



# Enhanced Follow-up report and Technical Compliance re-rating of Costa Rica



January 2024

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## COSTA RICA: LAST ENHANCED FOLLOW UP AND RE-RATING REPORT FOR THE FOURTH ROUND

### I. INTRODUCTION

1. In accordance with GAFILAT's Fourth Round procedures, Costa Rica's Mutual Evaluation Report (MER) was adopted in July 2015. This follow-up report analyses the progress made by Costa Rica in addressing the technical compliance deficiencies identified in its MER. New ratings are granted when sufficient progress is observed. Overall, the expectation is that countries have addressed most, if not all, technical compliance deficiencies before the end of the third year since the adoption of their MER. This report does not address Costa Rica's progress in improving its effectiveness.

### II. FINDINGS OF THE MUTUAL EVALUATION REPORT

2. In relation to Technical Compliance, the MER indicates that Costa Rica was rated as follows:

**Table 1. Technical Compliance Ratings, July 2018**

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

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

Sources: i) Mutual Evaluation Report of Costa Rica: <https://www.gafilat.org/index.php/es/biblioteca-virtual/miembros/costa-rica/evaluaciones-mutuas-5/100-iem-costa-rica-final-1>

3. Considering the results reflected in the MER, GAFILAT placed Costa Rica under the enhanced follow-up process.<sup>1</sup> In July 2023, as a result of the outstanding issues arising from the discussion at the December 2022 Plenary, it was agreed that Costa Rica would be subject to a process of re-rating of Recommendations 17, 22 and 28. The necessary supporting documentation was attached within the time frame provided for in the processes.

4. On this basis, and following GAFILAT's current procedures, the assessment team members from Group of Experts of GAFILAT were appointed to conduct the analysis and develop this report. The assessment team was integrated by Tomás Koch Shultz (Control and Compliance Division of the Financial Analysis Unit of Chile) and Lilian Baez Ureña (Money Laundering

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

Prevention Department of the General Directorate of Internal Revenue of the Dominican Republic). The process was conducted under the coordination and support of Juan Cruz Ponce, Deputy Executive Secretary of GAFILAT and Guillermo Hernández, Technical Expert of the GAFILAT Executive Secretariat.

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

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

6. This section summarises Costa Rica's progress in improving its technical compliance by addressing the technical compliance deficiencies identified in the MER.

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

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

- Recommendation 17, currently rated PC, should upgrade to C.
- Recommendation 22, currently rated PC, should remain PC.
- Recommendation 28, currently rated PC, should remain PC.

8. As a result of this progress, it is proposed that Recommendation 17 be reclassified from CP to C and Recommendations 22 and 28 from PC to LC.

#### **Recommendation 17 – Reliance on Third Parties**

##### **a) Background:**

9. According to Costa Rica's MER and seventh enhanced follow-up report, the following weaknesses were identified with regard to compliance with Recommendation 17; there were no requirements for financial institutions obligations set under Criteria 17.2 and 17.3. Below is an analysis of the extent to which these issues have been addressed by the country.

##### **b) Criterion 17.1**

##### **II) Analysis:**

10. Article 31 of the "Regulations for Prevention of Risk of Money Laundering, Terrorist Financing and Financing of the Proliferation of Weapons of Mass Destruction, applicable to Reporting Entities under article 14 of Law 7786" of January 2021<sup>2</sup> provides that reliance on third parties is not acceptable for the reporting entities of the national financial system, the only

<sup>2</sup> In accordance with article 14 of Law 7786, financial institutions and reporting entities are considered to be those regulated, supervised and controlled by the General Superintendence of Financial Institutions (SUGEF), the General Superintendence of Securities (SUGEVAL) and the Superintendence of Pensions (SUPEN).

exception being that the third party must be a supervised institution belonging to the same Costa Rican financial group or conglomerate.

11. Other provisions establishing the impossibility of delegating due diligence include article 39 of SUGEF Agreement 13-19, applicable to reporting institutions under articles 15 and 15 bis of Law 7786 of December 2019.<sup>3</sup>

## II. Conclusion:

12. The provisions established in Costa Rica prohibit reliance on third parties, unless the entity is a reporting entity that is a member of the same Costa Rican financial group, in which case the measures would apply as usual. In this sense, Criterion 17.1 is considered as **Not Applicable**.

### c) Criterion 17.2

#### I) Analysis:

13. Costa Rica established an express prohibition to the possibility that reporting entities, whether from the financial system or DNFBPs, may delegate to third parties the performance of customer due diligence procedures, so that no provisions, rules, or other type of measures related to the countries where these are established could be issued. The only exception is when the third party is a regulated entity belonging to the same Costa Rican financial group or conglomerate.

## II. Conclusion:

14. Based on the above analysis, derived from the prohibition of delegation to third parties, criterion 17.2 is considered as **Not Applicable**.

### d) Criterion 17.3

#### I) Analysis:

15. The Regulations applicable to reporting entities approved by SUGEF Agreement 12-21 establishes in article 31 the possibility that the execution of customer due diligence processes may rely on third parties only in the case of supervised entities belonging to a Costa Rican financial group or conglomerate. In this respect, where financial institutions belong to the same financial group or conglomerate, the obligations described in criterion 17.1 also apply to the competent authority.

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<sup>3</sup> According to article 15 of Law 7786, the following activities are subject to the provisions of the Law: systematic or substantial operations of exchange and transfer of money by means of instruments such as cheques, drafts, bills of exchange or similar; systematic or substantial operations of issuing, selling, redeeming or transferring travellers cheques or money orders; substantial systematic transfers of funds, carried out by any means; the management of funds through trusts or any other type of management of funds by legal persons other than financial intermediaries; remittances from one country to another; and; credit card issuers and credit card operators. In the case of reporting entities pursuant to article 15 Bis of Law 7786, these are Casinos; natural or legal persons professionally and regularly engaged in the purchase and sale of real estate; dealers in precious metals and stones; the activities of non-profit organisations that send or receive funds from or maintain relations with foreign parent companies, branches or subsidiaries located in internationally designated risk jurisdictions; natural and legal persons, as well as lawyers, notaries and accountants, with the exception of professionals employed by their public or private supervised employer, when arranging or carrying out transactions for their customers; trust service providers, including those involved in the creation, registration and administration of trusts; natural or legal persons granting credit of any kind; pawnshops; and; other activities established by law.

16. Costa Rica has chosen to limit the possibility of relying on third parties to supervised entities belonging to the same Costa Rican financial group or conglomerate. With regard to 17.3, the obligations of criterion 17.1 apply.

## II. Conclusion:

17. The possibility of delegating reliance on third parties to supervised entities that are part of a financial group or conglomerate is limited, so that the obligations of criterion 17.1 would apply in these cases. Criterion 17.3 is considered **Met**.

### e) Conclusion on Recommendation 17

18. Costa Rican regulations prohibit the possibility of relying on third parties for CDD, with the exception of reporting entities that rely on supervised entities that are part of the same Costa Rican financial group or conglomerate. In this respect, Costa Rica applies the obligations of criterion 7.1 in relation to criterion 17.3 of the Regulation. Therefore, criteria 17.1 and 17.2 are considered not applicable, while 17.3 is considered to be met. It is therefore proposed to re-rate Recommendation 17 as **Compliant**.

## Recommendation 22 – DNFBPs: Customer due diligence

### a) Background:

19. According to Costa Rica's MER and the seventh enhanced follow-up report, the following weaknesses were identified with regard to compliance with Recommendation 22:

- i. *There appears to be no provision requiring DNFBPs to take CDD measures in the cases referred to in Criteria 10.2(c) and (e) concerning occasional transactions by means of electronic funds transfers by REs in the circumstances referred to in R.16 and its IN, where the DNFBP has concerns about the veracity or accuracy of previously obtained customer identification data.*
- ii. *There appears to be no requirement for DNFBPs to verify that the person is actually authorised to carry out the transaction or to verify their identity. (Criterion 10.4)*
- iii. *In this respect, while Law 7786 (as amended by Laws 8204 and 9449) states that the RE must register and verify by reliable means the identity of occasional or regular customers, the regulations do not appear to contain provisions determining when the verification should be carried out. (Criterion 10.14).*
- iv. *For DNFBPs, there appears to be no obligation to put in place risk management procedures relating to the conditions under which the customer may use the business relationship prior to verification, in order to avoid that, in higher risk situations, the prevention system is breached while verification of the information requested as part of the know-your-customer due diligence process is carried out. (Criterion 10.15)*
- v. *There appears to be no provisions relating to the obligation for DNFBPs not to open the account or service, not to enter into the business relationship or not to execute the transaction, or to terminate the business relationship if they are unable to perform CDD, and to consider filing a suspicious transaction report in relation to the customer (Criterion 10.19).*
- vi. *There appears to be no provision for the filing of a suspicious transaction report where it is reasonably believed that the customer may have been tipped off by a CDD process. (Criterion 10.20)*
- vii. *There appears to be no provisions by the National Notary Directorate to consider obligations under criteria 12.1b-d, 12.2b and 12.3*

- viii. *There is no regulations under which obligations for DNFBPs have to identify and assess risks on the development of new products and new business practices (criterion 15.1) and risk assessments related to the launch or use of such business practices (criterion 15.2a)*
- ix. *There appears to be no provisions related to obligations under Recommendation 17, like the explicit prohibition to delegate on third parties by Notaries on the gathering of information under customer due diligence measures with occasional customers.*

## b) Criterion 22.1

### l) Analysis:

20. It is important to consider that the legal framework of the country (Act N° 7786 and its subsequent amendments introduced by Acts 8204 and 9449) covers the DNFBPs required by Recommendation 22. In the case of notaries, lawyers and accountants, the regulation covers most of the elements envisaged in the criterion, but it is not explicit that the situations in which such SOs are involved in the following activities for a client are included among the activities subject to AML/CFT measures: organization of contributions (contributions) for the creation, operation and management of companies, except for notaries and only in cases where such contributions are materialized in registrable goods, the notary having to verify that the contribution is duly recorded in the respective registry where the ownership of the contributed good/goods is recorded. However, from a harmonic and systemic interpretation of the rules as a whole, it can be interpreted that the elements foreseen in the Criterion are mostly covered.

21. With regard to Criterion 10.2 sub-criterion (c), articles 8 and 9 of the ML/TF/PF Risk Prevention Regulations (SUGEf Agreement 13-19) stipulate that Reporting Entities (REs) must classify their customers into regular and occasional customers, to which they must apply customer due diligence (CDD) from the start of the relationship. In addition, SGF Resolution 3419-2019 of 11 November 2019, which contains the general guidelines for the Regulation, states in paragraph 11.2 that the RE shall record the basic information of occasional customers.

22. In the case of notaries, article 15b (a) of Law 9449 states that it is the obligation of notaries to identify customers and apply CDD when establishing relationships. Taking into account that DNFBPs should apply CDD measures to all their occasional and regular customers, regardless of the type or modality of the operations they perform for their customers, the deficiency in this sub-criterion is considered to be addressed.

23. Regarding sub-criterion 10.2 e), the regulatory framework reflects that the rest of the DNFBPs have the obligation to develop and implement CDD procedures and know-your-customer policies. However, there is no explicit obligation to adopt these measures when the entity has doubts about the veracity or accuracy of previously obtained data.

24. For the purposes of the requirements of Criterion 10.4, Agreement SUGEf13-19 provides that for authorised persons or beneficiaries of the customer who is a natural or legal person, the type and number of the identification document, full name, nationality, and the nature of the relationship with the customer, whether family, commercial or employment, among other things, must be requested. (Sub-criterion 10.2.c). Articles 83 and 84 of the Notarial Code (Law 7764) apply to notaries, who are obliged to identify and verify the identity of the person appearing before them, even if that person is acting on behalf of another natural or legal person. The notary must certify the current legal capacity by means of an appropriate document.

25. However, these provisions are not explicit with respect to the obligation for the DNFBP to verify that a person claiming to act on behalf of the client is authorized to do so. Therefore, this

requirement is considered partially addressed, however, these requirements are covered to a certain extent with a systemic and integral interpretation of the regulatory framework.

26. In accordance with art. 16.c of Law 7786 and its amendments, it is established that the SO must register and verify by reliable means the identity of occasional or regular customers. The verification shall be carried out especially when they establish commercial relations. Articles 39, 47 and 83 of the Notarial Code establish the obligation to identify and verify the identity of users at the time of appearance before a notary. Regarding the verification of the identity of the beneficial owners of legal entities, Article 25 of Executive Decree 41040-H provides that notaries, when issuing documents to regulated entities, must verify the list of non-compliant parties and include it in the document. Notwithstanding the above, there are no specific provisions that determine when the verification of the identity of the beneficial owner of a legal person client or legal structure must be carried out for other DNFBPs, although the requirement is mostly covered based on an integral and systemic interpretation of the regulatory body. Therefore, this criterion is considered to be mostly addressed.

27. As regards the requirements indicated in Criterion 10.15, in accordance with the above, although it would seem possible that a legal person client may agree to use the commercial relationship with a DNFBP, its products and/or services, before the moment of verification of the identity of its final beneficiary, an analysis of the regulatory framework from a comprehensive perspective shows that this possibility is subject to a risk management procedure from the beginning of the commercial relationship, which determines the conditions for this to occur. Therefore, this criterion is considered to be mostly addressed.

28. There appears to be no provisions relating to the obligation for DNFBPs not to open the account or service, not to enter into the business relationship or not to execute the transaction, or to terminate the business relationship if they are unable to carry out CDD and, in conjunction with this, to consider filing a suspicious transaction report in respect of the customer. Nor were any provisions identified regarding the possibility of filing a suspicious transaction report where it is reasonably believed that the customer may be tipped off by conducting a CDD process. In view of the above, the requirements of criteria 10.19 and 10.20 are not sufficiently addressed for DNFBPs.

## II. Conclusion:

29. Based on the above analysis, it is concluded that Costa Rica has implemented measures that have mostly addressed the weaknesses related to Criterion 22.1, which is considered to be **Largely Met**.

### c) Criterion 22.2

#### I) Analysis:

30. The notary must keep a record of each file, which, once closed, is sent to the judicial archives for final storage, in accordance with article 131 of the Notarial Code. Similarly, article 13 of the SUGEF 13-19 agreement stipulates that the reporting entity must keep information about its customers and supporting documents for the duration of the business relationship. Once the business relationship has ended, it must keep the information and its supporting documents for the period laid down in Law 7786 (as amended by Laws 8204 and 9449), article 16.d) of which provides for a period of 5 years from the end of the transaction. With respect to CDD records and other information required by TC 11.2, the rule in article 16(e) deviates from the standard, which requires that they be retained for 5 years from the end of the business relationship and not from

the end of a particular transaction. The reporting entity shall make the information and its back-ups available on request by the competent authorities.

31. In this regard, the country has a general obligation for DNFBPs to keep records and has strengthened its legal framework through Laws 9449 and 9416, as well as its Regulations and Guidelines, although there do not appear to be specific provisions regarding full compliance with technical criteria 11.1 to 11.4, particularly with regard to the time for which the DNFBP is obliged to keep the information, but this deficiency is minor because the duty to keep records to a greater extent covers the elements of the Criterion.

## II. Conclusion:

32. The country has made progress in addressing the deficiencies previously identified. Notwithstanding this, not all the requirements of Criterion 22.2 are fully addressed, especially in relation to information on the termination of a business relationship, but this is considered a minor deficiency when considering the totality of the elements foreseen by the regulations. Therefore, the criterion is considered to be **Largely Met**.

### d) Criterion 22.3

#### 1) Analysis:

33. With regard to the requirements of sub-criterion 12.1 a), article 22 of Executive Decree 36948-MP-SP-JP-H-S states that entities and REs must apply enhanced due diligence when dealing with customers who are considered PEPs, whether domestic or foreign.

34. Pursuant to article 15 of the SUGEF 13-19 Agreement, the RE must establish a procedure for the identification of PEP customers and consequently apply enhanced CDD. REs are required to establish policies and procedures to identify BOs and, in particular, to indicate whether the BO of the legal person is a PEP in accordance with paragraphs 9 and 10.1.b.v of the SUGEF General Guidelines 13-19. Paragraph 12.2.k of these General Guidelines states that in classifying the risk level of the customer, the RE should consider (without limitation) whether the customer is a PEP.

35. With regard to sub-criterion 12.1 b), it is reported that the senior management of the RE must approve the establishment and continuation of business relationships with PEP customers. According to article 23 of Executive Decree 36948-MP-SP-JP-H-S, the explicit approval of the general management or equivalent position must be obtained in order to establish business relations with PEPs. Similarly, if a customer has been accepted and it is subsequently determined that the customer or BO of an account is or becomes a PEP, senior management approval must be obtained to continue the relationship.

36. With regard to sub-criterion 12.1 c), articles 7 to 14 of the SUGEF 13-19 Agreement on Measures to Establish the Source of Assets and Funds also apply to PEP customers. However, it is not entirely explicit that these provisions are applicable when the BF is a PEP, although a general application of the standard covers the same.

37. For the purposes of sub-criterion 12.1 d), article 36 requires the reporting entity to apply a continuous monitoring process in accordance with the risk category of its customers, with enhanced measures applied in the case of PEP customers.

38. Pursuant to article 25 of Decree 41016-MP-MH-MSP-MJP, notaries must request information from the customer in order to determine whether the customer is a PEP or a relative

of a PEP up to the second degree of consanguinity or affinity, or a close associate of a PEP, and apply enhanced CDD in accordance with the parameters established by the National Directorate of Notaries (DNN), for which they must have information on the origin of the funds. However, there are no provisions that include the above parameters and provide for the obligations set out in criterion 12.1.

39. With regard to the requirements of Criteria 12.2 and 12.3, notaries are required to identify the family members of a PEP client up to the second degree of consanguinity or affinity, or a close associate, and to request the PEPs for the origin of the funds (Article 25 of Executive Decree No. 41016-MP-MH-MSP-MJP). However, there are no explicit provisions containing the obligations indicated in criteria 12.2 and 12.3 in relation to the other members of the family for any type of PEP, nor for PEPs entrusted with a prominent role by an international organization.

## II. Conclusion:

40. Based on the above, taking into account the general progress in relation to this Criterion, it is concluded that the deficiencies are of a minor nature and, therefore, Criterion 22.3 is considered to be **Largely Met**.

### e) Criterion 22.4

#### I) Analysis:

41. Pursuant to the amendment of articles 15 and 15 bis introduced by Law 9449, DNFBPs should apply controls on ML/TF risks that may arise with the emergence of new technologies in new products and new business practices. In this regard, SUGEF Agreement 13 -19 (article 6, 32.b.v) and SGF Resolution 3419-2019-SGF-PUBLICO (paragraph 6) provide that the RE must apply a procedure to manage its ML/TF/PF risks prior to the launching of new products, new business practices, new distribution mechanisms and channels, the use of new or developing technologies, for which purpose it shall assess ML/TF/PF risks and take actions to mitigate them.

#### II. Conclusion:

42. Costa Rica has established requirements for DNFBPs to assess risks and establish ML/TF/PF controls that may arise in relation to new products and new business practices, as well as implement measures to mitigate such risks prior to launching them. Therefore, the criterion is **Met**.

### f) Criterion 22.5

#### I) Analysis:

43. With regard to the reliance on third parties applicable to DNFBPs, article 16 of the Executive Decree regulating Law 9449 stipulates that notaries may not rely on third parties for the collection of information on due diligence measures with the user of the service or the applicant. Furthermore, according to article 39 of the SUGEF 13-19 Agreement, reporting entities are solely and directly responsible for establishing and implementing their due diligence policies and procedures for knowing the customer and the source of funds; this responsibility cannot be delegated to a third party.

#### II. Conclusion:

44. DNFBPs in Costa Rica are not legally permitted to delegate the performance of CDD to third parties, therefore Criterion 22.5 is considered **Not Applicable**.

#### **g) Conclusion on Recommendation 22**

45. Costa Rica has made significant efforts and progress through legislative reform that includes DNFBPs for compliance with AML/CFT preventive measures. Of particular note are improvements to CDD procedures, obligations relating to PEPs, provisions relating to the analysis of products or distribution channels in the case of new technologies, and provisions prohibiting reliance on third parties for CDD.

46. Notwithstanding the above, as it has been described above, it is noted that there are still minor deficiencies to ensure full compliance with the requirements of Criteria 22.1, 22.2 and 22.3.

47. In view of the above, based on the progress made by the country in this area, it is proposed that the rating of Recommendation 22 be reclassified as **Largely Met**.

### **Recommendation 28 – Regulation and Supervision of DNFBPs**

#### **a) Background:**

48. According to Costa Rica's MER and seventh enhanced follow-up report, the following weaknesses were identified with regard to compliance with Recommendation 28: There are no provisions linked to a risk-based supervision, as CONASSIF had yet to state the provisions on this approach; additionally, there were still outstanding measures to fully comply with criteria 28.1b, 28.4b and 28.5, as explained below:

- i. *Verification on the information of company structure and beneficial ownership being used to impede criminals and their associates from having, or being Bos, or a significant or controlling stake of a DNFBP was not possible*
- ii. *There was no analysis on the grading of fines applicable to DNFBPs, based on R. 35*
- iii. *The "Conceptual Supervisory Framework" did not define carrying out a risk-based supervision in terms of criterion 28.5*

49. Below is an analysis of the extent to which these issues have been addressed by the country.

#### **b) Criterion 28.1**

##### **1) Analysis:**

##### **i)**

50. An analysis of the Costa Rican regulatory framework shows that there is a licensing system for the casino sector. In this regard, the characteristics that casinos must have in order to obtain a licence to operate are set out in article 3 of Law 9050. In addition, the Ministry of Public Security is responsible for granting the licence to carry out the activity, in accordance with Article 3 of Decree 39231 MSP-MH: Regulation to Law 9050, while article 4 sets out the requirements to be met by a potential operator.

51. Among the other requirements, the PEP certification requirement stands out, which provides for the obligation to determine whether the interested party, whether a natural person or the shareholders in the case of a legal person (national or foreign), falls within the definition of

"Politically Exposed Person (PEP)", in accordance with article 22 of the General Regulation on Legislation against Drug Trafficking, Related Activities, Money Laundering, Financing of Terrorism and Organised Crime, Executive Decree 36948-MP-SP-JP-H-S. In addition, the authorisation granted is exclusive to the person requesting it and cannot be transferred to third parties.

ii)

52. Articles 6, 9, 14 and 15 of SUGEF 11-18 set out the legal and regulatory measures necessary to prevent offenders and their associates from holding a significant or controlling interest in a BO or from holding a managerial position or from being a casino operator.

iii)

53. Article 15 bis of Law 9449 provides that legal or natural persons engaged in casino activities must register with the General Superintendence of Financial Institutions (SUGEF), without this being construed as an authorisation to operate, and must submit to the supervision of the Superintendence in the field of ML/TF/PF.

54. The supervision of casinos by SUGEF is included in article 15 Bis (a) of Law 7786 and its Regulations, which define the duties of all DNFBPs, including casinos. Although the Regulation applies generally to all DNFBPs, some activities are specifically mentioned in the Guidelines in response to specific points in the FATF standards, for example in relation to casinos.

## II. Conclusion:

55. From the foregoing analysis, it can be concluded that Costa Rica has established a licensing regime for casinos and has implemented the obligation to register with the Superintendence. It also has a criminal background check system in place to prevent criminals from having a significant interest in, controlling, managing, or operating a casino. In addition, a supervision system is foreseen. For this reason, criterion 28.1 is **Met**.

### c) Criterion 28.2

#### I) Analysis:

56. Article 15 bis of Law 9449 stipulates that natural or legal persons professionally and regularly engaged in the purchase and sale of real estate (Conf. para. b), dealers in precious metals and stones (Conf. para. c), natural and legal persons, as well as lawyers, notaries, and accountants, when they are involved in i. The purchase and sale of real estate, ii. The management of the customer's money, bank accounts, savings, securities, or other assets, and iii. The operation, administration, purchase and sale of legal persons or other legal arrangements (Conf. para. e) and trust service providers, including those involved in the creation, registration, and administration of trusts (Conf. para. f), should be subject to ML/TF/PF supervision.

57. In addition, article 15 ter of Law 7786 establishes the Department for the Prevention of Money Laundering, the Financing of Terrorism and the Proliferation of Weapons of Mass Destruction (Prevention Department) within the National Directorate of Notaries (DNN), as the body responsible for prevention, training, supervision, control, and sanctions in this field. This article also empowers the DNN to require public bodies to provide the necessary information and facilities. Furthermore, article. 11 of Decree 41016- MP- MH- MSP-MJP states that the Prevention Department of the DNN will be responsible for the supervision and control of the notarial function in the fight against ML/TF/PF.

## II. Conclusion:

58. Costa Rica's legal framework has established AML/CFT supervisors for all the DNFBP sectors through SUGEF, with the exception of the notarial sector, which is under the supervision of the Prevention Area of the National Directorate of Notaries. Therefore, this criterion is **Met**.

#### **d) Criterion 28.3**

##### **I) Analysis:**

59. As mentioned above, SUGEF supervises DNFBPs, including the management of trusts or any type of non-intermediary resource management, in accordance with Law 7786 and Executive Decree 41016-MP-MHMSP-MJP. Based on the procedure P-SU-225 "Supervision of ML/FT/FPWMD risks", which applies to REs registered under articles 15 and 15bis of Law 7786, it is established that the monitoring and analysis process starts from the moment the REs enter the scope of supervision and that the process is gradual and continuous. In the case of notaries, they are supervised by the Prevention Department of the DNN, as established under Art. 81 of Law 8204, as well as Art. 11 of Executive Decree No. 41016- MP- MH- MSP-MJP.

##### **II. Conclusion:**

60. In Costa Rica, AML/CFT supervisory authorities have been established for the categories of DNFBPs in the form of SUGEF and the Prevention Department of the DNN. Criterion 28.3 is **Met**.

#### **e) Criterion 28.4**

##### **I. Analysis:**

###### **i)**

61. SUGEF has the authority to issue instructions to REs to ensure proper compliance with their AML/CFT obligations. The National Council for the Supervision of the Financial System (CONASSIF), by means of article 7, paragraph A, of the minutes of session 1542-2019, approved the Regulations for the Prevention of ML/TF/PF, which cover DNFBPs. As required by the Regulation, the SUGEF has approved, by Resolution SGF 3419-2019, the General Guidelines that apply to the DNFBPs it supervises. Both documents are included in SUGEF Agreement 13-19.

62. Moreover, SUGEF issued the procedure P-SU-225 "Supervision of ML/FT/FPWMD risks", which established that the monitoring and analysis process starts from the moment the REs enter the scope of supervision and that the process is gradual and continuous. In addition, monitoring is defined as the process of verifying the integrity of the content of some information reports and compliance with the regulatory deadlines set by SUGEF or indicated in other types of requirements.

63. In addition, section 2.3.3 of the SUGEF ML/TF/PF risk assessment manual defines the scope of monitoring and analysis of REs under its supervision. Furthermore, in relation to the notaries sector, article 11 of Executive Decree 41016- MP- MH- MSP-MJP states that the Prevention Department of the DNN will be responsible for the supervision and control of the notarial function in the fight against ML/TF/PF.

64. Costa Rica has the DNN for the process of supervision of notaries as reporting entities, through the Prevention Department, which has been assigned with the faculties under Executive Decree No. 40959-MJP that includes, among other tasks, to carry out an assessment on the

implementation levels and functions of the AML/CTF/CPF system of the notary sector, as well as to act as a technical liaison with the FIU under the National AML/CFT/CFP Plan.

**ii)**

65. Article 7 of SUGEF Agreement 11-18 provides that DNFBPs developed by natural persons shall submit the application for registration, signed by the applicant or their legal representative, by the means provided for and approved by SUGEF in accordance with sub-paragraph IX, which shall include a sworn statement of criminal record related to ML/TF/PF, supported by the relevant criminal record certificates from the country of birth, the country of nationality and the country of residence. In addition, a sworn statement as to whether the person is designated on the UN or other (OFAC) ML/TF/PF-related lists must be included in accordance with paragraph X.

66. In the case of legal persons, article 7 of SUGEF Agreement 11-18 stipulates that each member of the board of directors and of the supervisory body (fiscal or equivalent position) must be identified by full name, identity card or passport number, where applicable, nationality and position held. In addition, the full name and identity card or document number, as appropriate, of each partner or beneficiary, the nationality, and the percentage of direct or indirect participation equal to or greater than 10% of the share capital, as well as the full name and identity card or document number, as appropriate, and the nationality of the general manager, director, or equivalent position, must be obtained. With regard to the identification of the BO, if the shares represent 10% or more of the share capital, a sworn statement of the shares representing the share capital must be submitted, issued by a notary public.

67. In addition to the above, a sworn statement of previous convictions for ML/TF/PF offences will be required, which must be supported by the corresponding criminal record certificates from the country of birth, country of nationality, country of residence and Costa Rica, of the legal representatives, members of the board of directors, members of the supervisory body (prosecutor or equivalent position), managers, attorneys, and natural persons (partners, beneficiaries) who hold a direct or indirect interest equal to or greater than 10% of the capital of the legal person to be registered, or of those who hold the largest interest, even if it does not exceed the aforementioned percentage. Finally, a sworn statement is required as to whether any of the above persons or their related parties (natural and legal) are listed on UN lists.

68. In the case of notaries, article 9 of Decree 41016- MP- MH- MSP-MJP establishes that there is a notaries' register and that the updating of information on notaries is carried out in accordance with the provisions of the Notarial Code and the guidelines and provisions established by the DNN. In this sense, article 3 of the Notarial Code sets out the requirements and disqualifications for exercising the office of notary, stating that those who have been convicted and are in pre-trial detention are disqualified from acting as notaries. Article 4 of the Notarial Code contains a number of disqualifications, such as conviction for certain types of crime and pre-trial detention.<sup>4</sup>

**iii)**

69. Article 81 of Law 8204, which amends Law 7786, establishes the scope and types of sanctions for DNFBPs, stating that the natural or legal persons referred to in articles 15 bis and 15 ter of the Law shall be sanctioned by SUGEF or DNN, as appropriate, taking into account the

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<sup>4</sup> At the administrative level, applications for authorisation are rejected for notaries with any kind of criminal record. The country provided two precedents in which the Superior Council of Notaries, as the authority responsible for hearing appeals against refusals to authorise such notaries, was involved. This is because the certificate of good conduct would be an objective parameter for verifying the requirement of good conduct laid down in article 3.a of the Notarial Code.

seriousness of the offence, the extent of the damage and recidivism. Furthermore, the ICD shall keep a listing of all final sanctions, and being considered of public interest, it may be published, which aims at having a dissuasive effect. SUGEF, will be able to implement sanctions of “suspending” the registration made under this body, which has the effect of preventing the financial system to provide services to reporting entities under such status.

70. In the case of notaries, article 15 ter of Law 8204 stipulates that the DNN must effectively implement the corresponding sanctioning system, without prejudice to civil, criminal, and disciplinary liability in accordance with the legal framework in force. Furthermore, article 13 of Decree 41016 - MP - MH - MSP - MJP stipulates that administrative sanction proceedings against notaries who fail to comply with the provisions of Law 7786 and its subsequent amendments shall be conducted in accordance with the Regulations on the Functions of the Prevention Department of the DNN. The DNN must immediately inform the Financial Intelligence Unit of the sanctions imposed on notaries by means of a final resolution. Finally, Regulation 40959-MJP stipulates that it is the task of the Prevention Department of the DNN to direct the administrative sanction proceedings against notaries arising from the application of Law 7786 and to submit them to the Superior Council of Notaries for the issuance of the final act.

71. Further to the latter, the range of disciplinary sanctions available, consisting of banning the notary from service from one to six months seems to cover the requirement of having a range of sanctions that seem to be proportionate, effective and dissuasive.

72. According to the Notarial Code, notaries are liable for the violation of their professional duties and obligations, as well as for the violation of laws and their regulations. Such liability may be disciplinary, civil, or criminal. This liability does not exempt the notary from sanctions in various instances, as clearly stated in article 19 of the same law. Art. 139 of the Notary Code established sanctions that consist on warnings, reprimands and suspension in the exercise of notarial functions; these non-pecuniary sanctions seem to apply to breaches in compliance with notarial exercise and prudential aspects, as well as to noncompliance with the obligations in der the AML/CFT regime, as Art. 144 of the Notary Code establishes sanctions for breach or noncompliance of any legal or regulatory provision, imposed on the exercise of the notary functions. By interpreting that Article 15 Bis and 15 Ter establish duties under AML/CFT scope for the notary function, these sanctions could be implemented in such cases.

73. In addition to the above, in the event of the commission of AML/CFT offences in which the notary is involved as part of the criminal activity, he/she may be subject to a criminal conviction and disciplinary sanction at the same time. It is important to mention that the country has established the maximum disciplinary sanction of suspension for 10 years in the event of a criminal conviction of the notary, as provided for in Ordinal 147 of the Notarial Code.

## II. Conclusion:

74. Costa Rica has made significant efforts to strengthen DNFBP supervision. However, there are still minor deficiencies in the range of sanctions that can be applied by the supervisory bodies to directors and managers.

75. On the basis of the above and taking into account the material importance of the activities of the DNFBP sectors, in particular the notary sector, the criterion is **Mostly Met**.

## f) Criterion 28.5

### I. Analysis:

i)

76. Article 15 bis of Law 9449 provides that SUGEF's supervision of all categories of DNFBPs shall be carried out with an RBA established by CONASSIF through prudential regulations.

77. The Risk Based Supervision (RBS) Manual on ML/TF/PF risk management states that SUGEF will perform an automated analysis to identify the activities with the highest transactional volume and potential risk, based on, among other things, the activity to which they are dedicated, their geographical location, the use of cash, suspicious transaction reports and the use of international transfers. Based on this rating, a supervisory work plan is established for a period of three years, during which time the matrix is fed with information resulting from the management review of the highest risk issues.

78. In addition, the Supervisory Framework M-SU-008 describes the approach, principles, methodology and process used by SUGEF to guide its activities in relation to the reporting entities under its supervision. It also points out that the classification of the type of reporting entity will determine the intensity of supervision, which must be proportionate to its ML/TF/PF risk level. To determine the type of regulated entity, factors such as its nature, size, structure, number of operations, number of employees, volume of transactions and ML/TF/PF risk factors are taken into account. Taking these factors into account, reporting entities are categorised as Type 1, Type 2, and Type 3, as defined in article 4 of the SUGEF Agreement 13-19.

79. Finally, procedure P-SU-225 ML/TF/PF Risk Supervision stipulates that all reporting entities categorised as Type 1 shall be subject to full investigations during the supervisory cycle, while the other categories shall be subject to partial investigations, leaving it to the discretion of SUGEF to carry out full investigations of those categorised as Type 2 and 3 if it deems it advisable.

80. With regard to the notarial sector, article 23 g) of the Notarial Code provides that inspections may be carried out in the offices of notaries in order to ensure that they have offices open to the public and that they comply with the laws, regulations, guidelines, and directives to be complied with. In addition, it provides that the supervision of the notarial sector includes two essential activities: the first is the preliminary study and the second is the on-site inspection. Article 17 of the above-mentioned Regulation sets out a series of parameters for the exercise of supervision, which provides that supervision may be exercised on the basis of reports on possible irregularities committed by notaries submitted by other authorities or by other departments of the DNN itself (as in the case of the Prevention Unit).

81. Nevertheless, there is no evidence of a risk-based approach. For example, there is no evidence of the existence of manuals or procedures to determine the frequency and intensity of AML/CFT supervision of the notaries sector based on their understanding of ML/TF risks, taking into account the characteristics of the sector, in particular its diversity and number of notaries.

ii)

82. The supervisory processes developed by SUGEF are based on a risk matrix prepared in accordance with the inherent risk analysis, the legal and regulatory compliance function rating categories, and the risk management ratings. The risk profile is therefore considered to be taken into account when assessing the adequacy of DNFBPs' internal AML/CFT controls, policies, and procedures.

83. However, in the case of the notary sector it should be noted that supervision does not have a RBA and no clear criteria are envisaged in this respect. For example, the regulations do not specify the objective sources to be taken into account for the initiation of supervision, and the

criteria for weighing higher or lower risks in this sector are subject to provisions that are mainly of a prudential and disciplinary nature and not directly linked to compliance with the AML/CFT regime.

84. Finally, although the DNN makes considerable efforts to understand the risks of the sector, this is not reflected in the existence of documentation, tools or methodologies that would allow verification that it is focused on taking into account the ML/TF risk profile of notaries, nor that it is taken into account when assessing the adequacy of the notaries' internal AML/CFT controls, policies, and procedures.

## II. Conclusion:

85. With the exception of the notaries sector, Costa Rica has established an RBA for the supervision of DNFBPs, as well as a system of sanctions for non-compliance with AML/CFT/CFP requirements, as set out in the manuals and regulations issued for this purpose by the National Council for the Supervision of the Financial System (CONASSIF) and SUGEF. Notaries are supervised by the Prevention Department of the DNN, with powers established both under Law and regulatory provisions.

86. With regard to the system of sanctions for DNFBPs, with the exception of the notary sector, the range of sanctions is sufficiently proportionate and dissuasive, which includes pecuniary and administrative sanctions that imply suspension of registration as a reporting entity, which has the effect of preventing them to transact with the financial system, thus hindering its operations and business, regardless of any criminal or civil liability that may apply. As regards notaries, a system for monitoring compliance with their duties is in place. However, there was no RBA in place at the time of analysis. Regarding sanctions, the notary sector is provided with the sanctions under the Notary Code, which include suspension, regardless of any administrative or criminal liability that could apply.

87. For the above weaknesses, which are considered to be of a minor nature, the criterion is **Mostly Met**.

### Conclusion on Recommendation 28

88. The country has made significant progress with regard to supervision of DNFBPs. In particular, the country's regulatory framework requires that there be a licensing system for the casino sector and a mechanism to prevent criminals from owning or controlling it. In addition, the casino sector is required to register with SUGEF and is subject to ML/TF/PF supervision by the Superintendence.

89. In the case of notaries, the body responsible for verifying AML/CFT compliance is the Prevention Department of the DNN, while for the other DNFBP categories it is the SUGEF. The framework to apply sanctions in the case of both entities is clear and responsibilities and functions of the DNN are adequately regulated.

90. As regards the sanctions regime for AML/CTF non-compliance by DNFBPs in general Costa Rica has a broad spectrum of sanctions that seem to be effective, dissuasive and proportionate enough, as it provides for the application of fines and other types of sanctions, which for the notaries sector include suspension, regardless of other administrative or criminal sanctions that could apply.

91. Finally, it could not be established that the regulatory framework applicable to the notary sector requires supervision to be carried out in a risk-sensitive manner<sup>5</sup>, a fact that could be verified in relation to the other categories of DNFBPs, where SUGEF appears to take into account the characteristics of the different categories of DNFBPs supervised, in particular their diversity and number, in order to determine the frequency and intensity of supervision.

92. In summary, a supervisory regime with a RBA has been established for DNFBPs in general, excluding notaries, whose risk-based supervision is under development, but the sanctions regime is not applicable to directives and managers of entities, the amount of which can be determined according to the seriousness of the infringement. As regards the notary sector, although progress has been made, there is no RBA for such supervision.

93. In the light of the above and taking into account the deficiencies prevalent in all DNFBPs, and in particular in the notaries sector, which is a sector of significant materiality and was an area of concern in the mutual evaluation, it is proposed to re-rate Recommendation 28 as **Largely Compliant**.

## IV. CONCLUSION

94. Overall, Costa Rica continues to make significant progress in addressing the technical compliance issues identified in its MER. However, there are still minor deficiencies in the implementation of the requirements of Recommendations 22 and 28. Based on the analysis in this report, it is proposed to upgrade **Recommendation 17 to Compliant (previously Partially Compliant)** and to re-rate **Recommendations 22 and 28 as Largely Compliant**.

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

**Table 2. Technical Compliance Ratings, December 2022**

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

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

96. This report concludes the enhanced follow-up of Costa Rica for the Fourth Round of Mutual Evaluations, in accordance with the approved procedures and in line with GAFILAT's roadmap for the preparation of the Fifth Round of Mutual Evaluations. The significant efforts and progress made by the country to address the shortcomings identified in the MER are recognised and reflected in the approved follow-up reports. All subsequent progress and advances made by

<sup>5</sup> It should be highlighted, though, that Costa Rica has been working in the development of a risk-based supervision model for the Notary sector, yet it could not be analyzed within the scope of this re-rating report, as it was not yet enforced at the time established under the procedures.

the country to improve technical compliance with the Recommendations that have been rated PC or NC will be analysed in the framework of the Fifth Round Mutual Evaluation.