financial assets, it is not considered to be a significant deficiency. Therefore, it is proposed that the rating be changed to **Largely Compliant**.

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

68. Since the adoption of Nicaragua's MER in 2017 and the request for re-rating discussed in December 2019, the FATF amended Recommendation 15. By virtue of the foregoing, the following section analyses Nicaragua's compliance with the new requirements.

Recommendation 15 – New technologies (originally rated PC – re-rated NC)

69. The Nicaraguan MER identified weaknesses in criterion R.15.1:

- i. *Some FIs are not covered by existing provisions.*
- ii. *There are no provisions for the country to identify and assess ML/TF risks that may arise with respect to the development of new products and new business practices, including new delivery mechanisms, and the use of new technologies or technologies under development for new or existing products.*

70. With regard to the first deficiency, paragraph 3 of Nicaragua's Second Enhanced Follow-Up Report describes the adoption of Law 977, the Law against Money Laundering, Terrorist Financing and the Financing of the Proliferation of Weapons of Mass Destruction (Law against ML/TF/FP) (August 2019), whose Article 9 incorporates FIs pending designation as RIs (factoring, leasing, and microfinance intermediary financial institutions outside CONAMI).

71. Furthermore, in response to the second deficiency, the country informed progress, which is detailed in the following sentences. On the one hand, Nicaragua informed that an action plan on virtual assets and VASPs was established. This action plan consists on the development of a study and risk analysis, the development of a technical-juridical proposal concerning VA and payment methods, and the issuance of regulation at the national level. Among other aspects, it is expected also to establish a VASPs registry.

72. Additionally, the country indicated that there is work in progress on the drafting of such regulations, with the aim of issuing them and including the VASPs in the AML/CTF/CPF regime. Nicaragua also reported that a draft regulation on fintech services providers is also being developed, and its issuance is expected to occur in short (the country has been progressing in this field, however, due to the pandemic some actions had to be re-scheduled).

73. On the other hand, by means of Article 6 of the Law against ML/TF/FP the National AML/CFT/CPF Commission (Article 6) was established and its functions include the periodic assessment of national risks related to ML/TF/FP, which also includes the analysis of products, services, and new technologies (Article 7.1.a).

74. Article 14, paragraphs 1 and 2 of the AML/CFT/CPF Law requires all RIs to individually assess their particular AML/CFT/CPF risks for products, services, operations or transactions, distribution and delivery channels, use of new technologies for both new and existing services. Assessments should be documented, regularly updated and the findings reported to the respective Supervisor.

75. Articles 4.3.c and 4.4.a of Resolution No. UAF-N-019-2019, the UAF-AML/CFT/CPF Regulations, provide for the obligation of FIs under UAF supervision to identify, evaluate and understand their own inherent and residual ML/TF/FP risks every two years. The assessment shall contain the products, services, and operations, as well as the channels through which they are provided and the analysis of the ML/TF/FP risks that may arise in relation to:

- a. The development of new business practices; and
- b. The use of new technologies or developing technologies for the provision of their products or services, particularly those that could promote the anonymity of natural and legal persons, who request or make use of their services.

76. CONAMI approved Resolution No. CD-CONAMI-008-01AG007-2018, Regulation for the Prevention of ML, TF and FP, applicable to microfinance institutions and microfinance intermediary financial institutions, supervised by CONAMI (November 2018), whose Article 31 states that each microfinance institution must develop policies, procedures, and systems for the assessment of ML/TF/FP risks, including the definition of the matrix or matrices applicable to the evaluation of new products and services, the technologies and distribution channels used. The assessments will be conducted prior to their release in the design, development, testing, approval, and implementation phases.

77. The SIBOIF issued External Circular DS-VSIB-DSPLD-1721-04-2019-MMDO (April 2019) applicable to all entities under its regulation and supervision: Guidelines for strengthening ML/TF/FP prevention programmes, in terms of CDD measures, thresholds for occasional transactions, and on new technologies, in particular in paragraph 6, which states the following:

“6) Each Supervised Entity should identify and evaluate ML/TF/FP risks that may arise with respect to the development of new products and new business practices, including new delivery mechanisms, and the use of new technologies or technologies under development for new or existing products; and should:

- a) Develop policies, procedures, and systems for the assessment of ML/TF/FP risks, including the definition of the applicable matrix(es) to be used prior to the approval and launching of new or existing products and services and distribution channels, to be applied in the design, development, testing, approval and implementation phases.
- b) Reassess the existing ML/TF/FP risks in the redesign, modification, or innovation of operations, products, services, channels, and/or means of payment and/or existing lines of business through the use and application of new technologies.
- c) Take appropriate measures to manage and mitigate the risks identified and include them in its Risk Prevention Handbook”.

78. In addition, on May 4, 2020, the SIBOIF issued guidelines on the risk-based approach (RBA) in AML/CFT/CFP matters following Covid-19, which requires FIs under its supervision to apply a RBA to examine, identify, and address the threats, vulnerabilities, and potential new risks that are emerging as a result of Covid-19, based on products, services, and uses of new technologies, among other aspects; and based on the findings, take the necessary measures for their mitigation in order to avoid the use and exploitation of the national financial system for ML/TF/FP purposes.⁹

79. Regarding Criteria 15.4 to 15.11, Nicaragua informed that they are working in the drafting of the relevant regulations, aimed at covering the VASP in the AML/CTF/CPF regime and applying the required controls to the sector. Without prejudice to the previous, at present no measures in force addressing these aspects are envisaged.

⁹ It should be mentioned that on July 7th, 2020, the SIBOIF issued the Circular DS-DSPLD-1527-07-2020/LAME, addressed to the banking entities, and containing provisions on ML/TF risk management. This regulation requires the reporting entities to improve their policies, procedures, and controls with a risk-based approach to effectively manage their SIPAR LD/FT/FP or preventive program. These measures should be based in the Basel Committee guidelines “Sound management of risks related to money laundering and financing of terrorism”, to mitigate the potential ML/TF/FP abuse of the domestic financial system by the organized crime, which could result from the vulnerabilities affecting the banks, especially those arising from the new modalities or conditions they are applying as part of the biosecurity measures taken to reduce risks of COVID-19 contagion. Notwithstanding the previous, this provision entered into force after the deadline established by the 4th Round Procedures (at least 6 months in advance to the Plenary Meeting where the report would be discussed). Therefore, this provision could not be considered in this report, while it could be analyzed in future requests.

Conclusion

80. Therefore, FIs under the supervision of the UAF, SIBOIF, and CONAMI have obligations in place for the identification and assessment of ML/TF risks required in criterion 15.1. In addition, it is highlighted that the country is undertaking work to adopt several measures to address these elements. However, according to the information analysed, at present there is no indication that the ML/TF risks that could arise with regard to the development of new products and new commercial practices and the use of new technologies or technologies under development for new or existing products have yet been identified or assessed at the country level.

81. With regard to criterion 15.3, while the country is working on several measures aimed at addressing the subject, it is not yet apparent that the ML/TF risks arising from virtual asset activities and from the activities or operations of virtual asset service providers (VASPs) have been assessed. No evidence is given that a RBA has yet been applied to ensure that measures to prevent or mitigate ML/TF are proportionate to the identified ML/TF risks; and that the VASPs have been required to take appropriate steps to identify, assess, manage, and mitigate their ML/TF risks, as required in criteria 1.10 and 1.11.

82. With respect to criteria 15.4 to 15.11, the country informed progress with regard to drafting regulations, although at presents no measures in force are envisaged to consider these Criteria addressed.

General assessment

83. Considering the analysis of the provisions provided by Nicaragua in Law 977 and its amendments, the UAF-AML/CFT/CFP Regulations, the External Circular of the SIBOIF DS-VSIB-DSPLD-1721-04-2019-MMDO, and Resolution No. CD-CONAMI-008-01AG007-2018, Regulation for the Prevention of ML, TF, and FP, FIs under the supervision of the UAF, SIBOIF and CONAMI have obligations in place for the identification and evaluation of the ML/TF risks required by criterion 15.1.

84. Likewise, the SIBOIF has issued Guidelines on the RBA in AML/CFT/CFP matters following Covid-19, where FIs under its supervision are required to apply a RBA to examine, identify, and address the threats, vulnerabilities, and potential new risks that are emerging as a result of Covid-19, based on products, services, and uses of new technologies.

85. Without prejudice to the above, and despite the fact that the country is actively working to adopt several measures and actions concerning this subject, at present there is no indication that the ML/TF risks that could arise with regard to the development of new products and new commercial practices and the use of new technologies or technologies under development for new or existing products have yet been identified or assessed at the country level.

86. With respect to the new criteria 15.3 to 15.11, while the country is working in an action plan and drafting relevant regulations related to VA and VASPs, currently there is no evidence of measures in force that would allow them to be considered addressed.

87. According to the analysis above, and despite the fact that the country is working on measures and drafting relevant regulations on this subject, it is proposed that the rating be changed to **Non-Compliant**.

IV. CONCLUSION

88. In general, Nicaragua continues making important progress in relation to addressing the technical compliance deficiencies identified in its MER and has been re-rated in relation to Recommendations 14 to **Largely Compliant**, and 35 to **Largely Compliant**. However, changes to Recommendation 15 have not yet been addressed and it was therefore re-rated as **Non-Compliant**.

89. In view of Nicaragua's progress since the adoption of its MER, its technical compliance with FATF Recommendations was re-rated as follows:

Table 2. Technical Compliance Ratings, December 2020

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

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

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