



# SECOND ENHANCED FOLLOW-UP REPORT OF NICARAGUA



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## ***NICARAGUA: Second Enhanced Follow-Up Report***

### **I. INTRODUCTION**

1. The mutual evaluation report (MER) of Nicaragua was adopted in July 2017. This follow-up report analyses Nicaragua's progress in addressing certain technical compliance deficiencies which were identified in Nicaragua's MER. Re - ratings are given where sufficient progress has been made. This report also analyses Nicaragua's progress in the implementation of the new requirements in relation to the FATF Recommendations that changed since the on-site visit to Nicaragua: Recommendations 5, 7, 18 and 21. This report does not address what progress Nicaragua has made to improve effectiveness. A later follow-up assessment will analyse the progress on the improvement of effectiveness which may eventually result in the new rating of the Immediate Outcomes.

### **II. FINDINGS OF THE MUTUAL EVALUATION REPORT**

2. Regarding technical compliance, the MER rated Nicaragua as follows:

**Table 1. Ratings of technical compliance, December, 2017**

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

*Note:* There are four possible levels of technical compliance: Compliant (C), largely compliant (LC), partially compliant (PC) and non-compliant (NC).

Source: Mutual Evaluation Report of Nicaragua, October 2017, [<http://www.gafilat.org/index.php/es/biblioteca-virtual/miembros/nicaragua/evaluaciones-mutuas-11/1251-informe-de-evaluacion-mutua-de-la-cuarta-ronda-de-nicaragua>].

3. Given these results, GAFILAT placed Nicaragua in enhanced<sup>1</sup> follow-up. The Executive Secretariat of the GAFILAT assessed Nicaragua's request for a new rating of technical compliance and drafted this report.

4. Section III of this report summarizes the progress made by Nicaragua to improve technical compliance. Section IV features the conclusion and a table that shows which Recommendations were newly rated.

<sup>1</sup> Regular follow-up is the monitoring mechanism predetermined for all countries. Enhanced follow-up is based on the FAFT's traditional policy that addresses those members with significant deficiencies (of technical compliance or effectiveness) in their AML/CFT systems, and it implies a more intensive follow-up process.

### III. OVERALL DESCRIPTION OF THE PROGRESS INTENDED TO IMPROVE TECHNICAL COMPLIANCE

5. This section summarizes Nicaragua's progress to improve its technical compliance by:
  - A. Addressing the deficiencies of technical compliance identified in the MER.
  - B. Implementing new requirements where the FATF Recommendations have changed since the MER was adopted (R. 5, R.7, R.18 and R.21).

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

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

- R. 1, rated as PC
- R. 5, rated as PC
- R. 7, rated as NC
- R. 8, rated as PC
- R. 10, rated as PC
- R. 11, rated as PC
- R. 12, rated as PC
- R. 14, rated as PC
- R. 15, rated as PC
- R. 20, rated as PC
- R. 21, rated as PC
- R. 22, rated as NC
- R. 23, rated as NC
- R. 24, rated as NC
- R. 25, rated as NC
- R. 26, rated as PC
- R. 28, rated as NC
- R. 35, rated as PC

7. As a result of this progress, Nicaragua received a re-rating in Recommendations: R. 5, 11, 20, 21, 22, 23, 24, 26 and 28.

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#### ***Recommendation 1- Risk assessment and application of a risk-based approach (originally rated as PC – without rerating)***

1. Nicaragua's MER established as deficiencies: 1) Within the preparation process of the National Risk Assessment (NRA), the participation of different sectors, especially the DNFBP (Designated Non-Financial Businesses and Professions) was needed, restricting the outcomes obtained (criterion 1.1), 2) There is no evidence showing that a risk-based allocation of resources has been made in the relevant institutions as per the NRA outcomes (criterion 1.5), and 3) The FIs (factoring, financial leasing and the Intermediary Financial Institutions of Microfinance [IFIMs] beyond the monitoring of the CONAMI [National Microfinance Commission]) as well as the DNFBPs (except casinos) are not Reporting Institutions (RI) and therefore they are neither regulated nor under a specific supervisory body (Criteria 1.7-12).

2. With respect to the first two deficiencies that meet criteria 1.1 and 1.5, the AML/CFT/CFP National Commission is created, which shall have the power to identify and periodically evaluate the national risks related to ML/TF/FP. In carrying out these evaluations, the Commission may require the participation of any institution. However, an evaluation would need to be carried out confirming the participation of all relevant sectors. On the other hand, no information is provided regarding the resources allocated based on the results of the NRA.

3. On the other hand, in relation to the third deficiency identified in the MER, in July 2018, Nicaragua approved Law 977 Against Money Laundering, Terrorist Financing and Financing of Proliferation of Weapons of Mass Destruction. Art. 9 establishes as RI the natural or legal persons that develop activities under the form of the following Financial Institutions and Non-Financial Activities and Professions:

**I. Financial Institutions supervised by the Superintendence of Banks and Other Financial Institutions:**

- a. Banks,
- b. Finance companies,
- c. Insurance, reinsurance and bonds companies
- e. Insurance brokers,
- d. General warehouse stores,
- e. Stock exchange companies,
- f. Securities depositories,
- g. Stock brokerage firms,
- h. Clearing and settlement companies,
- i. Fund administration companies
- j. Investment companies,
- k. Pension fund administration companies
- l. Representative offices of foreign banks and financial institutions
- m. Special regime companies referred to in the General Law on Banks, Non-Banking Financial Institutions and Financial Groups

**II. Entities supervised by the National Microfinance Commission:**

- a. Intermediary Microfinance Institutions
- b. Microfinance Institutions

**III. The following entities shall be supervised by the Financial Intelligence Unit (FIU) in the area of prevention of ML/TF/FP:**

- a. Companies which, when carrying out the following activities, do not maintain bonds of ownership, administration, use of corporate image or control with banks or other regulated non-banking financial institutions:
  - i. Issuance and administration of means of payment.
  - ii. Factoring transactions.
  - iii. Financial leasing.
  - iv. Remittances.
  - v. Purchase and sale and/or exchange of currency.

- b. Microfinance institutions that are not regulated by CONAMI, regardless of their legal status.
- c. Cooperatives that, among the activities they carry out with their members, provide any form of financing or that which includes financial intermediation.
- d. Pawnshops and loan venues,
- e. Casinos,
- f. Real estate brokers,
- g. Merchants of precious metals and/or precious stones,
- h. Dealers and distributors of new and/or used vehicles,
- i. Trust service providers

#### **IV. Authorized Public Accountants, registered in the Nicaraguan Public Accountant's Association.**

4. It is also established that the supervisory authorities mentioned above have the power to supervise the obligations of ML/TF/FP prevention (Art. 30) of the respective RI. However, lawyers and notaries are not under the AML/CFT legislation of Nicaragua and do not have a supervisory authority. Based on this information, an analysis was made of criteria 1.7 to 1.12 as follows.

5. With respect to criterion 1.7, numeral 3 of Art. 14 of Law 977 indicates that FIs and DNFBPs must establish ML/TF/FP prevention programs that allow them to effectively manage and mitigate the risks identified through national, sectoral or individual ML/TF/FP risk assessments.

6. In compliance with criterion 1.9, Nicaragua informs that Art. 20 of Law 977 has established a supervisory authority for FIs and DNFBPs covered in Art. 9 for compliance with their obligations to prevent ML/TF/FP except in the case of lawyers and notaries that are not included as RI.

7. In relation to criterion 10.10, in accordance with Art. 14, Law 977, RI must individually assess their particular risks of ML/TF/FP for clients; countries or geographical areas; products; services; operations or transactions; distribution and delivery channels; use of new technologies for the provision of both new and existing services; and other factors they consider relevant, using information from national ML/TF/FP assessments, without necessarily limiting themselves to this source of information. They must also document their individual risk assessments, update them periodically and report their results to their respective Supervisor, within the terms and in the manner established by them.

8. With respect to criterion 1.11, Art. 14.4, Law 977 indicates that FIs and DNFBPs must adopt intensified measures that address major risks in their ML/TF/FP prevention programs. These measures should be consistent with the major risks identified through national and sectoral or individual ML/TF/FP risk assessments. As mentioned in 1.7, RI must establish ML/TF/FP prevention programs that enable them to effectively manage and mitigate identified risks. Depending on the nature, scope and/or size of their activity, ML/TF/FP prevention programmes must establish standard, simplified and intensified measures and procedures that effectively manage and mitigate the identified risks, the creation of managerial functions or positions that supervise compliance with AML/CFT/CFP measures and procedures and recommend to their superiors that they intensify them -when necessary -, the responsibilities that senior management has in the implementation of the measures, controls and procedures, including the duty to approve, review and update them, as appropriate (Art. 15, Law 977).

9. Regarding criterion 1.12, FIs and DNFBPs must adopt simplified measures that address minor risks in their ML/TF/FP prevention programs, provided that such measures are consistent with the results of national and sectoral or individual ML/TF/FP risk assessments. In any case, RI are prohibited from applying simplified measures when there are suspicions of ML/TF/FP (Art. 14.5, Law 977).

10. According to an analysis of the information submitted by Nicaragua, the deficiencies established in the MER for R.1 are addressed with respect to the obligations established for DNFBBs and FIs under the AML/CFT regime and the authorities in charge of their supervision under the of new Law 977. However, notaries and lawyers are still outside the national AML/CFT regime. Therefore, the criteria of this R. do not apply to these sectors and in that sense the fulfilment of criteria 1.7 to 1.12 is not total. On the other hand, according to the results of the NRA, there is still no evidence that a risk-based allocation of resources has been made in the relevant institutions. While a Commission is established to request institutions to participate in national assessments, another NRA needs to be developed in order to confirm this participation and - thus - not to restrict the results. Accordingly, it is proposed that the rating be maintained as **Partially Compliant**.

***Recommendation 8- Non-profit organizations (originally rated as PC – without rerating)***

11. Nicaragua's MER established as deficiencies: 1) the lack of adequacy of laws and regulations applicable to NPOs, which should include provisions on AML/CFT (criterion 8.1c), 2) it is necessary to implement outreach actions and educational programs to raise awareness of the risks of the NPO sector (criterion 8.2b), 3) it is necessary to ensure that the relevant authorities can take effective and proportionate actions to the identified risks (criterion 8.3), 4) there is no range of proportional or dissuasive AML/CFT sanctions (criterion 8.4b), 5) the authorities have yet to implement supervisory and monitoring measures with a Risk-Based Approach (RBA) (8.4a).

The analysis of criteria 8.1c, 8.2b, 8.3, 8.4 a and b is presented below.

12. With regard to criterion 8.1c, Art. 37 of Law 977 stipulates that the competent authorities for the regulation, supervision and sanction of NPOs must, in a manner proportional to the risk identified in this sector, carry out ML/TF/FP prevention functions. These include identifying effective actions to mitigate the ML/TF/FP risks of NPOs, in conjunction with the corresponding sectors. However, it is still pending that the competent authorities in charge of regulating, supervising and sanctioning the NPOs review the adequacy of the measures, related to the subgroup of the NPO sector that could be abused for TF support, in order to be able to perform effective and proportional actions to address the risks identified.

13. With regard to criterion 8.2b, Nicaragua informs that with the approval of Art. 37.2, the competent authorities in the NPO sector should develop training activities aimed at the sector so that NPOs are aware of the ML/TF/FP risks to which they are vulnerable and the internal control measures that can be implemented to mitigate them. However, the country does not report on recent outreach activities with the sector, pursuant to the approval of this Article, nor does it refer to future actions with NPOs on the issue.

14. With respect to criterion 8.3, Art. 37, paragraphs 1-4, of the same law in question, the competent authorities must carry out prevention functions in a manner proportional to the risks identified through national assessments. Among these functions there are the following: (i) establish measures that promote transparency in the management of NPOs, (ii) inform NPOs of the risks to which they are vulnerable, (iii) identify effective measures to mitigate risks, (iv) monitor compliance with administrative regulations and sanction for non-compliance. However, it is still pending that the competent authorities carry out effective actions proportionate to the risks themselves in the subgroup corresponding to the NPO. In addition, Art. 7.1.a of Law 977 sets forth that the Commission must periodically identify and assess national ML/TF risks. Such assessments include DNFBBs, service products, technologies and legal persons, including NPOs.

15. In accordance with criterion 8.4a, as stated in criterion 8.1, it sets forth that the Commission must periodically identify and assess national ML/TF risks. The NRAs include the risks posed by DNFBBs,

products, services, technologies and legal persons -including NPOs-. As a result of the assessment, public entities that have powers and attributions related to the regulation, supervision and sanction of NPOs shall perform ML/TF/FP prevention functions proportionally to the identified risks a. Article 37.4 of the same law allows competent authorities to supervise compliance with AML/CFT regulations and apply sanctions in case of non-compliance. However, the way in which the supervision and monitoring will be carried out according to the risk and with an EBR has not yet been established.

16. With regard to criterion 8.4b, Nicaragua informs that in accordance with Art. 37, paragraph 3 of Law 977, the competent authorities of NPOs, in conjunction with the relevant sectors, must identify effective actions to be taken to mitigate the ML/TF/FP risks of NPOs. However, the deficiency has not been fully covered in the absence of a range of AML/CFT measures or sanctions applicable to NPOs.

17. According to the information presented, despite the efforts made by Nicaragua with the approval of Law 977, it is still pending the regulatory framework that establishes how the competent authorities should carry out preventive actions according to the risk, promote the transparency of the NPOs and raise awareness of their risks. Additionally, it must be established how the RBA monitoring and supervision will be carried out and determine the sanctions regime applicable to the sector. In addition, it is necessary that the country carries out engagement activities with the sector to raise awareness about its risks. Considering the above, it is proposed to maintain the rating as. **Partially Compliant.**

#### ***Recommendation 10- Customer due diligence (originally rated as PC – without rerating)<sup>2</sup>***

18. Nicaragua's MER established as deficiencies: 1) Some FIs are not covered by the provisions. 2) Those supervised by the Superintendence of Banks and Other Financial Institutions (SIBOIF) and CONAMI do not have the requirement to establish a threshold or to structure the operations of occasional clients. 3) With regard to adopting Customer Due Diligence (CDD) measures on occasional transactions through electronic transfers, criteria 16.2, 16.3 and 16.14 do not apply to remittance companies and institutions supervised by the CONAMI. 4) The fact that the figure of "professional trustee" is not provided for in Law 741 affects the CDD provisions of trusts. 5) The definition of the beneficial ownership applicable to FIs regulated by the SIBOIF does not include all the elements foreseen in the standard since it includes legal persons within the definition of beneficial ownership.

19. With regard to the first deficiency, in accordance with all that is indicated in the analysis of R.1, all FIs in Nicaragua are RI under Article 9 of Law 977. However, in order to verify compliance with this R., it is necessary analyse whether the obligations in the criteria of R.10 are enforceable to the financial RI that were not covered at the time of the approval of the MER.

20. With regard to the fulfilment of criterion 10.1, the RI listed in art. 9 of Law 977, in no case may provide services or open anonymous accounts or under fictitious names. (Art. 17 Law 977).

21. With regard to criterion 10.2, Nicaraguan RI under Article 17 of Law 977 must identify customers or occasional customers, whether natural or legal persons or persons acting in their own name or on behalf of others, when establishing a business or service relationship; perform occasional transactions in excess of the threshold established by each Supervisor; or carry out electronic and non-face-to-face transactions, including transfers of assets. Notwithstanding the foregoing, RI must identify customers or occasional customers whenever there is suspicion of ML/TF/FP or when they have doubts about the veracity or

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<sup>2</sup> It is worth mentioning that the country issued the Resolution No. UAF-N-14-2018, "Regulation on Prevention, Detection and Reporting of Activities Related to M L/TF/PF through Financial Institutions Regulated and Supervised by the FIU," which establishes obligations about PEP. The analysis of the information corresponding to the decree will be conducted in a subsequent report to be discussed at the next GAFILAT's Plenary of Representatives.



accuracy of previously obtained customer identification data. Under no circumstances can services be provided, or accounts opened anonymously or under fictitious names. Supervisors must establish the documents, data or minimum information that must be used by the RI to identify and verify the identity of customers and occasional customers.

22. On the other hand, the CONAMI Administrative Circular Letter PE-628-04-2018/JML establishes that with respect to merely occasional customers, when the transaction does not exceed USD 1,000, the Microfinance Institution must at least identify them, taking note of the name, number and type of the identity document, and having at sight the respective legal, official, current, reliable and indubitable documents according to the laws of the matter; when the amount exceeds USD 1,000, it must apply the CDD of regular clients, according to their risk level. However, in the case of RI supervised by the SIBOIF, they have not yet established thresholds for the adoption of CDD measures in occasional customer transactions.

23. Point IV of the CONAMI Administrative Circular 628-04-2018/JML lays down the provisions to ensure that all electronic transfers below the threshold not exceeding 1000 USD/EUR should be accompanied by the name of the originator and beneficiary, the account number of the originator and beneficiary or a reference number of the transaction that enables it to be traced. This information does not need to be verified as to its accuracy, but the institution should verify information relating to the customer where there is suspicion of ML/TF.

24. In cases of electronic transfers of USD/EUR 1,000 or more, a beneficiary FI must verify the identity of the beneficiary, if it has not been previously verified, and keep the information for the term established in the AML/FT Regulation.

25. Article 24 of Law 977 refers that the corresponding supervisors shall establish the information on originators and beneficiaries of electronic transfers and remittance and similar services that must be obtained, transmitted and kept by the RI. However, the application of criteria 16.2, 16.3 and 16.14 for remittances supervised by the FIU is not yet clear.

26. Under criterion 16.14, RI, depending on the nature of the operations, transactions or services to which they are authorized in accordance with their respective regulations, must keep up-to-date records on originators and beneficiaries of electronic transfers that have been obtained by acting as a financial institution that is either an originator, intermediary or beneficiary, for at least five (5) years after the transfer is made (Art. 25 of Law 977).

27. In this regard, Nicaragua has yet to establish provisions for remittances under criteria 16.3 and 16.4 for the implementation of CDD measures in the context of criterion 10.2.c.

28. In compliance with criterion 10.3, under Arts. 17 and 22 of Law 977, the RI must identify customers or occasional customers, whether natural or legal persons at the time of establishing a business or service relationship, when carrying out occasional transactions in excess of the threshold established by each supervisor; they must also identify the identity of the client. However, even the supervisory authorities have not established the thresholds for the adoption of CDD measures in case of occasional transactions nor establishes the obligation to verify the identity using data or reliable information and from an independent source

29. As for criterion 10.4, Regarding criterion 10.4, there are still no provisions for FIs to verify that a person purporting to act on behalf of the client is authorized to do so and that they identify and verify the identity of that person.

30. In compliance with criteria 10.5 and 10.10, in accordance with Law 977, supervisors must establish the manner in which the RI must obtain from their customers adequate, precise and timely

information on the beneficial owner upon whose behalf they intend to establish a business relationship; in particular, they must establish information obligations on the nature of the business and shareholding structure and control of legal persons and trusts. (Art. 17.2). However, there is no direct obligation for FIs to identify the beneficial owner and take reasonable steps to verify the identity of the beneficial owner using relevant information or data obtained through sources that allow FIs to be convinced of the identity of the BO.

31. Art. 4.6 of Law 977 defines the beneficial ownership as follows:

- a. *“The natural person or persons on whose behalf an operation is conducted.*
- b. *The natural person or persons who ultimately own or control a customer, including the natural person or persons who exercise ownership or control through a chain of ownership or other means of control other than direct control.*
- c. *The natural person or persons who ultimately own or control a trust, including the natural person or persons who exercise ownership or control of the trust through a chain of ownership or other means of control other than direct control and the natural person or persons on whose behalf a trust transaction is conducted.*
- d. *The natural person or persons who is or are the beneficial owner of a beneficiary under a life insurance policy or other insurance policy linked to the investment”.*

32. In the case of items "b" and "c", the term "ownership" refers to both ownership actually exercised and ownership obtained through legal means. Likewise, the term "control" is about the ability to make and impose relevant decisions, when this is exercised by both formal and informal means

33. This Law is applicable to all RI including those supervised by the SIBOIF as referred to in Art. 9.1, which lists all RI and includes FIs supervised by the SIBOIF. Moreover, the scope of the Law in Art. 3 establishes: "The competent authorities and the RI are subject to the scope of application of this Law, to the extent prescribed by it (...)". Likewise, Circular Letter DSPLD-3543-08-2017-VMUV of the SIBOIF amends the definition of beneficial owner, adjusting it to the elements foreseen by the Standard.

34. With regard to compliance with criterion 10.6, FIs should require customers to provide information in order to know the nature of their professional or business activity. The activity declared by the client must be registered prior to establish the business relationship. They should carry out additional checks when the client's operations do not match with their declared activity or background or when they are clients related to higher risks. (Art. 17.3 Law 977). However, it is not clearly stated that FIs, as appropriate, should obtain information on the purpose and intended nature of the business relationship.

35. With regard to criterion 10.11, Article 9 of Law 977 defines trust service providers (which according to the FATF definition can be professional trustees or not) as RI; they shall be bound to implement standard, simplified and enhanced CDD measures (Arts. 7, 18 and 19 Law 977). In accordance with Art. 22, they must also verify the identity of their customers and their beneficial owners.

36. On the other hand, Art. 25.3 of the same Law establishes the obligation of trust service providers and professional trustees to keep for a term not less than five (5) years, from the end of the relationship, all such information on the settlor; the trustees; the beneficial owners and any other natural person who exercises control over the trust; as well as those providing services to the latter, such as investment advisors or managers, accountants and tax advisors, without this list being limitative. However, there are still no specific provisions for compliance with this criterion, as regards the obligation to verify the identity of the settlor, trustee, protector, beneficiary and any other person exercising effective and definitive control over the trust, and for other types of legal structures there are no provisions to require the identity of persons in equivalent positions.

37. Article 22 of Law 977, in relation to criterion 10.14, states that FIs must verify the identity of the customer and its beneficial ownership at the time the business or service relationship is established or when operations for occasional customers are conducted. Notwithstanding the foregoing, they may verify it subsequently provided that the verification is made within a period of ten (10) days counted as from the beginning of the business or service relationship, the RI has verified that the risks of ML/TF/PF are under control and this is necessary in order not to interrupt the normal conduct of the business or service.

38. On the other hand, the same article, according to criterion 10.5, provides that RI must set forth the conditions under which the customer may use the business relationship before verification and adopt specific procedures for the management of risks related to those conditions. However, risk management procedures are not yet foreseen with reference to the conditions under which the customer can use the business relationship prior to verification.

39. With regard to criterion 10.17, in accordance with art. 17.4 of Law 977, the RI must perform a general monitoring of the transactions conducted throughout the business or service relationship in order to contrast their correspondence with the profile declared by the client. RI must intensify monitoring if higher risks arise, as derived from the risk analysis performed by the RI. For the purposes of the foregoing, the RI must perform revisions to update customer documents and information periodically.

40. Considering criterion 10.18, FIs may apply simplified CDD measures with respect to those customers, occasional customers, products, transactions or services that pose a low risk of ML/TF/PF, in accordance with the results of national and sectoral or individual risk assessments of ML/TF/PF. RI may not apply simplified measures when they have suspicions of ML/TF/PF or when higher risk scenarios are present (Art. 18 Law 977).

41. With regard to criterion 10.19, where FIs are unable to complete the application of their CDD measures due to their regular or occasional customers, they must not establish a business or service relationship, carry out the occasional transaction in question or maintain the business or service relationship and are obliged to analyse the case to determine whether they should submit an STR to the FIU. Likewise, when the FIs have suspicion that the customer is related to ML/TF/PF activities and predicate offences associated with ML when initiating or during a business or service relationship, and they consider that the CDD measures will alert them to such suspicions, they may not complete the CDD process, but must proceed to submit an STR to the FIU (Art. 9 of Law 976).

42. Considering criterion 10.20, art. 17.5 of Law 977 states that if the RI suspects that there is ML/TF/PF in the customer's operations and reasonably believes that if they carry out the CDD process they are going to alert the customer, they will be exempted from applying this procedure and, instead, must submit a STR to the FIU.

43. In accordance with the foregoing analysis, it is determined that Nicaragua has expanded its list of RI. Likewise, it has included trust service providers (professional fiduciaries) as RI, who must implement CDD measures. On the other hand, the CONAMI has established provisions relating to the implementation of CDD measures for customers who perform occasional operations for thresholds above 1,000.00 USD and the definition of beneficial ownership (which includes all elements of FATF standards) is also applicable to the RI regulated and supervised by the SIBOIF. However, in accordance with the analysis of the information presented, there is still a lack of regulatory measures that includes all the obligations established in criteria 10.2c to 10.11 and 10.16) for financial RI that were not covered at the time of the MER adoption and that are now under the supervision of the FIU under the new Law 977. Therefore, it is proposed that the rating remains as **Partially Met**.

***Recommendation 11 - Record-keeping (originally rated as PC – rerated as C)***

44. Nicaragua's MER identified the following deficiencies: 1) The specific record keeping obligations of all records on national and international transactions, and records obtained through CDD measures for a period of five years are not established by law, and 2) Some FIs are not covered by AML/CFT provisions.

45. With respect to the second deficiency, as indicated in the analysis of R.1, all FIs in Nicaragua have been incorporated as RI under Article 9 of Law 977. In this sense, the FI - factoring financial leasing and IFIMFs beyond the monitoring of the CONAMI-; which were not RI at the time of the approval of the MER, are required to comply with the record-keeping obligations set forth in Law 977 according to the following analysis.

46. With respect to criterion 11.1, Law 977 establishes the obligation to keep records and stipulates in Art. 25 that RI, in accordance with the nature of the operations, transactions or services to which they are authorized according to their respective regulations, must keep updated records of national and international operations or transactions for at least five (5) years after the end of the operation or transaction. (Law 977, Art. 25.a).

47. With regard to criterion 11.2, Art. 25.c of Law 977 stipulates that RI according to "(...) the nature of the operations, transactions or services to which they are authorized according to their respective regulations, must keep updated records of the information and documents obtained through CDD measures, as well as account files and business correspondence, and the results of analyses carried out on unusual or suspicious transactions, for at least five (5) years after the end of the business relationship or after the date of the occasional transaction".

48. In accordance with criterion 11.3, all RI listed in Law 977 must keep all documents, whether physical or electronic, in good condition, and they must be adequate and sufficient to enable the reconstruction of transactional links with the customer and must be at the disposal of the competent authorities.

49. Art. 25.4 of the same Law, taking into account criterion 11.4, indicates that it is the obligation of the RI, to keep records of documents referred to in this article (see criteria 11.1 and 11.2) in good condition, and that they must be adequate and sufficient to enable the reconstruction of transactional links with the customer and must be at the disposal of the competent authorities.

50. Therefore, according to the preceding analysis, the record-keeping obligations under R 11 are set out in Law 977 and are enforceable against FIs in Nicaragua under the new Art. 9 of the above-mentioned Law. In that sense, according to the analysis of the submitted information, it is considered that the deficiencies indicated in the MER have been overcome. Thus, it is proposed that the rating be raised to **Compliant**.

***Recommendation 12 - Politically exposed persons (originally rated as PC – without rerating)<sup>3</sup>***

51. Nicaragua's MER identified the following deficiencies: 1) Persons performing or entrusted with prominent roles by an international organization to members of senior management are not included as PEPs in the CONAMI regulations. 2) The FIU regulations do not specify whether there are measures to determine the origin of the wealth of customers and beneficial ownership identified as PEPs. 3) CONAMI

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<sup>3</sup> It is worth mentioning that the country issued the Resolution No. UAF-N-14-2018, "Regulation on Prevention, Detection and Reporting of Activities Related to ML/TF/PF through Financial Institutions Regulated and Supervised by the FIU," which establishes obligations about PEP. The analysis of the information corresponding to the decree will be conducted in a subsequent report to be discussed at the next GAFILAT's Plenary of Representatives.

regulations do not specify the origin of the wealth or the origin of funds of customers and beneficial ownership identified as PEPs. 4) Some FIs are not covered by AML/CFT provisions.

52. As already indicated in the analysis of R.1, all FIs in Nicaragua have been incorporated as RI under Article 9 of Law 977. However, in order to verify compliance with this R, it is necessary to develop the analysis that the obligations established in the criteria of R.12 are made enforceable on financial RI that were not covered at the time of the approval of the MER.

53. With regard to criterion 12.1, Art. 19 of Law 977 stipulates that FIs must establish and apply measures to identify customers or, where appropriate, occasional customers whose activities may represent a high ML/TF/FP risk, including PEPs. However, there is still a need for the regulatory development of the law that establishes the provisions related to literals b, c and d of the aforementioned criterion.

54. On the other hand, Administrative Circular letter 628-04-2018/JML, point I.2.c. of the CONAMI establishes that when a microfinance institution determines that when a customer or beneficial owner is a PEP, relative or close collaborator of the latter, national or foreign, it must execute the necessary mechanisms to justify, evidence and document the origin and destination of the funds that are involved in the transaction or that are used for the payment of obligations with the Institution.

55. With regard to criterion 12.2, Law 977 defines PEPs as including persons entrusted with prominent roles in an international organisation. (Art. 4.3). Said Law is also applicable to RI supervised by the CONAMI, as referred to in Article 9.2 which lists FIs supervised by the CONAMI as Reporting Institutions, and Art. 3 which refers to the scope of the Law: “The competent authorities and Reporting Institutions are subject to the application of the present Law, with the scope that it prescribes (...)”.

56. Similarly, Administrative Circular letter 628-04-2018/JML of the CONAMI includes natural persons, national or foreign, who have been entrusted with prominent roles in an international organization.

57. Notwithstanding the above, the RI supervised by the FIU do not yet have provisions requiring them to apply measures to determine the origin of the wealth or the funds of customers and beneficial owners identified as national PEPs or persons entrusted with a prominent role by an international organisation. Additionally, there are no provisions pertaining to criterion 12.2.b for all FIs.

58. There are no provisions pertaining to criterion 12.3 for all FIs.

59. As indicated, Nicaragua expanded the RI list, including FIs that were not regulated by Law 793. Additionally, Law 977 defines PEPs in a way that includes people who have been entrusted with prominent functions in an organization. which is also applicable to the RI supervised by CONAMI. However, in accordance with the analysis of the information presented, there is still a lack of regulatory development with the requirement of the obligations established in criteria 12.1, 12.2 and 12.3 for financial RI that were not covered at the time of the approval of the MER and that now they are under the supervision of the FIU under the new Law 977. With which it is proposed that the rating be maintained in **Partially Compliant**.

***Recommendation 14 - Money or value transfer services (originally rated as PC – without rerating)***

60. Nicaragua’s MER identified the following deficiencies: 1) There are no actions to identify those who provide MVTSS without a license or without registration, nor are there sanctions applicable for such cause. 2) There is no power for the FIU to carry out supervision and to issue respective sanctions for non-compliance. 3) Training is not mandatory for agents of MVTS providers, and compliance with their AML/CFT programs is not monitored.

61. With respect to criterion 14.2, pursuant to Article 32 of Law 977, the Central Bank of Nicaragua, in accordance with its Organic Law, shall regulate the business activity of providers of remittance services,

including undertaking actions for the identification of natural or legal persons who provide remittance services (numeral 3); likewise, it may also apply effective, proportional and dissuasive sanctions to those who fail to comply with the provisions of this article, as well as those issued by the Board of Directors of the Central Bank.

62. However, it is still necessary to determine the actions to be taken to identify natural or legal persons who provide remittance services, as well as the types of sanctions to be applied by the Central Bank to natural or legal persons for non-compliance with the registration obligations. In this regard, the deficiencies noted in Nicaragua's MER with respect to this criterion persist.

63. Under criterion 14.3, the FIU has the power to supervise the RI listed in Art. 9, numeral 3 of Act 977, which includes remittance companies, in matters of ML/TF/FP prevention. Art. 30 of the same Law also defines the authorities empowered to supervise, with a risk-based approach, that the RI implement their ML/TF/FP prevention obligations and impose corrective measures and/or administrative sanctions where appropriate, mentioning in paragraph d) the FIU with respect to the designated RI in or in accordance with the Law. On the other hand, Law 976, FIU's Law, establishes within the powers of the FIU the supervision of compliance with ML/TF/FP prevention obligations set forth in the legal framework applicable to RI within its sphere of competence, and the issuing of sanctions for non-compliance. (Art. 5.5)

64. Regarding criterion 14.5, there are no provisions for MVTs providers who use business allies (agents) to ensure their compliance with ML/TF/FP prevention measures.

65. Likewise, the obligation of MVTs providers to train their business allies has not yet been covered in the actions adopted by the country. Therefore, Nicaragua has not yet adopted measures to remedy the deficiencies identified in criterion 14.5 of the MER.

66. In accordance with the analysis of the information presented by Nicaragua, it is considered that it has overcome some deficiencies indicated in the MER regarding the regulation and application of sanctions on remittances in terms of operations and prevention of ML/TF; However, deficiencies persist with respect to the actions taken or to be undertaken to identify individuals or legal entities that provide remittance services, as well as the types of sanctions that the NCB will apply in relation to the registration obligations. Likewise, there are no provisions for the providers of MVTs that use business allies (agents) to ensure compliance with the ML/TF/FP prevention measures by them. On the other hand, the obligation of MVTs providers to train their business allies has not yet been contemplated in the actions adopted by the country. With which it is proposed that the rating be maintained as **Partially Compliant**.

***Recommendation 15 - New technologies (originally rated as PC – without rerating)***

67. Nicaragua's MER identified the following deficiencies: 1) There are no provisions for the country to identify and evaluate them. 2) Some FIs are not covered by these provisions.

68. As indicated in the analysis of R.1, all FIs in Nicaragua have been incorporated as RI under Art. 9 of Law 977. In that sense, in order to verify compliance with this R, it is necessary to develop the analysis that the obligations established in the criteria of R 15 are made enforceable on financial RI that were not covered at the time of the MER's adoption.

69. With regard to criterion 15.1, Art. 6 of Law 977 creates the National AML/CTF/CPF Commission made up of permanent representatives and technical liaisons of competent institutions. The purpose of the Commission is the on-going assessment of national ML/TF/FP risks, which also includes the analysis of products, services and new technologies (Art. 7 of Law 977). Nevertheless, Nicaragua has not yet identified

or assessed the ML/TF risks that may arise with respect to the development of new products and new business practices and the use of new or developing technologies for new or existing products.

70. With respect to FIs, Art.14 requires SOs to individually assess their particular ML/TF/PF risks for products, services and the use of new technologies for the provision of services, both new and existing, however, the obligation to conduct risk assessment on new business practices is not yet contemplated.

71. Regarding criterion 15.2, Art 14 of Law 977 requires RI: a) assess their particular ML/TF/PF risks for products, services and new technologies for the provision of services, both new and existing; however, it is not established that it must be done before the launch or use; and b) establish ML/TF/PF prevention programs that enable them to effectively manage and mitigate the risks identified through national, sectorial or individual ML/TF/PF risk assessments.

72. As indicated, it is still pending that the obligation to assess risk of new business practices be established and that evaluations of products, new technologies be made in advance of their launch or use for FIs that were not covered at the time of the MER's adoption and that now they are under the supervision of the FIU according to the new Law 977. Likewise, Nicaragua has not yet identified or assessed the ML/TF risks that may arise with respect to the development of new products and new business practices and the use of new or developing technologies for new or existing products. Thus, it is proposed that the rating be maintained as **Partially Compliant**.

#### ***Recommendation 20 - Reporting of suspicious transactions (originally rated as PC – rerated as LC)***

73. Nicaragua's MER identified the following deficiencies: 1) There is no direct mandatory obligation established in the law for FIs to report transactions and attempts of suspicious transactions. 2) Some FIs are not covered by AML/CFT provisions, and therefore they are not required to file STRs. 3) Deficiencies in the criminalization of ML and TF affect compliance with R 20.

74. As indicated in the analysis of R 1, all FIs in Nicaragua have been incorporated as RI under Article 9 of Law 977.

75. With regard to criteria 20.1 and 20.2, Art. 2.6 of Law 976 defines a suspicious transactions as any act, operation or transaction, isolated, repeated, simultaneous or serial, regardless of its amount, carried out or attempted by any natural or legal person, which in accordance with the regulations in force, the uses or customs of the activity in question, is unusual or lacks any apparent economic or legal justification.

76. In turn, Law 977 indicates as RI the institutions supervised by the SIBOIF, CONAMI, FIU, Public Accountants and any other designated natural or legal person by updating the types of RI (Art. 9).

77. In this regard, Law 976, FIU's Law, states in Art. 8.1: "Reporting Institutions that suspect that a customer's assets are linked to ML/TF/PF and predicate offences associated with ML at the time of carrying out or attempting a transaction requested by the customer or at the conclusion of the analysis of its transactions must report these suspicions immediately to the FIU. In the same way, they shall report the transactions and assets of providers of funds, services, associates, employees, business partners and allies who they suspect are linked to ML/TF/PF and predicate offences associated with ML."

78. The deficiencies indicated in R 5 concerning the creation of the offense of TF have been addressed through Art. 44 of Law 977 on amendments and additions to Articles 394 and 395 of Law 641, Criminal Code (see analysis of R 5).

79. In accordance with the analysis of the information submitted by Nicaragua, it is considered that the obligations established in the R. 20 criteria are addressed by Law 976. However, there are still some

minor deficiencies in typifying ML that have impact in the ability of RI to disseminate an STR of conducts that are not criminalized. Thus, it is proposed that the rating be raised to **Largely Compliant**.

***Recommendation 22 - DNFBPs: Customer Due Diligence (originally rated as NC – re-rated as PC)<sup>4</sup>***

80. Nicaragua's MER noted as a deficiency that real estate brokers, dealers in metals and precious stones and lawyers, notaries, other legal professionals and independent accountants are not covered by this provision because they are not regulated. In order to verify compliance with this R, it is necessary to develop the analysis that the obligations established in the criteria of R.22 are made enforceable on DNFBPs that were not covered at the time of the approval of the MER.

81. With respect to criterion 22.1, in accordance with the analysis of R 1, casinos, real estate brokers, dealers in metals and precious stones, accountants and trust service providers have been incorporated as RI, through Art. 9, Law 977. Regardless, lawyers and notaries carrying out the activities set out in R 22 remain to be included as RI. According to the analysis in R 10, it is identified that there are no provisions relating to some of the obligations established in criteria 10.2 to 10.11 as well as to criterion 10.16 for DNFBPs. (see analysis of R 10).

82. The analysis on R11 is applicable to all RI, both IF and ANPFD covered under Art. 9 Law 977. With which the provisions of criterion 22.2 are met, except for lawyers and notaries.

83. The analysis developed for R12 is applicable to all RI covered under Art. 9 of Law 977. Therefore, the regulatory development of the law that establishes the obligations established in criteria 12.1, 12.2 and 12.3 is necessary. With which criterion 22.3 is partially fulfilled.

84. Given the information provided by Nicaragua, the analysis developed in R.15 is applicable to this criterion for the RI covered under Art. 9 of Law 977. With which it partially complies with criterion 22.4.

85. Pursuant to Article 17.6 of Law 977, the application of CDD measures is non-delegable; consequently, criterion 22.5 is not applicable to DNFBPs.

86. According to the information provided by Nicaragua, the regulatory framework now includes DNFBPs that were not covered in the previous MER and through Law 977 except lawyers and notaries. The new regulatory framework fulfils some of the requirements of CDD (R.10) and new technologies (R.15). Criterion 22.2 on record keeping is met (except for lawyers and notaries) and criterion 22.5 is not applicable for DNFBPs (R.17). Considering this analysis, it is considered that Nicaragua has developed some aspects for compliance with this R. by the Law 977 to achieve partial compliance, but regulations for compliance with the other criteria are still pending. Therefore it is proposed a re-rating to **Partially Compliant**.

***Recommendation 23 - DNFBPs: Other measures (originally rated as NC – re-rated as PC)***

87. The MER of Nicaragua established as deficiencies: 1) the DNFBPs mentioned in subparagraphs a) and b) of criterion 23.1 are not included as RI, therefore, this Recommendation is not complied with, and 2) there is no obligation for DNFBPs to report if they have reasonable grounds to suspect that the funds come from a criminal activity or are related to TF, including attempts to conduct operations (criterion 23.1).

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<sup>4</sup> It is worth mentioning that the country issued the Resolution No. UAF-N-14-2018, "Regulation on Prevention, Detection and Reporting of Activities Related to ML/TF/PF through Financial Institutions Regulated and Supervised by the FIU," which establishes obligations about PEP. The analysis of the information corresponding to the decree will be conducted in a subsequent report to be discussed at the next GAFILAT's Plenary of Representatives.



88. According to the analysis of the R.22, RI has been incorporated into: casinos, real estate agents, metal and precious stone traders, accountants and fiduciary service providers. However, lawyers and notaries remain to be included as RSs.

89. Below there is the analysis of all criteria of R. 23 applicable to the DNFBPs that were not as RI and not cover at the time of MER`s adoption..

90. For the analysis of criteria 23.1 with respect to the obligation of DNFBPs to carry out a STR, refer to the analysis made in R. 20 which is applicable to all RI covered under Art. 9 of the Law 977 (except for lawyers and notaries).

91. With respect to criterion 23.2, according to what is established in criterion 18.1, under Art. 15, the RSs must establish in their ML/TF/FP prevention programs:

- The creation of roles or positions with managerial level and/or administrative structures that supervise compliance with AML/CFT/CFP measures and procedures and recommend that their superiors intensify them when necessary. Supervisors may determine in which cases the RI under their supervision are exempted from appointing staff at the managerial level (criterion 18.1.a).
- Rigorous selection procedures to ensure high standards in hiring employees (criterion 18.1.b).
- An ongoing training program for employees, including senior management, on AML/CFT/CFP (criterion 18.1.c).
- An independent audit or evaluation role to examine the effectiveness of the program and its implementation, either by internal audit or by independent external experts, including external auditors (criterion 18.1.d).

92. With which it complies with what is established in criterion 23.2, except for lawyers and notaries.

93. As regards criterion 23.3, Nicaragua states that under Article 20 of Law No. 977, RI must apply enhanced CDD measures, proportionate to the risks, to business relations, services and transactions initiated, maintained or carried out in relation to natural or legal persons, or trusts, coming from or located in countries that do not fully or sufficiently apply in accordance with International Law and standards against ML/TF/FP (in compliance with criterion 19.1).

94. For the analysis of criterion 23.4 with respect to disclosure and confidentiality requirements, refer to the analysis of R. 21 which is applicable to all RI covered under Art. 9 of Law 977 (except for lawyers and notaries).

95. According to the analysis carried out, the new Nicaraguan legal framework establishes as RI the remaining DNFBPs, except for lawyers and notaries. The Law establishes the obligations included in R. 18, 20 and 21. However, compliance with R. 19 is partial. important with Law 977, however it is considered partial compliance with this R. to not establish obligations for lawyers and notaries, which is proposed to raise the rating to **Partially Compliant**.

***Recommendation 24 - Transparency and beneficial ownership of legal persons (originally rated as NC –erated as PC)***

96. The MER of Nicaragua established the following deficiencies: i) In the case of a cascading corporate structure, it is not a requirement to constitute the legal person downstream, the information of the beneficial ownership upstream (criterion 24.1), ii) Nicaragua has not developed a risk assessment for

each type of legal entity available in the country (criterion 24.2), iii) Information on directors, owners and/or shareholders of the company is not updated in the Commerce Registry, nor is there an obligation, under specific sanction, to update the information (criterion 24.4); iv) there is no obligation to update the information established in criteria 24.3 and 24.4 (criterion 24.5) v) companies are not required to obtain and maintain, or establish the requirement to register in the Company Registry, the information on the beneficial ownership of the companies (criterion 24.6); vi) there is no requirement that the information on the beneficial ownership be accurate and updated (criterion 24.7); vii) there is no express norm that establishes the obligation for every company to cooperate with the competent authorities for the determination of the beneficial ownership (criterion 24.8); viii) there is no express norm that establishes the obligation for legal persons and/or for the respective supervisory authorities to maintain records for at least 5 years of all the information on the beneficial ownership of the same at the time of its dissolution (criterion 24.9) ); ix) there are no measures in Nicaragua's legislation to comply with any of the control mechanisms for bearer shares in accordance with the provisions of the Recommendation (criterion 24.11); ix) There are no proportional and dissuasive sanctions against non-compliance with the information requirements mentioned in this Recommendation (criterion 24.13); and x) there are no established protocols to monitor the fulfilment or satisfaction of the responses received in response to the requirements of local authorities regarding information on beneficial ownership or basic information of legal persons in general (criterion 24.15)

97. An analysis of the previously referenced criteria is made as follows.

98. With respect to criterion 24.1, information has not yet been provided in order to comply with the aforementioned deficiency. Against criterion 24.2, as mentioned in art. 6 of Law 977 creates the National AML/CFT/CFP Commission, whose function is the periodic evaluation of national risks related to ML / TF / PF. However, the risks associated with the types of legal persons in Nicaragua have not yet been evaluated.

99. 2. With respect to criterion 24.4, Art. 25.2 of Law 977 establishes that commercial registers and legal persons or their administrators must keep records in which they correspond to their name, constitutive instrument, domicile statutes, list of directors and final beneficiaries. Additionally, Article 13 of the aforementioned Law establishes that legal entities must keep adequate and accurate information on the ownership and control structure of the legal entity.

100. However, the information on the shareholder of the mercantile company is not updated in the Company Registry, without there being an obligation, under specific sanction, to update the information beyond that provided at the time of registration, whose information it is only with respect to the moment of the constitution of the company and does not reflect the subsequent.

101. With respect to criterion 24.5, Art. 25.5 of Law 977 establishes that supervisors will determine the periodicity with which the information of the mercantile registers and of the juridical persons contained in art. 25.2. With which the verification is still pending that it can be guaranteed that the information is accurate and updated.

102. Regarding criterion 24.6, Art. 13 of Law 977 establishes the obligation of legal entities to keep adequate, accurate and updated information about their final beneficiary and their ownership and control structure. This information must be kept and updated by each type of legal entity. The competent authorities will have access to the information referred to in a timely manner. However, there are still no specific sanctions that oblige mercantile companies to keep the information updated in the Company Registry.

103. With respect to criterion 24.7, legal persons must keep adequate, precise and updated information on their beneficial owner and their ownership and control structure (Article 13 of Law 977).

104. Regarding criterion 24.8, although in accordance with the aforementioned Art. 13, the competent authorities have the right to access in a timely manner the information available from the beneficial ownership, there is still no provision that guarantees that the mercantile companies cooperate in accordance with to any of the mechanisms established in criterion 24.8.

105. With regard to criterion 24.9, in accordance with Law 977, the Company Registries, the entities that regulate, supervise and sanction NPOs, the Ministry of Family, Cooperative, Community and Associative Economy and the legal persons themselves or their administrators, liquidators or other persons involved in their extinction, must keep records, as appropriate, of their name, instrument of incorporation, bylaws, domicile, list of directors and beneficial owners, for five (5) years from the date when the legal person, for any reason or circumstance, ceases to exist. (Art. 25, numeral 2, of Law 977).

106. Nicaragua has adopted the measure in paragraph a) of the evaluation criterion 24.11, indicating that for the purposes of identification of the shareholding and control structure of corporations, the issuance of bearer shares and share certificates, as well as the conversion of nominative shares into bearer shares, is prohibited. Notaries must not authorize public deeds of corporations with shares and bearer share certificates (Art. 21, Law 977). In this sense, the commercial companies that at the moment of Law 977 coming into force have bearer shares and share certificates are required to convert them into nominative shares within twelve (12) months. If the foregoing is not complied with, they may not be disposed of in acts or contracts. This conversion must be registered in the Public Company Registry (Article 46, Law 977).

107. With respect to criterion 24.13, there are still no proportional and dissuasive sanctions against non-compliance with the information requirements mentioned in this R. Additionally with respect to criterion 24.15, there are still no protocols established to monitor and monitor the compliance or satisfaction of the answers received in response to the requirements of local authorities regarding final beneficiary information or basic information of legal persons in general.

108. In accordance with the analysis of the information presented, Nicaragua has made significant efforts to comply with this R., in particular the obligations of legal persons have been established to keep updated and accurate information of the beneficial owner and ownership structure and control, as well as the obligation for the companies to cooperate with the competent authorities regarding access to this information. Additionally, the issue of bearer shares has been prohibited. However, the fulfilment of some of the criteria in particular with respect to the risk analysis of legal persons is still pending, there are no sanctions, proportional and dissuasive sanctions against non-compliance with the information requirements mentioned in the R., there is still no provision that guarantee that the companies cooperate in accordance with any of the mechanisms established in criterion 24.8, nor are there protocols established to follow up and monitor the fulfilment or satisfaction of the responses received in response to local authorities' requirements regarding beneficial ownership information or basic information of legal persons in general. With which it is considered that Nicaragua has partially overcome the deficiencies indicated. With which it is proposed that the rating raise to **Partially Compliant**.

***Recommendation 25 - Transparency and beneficial ownership of legal arrangements (originally rated as NC – without rerating)***

109. Nicaragua's MER identified the following deficiencies: 1) In trusts it is not possible to establish who will be the natural person(s) exercising control in cases where the beneficial owner is a legal person. 2) No obligation is established in the Law with respect to keeping identification information of the participants of the trust nor of service providers, advisors, investment managers, accountants, nor fiscal advisors. 3) Only for subjects supervised by the SIBOIF and CONAMI there is an obligation to keep

records for the period indicated. 4) There are no requirements to update the information provided for the creation of the trust. 5) There is no express obligation for the trustee to actively disclose to the FI or DNFBP, with which it establishes a business relationship, that it is acting in that capacity with respect to the funds that are part of the mentioned business relationship. 6) When the trust service is provided by an FI for which bank secrecy applies, information on the settlor or the beneficiary may not be provided to another FI or DNFBP with which a business relationship is established in the exercise of the duties that must be performed as administrator of the trust. 7) There are no sanctions established in the law to guarantee that the information related to the settlor, beneficiary and the acts executed in the administration of the trust assets are availability and up-to-date. 8) Except for the provisions of Law 793, Art. 9, numeral 2, the legislation does not provide for specific sanctions for failure to deliver information on the trust to the competent authorities.

110. As regards criterion 25.1, Law 977 stipulates that supervisors must establish the manner in which RI obtain adequate, precise and timely information on the beneficial owner of their customers on whose behalf they intend to establish a business relationship; in particular, they must establish information obligations on the nature of the business, shareholding and control structure of legal persons and trusts (Art. 17, numeral 2). However, the weakness noted in the MER persists. There are no provisions relating to the identification of the natural person exercising control in cases where the beneficiary is a legal person as established on criteria 25.1.b.

111. Art. 25.3 of Law 977 stipulates that trust service providers and professional trustees, in addition to the records indicated in numeral 1 that are applicable to them, must keep for a period of not less than five (5) years, as from the end of the relationship, information on the settlor; the beneficiaries; the beneficial owners and any other natural person exercising control over the trust; as well as those who provide services for the latter, such as investment advisors or managers, accountants and tax advisors, this enumeration not being limitative. In that sense, Nicaragua has addressed the deficiency indicated in criterion 25.1.c of the MER

112. With regard to criterion 25.2, Law 977 provides trust service providers and professional trustees must keep for a period of not less than five (5) years the records of the information indicated in this Law. Therefore, documents must be kept in good condition, regardless of whether they are physical or electronic, and they must be adequate and enough to enable the reconstruction of transactional links with the customer and must be at the disposal of the competent authorities.

113. On the other hand, supervisors must determine how frequently the records must be updated.

114. Nevertheless, the frequency with which trust service providers must update the information maintained in their records is not yet known.

115. In view of the deficiency noted in the MER with respect to criterion 25.3 and the information provided by the country, it is considered that there is still no express obligation for the trustee to actively disclose to the FI or DNFBP, with which it establishes a business relationship, that it is acting in that capacity with respect to the funds that are part of the mentioned business relationship.

116. According to criterion 25.4, in general terms, in accordance with Article 36 of Law 977, Supervisors have the power to order the implementation of corrective measures and impose sanctions on RI and/or their directors, administrative managers and compliance officers, as appropriate, for non-compliance with applicable ML/TF/PF prevention obligations, without prejudice to the provisions of criminal legislation.

117. However, there is still no express obligation for the trustee to actively disclose to the FI or DNFBP, with which it establishes a business relationship, that it is acting in that capacity with respect to the funds

that are part of the mentioned business relationship. There is also no sanctioning framework to guarantee that the information related to the settlor, beneficiary and the acts executed in the administration of the trust assets are availability and up-to-date; and that the information in the possession of trust service providers is delivered to the competent authorities when requested.

118. According to the information provided by the country, Law 977 states that supervisors are empowered to establish corrective measures and sanctions on RI for non-compliance with ML/TF/FP prevention obligations. However, there are no specific provisions regarding sanctions for failure to deliver information on beneficial owners and control of the trust for RI.

119. Based on the analysis of the information submitted by Nicaragua, it is considered that it has made technical progress with respect to certain weaknesses identified in the MER. Nevertheless, there persist significant deficiencies relating to the identification of the natural person exercising control in cases where the beneficiary is a legal person. There are no provisions regarding the frequency with which trust service providers must update the information maintained in their records. There is still no express obligation for the trustee to actively disclose to the FI or DNFBP, with which it establishes a business relationship, that it is acting in that capacity with respect to the funds that are part of the mentioned business relationship. Likewise, the country also has no provisions relating to the sanctioning framework to guarantee that the information related to the settlor, beneficiary and the acts executed in the administration of the trust assets are availability and up-to-date; and that the information in the possession of trust service providers is delivered to the competent authorities when requested. Thus, it is proposed that the rating be maintained as **Non-Compliant**.

***Recommendation 26 - Regulation and supervision of financial institutions (originally rated as PC – rerated as LC)***

120. Nicaragua's MER identified the following deficiency: 1) Nicaraguan legislation does not include all financial sectors in the legal framework for prevention and detection of ML/TF.

121. As indicated in the analysis of R.1, all the FIs that were outside the scope of the AML/CFT regulation (financial leasing, factoring and IFIM that are not supervised by CONAMI, identified in the MER) have been incorporated as RI under art. 9 of Law 977 and the FIU is established as the supervising body of said institutions. In order to verify compliance with this R. it is necessary to verify that the FIU exercises the obligations established in the criteria of R.26.

122. In response to criterion 26.1, as indicated above, the FIs - financial leasing, factoring and IFIM that are not supervised by CONAMI- have been incorporated as RI under art. 9 of Law 977 and the FIU has been designated as the body in charge of regulating, monitoring and supervising compliance with AML/CFT obligations. With which, it meets the requirements of criterion 26.1

123. In response to the deficiency that affects compliance with criterion 26.2 indicated in the MER, the Central Bank of Nicaragua will regulate the commercial activity of the remittance service providers and those engaged in the sale and / or currency exchange activity (art. 32 Law 977). Additionally, Art. 15 of Law 976, all RI must register with the FIU.

124. Regarding criterion 26.3, art. 33 of Law 977 states that the supervisors, including the FIU will establish the measures for the granting of authorizations, licenses, registration or other controls to prevent non-qualified persons from having, or being the final beneficiary, of shareholdings or controlling or occupying a managerial position in an FI or, in the case of DNFBPs, obtain accreditation to join the exercise of a profession or authorization to operate, as appropriate. In this context, Law 976 establishes that the FIU (Art. 15) may request information from the police, other public authorities or private entities that may have relevant information regarding the RI and establishes that the FIU is regulating the conditions in which the RI must

register the RI and the sanctions against non-compliance with the registration. The development of the specific obligations that must be fulfilled by the RI with respect to their registration for the full compliance with criterion 26.3 is still lacking.

125. Regarding criterion 26.4, In accordance with Art. 30 of Law 977, supervision with a risk approach. Additionally, in accordance with Art. 5.4 and 5.5 of Law 976, the FIU will carry out the regulation and supervision of AML/CFT obligations established for FIs in accordance with the national and sectoral risks that are identified. With which it is considered that the criterion is considered fulfilled.

126. With respect to criterion 26.5, pursuant to Art. 16 of Law 976, the frequency and intensity of the supervision performed by the UAF of the SOs under its responsibility must be based on: a) the risks of ML / FT / FP nations , b) the risks of ML / TF / PF of the RI, identified through the evaluation of their individual risk profiles, c) the policies, internal controls and prevention procedures adopted by the OS, d) the characteristics of the RI, such as their capacity and experience in ML / FT / FP prevention, the diversity and amount of RI and the degree of discretion that allows them to establish simplified, standardized or intensified measures and procedures. With which it is considered that the criterion is considered fulfilled

127. Regarding criterion 26.6, Law 796 establishes in Art. 16.1.b that the FIU must carry out periodic evaluations of the risk profiles of the RI, without prejudice to the fact that the FIU decides to carry them out of the programmed moments, when situations arise that you consider particularly relevant. In this sense, the criterion is considered fulfilled.

128. In accordance with the analysis as IF that were outside the scope of the AML / CFT regulations identified in the MER (financial leasing, factoring and IFIM that are not supervised by CONAMI) have been incorporated as RI under art. 9 of Law 977 and the FIU is established as the supervising body of said institutions. In addition, the responsibilities and obligations of the FIU as the regulator and supervisor of the FIs indicated have been established. However, there are still minor deficiencies related to the development of the registration obligations already established in the Law, with which it is proposed that the rating of this R. be raised to **Largely Compliant**.

### ***Recommendation 28 - Regulation and supervision of DNFBPs (originally rated as NC –rerated as PC)***

129. The MER of Nicaragua established as deficiencies: 1) there are no measures to prevent associates of criminals from participating in the casino as shareholder, partner, director, manager, attorney or worker, and 2) are not included as RI by law to other DNFBPs, or another additional category included by the country. Nor is a supervisory body on AML / CFT with powers to verify regulatory compliance identified. In accordance with the new Law 977, an analysis is made of all the criteria of Recommendation 28 applicable to supervisors once the DNFBPs that were not found as RI were incorporated.

130. In compliance with criterion 28.1, Nicaragua determines under article 33 of Law 977 that supervisors or enforcement authorities established by law to regulate the commercial activity of specific sectors of RI should establish measures for the granting of licenses and records in order to prevent unsuitable persons from participating as shareholders, controlling or obtaining accreditation to join the exercise of an DNFBP. Additionally, the analysis carried out on the FIU applied in R. 26 applies to this criterion as it is the FIU designated to supervise the DNFBPs as indicated in the following criterion.

131. With regard to criterion 28.2, according to the Law 977 (Art.9) Nicaragua designated the following authorities for DNFBPs that must be subject to supervision, and empowers them to make administrative arrangements in compliance with the law:

1. The FIU is the authority responsible for supervising:
  - a. Casinos

- b. Real estate brokers
- c. Dealers in metals and precious stones
- d. Merchants of vehicles
- e. Trust service providers

- 2. The Nicaraguan Public Accountants' Association supervises:
  - a. Authorized Public Accountants

132. With regard to criterion 28.3, as referred to above, the DNFBPs identified in Article 9 of Law 977 are subject to monitoring and supervision, although lawyers and notaries are not in the RI category.

133. For criterion 28.4, under the law, the authorities responsible for the supervision of DNFBPs:

- a) Have appropriate powers to fulfil their roles. In accordance with Article 30, they may create administrative provisions to make Law 977 operational, supervise with a risk-based approach that RI implement their ML/TF/PF prevention obligations;
- b) Shall establish measures to grant authorizations, licenses, registration or other controls in order to prevent unsuitable persons having, or being beneficial owners of shareholdings or having control or holding a management position in a DNFBP (Article 33);
- c) Have the power to impose corrective measures and/or administrative sanctions when applicable to RI for non-compliance with ML/TF/PF prevention obligations (Articles 30 and 36).

134. Regarding criteria 28.5 and 28.6, in the case of the supervision work of the FIU, the analysis of criteria 26.5 and 26.6 is applied. Still lacks the development of the own with respect to the Association for Public Accountants.

135. In accordance with the information provided, Nicaragua manages to address important deficiencies identified in the MER, particularly except for lawyers and accountants who are not RI, Law 977 has designated a supervisory body for the rest of the DNFBPs. In the case of the FIU, the supervision obligations are established and for the case of the Nicaraguan Public Accountants Association, it is still necessary to develop some of the obligations of this R. Based on the above, it is considered to raise the rating to **Partially Compliant**.

***Recommendation 35 – Sanctions (originally rated as PC – without re-rating)***

136. The MER of Nicaragua established as deficiencies: 1) the sanctions regime does not cover all the hypotheses raised by the Standards and 2) there are other categories of FIs and DNFBPs that are not considered RI by law and are not subject to sanctions. The analysis of criteria 35.1 and 35.2 is presented as follows

137. As indicated above, all FIs and DNFBPs (except notaries and accountants) in Nicaragua have been incorporated as RI under art. 9 of Law 977.

138. Regarding criterion 35.1 of the sanctions regime, Article 36 of Law 977 establishes that supervisors have the power to order the implementation of corrective measures and impose sanctions on RI and/or directors, administrative managers and compliance officers for breaching the obligations of the LA/FT/PF preventive system that applies to them.

139. In the case of the FIU, Art. 17 establishes that the FIU has the power to order the RI under its supervision to implement corrective measures in case of non-compliance with ML/FT/PF prevention duties and in particular those RI that breach the duty to identify the client and beneficial ownership, maintain

records and perform a STR will be subject to corrective measures as sanctions. The FIU can impose the following types of sanctions: a) Fines of five hundred to fifteen thousand units of fine. The value of each unit of fine will be equivalent to 1 USD, b) temporary suspension of the operations of a RI or final closure and c) separation of the position as compliance officer. Notwithstanding the foregoing, specific provisions have yet to be established to implement a range of proportional and dissuasive sanctions, whether criminal, civil or administrative. Nor does it establish provisions for sanctions to be applicable for non-compliance with the AML/CFT requirements described in R. for both the FIU and the pertinent SIBOIF under the MER.

140. As mentioned above, except for lawyers and notaries, the other FIs and DNFBPs are subject to AML/CFT obligations, however, the development of the system of sanctions by the FIU applicable not only to FIs, is still lacking, APNFD, but to directors and senior managers.

141. According to the previous analysis, all FIs and DNFBPs (except notaries and accountants) in Nicaragua have been incorporated as RI under art. 9 of Law 977 and it is established that the FIU can apply sanctions to its RI. However, there is still a lack of development of the sanctions regime by the FIU applicable not only to FIs, DNFBPs, but also to directors and senior managers. The sanctions regime must be applicable due to non-compliance with the AML / CFT requirements described in R. for both the FIU and the relevant SIBOIF under the MER. For all the above, it is considered to maintain the rating as **Partially Compliant**.

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

Since Nicaragua's on-site visit in 2017, the FATF has amended modified Recommendations 5, 7, 18 and 21. This section analyzes Nicaragua's compliance with the new requirements.

#### ***Recommendation 5- Terrorist Financing Offense (originally rated as PC – Rerated as LC)***

142. Nicaragua's MER noted the following deficiencies: 1) the criminalization of the conducts established in the Annex to the FT Convention is partial (criterion 5.1), 2) the FT offence should refer to "a population" or "an government "in general (criterion 5.1), 3) there is no criminalization of the financing of the individual terrorist, (criterion 5.2.b), 4) the TF offence does not cover the financing of travel of individuals who travel for the purpose of perpetrating, planning, prepare or participate in terrorist acts or provide or receive terrorist training (criterion 5.2 bis); and 5) there are no sanctions against legal persons (criterion 5.7).

143. Article 44 of Law 977, which amends article 395 of the Criminal Code on TF, establishes that

*"anyone who, by any means, directly or indirectly, unlawfully and deliberately, collects, captures, channels, deposits, transfers, moves, insures, administers, protects, acts as a broker in, lends, provides, delivers assets, whether from licit or illicit sources, with the intention that they be used or knowing that they will be used, in whole or in part, for the purposes herein below outlined, shall be subject to a penalty of fifteen to twenty years' imprisonment- namely:*

*a. Commit or attempt to commit terrorism, aggression against internationally protected persons, offences relating to dangerous materials, hostage-taking, offences against the security of civil aviation, offences against navigation and port security and/or any other conduct prohibited by international legal instruments against terrorism to which Nicaragua is a party.*

*b. Make them available to or for use by terrorist organizations or terrorist individuals for any purpose, regardless of whether they are intended for terrorist acts;*



*c. To finance the travel of individuals who travel to a State other than their State of residence or nationality for the purpose of committing, planning, preparing or participating in terrorist acts;*

*d. Finance the radicalisation and/or recruitment of persons to carry out terrorist acts or integrate terrorist organizations; or*

*e. Provide or receive training for the purpose of terrorism.*

*For an act to constitute financing of terrorism it shall not be necessary that the funds have been effectively used for the purposes numbered in the preceding paragraph, nor that the funds are linked to a specific terrorist act. The penalty shall be increased by one third in its minimum and maximum limits when the crime is committed through the financial system or by a partner, director, manager, administrator, guardian, external or internal auditor, representative or employee of a public entity or authority, a public official or employee.”*

144. The analysis of criteria 5.1, 5.2, 5.2 bis and 5.7 is presented below.

145. With regard to criteria 5.1, in accordance with Article 44.a, the TF offence is committed when acts or conducts are prohibited by international legal instruments against terrorism signed by Nicaragua are financed (Article 2.a). In this regard, it has been verified that Nicaragua has signed all the treaties in the Annex to the International Convention for the Suppression of the Financing of Terrorism. Hence, the provisions of Article 2.a of the FT Convention are fulfilled. In addition, Nicaragua amended article 394 of the Criminal Code by Article 44 of Law 977, referring to anyone acting individually or together with a terrorist organization that seeks to intimidate a population, alter the constitutional order, or compel a government or an international organization to carry out a terrorist act. Hence, the provisions of Article 2.b of the FT Convention is covered.

146. With regard to criterion 5.2.b, in accordance with new Article 395 of the Criminal Code Nicaragua criminalizes making funds available for use by terrorist individuals for any purpose, regardless of whether they are intended for a terrorist act.

147. In compliance with 5.2.bis, through Article 44 of Law 977, paragraphs c-e, Nicaragua includes the financing of travel by foreign terrorist combatants whose purpose is to perpetrate, plan, prepare or participate in terrorist acts. It also includes financing the recruitment of persons to carry out terrorist acts or to join a terrorist organization, as well as providing or receiving terrorist training.

148. Concerning criterion 5.7, under Nicaraguan law, legal persons who are criminally liable for a crime or misdemeanour are also criminally liable if the act results in damages. Likewise, they are civilly liable in the absence of criminal liability, for the crimes or misdemeanours committed by their employees or dependants, representatives or managers in the performance of their obligations or services. (Arts. 121, first paragraph, and 125, subparagraph “b”, of the Criminal Code). Nevertheless, the shortcoming with regard to the impossibility of applying sanctions to legal persons autonomously and directly still remains.

149. According to an analysis of the information presented, Nicaragua has addressed all the deficiencies identified in the MER for R.5, except for all that relates to sanctions on legal persons on an autonomous basis. Accordingly, it is proposed that the rating be raised to **Largely Compliant**.

***Recommendation 7- Targeted financial sanctions related to proliferation (originally rated as NC – without rerating)<sup>5</sup>***

150. The MER pinpointed the following deficiency: There are no regulations to enforce UNSCRs related to the financing of proliferation of weapons of mass destruction (FPWMD). Derived from the

<sup>5</sup> It is important to mention that Nicaragua approved Decree No. 15-2018 on the Regulation of Law No. 977, which establishes the provisions for the implementation of the UNSCR against the proliferation of weapons of mass destruction

deficiency, an analysis of each of the technical criteria of R. 7 was made with the information provided by the country.

151. In this regard, for criteria 7.1 and 7.2, through Law 977, Nicaragua establishes a base regime for implementing targeted financial sanctions (TFS) with respect to the FPWMD. Article 40 of Law 977 stipulates that the authorities and procedures for compliance with UNSCRs establishing financial sanctions against natural and legal persons and criminal organizations linked to terrorism, proliferation and their financing shall be defined by means of regulations.

152. With respect to criterion 7.2a, according to Art. 41, the competent authorities may order RSs to freeze without delay the funds or assets of designated natural persons, legal persons or criminal organizations. However, this obligation does not extend to all natural and legal persons in Nicaragua. Similarly, they shall have the power to request the judicial authority to validate the freezing of funds or assets of designated natural or legal persons or criminal organizations.

153. With respect to criterion 7.2 c, Art. 43 establishes that no person in the national territory may provide funds or other assets, economic or financial resources or other related services, directly or indirectly, for the benefit of designated natural or legal persons or organizations, unless such person has a license or authorization provided by the UNSC or the competent local authority. This prohibition extends to natural persons, legal entities or organisations controlled by or acting on behalf of those subject to the immobilisation measure.

154. Regarding criterion 7.2 e, according to Art. 42, RSs shall comply with the freezing orders of funds or assets notified to them and shall inform the competent authorities of such immobilisation or actions taken in compliance with such orders, including attempted transactions.

155. Regarding criteria 7.2 b, 7.2.d and 7.2.f, the regulatory framework of Nicaragua does not yet address these sub-criteria.

156. Based on the information provided and as discussed in criteria 7.1-7.2, Articles 40-43 of Law 977 cover the FPWMD and the obligations of the competent authorities and RSs to implement the freezing without delay of funds and assets of designated persons or entities. However, there do not appear to be any provisions that include: i) the measures the country should take to monitor and ensure compliance by FIs and DNFBPs with their obligations under this Recommendation (criterion 7.3), ii) procedures of public knowledge for submitting requests to the Security Council for removal from lists in the event that persons or entities no longer meet the designation criteria (criterion 7.4) y iii) Assumptions regarding contracts, agreements or obligations that arose prior to the date on which the accounts became subject to TFS under criterion 7.5.

157. According to the analysis of the information provided, the efforts made by Nicaragua with the approval of Lay 977 are recognized, which presents a basis for implementing the SFDs on FPADM, establishing a framework that must be developed through regulations as established in Art. 40 of the aforementioned Law. According to the analysis, some of the obligations established in criteria 7.1 and 7.2 are established. However, the other obligations of R.7 are not yet covered under the Nicaraguan regulations. In that sense, it is considered that there are important deficiencies, which is why it is proposed to keep the rating as **Non-compliant** for R.7.

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and their financing. The analysis of the information corresponding to the decree will be made in a subsequent report to be discussed at the next GAFILAT's Plenary of Representatives.

*Recommendation 18- Targeted financial sanctions related to proliferation (originally rated as LC – without rerating)<sup>6</sup>*

158. The deficiencies identified are: 1) Some FIs are not reached by the applicable provisions, and 2) There is no regulatory provision for the FIs regulated by the FIU to establish that the Compliance Officer has a managerial level.

159. In response to the first deficiency, in accordance with the analysis of the R.1, all FIs in Nicaragua have been incorporated as RS under Law 977, and addressing the second deficiency, art. 15b of the aforementioned Law establishes that the RI should establish the creation of responsibilities or positions with managerial level and/or administrative structures that supervise compliance of AML/CFT/CFP measures and procedures and recommend their superiors to intensify them whenever necessary. Supervisors may determine in which cases supervised RI are exempt from appointing managerial-level personnel.

160. On the other hand, to verify compliance with this R. it is necessary to develop the analysis according to the recent modification of criterion 18.2b of the Assessment Methodology. In that sense, art. 15 of Law 977 establishes that the ML/TF/FP prevention programs of the financial groups are regulated in accordance with the provisions of the aforementioned Law that are applicable to it and Law 561, General Banking Law, Non-Banking Financial Institutions and Financial Groups.

161. However, in Laws 977 and 561 there are no provisions related to what is mentioned in criterion 18.2b, with which it is proposed to maintain the rating as **Largely Compliant** for R. 18.

*Recommendation 21 - Tipping-off and confidentiality (originally rated as PC – rerated as LC)*

162. Nicaragua's MER identified the following deficiencies: 1) The lack of express obligation in the STR Law. 2) Some FIs are not covered by AML/CFT provisions, and therefore they are not required to file STRs; consequently, they are not protected against civil or criminal liability derived from any disclosure they may have made, and likewise, they are not obliged to keep confidentiality.

163. The analysis of the documentation presented by Nicaragua to overcome the described deficiencies is performed below:

164. With regard to criterion 21.1, Law 976, FIU Law, states in Articles 8 and 9 the obligation of Reporting Subjects to submit to the FIU reports on transactions suspected of ML/TF/FP (both carried out and attempted). In addition, Law 959 amended and added to Law 735, stipulating that all FIs must apply CDD measures, keep records and send STRs to the FIU.

165. In light of criterion 21.2, Article 11 of Law 976 refers to provisions relating to exemption from liability for good faith in suspicious transaction reporting:

*“Reporting Institutions or their directors, administrative managers and compliance officers shall be exempt from civil, criminal, disciplinary or administrative liability with respect to banking secrecy obligations or any other secrecy established by law or through contract, when, in compliance with their obligation, they submit reports or provide information to the FIU in good faith, even if they do not know precisely what the criminal activity predicate to ML is, regardless of whether it has occurred.” And Article 12 indicates to Reporting Institutions that under no circumstance shall their directors, administrative managers, compliance officers or*

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<sup>6</sup> It is important to mention that Nicaragua approved Decree No. 15-2018 on the Regulation of Law No. 977, which establishes the provisions regarding the criterion 18.2.b. The analysis of the information corresponding to the decree will be made in a subsequent report to be discussed at the next GAFILAT's Plenary of Representatives.

employees disclose to a customer, provider of funds, services, associates, employees, business partners and allies or to third parties that:

- Information on them was sent to the FIU.
- A report concerning suspicious transactions relating to ML/TF/PF and predicate offences associated with ML will be sent, is being sent or has been sent to the FIU.
- A criminal investigation is being or has been conducted into them in relation to ML/TF/PF activities and predicate offences associated with ML.
- A decision has been made not to provide a product or service based on suspicions that the customer's assets are derived from ML/TF/PF activities.

Except in those cases where it is required within the exercise of their role. These prohibitions shall prevail even after the termination of employment and shall be subject to criminal or administrative liability, as the case may be”.

**166.** In view of the foregoing, the content indicated in Law 976 in relation to R. 21 does not address provisions on not preventing the exchange of information under R.18. Consequently, it is proposed to raise the rating of Recommendation 21 to **Largely Compliant**.

#### IV. CONCLUSION

167. Overall, Nicaragua has been making significant progress in addressing the technical compliance deficiencies identified in its MER and has been re-rated in Recommendations 5 to Largely Compliant, 11 to Compliant, 20 to Largely Compliant, 21 to Largely Compliant, Recommendations 22 to 24 to Partially Compliant and 28 to Partially Compliant.

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

**Table 2. Ratings of technical compliance, December 2018**

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

Note: There are four possible levels of technical compliance: Compliant (C), largely compliant (LC), partially compliant (PC) and non-compliant (NC).

169. Nicaragua will continue the intensified follow-up and will continue to inform GAFILAT of progress in strengthening its implementation of AML/CFT measures.