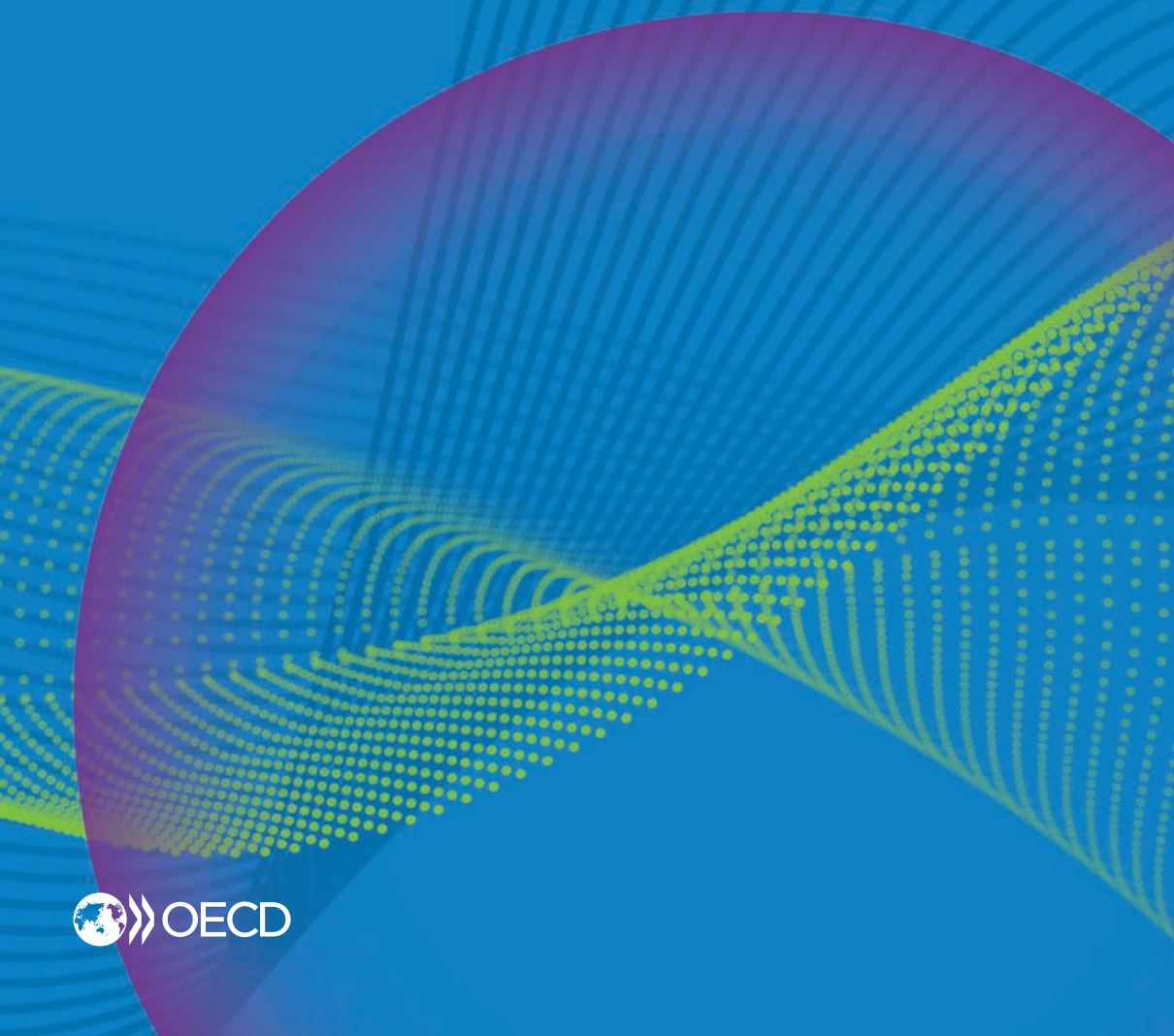
GLOBAL FORUM ON
TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request

NICARAGUA

2023 (Second Round)



OECD

Global Forum on Transparency and Exchange of Information for Tax Purposes: Nicaragua 2023 (Second Round)

PEER REVIEW REPORT ON THE EXCHANGE OF INFORMATION ON REQUEST

BETTER POLICIES FOR BETTER LIVES

This peer review report was approved by the Peer Review Group of the Global Forum on Transparency and Exchange of Information for Tax Purposes on 27 February 2023 and adopted by the Global Forum members on 27 March 2023. The report was prepared for publication by the Secretariat of the Global Forum on Transparency and Exchange of Information for Tax Purposes.

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Note by the Republic of Türkiye
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Note by all the European Union Member States of the OECD and the European Union
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Reader's guide

The Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 160 jurisdictions that participate in the Global Forum on an equal footing. The Global Forum is charged with the in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes (both on request and automatic).

Sources of the Exchange of Information on Request standards and Methodology for the peer reviews

The international standard of exchange of information on request (EOIR) is primarily reflected in the 2002 OECD Model Agreement on Exchange of Information on Tax Matters and its commentary, Article 26 of the OECD Model Tax Convention on Income and on Capital and its commentary and Article 26 of the United Nations Model Double Taxation Convention between Developed and Developing Countries and its commentary. The EOIR standard provides for exchange on request of information foreseeably relevant for carrying out the provisions of the applicable instrument or to the administration or enforcement of the domestic tax laws of a requesting jurisdiction. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including ownership, accounting and banking information.

All Global Forum members, as well as non-members that are relevant to the Global Forum's work, are assessed through a peer review process for their implementation of the EOIR standard as set out in the 2016 Terms of Reference (ToR), which break down the standard into 10 essential elements under three categories: (A) availability of ownership, accounting and banking information; (B) access to information by the competent authority; and (C) exchanging information.

The assessment results in recommendations for improvements where appropriate and an overall rating of the jurisdiction's compliance with the EOIR standard based on:

1. The implementation of the EOIR standard in the legal and regulatory framework, with each of the element of the standard determined to be either (i) in place, (ii) in place but certain aspects need improvement, or (iii) not in place.
2. The implementation of that framework in practice with each element being rated (i) compliant, (ii) largely compliant, (iii) partially compliant, or (iv) non-compliant.

The response of the assessed jurisdiction to the report is available in an annex. Reviewed jurisdictions are expected to address any recommendations made, and progress is monitored by the Global Forum.

A first round of reviews was conducted over 2010-16. The Global Forum started a second round of reviews in 2016 based on enhanced Terms of Reference, which notably include new principles agreed in the 2012 update to Article 26 of the OECD Model Tax Convention and its commentary, the availability of and access to beneficial ownership information, and completeness and quality of outgoing EOI requests. Clarifications were also made on a few other aspects of the pre-existing Terms of Reference (on foreign companies, record keeping periods, etc.).

Whereas the first round of reviews was generally conducted in two phases for assessing the legal and regulatory framework (Phase 1) and EOIR in practice (Phase 2), the second round of reviews combine both assessment phases into a single review. For the sake of brevity, on those topics where there has not been any material change in the assessed jurisdictions or in the requirements of the Terms of Reference since the first round, the second round review does not repeat the analysis already conducted. Instead, it summarises the conclusions and includes cross-references to the analysis in the previous report(s). Information on the Methodology used for this review is set out in Annex 3 to this report.

Consideration of the Financial Action Task Force Evaluations and Ratings

The Financial Action Task Force (FATF) evaluates jurisdictions for compliance with anti-money laundering and combating terrorist financing (AML/CFT) standards. Its reviews are based on a jurisdiction's compliance with 40 different technical recommendations and the effectiveness regarding 11 immediate outcomes, which cover a broad array of money-laundering issues.

The definition of beneficial owner included in the 2012 FATF standards has been incorporated into elements A.1, A.3 and B.1 of the 2016 ToR. The 2016 ToR also recognises that FATF materials can be relevant for carrying out EOIR assessments to the extent they deal with the definition of beneficial ownership, as the FATF definition is used in the 2016 ToR (see 2016 ToR, Annex 1, part I.D). It is also noted that the purpose for which the FATF materials have been produced (combating money-laundering and terrorist financing) is different from the purpose of the EOIR standard (ensuring effective exchange of information for tax purposes), and care should be taken to ensure that assessments under the ToR do not evaluate issues that are outside the scope of the Global Forum's mandate.

While on a case-by-case basis an EOIR assessment may take into account some of the findings made by the FATF, the Global Forum recognises that the evaluations of the FATF cover issues that are not relevant for the purposes of ensuring effective exchange of information on beneficial ownership for tax purposes. In addition, EOIR assessments may find that deficiencies identified by the FATF do not have an impact on the availability of beneficial ownership information for tax purposes; for example, because mechanisms other than those that are relevant for AML/CFT purposes exist within that jurisdiction to ensure that beneficial ownership information is available for tax purposes.

These differences in the scope of reviews and in the approach used may result in differing conclusions and ratings.

More information

All reports are published once adopted by the Global Forum. For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published reports, please refer to www.oecd.org/tax/transparency and http://dx.doi.org/10.1787/2219469x.

Abbreviations and acronyms

2016 TOR	Terms of Reference related to EOIR, as approved by the Global Forum on 29-30 October 2015
AML	Anti-Money Laundering
AML/CFT	Anti-Money Laundering/Countering the Financing of Terrorism
CDD	Customer Due Diligence
Central American Convention	Multilateral Convention on the Mutual Assistance and Technical Co-operation among Central American Tax and Customs Administrations Convention
CONAMI	*Comisión Nacional de Microfinanzas* (National Commission for Microfinance)
DGI	General Directorate of Revenue (*Dirección General de Ingresos*)
EOI	Exchange of information
EOIR	Exchange of Information on Request
FATF	Financial Action Task Force
GAFILAT	Financial Action Task Force of Latin America
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes
MEFCCA	Ministry of Family, Community, Co-operative and Associative Economy (*Ministerio de Economía Familiar Comunitaria Co-operativa y Asociativa*)
ML/TF/PF	Money Laundering/Terrorist Financing/Proliferation Financing
NIO	Nicaraguan córdoba (national currency)
Review period	1 October 2018 to 30 September 2021

RUC	Taxpayer unique identification number (*numéro de Registro Único de Contribuyente*)
SA	*Sociedades anónimas* (joint stock companies)
SINARE	National system of registers (*Sistema Nacional de Registro*)
SBOFI	Superintendence of Banks and Other Financial Institutions
SCA	*Sociedades en comandita por acciones* (limited liability companies)
SCS	*Sociedades en comandita simple* (limited liability partnerships)
SNC	*Sociedades en nombre colectivo* (joint partnerships)
UAF	Financial investigation unit (*Unidad de Análisis Financiero*)
VAT	Value-added tax

Executive summary

1. This report analyses the implementation of the standard of transparency and exchange of information on request (EOIR) in Nicaragua on the second round of reviews conducted by the Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum). It assesses both the legal and regulatory framework and the practical implementation of this framework against the Terms of Reference related to EOIR, as approved by the Global Forum on 29-30 October 2015 (the 2016 TOR), including in respect of Exchange of Information (EOI) requests received and sent from 1 October 2018 to 30 September 2021 (the review period).

2. Nicaragua is not a member of the Global Forum but was identified as a jurisdiction that is relevant to the Global Forum's work in relation to the exchange of information on request.

3. Nicaragua was given the same opportunity to participate in its review as Global Forum members, but did not participate in the review process. In particular, it was not possible to organise an onsite visit in Nicaragua. As a result, the assessment is primarily based on publicly available laws, regulations, and exchange of information mechanisms in force or effect as on 25 November 2022 (see Annex 3).

4. This report concludes that Nicaragua is rated overall **Non-Compliant** with the standard.

Overview of ratings and determinations

Element	Determinations	Ratings
A.1 Availability of ownership and identity information	In place but needs improvement	Partially Compliant
A.2 Availability of accounting information	In place but needs improvement	Partially Compliant
A.3 Availability of banking information	In place but needs improvement	Partially Compliant
B.1 Access to information	Not in place	Non-Compliant
B.2 Rights and Safeguards	In place	Partially Compliant
C.1 EOIR Mechanisms	Not in place	Non-Compliant
C.2 Network of EOIR Mechanisms	Not in place	Non-Compliant

Element	Determinations	Ratings
C.3 Confidentiality	In place	Partially Compliant
C.4 Rights and safeguards	In place	Partially Compliant
C.5 Quality and timeliness of responses	n/a	Partially Compliant
OVERALL RATING	**Non-Compliant**	

Note: The three-scale determinations for the legal and regulatory framework are: In place, In place but certain aspects of the legal implementation of the element need improvement (Needs improvement), and Not in place. The four-scale ratings are Compliant, Largely Compliant, Partially Compliant, and Non-Compliant.

Transparency framework

5. Legal ownership information on relevant entities and arrangements is available largely as a result of commercial law-related obligations that are self-executing, notably the filing obligations with the Commercial Registry. Since August 2020, these cover not only constituent documents, but also any changes in the shareholding structure and the shareholders as they arise subsequent to incorporation. Moreover, relevant entities are required to keep a register of shares, upon which depends the legal effect of the shares.

6. Beneficial ownership information may be available through several sources of beneficial ownership information: (i) entities subject to anti-money laundering (AML) requirements, as a result of their customer diligence obligations; (ii) the entities and legal arrangements themselves, as a result of a general obligation to keep adequate, accurate and up-to-date information on their beneficial owners and their ownership and control structure; and (iii) the Register of Beneficial Owners of Commercial Companies. As noted below however, certain improvements are necessary as regards both the potential content of the information, as well as aspects of supervision and enforcement.

7. The issuance of bearer shares has been prohibited in Nicaragua since mid-2018, but it is not clear how the relevant prohibition is being supervised and enforced. Moreover, rights attaching to unconverted bearer shares appear to be maintained (such as the right to receive dividends), with the exception of the right to transfer shares.

8. Reliable accounting records are required to be kept for all relevant entities, though for purposes of enforcement, the tax law framework is relied on, and it requires only the retention of records for the period of statute of limitation – i.e. four years, instead of the minimum of five years prescribed by the standard.

9. Banks are in turn required to keep up-to-date registers of information, including of their clients' operations and transactions, for a period of at least five years following the finalisation of the operation or transaction, though not necessarily after a bank ceases to exist. The obligations of banks in relation to the identification of the beneficial owners of accounts is however based on norms that are outdated and incomplete, and other sources of beneficial ownership information do not necessarily cover all entities and legal arrangements that may be account holders. In addition, an appropriate sanctions framework seems to be lacking to help ensure enforcement of the availability of beneficial ownership information on account holders.

10. Finally, access to information by the tax administration is generally assured through a number of complementary access-related provisions in the Nicaraguan Tax Code, though a number of questions exist with regard to the articulation between these different provisions and laws and whether this prevents access to beneficial ownership information.

11. Importantly, banking information is subject to bank secrecy, and the access powers of the tax administration do not override this premise. In addition, professional secrecy is well protected, the Criminal Code allowing disclosure only for undefined "legitimate interest".

Exchange of information

12. Nicaragua's only exchange of information mechanism is the Convention on Mutual Assistance and Technical Co-operation among the Central American Tax and Customs Administrations. This instrument is in line with the standard, and Nicaragua can exchange information on this basis since 2012 with Costa Rica, El Salvador, Guatemala and Honduras.

13. It appears that Nicaragua has not received any exchange of information requests to date, nor does it appear to have sent requests to its partners.

Key recommendations

14. The main shortcoming identified in the review relates to access to information (Element B.1), as banking information is subject to bank secrecy and the access powers of the tax administration do not override this premise. This affects the exchange of information mechanism in place (Element C.1), because the existence of bank secrecy in the domestic law framework prevents the exchange of banking information under this mechanism. In addition, it impedes Nicaragua from giving effect to its network of exchange of information relationships (Element C.2). This is contrary to the

standard of exchange of information on request, and Nicaragua should lift bank secrecy for the purposes of the exchange of information for tax purposes. In the same vein, direct access to beneficial ownership information by the tax administration is not ensured (Element B.1).

15. Improvements are also recommended with regard to the availability of beneficial ownership information (Element A.1). Shortcomings exist in relation to the information available with AML-obliged entities as a result of their customer due diligence obligations, notably as concerns the consideration of control by means other than ownership and reasonable measures to verify the identity of beneficial owners of clients in all circumstances. This is highlighted as the beneficial ownership register is a recent source of information, covering commercial entities.

16. With regard to effective supervision and enforcement of existing beneficial ownership information sources, while information is lacking in relation to supervision of the register that is being established, each of the other two sources has a shortcoming in this respect:

- The customer due diligence obligations of AML-obliged entities vary across industries, with banks and financial institutions having the least complete system, but supervision is lacking generally (with the exception of persons supervised by Nicaragua's financial intelligence unit). This shortcoming therefore permeates the availability of information in respect of all account holders (Element A.3), as well as the existence of effective, proportionate and dissuasive sanctions to accompany such obligations.
- The obligation on entities and legal arrangements to keep information on their beneficial owner(s) is not accompanied by any supervision or enforcement mechanisms.

17. Improvements are also recommended in relation to the retention of accounting records. Whilst company and commercial law obligations require a retention period that is in line with the standard (records must be kept for up to ten years after the liquidation of a business), tax law obligations require a retention period of only four years (instead of a minimum of five years as required pursuant to the transparency standard), and it is the latter framework that is relied on for purposes of enforcement.

18. More generally, the practical implementation of each Element of the standard is subject to any recommendations made with regard to the legal framework, and Nicaragua should ensure application and enforcement in practice once recommendations are addressed. Insufficient information is otherwise available publicly to conclude positively on the practical implementation of each Element of the standard.

Overall rating

19. Nicaragua has been assigned a rating for each of the ten essential Elements, as well as an overall rating. The ratings for the essential elements are based on the analysis in the text of the report, taking into account any recommendations made in respect of Nicaragua's legal and regulatory framework and the effectiveness of its exchange of information in practice, where this is known.

20. Where insufficient information is available to conclude on the practical implementation of an Element of the standard, Nicaragua has been assigned a rating of Partially Compliant for that Element, on the basis that it is not possible to confirm that it has a satisfactory level of implementation of the standard.

21. Hence, Nicaragua has been assigned the following ratings: Partially Compliant for Elements A.1, A.2, A.3, B.2, C.3, C.4 and C.5; and Non-Compliant for Elements B.1, C.1 and C.2. Nicaragua's overall rating is Non-Compliant based on a global consideration of its compliance with the individual elements and subject to the information available.

Next steps

22. This report was approved at the Peer Review Group of the Global Forum on 27 February 2023 and was adopted by the Global Forum on 27 March 2023. Nicaragua will be invited to address the recommendations made in this report and to provide a follow-up on report to the Peer Review Group no later than 30 June 2024, and thereafter in accordance with the procedure set out under the 2016 Methodology for peer reviews and non-member reviews, as amended.

Summary of determinations, ratings and recommendations

Determinations and ratings	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information, including information on legal and beneficial owners, for all relevant entities and arrangements is available to their competent authorities *(ToR A.1)*		
The legal and regulatory framework is in place, but certain aspects of the legal implementation of the element need improvement	There is no obligation for identity information to be kept on foreign partnerships which are carrying on business in Nicaragua, or have income, credits or deductions for tax purposes in Nicaragua.	Nicaragua should ensure that adequate, accurate and up-to-date identity information is kept for all relevant foreign partnerships.

Determinations and ratings	Factors underlying recommendations	Recommendations
	The anti-money laundering law provides a framework for customer due diligence obligations, which supervisors are required to develop further for purposes of application by the entities under their responsibility. However, the guidelines applicable to the identification of beneficial owners by anti-money laundering-obliged persons are lacking in relation to the following aspects: (i) when control by means other than ownership is considered in order to identify the beneficial owner (i.e. whenever there is doubt as to whether a person(s) with a controlling ownership interest is the beneficial owner(s) or where no natural person exerts control through ownership interests); (ii) when reasonable measures should be taken to verify the identity of beneficial owners; (iii) who should be identified as a beneficial owner when a partnership is concerned rather than a company (given that the partners in a *sociedad en nombre colectivo*, and the managing partners (*socios gestores*) in a *sociedad en comandita simple* are jointly and severally liable, it would be appropriate to identify all partners; in addition, where a partner is a legal person, it would be necessary to identify a natural person as the beneficial owner); and (iv) in relation to trusts, whether each of the settlor, the trustee(s), the protector (if any), the beneficiaries or class of beneficiaries must be identified in all cases by non-professional trustees and the absence of a specified frequency for updating the information.	Nicaragua should ensure that adequate, accurate and up-to-date beneficial ownership information is available for all relevant entities and legal arrangements.

Determinations and ratings	Factors underlying recommendations	Recommendations
	Article 30 of the anti-money laundering law requires supervisors to establish administrative provisions that put into practice the law and impose corresponding sanctions. This has been done by the financial investigation unit (*Unidad de Análisis Financiero*), but not by other supervisors, thereby putting into question the compliance with customer due diligence requirements of anti-money laundering-obliged persons, and therefore the availability of beneficial ownership information from this source. In addition, the obligation that is contained in Article 13 of the law for all persons and legal arrangements established in Nicaragua to keep adequate, accurate and up-to-date information on their beneficial owners and their ownership and control structure does not appear to be accompanied by a supervision mechanism or enforcement features such as sanctions.	Nicaragua should ensure that appropriate supervision mechanisms and effective, proportionate and dissuasive sanctions are in place to accompany all obligations relating to the availability of beneficial ownership information.

Determinations and ratings	Factors underlying recommendations	Recommendations
EOIR Rating: Partially Compliant	The Register of Beneficial Owners of Commercial Companies was created in August 2020 and is to include the information on beneficial owners of all commercial entities (companies and partnerships) operating in Nicaragua, including foreign companies. It is therefore expected to be an important source of beneficial ownership information for the Nicaraguan authorities. The effective monitoring and supervision of the obligations of maintaining adequate, accurate and up-to-date beneficial ownership information will be key to its effective implementation.	Nicaragua should ensure the full and effective implementation of the Register of Beneficial Owners of Commercial Companies and put in place the necessary supervisory and enforcement mechanisms to monitor compliance by legal persons to ensure that adequate, accurate and up-to-date beneficial ownership information is available.
	The anti-money laundering legislation in Nicaragua, in force since 20 July 2018, prohibits the issuance of bearer shares and the conversion of nominative shares into bearer shares. However, the law provides only that bearer shares that are not converted into nominative shares by July 2019 cannot be transferred in acts or contracts after this date, indicating that other rights attached to the shares are maintained. In addition, no sanctions, supervision or enforcement mechanism is indicated in this regard.	Nicaragua is recommended to ensure that the prohibition and conversion of bearer shares is properly supervised and enforced, and accompanied with appropriate sanctions.

Determinations and ratings	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements *(ToR A.2)*		
The legal and regulatory framework is in place, but certain aspects of the legal implementation of the element need improvement	Accounting records should generally be available with the trustee of *fideicomisos* based on the obligations contained in the Law on *Fideicomiso* Contracts. Where the trustees are professionals and their role in the trust is therefore covered by the obligations in the Code of Commerce, they are subject to the obligation to keep books for the duration of their business and for up to ten years after its liquidation. This does not apply to non-professional trustees, and there is no general obligation to maintain the accounts of *fideicomiso* or any specific period of time after a *fideicomiso* has ceased to exist under the Law on *Fideicomiso* Contracts.	Nicaragua is recommended to ensure the availability, for at least five years, of accounting records of *fideicomisos* that have ceased to exist.
EOIR Rating: Partially Compliant	The Code of Commerce and Tax Code together require that reliable accounting records are kept for all relevant entities. In terms of retention period, records must be kept for up to ten years after the liquidation of the business pursuant to the commercial framework, and for four years pursuant to the tax framework. Enforcement measures with regard to commercial law obligations are however few, and the tax law context must therefore be relied on for enforcement purposes. This means that only a retention period of four years is accompanied with enforcement measures.	Nicaragua is recommended to ensure that all accounting records are maintained in line with the standard for a period of at least five years by applying appropriate control and enforcement measures.

Determinations and ratings	Factors underlying recommendations	Recommendations
Banking information and beneficial ownership information should be available for all account-holders *(ToR A.3)*		
The legal and regulatory framework is in place, but certain aspects of the legal implementation of the element need improvement	Banks are required to keep up-to-date registers of information, including of their clients' operations and transactions, for a period of at least five years following the finalisation of the operation or transaction. However, it is unknown what occurs to the records where a bank ceases to exist, merges with another or where a foreign bank ceases its operations in Nicaragua.	Nicaragua should ensure the availability of banking information for at least five years, including in cases where a bank ceases to exist, merges with another or where a foreign bank ceases its operations in Nicaragua.
	The anti-money laundering law provides a framework for customer due diligence obligations, which supervisors are required to develop further for purposes of application by the entities under their responsibility. The norms developed by the Superintendence of Banks and Other Financial Institutions for application by banks date from 2012 and their content is outdated and leaves considerable space for banks to develop the details of customer due diligence processes. The closest provision to requiring that beneficial ownership information be available in respect of account holders that are legal persons is a provision that requires banks to implement measures to verify the identity of the beneficial owners of accounts (or transactions) in all cases where the client is acting on behalf of others as a representative, or where there is reason to believe that the client is so acting. The result is that the identification and verification of beneficial owners is not unequivocally required, and the information may therefore not be available in respect of all account holders. In addition, there is no specified frequency in the legal or regulatory framework for the updating of beneficial ownership information in relation to customers that are not high-risk.	Nicaragua is recommended to ensure that adequate, accurate and up-to-date beneficial ownership information be available in respect of all account holders.

Determinations and ratings	Factors underlying recommendations	Recommendations
	Article 30 of the main anti-money laundering law requires supervisors to establish administrative provisions that put into practice the law and impose corresponding sanctions. This has been done by the Superintendence of Banks and Other Financial Institutions only in respect of the non-proliferation of weapons of mass destruction and the detection of illicit financial flows. Therefore, they do not contribute towards ensuring the availability of banking information and beneficial ownership information on account holders existing as a result of the CDD requirements of banks.	Nicaragua should ensure that effective, proportionate and dissuasive sanctions are in place to accompany all obligations relating to the availability of banking and beneficial ownership information.
EOIR Rating: Partially Compliant	Once the recommendations on the legal framework are addressed, Nicaragua should ensure that they are applied and enforced in practice. Insufficient information is otherwise available publicly to conclude on the practical implementation of the standard in relation to the availability of banking information.	
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) *(ToR B.1)*		
The legal and regulatory framework is not in place	Banking information is subject to bank secrecy, and the access powers of the tax administration do not override this premise. Accordingly, banking information cannot be accessed by the Nicaraguan tax authority unless authorised by the client or requested by the judicial authorities.	Nicaragua should ensure that banking information may be obtained and provided in accordance with the standard so as not to prevent the effective exchange of information in tax matters.

Determinations and ratings	Factors underlying recommendations	Recommendations
	The interrelation between the access-related provisions in the Nicaraguan Tax Code and the content of the AML Law is unclear and it cannot therefore be concluded, based on information publicly available, that the tax administration may obtain beneficial ownership information available as a result of AML obligations, including for EOIR purposes. In particular, the anti-money laundering law is silent as to whether confidentiality obligations applicable to anti-money-laundering-obliged persons may be waived for the tax administration. The information available on beneficial ownership with the entities themselves pursuant to the Law is to be accessible to specified authorities which are not defined to include the tax authority. In addition, access to the beneficial ownership information contained in the Register of Beneficial Owners of Commercial Companies is officially subject to a collaboration agreement to this effect with the Supreme Court of Justice.	Nicaragua should ensure that beneficial ownership information may be obtained and provided in accordance with the standard so as not to prevent the effective exchange of information in tax matters.
	The ethics rules of lawyers and notaries are wide, comprising the obligation to maintain confidential all information received from a client, not just communications produced in the context of obtaining legal advice or for legal proceedings. Exceptions to professional secrecy in other laws, such as the Tax Code and anti-money laundering law, are very narrow. The Nicaraguan Criminal Code exempts from the professional secrecy provision information disclosed with “legitimate interest”. Whilst the provision of the information for tax investigation purposes would presumably satisfy this requirement, “legitimate justification” is not further defined or explained in the Nicaraguan legal framework and the presumption cannot be confirmed. As such, the tax administration would have to rely on the “legitimate justification” exception for access to information covered by the professional secrecy, with the inherent uncertainty this involves.	Nicaragua should ensure that the information covered by professional secrecy which is not related to communications produced in the context of obtaining legal advice or for legal proceedings, can be obtained for EOIR purposes in accordance with the standard.

Determinations and ratings	Factors underlying recommendations	Recommendations
EOIR Rating: Non-Compliant	Once the recommendations on the legal framework are addressed, Nicaragua should ensure that it is applied and enforced in practice. Insufficient information is otherwise available publicly to conclude on the practical implementation of the standard in relation to access powers.	
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information *(ToR B.2)*		
The legal and regulatory framework is in place		
EOIR Rating: Partially Compliant	Insufficient information is available publicly to conclude on the practical application of the rights and safeguards and their compatibility with effective exchange of information.	
Exchange of information mechanisms should provide for effective exchange of information *(ToR C.1)*		
The legal and regulatory framework is not in place	Though the exchange of banking information is allowed pursuant to the terms of its only exchange of information mechanism, the Convention on Mutual Assistance and Technical Co-operation among the Central American Tax and Customs Administrations, bank secrecy rules in Nicaragua prevent Nicaragua from exchanging banking information.	Nicaragua should ensure it can access and exchange all information relevant for tax purposes in accordance with the standard in order for it to give full effect to any EOI mechanisms.
EOIR Rating: Non-Compliant	Once the recommendation on the legal framework is addressed, Nicaragua should ensure that it is applied in practice in accordance with the standard. Insufficient information is otherwise available publicly to conclude conclusively on the practical implementation of exchange of information mechanisms by Nicaragua.	

Determinations and ratings	Factors underlying recommendations	Recommendations
The jurisdictions' network of information exchange mechanisms should cover all relevant partners *(ToR C.2)*		
The legal and regulatory framework is not in place	The existence of bank secrecy in Nicaragua prevents the exchange of banking information, regardless of the content of its exchange of information mechanism and consequently its exchange of information network.	Nicaragua should ensure it can access and exchange all information relevant for tax purposes in accordance with the standard, such that it may give full effect to its exchange of information network.
EOIR Rating: Non-Compliant	Once the recommendations on the legal framework are addressed, Nicaragua should ensure that they are applied in practice in accordance with the standard. Insufficient information is otherwise available publicly to conclude conclusively on the practical implementation of Nicaragua's exchange of information network.	
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received *(ToR C.3)*		
The legal and regulatory framework is in place		
EOIR Rating: Partially Compliant	Insufficient information is available publicly to conclude on the practical implementation of the standard in relation to the confidentiality of information exchanged.	
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties *(ToR C.4)*		
The legal and regulatory framework is in place		
EOIR Rating: Partially Compliant	Insufficient information is available publicly to conclude on the practical implementation of the standard in relation to the rights and safeguards of taxpayers and third parties.	

Determinations and ratings	Factors underlying recommendations	Recommendations
The jurisdiction should request and provide information under its network of agreements in an effective manner *(ToR C.5)*		
Legal and regulatory framework:	This element involves issues of practice. Accordingly, no determination on the legal and regulatory framework has been made.	
EOIR Rating: Partially Compliant	It is not known whether Nicaragua has put in place the necessary processes and resources to ensure effective exchange of information, including internal guidelines and the training of staff in relation to exchange of information. In addition, Nicaragua has not received any requests from its treaty partners during the review period to test the effectiveness of its exchange of information framework in practice.	Nicaragua should ensure that it has in place the organisational processes necessary for it to provide and request information under exchange of information agreements in an effective manner.

Overview of Nicaragua

23. This overview provides some basic information about Nicaragua that serves as context for understanding the analysis in the main body of the report.

Legal system

24. Nicaragua has a population of approximately 6.9 million.[1] It is a civil law jurisdiction and is organised as a presidential regime. The President of the Republic, who is the Head of State, government and the army of Nicaragua, exercises the executive power. The National Assembly exercises the legislative power, whilst the judicial branch is comprised of the courts of justice, which form a unitary system whose superior body is the Supreme Court of Justice.

25. At the top of the hierarchy of norms sits the Constitution, followed by ordinary laws, and norms emanating from the executive power (regulations, presidential or ministerial agreements, among others). Treaties are subordinate to the Constitution, but their hierarchical relationship with respect to ordinary laws is not established in the Constitution.

26. Laws are readily available to the public, including through the databases of the judiciary and the National Assembly, as are secondary norms emanating from the executive power.

Tax system

27. The General Directorate of Revenue (*Dirección General de Ingresos*, DGI) is a decentralised and financially and administratively autonomous government agency, responsible for revenue collection on behalf of the Government of Nicaragua.

1. https://data.worldbank.org/indicator/SP.POP.TOTL.

28. The tax system of Nicaragua relies mainly on the following taxes: Income tax, Value added tax, Selective consumption tax, Stamp duty, Real estate tax, Municipal tax on income, and Municipal registration tax.[2]

29. Article 18 of the Tax Code defines taxpayers as all those persons who are directly subject to tax obligations for reasons established by law, and consequently lists as taxpayers: natural persons; legal persons of public law or private law; trusts; and entities or communities that constitute an economic unit, even if they do not hold any assets and regardless of whether they have functional autonomy.

30. Nicaragua has a territorial income tax system under which only income generated in, or that causes effects in, Nicaragua is generally subject to income tax. Corporate income tax is imposed on an entity's profits, which consist of business/trading income, as well as on passive income. Capital income and capital gains are subject to withholding tax at a rate of 15% insofar as dividends, interest and royalties are concerned.

31. Corporate income tax is imposed on domestic-sourced income at a flat rate of the higher of (i) 30% of net taxable income, and (ii) a minimum tax of 1% to 3% on gross income obtained during the fiscal year (subject to certain exceptions established by law, for example during the first three fiscal periods of recently incorporated entities). Entities and legal arrangements are considered tax resident if they are constituted in accordance with the laws of Nicaragua or if they have their fiscal domicile, administrative headquarters or place of management in Nicaragua (Article 7 of the Tax Co-ordination Law).

32. Individual income tax is imposed on all residents and non-residents on income originating in Nicaragua. Residents are subject to income tax according to progressive tax brackets, at a maximum rate of 30%. Taxable income of non-residents that originates in Nicaragua is determined as a percentage of gross income, depending on the nature of the income. Non-residents are subject to a 20% definitive withholding tax.

33. For tax purposes, pursuant to Article 7 of the Tax Co-ordination Law, a resident is defined as either:

- a national or foreigner who is in the country for more than 180 days in a calendar year, whether continuously or not
- a person whose main centre of economic interest is located within the country, unless the person proves its residence or tax domicile in another country through a certificate issued by the competent tax

2. http://pronicaragua.gob.ni/media/publications/Investor_Guideline_2019_D6yuVmj.pdf.

authorities, unless the country is considered by the Nicaraguan tax authorities as a "tax haven".[3]

34. Most supplies of goods and services are subject to value-added tax (VAT) at a rate of 15% over the taxable amount. Certain items, such as medicine, basic food products and tuition, are exempt from VAT. Exports are levied at a tax rate of 0% but are subject to information-filing requirements.

35. In January 2013, the Tax Co-ordination Law came into force. Its main objective was to modernise and improve tax administration, as well as to simplify the payment of taxes, regulate the exemptions and exonerations, reduce tax evasion and enlarge the tax base. For example, Article 49 of the Law provides that expenses paid or credited by a resident taxpayer to a person resident in a tax haven are subject to a definitive retention of 17%.

Financial services sector

Institutional framework

36. The Superintendence of Banks and Other Financial Institutions (SBOFI) authorises, supervises and regulates all banks, branches and banking agencies within the country, whether state or private, in accordance with applicable laws and regulations. The same applies with regard to other financial institutions to the extent that these operate on public recourses, i.e. stock exchange brokers, insurance companies and general warehouses stores (Articles 2 and 3 of the SBOFI Law).

37. Article 8 of the SBOFI Law therefore provides that the SBOFI has four specialised Intendencies:

- Intendancy of Banks and other Financial Institutions
- Intendancy of Securities
- Intendancy of Insurance
- Intendancy of General Deposit Warehouses

38. In addition, the SBOFI is responsible for issuing general norms to prevent money laundering within the system under its supervision (Article 10(5) of the SBOFI Law).

3. Tax havens are defined at Article 9 of the Tax Co-ordination Law and include jurisdiction where income tax or equivalent is substantially lower than in Nicaragua in relation to economic activities and capital income, as well as States or jurisdictions categorised as "non-co-operative" by the Global Forum on Transparency and Exchange of Information for Tax Purposes.

Banking sector

39. Nicaragua does not provide financial services to non-residents on a scale that is incommensurate with the size and the financing of its domestic economy, and is therefore not considered an offshore financial centre (see below). A particular characteristic of the financial sector is the relatively high volume of remittances from workers abroad, in proportion to the size of its economy. The World Bank calculates remittances as making up 14.7% of GDP in 2020.[4] Another important feature is the high use of cash.[5] More generally, the World Bank notes that the present domestic political context is expected to keep investment and growth below historical levels.[6]

40. According to the September 2021 study of the SBOFI, the total asset value of the banking and financial sector supervised by the SBOFI is Nicaraguan córdoba (NIO) 253 billion, equivalent to approximately USD 7.1 billion.[7] This represents an increase from the 2015 figure of USD 6.7 billion quoted in the 2017 Mutual Evaluation Report by the Financial Action Task Force of Latin America (GAFILAT).

41. The 2016 Country Report by the Bertelsmann Stiftung's Transformation Index notes that Nicaragua's banking sector is underdeveloped and one of Latin America's smallest, accounting for approximately 5% of GDP. It further notes that financial intermediation remains weak, hindering economic growth and that more than two-thirds of deposits and loans are denominated in United States dollars.[8]

42. The GAFILAT report noted that at the end of 2015, the Nicaraguan banking system comprised seven commercial banks, one development bank and three non-banking financial institutions. In the 2021 study of the SBOFI, only two non-banking financial institutions, but seven banks and one development bank are listed. The banking sector, like the financial services sector more generally, remains focused on the domestic market.

43. According to the GAFILAT report, four offices of foreign banking entities were operating, out of the five authorised to do so. The banking sector is dominated by three banks, Banco de la Producción, Banco Lafise

4. See https://data.worldbank.org/indicator/BX.TRF.PWKR.DT.GD.ZS?locations=NI&most_recent_value_desc=true.
5. GAFILAT, Mutual Evaluation Report of the Republic of Nicaragua, July 2017, paragraph 53.
6. The World Bank in Nicaragua, Nicaragua Overview: Development news, research, data | World Bank (https://www.worldbank.org/en/country/nicaragua/overview).
7. Estado de Situación Financiera Comparativo por Entidad (https://www.siboif.gob.ni/sites/default/files/documentos/informes/bancos/balgp202109sfb_0.htm).
8. BTI 2016 (https://bti-project.org/fileadmin/api/content/en/downloads/reports/country_report_2016_NIC.pdf).

Bancentro and BAC Credomatic. All were originally founded in Nicaragua and are now present throughout the region.

44. Due to the lack of presence of a formal banking sector in rural areas, microfinance institutions play an important role.[9] These are supervised by the National Commission for Microfinance (*Comisión Nacional de Microfinanzas*, CONAMI). A total of 49 institutions are currently registered with CONAMI, 35 of these being microfinance institutions and the remainder registering voluntarily.[10] This represents a significant increase compared with 2015, when 33 institutions were registered.[11] The total assets have however decreased based on the figures available and were NIO 12.1 billion, approximately USD 338.39 million as at April 2022 (compared with USD 425.34 million in 2015).[12]

Insurance and reinsurance and capital markets sector

45. The insurance sector is composed by five authorised insurance companies: one state-owned and four private companies. They operate across the country through agencies and branches. At the end of 2018, the insurance industry registered a premium production of NIO 7 billion, approximately USD 197 million.[13]

46. The capital market sector comprises eight institutions: one stock exchange, five exchange posts, one securities depository and one investment fund company. The value of the domestic market capitalisation is USD 1.26 million, and therefore a fraction of the size of the banking sector, which in itself is small.

47. The Nicaraguan Stock Exchange is a private corporation, founded largely by private banks and business group representatives with the objective of promoting the development and modernisation of the Nicaraguan financial sector. It constitutes a small bond market that exchanges primarily in government bonds, but also sells some corporate debt to institutional investors. Nicaragua does not currently have an equities market.

9. BTI 2016 (https://bti-project.org/fileadmin/api/content/en/downloads/reports/country_report_2016_NIC.pdf).
10. Registro Nacional de IFIMs (http://www.conami.gob.ni/index.php/registro).
11. GAFILAT, Mutual Evaluation Report of the Republic of Nicaragua, July 2017, paragraph 52, at GAFILAT, Mutual Evaluation Report of the Republic of Nicaragua, July 2017 (https://www.fatf-gafi.org/media/fatf/content/images/GAFILAT-MER-Nicaragua-2017.pdf).
12. Reportes Estadísticos (http://www.conami.gob.ni/index.php/est-reportes?reportName=/RptEstadisticas/RptEstadoSituacionAnual&tituloreport=Estado de Situaci%C3%B3n Financiera Total General&cat=Reportes Contables).
13. Informes Intendencia de Seguros | SIBOIF (https://www.siboif.gob.ni/supervision/intendencia-seguros/informes).

Anti-money laundering framework

48. The Law against Money Laundering, the Financing of Terrorism and the Financing of the Proliferation of Weapons of Mass Destruction of 2018, Law No. 977, in force since 20 July 2018 and amended on several occasions since, most recently in May 2021, is the primary instrument in Nicaragua's AML framework. The accompanying implementing regulations are contained in Decree 15-2018, and several other norms complete this framework (see Annex 3).

49. The financial investigation unit is the *Unidad de Análisis Financiero* (UAF), established in 2012. The UAF is also the supervising authority for entities that are involved in financial transactions but not supervised by another authority. This includes currency exchange houses, remittance offices, co-operatives that issue financing or act as financing intermediaries and *fideicomiso* service providers (Article 9 of the AML Law). In this context, the UAF has issued comprehensive guidance, as described under section A.1.1. However, the UAF does not supervise the banking sector (see above).

50. The AML framework of Nicaragua has been ratcheted up incrementally, largely as a result of Nicaragua's membership in the GAFILAT. The GAFILAT report adopted in July 2017 rated Nicaragua Partially Compliant for Recommendation 10 on customer due diligence (CDD), and Non-Compliant for Recommendations 24 and 25 on transparency and beneficial ownership of legal persons and legal arrangements, respectively.

51. Enhanced follow-up reports documenting Nicaragua's progress in addressing technical compliance deficiencies were published in 2018, January and August 2019, 2020 and 2021 and have led to a re-rating of Recommendation 10 to Compliant (in August 2019), Recommendation 24 to Partially Compliant (in August 2019), and Recommendation 25 to Largely Compliant (in January 2019). Overall, the main gap that remains is therefore with regard to Recommendation 24, specifically as concerns sanctions for non-compliance and enforcement. However, none of the follow-up reports have assessed the progress of Nicaragua on effectiveness.

Recent developments

52. Developments in relation to the availability of beneficial ownership information correspond to developments in the AML framework and are incremental. For example, in August 2021 sanctions were introduced in relation to obligations introduced to prevent terrorist financing and the proliferation of weapons of mass destruction in 2014 and 2018, following further criticism of the lack of sanctions in this respect in the GAFILAT follow-up report of January 2021. However, sanctions are still lacking in relation to

other areas, notably to ensure the availability of beneficial ownership information, as discussed under Element A.1.1. In the same vein, the introduction of a Register of Beneficial Owners of Commercial Companies, introduced by law in August 2020 and due to have been populated between April 2021 and April 2022, is a positive development that warrants monitoring.

53. On 21 October 2022, Nicaragua was removed from the list of jurisdictions subject to increased monitoring by the FATF on the basis of the improvements made, following discussion of the most recent on-site visit report.

Part A: Availability of information

54. Sections A.1, A.2 and A.3 evaluate the availability of ownership and identity information for relevant entities and arrangements, the availability of accounting information and the availability of banking information.

A.1. Legal and beneficial ownership and identity information

Jurisdictions should ensure that legal and beneficial ownership and identity information for all relevant entities and arrangements is available to their competent authorities.

55. The availability of legal ownership and identity information, for both companies and partnerships, is ensured through the company and commercial law framework. Relevant entities are required to file with the Commercial Registry information on their founding members as reflected in the constituent documents and, since August 2020, any changes in the shareholding structure and the shareholders as they arise subsequent to incorporation. In addition, relevant entities are required to keep themselves a register of shares, upon which depends the legal effect of the shares. This also ensures self-execution of the obligation, against a background in which enforcement measures are few. These obligations apply to domestic companies and partnerships, foreign companies and partnerships having their place of management in Nicaragua, but not to foreign partnerships that may otherwise have income for tax purposes or carry on business in the jurisdiction, in contravention with the standard.

56. The availability of beneficial ownership information, for both companies and partnerships, is partially ensured through a combination of AML-related requirements and the Register of Beneficial Owners, established in August 2020. Existing companies and partnerships (but not legal arrangements such as *fideicomisos*) were expected to populate the register between April 2021 and April 2022, and new companies and partnerships are required to declare their beneficial ownership information within 30 days of their registration with the Commercial Registry. The related obligations

are accompanied by effective, proportionate and dissuasive sanctions. Incomplete information is however available on the effectiveness of supervision and enforcement in this respect.

57. AML-related requirements on the other hand are dependent on the existence of a relationship with an AML-obliged person (there is, for example, no obligation to engage a bank). The practical extent of customer due diligence (CDD) depends largely on the industry concerned, with banks and financial institutions having the least complete system, as set out under section A.3, and the AML Law only expressly requiring the verification of beneficial owners of clients, as opposed to their identification.

58. In addition, the AML Law does not distinguish between the identification of beneficial owners of partnerships and companies, and does not require all parties to a *fideicomiso* arrangement – which has common law trust-like features – to be identified, unless the trustee is a professional. Even then, there is no specified frequency for updating the information in the legal or regulatory framework the covers all trusts. Moreover, the guidance produced by supervisors provides only for the consideration of control by other means where it cannot be determined who exercises control of a legal person based on their ownership interest, and reasonable measures to verify the identity of beneficial owners of clients are not required in all circumstances pursuant to the guidance. These aspects are therefore taken into account in a recommendation to ensure the availability of beneficial ownership information for all relevant entities and legal arrangements.

59. The AML Law contains a requirement of general application in relation to the availability of beneficial ownership information, namely that all persons and legal arrangements established in Nicaragua must keep adequate, accurate and up-to-date information on their beneficial owners and their ownership and control structure. However, there do not appear to be mechanisms to supervise or enforce this important obligation. A recommendation is therefore included in this regard, capturing also the lack of a sanctions framework put in place by individual supervisors, with the exception of the UAF.

60. Nicaragua prohibited the issuance of bearer shares in mid-2018 through a provision in its AML Law. However, whilst bearer shares that were not converted to nominative shares within a period of 12 months cannot be transferred in acts or contracts, other rights appear to be maintained. Moreover, it is not clear how the prohibition is being supervised and enforced, given that under the AML Law, enforcement is left to relevant supervisors.

61. Foundations can only be established for non-profit activities, and their operations are significantly regulated, including accounting and membership information. Co-operatives, or autonomous associations of persons

that come together to realise a common economic goal, in particular in the agriculture and crafts sectors, are regulated by the Ministry of Family, Community, Co-operative and Associative Economy and of limited relevance to the exchange of information for tax purposes as their members must be natural persons or non-profit legal persons.

62. Finally, insufficient information is available to conclude comprehensively on the practical implementation of the standard as far as enforcement and supervision in relation to the availability of legal and beneficial ownership and identity information are concerned.

63. The conclusions are as follows:

Legal and Regulatory Framework: in place, but certain aspects of the legal implementation of the element need improvement

Deficiencies identified/Underlying factor	Recommendations
There is no obligation for identity information to be kept on foreign partnerships which are carrying on business in Nicaragua, or have income, credits or deductions for tax purposes in Nicaragua.	Nicaragua should ensure that adequate, accurate and up-to-date identity information is kept for all relevant foreign partnerships.
The anti-money laundering law provides a framework for customer due diligence obligations, which supervisors are required to develop further for purposes of application by the entities under their responsibility. However, the guidelines applicable to the identification of beneficial owners by anti-money laundering-obliged persons are lacking in relation to the following aspects: (i) when control by means other than ownership is considered in order to identify the beneficial owner (i.e. whenever there is doubt as to whether a person(s) with a controlling ownership interest is the beneficial owner(s) or where no natural person exerts control through ownership interests); (ii) when reasonable measures should be taken to verify the identity of beneficial owners; (iii) who should be identified as a beneficial owner when a partnership is concerned rather than a company (given that the partners in a *sociedad en nombre colectivo*, and the managing partners (*socios gestores*) in a *sociedad en comandita simple* are jointly and severally liable, it would be appropriate to identify all partners; in addition, where a partner is a legal person, it would be necessary to identify a natural person as the beneficial owner); and (iv) in relation to trusts, whether each of the settlor, the trustee(s), the protector (if any), the beneficiaries or class of beneficiaries must be identified in all cases by non-professional trustees and the absence of a specified frequency for updating the information.	Nicaragua should ensure that adequate, accurate and up-to-date beneficial ownership information is available for all relevant entities and legal arrangements.

Deficiencies identified/Underlying factor	Recommendations
Article 30 of the anti-money laundering law requires supervisors to establish administrative provisions that put into practice the law and impose corresponding sanctions. This has been done by the financial investigation unit (*Unidad de Análisis Financiero*), but not by other supervisors, thereby putting into question the compliance with customer due diligence requirements of anti-money laundering-obliged persons, and therefore the availability of beneficial ownership information from this source. In addition, the obligation that is contained in Article 13 of the law for all persons and legal arrangements established in Nicaragua to keep adequate, accurate and up-to-date information on their beneficial owners and their ownership and control structure does not appear to be accompanied by a supervision mechanism or enforcement features such as sanctions.	Nicaragua should ensure that appropriate supervision mechanisms and effective, proportionate and dissuasive sanctions are in place to accompany all obligations relating to the availability of beneficial ownership information.

Practical implementation of the Standard: Partially Compliant

Deficiencies identified/Underlying factor	Recommendations
The Register of Beneficial Owners of Commercial Companies was created in August 2020 and is to include the information on beneficial owners of all commercial entities (companies and partnerships) operating in Nicaragua, including foreign companies. It is therefore expected to be an important source of beneficial ownership information for the Nicaraguan authorities. The effective monitoring and supervision of the obligations of maintaining adequate, accurate and up-to-date beneficial ownership information will be key to its effective implementation.	Nicaragua should ensure the full and effective implementation of the Register of Beneficial Owners of Commercial Companies and put in place the necessary supervisory and enforcement mechanisms to monitor compliance by legal persons to ensure that adequate, accurate and up-to-date beneficial ownership information is available.
The anti-money laundering legislation in Nicaragua, in force since 20 July 2018, prohibits the issuance of bearer shares and the conversion of nominative shares into bearer shares. However, the law provides only that bearer shares that are not converted into nominative shares by July 2019 cannot be transferred in acts or contracts after this date, indicating that other rights attached to the shares are maintained. In addition, no sanctions, supervision or enforcement mechanism is indicated in this regard.	Nicaragua is recommended to ensure that the prohibition and conversion of bearer shares is properly supervised and enforced, and accompanied with appropriate sanctions.

A.1.1. Availability of legal and beneficial ownership information for companies

64. The principal type of legal entity in Nicaragua is the "*sociedad*", or company. Article 118 of the Code of Commerce provides that four types of *sociedad* exist in Nicaragua. Given their structure, *sociedades en nombre colectivo* (SNC) – joint partnerships, and *sociedades en comandita simple* (SCS) – limited liability partnership, are considered under *Partnerships* (section A.1.3), but due to their classification as *sociedades*, the same legal framework is in fact applicable to both types of entity in Nicaragua.

65. The two other types of legal entity are considered as companies:

- *Sociedades anónimas* (SA) – joint stock companies – are governed by Articles 201 to 286 of the Code of Commerce. Their share capital is divided into shares, represented by negotiable share certificates. Shareholders can be either natural or legal persons and their liability is limited to the amount of their share capital (Article 201). The number of such entities in Nicaragua is not known.
- *Sociedades en comandita por acciones* (SCA) – limited liability companies – are governed by Articles 287 to 299 of the Code of Commerce, and otherwise by the same provisions as SAs. Their capital is also divided into shares, represented by negotiable share certificates, but they have two different kinds of members: (i) *socios gestores,* who have joint and unlimited liability and are responsible for the company's management, and (ii) *socios comanditarios,* whose liability is limited to the amount of their capital contributions (Article 287). The number of such entities in Nicaragua is not known.

66. Foreign companies may establish themselves in Nicaragua, operate as subsidiaries by fixing their domicile in Nicaragua, or as branches of foreign-incorporated companies. In any of these cases, they will be subject to the same company and tax law framework as domestic companies, including registration and filing requirements, and the requirement to appoint a legal representative resident in Nicaragua.

67. Moreover, Article 339 of the Code of Commerce provides that companies incorporated abroad to carry out their main business in Nicaragua with the majority of their capital raised domestically, or that have their central company directory and their assembly of members in Nicaragua will be considered as national companies for purposes of the application of the Code of Commerce.

Legal ownership and identity information requirements

68. The legal ownership and identity requirements for companies are found mainly in the company and commercial law framework. The following table shows a summary of the applicable legal requirements.

Companies covered by legislation regulating legal ownership information[14]

Type	Company law	Tax law	AML law
SA	All	Some	Some
SCA	All	Some	Some
Foreign companies (tax resident)	All	Some	Some

69. An entity will be covered by the tax and AML law requirements if certain conditions are met, notably if the information provided to the tax administration at the time of its registration remains valid in the case of the tax law framework, and in light of the legal ownership information and ownership structure information that is established as a result of the application of the AML framework (though this will not be complete as it will not necessarily reveal all shareholders).

Company law requirements

70. SAs and SCAs are incorporated through public notarised deed pursuant to Article 121 of the Code of Commerce. This has been a requirement since 25 August 2020[15] and means that a notary ensures that the documentation of persons preparing to form a company complies with all the relevant legal guidelines and that the formation of the company is made public through the Commercial Registry (Article 19).

71. Article 124 of the Code of Commerce sets out the information the deed of incorporation must contain. This includes the name and domicile of the founding members; the objectives, domicile and legal form of the company; the manner in which the persons responsible for the administration or management of the company will be elected; the legal representative of the

14. The table shows each type of entity and whether the various rules applicable require availability of information for "all" such entities, "some" or "none". "All" means that the legislation, whether or not it meets the standard, contains requirements on the availability of ownership information for every entity of this type. "Some" means that an entity will be covered by these requirements if certain conditions are met.

15. The Law Amending the General Law on Public Registries and the Code of Commerce (Law No. 1035 of 25 August 2020) amended Article 121 of the Code of Commerce so as to require incorporation by public deed, as well as the submission of information on beneficial ownership (see below).

company; the duration of its activities; its share capital; the number, quality and value of its shares; the time period within which and the manner in which the share capital is to be subscribed to; any particular advantages or rights that the founders enjoy; the rules for the formulation of the balances of the company and the repartition of benefits; and decision-making and voting arrangements. Any omission is stated to nullify the social covenant between members (Article 125), but not to the detriment of a contracting third party (Article 126). For companies established following the entry into force of Law No. 1035 of 25 August 2020, it is also a requirement to identify their beneficial owner in their deed of incorporation, but such information will not be available in the deeds of companies established prior to this.

72. The national system of registers, SINARE (*Sistema Nacional de Registros*), comprises several registers, including the Commercial Register, or *Registro Público Mercantil*. Registration is decentralised through regional registration offices. Registration with the Commercial Registry is obligatory for all merchants pursuant to Article 19 of the Code of Commerce. Failure to register prevents entities from acquiring legal personality and from being able to add any document to the register or enjoy any related legal effects (Article 155 of the General Law of Public Registers).

73. Article 156 of the General Law of Public Registers sets out what information is required to be filed with the Registry. This includes the name and address of the founding members of the company as reflected in the constituent documents and, since August 2020, any changes in the shareholding structure and the shareholders, as they arise subsequent to incorporation.

74. Specifically, the documents required to be registered include the following:

- The deeds through which a company is constituted, transformed, or dissolved; or in which in any other way a company is modified. When national and/or foreign commercial companies appear as members in the act of incorporation and/or modification of a legal entity, the beneficial owner must be successively identified, in accordance with the chain of ownership or complexity until the natural person(s) exercising control is determined. When one of the members is a foreign legal person, in addition to the aforementioned information, a certified copy of the following must be attached: incorporation deed; articles of incorporation of the company and its statutes; updated registry certificate containing the registration data of the company; and an updated certificate of the shareholding held by the company, which must contain the respective authentication or apostille.
- Changes in shareholding structure, participation or ownership, control of commercial companies and their legal representatives; as

well as any change that modifies the identification and updating of information on the beneficial owner of commercial companies.

- In order to incorporate an SA that is a member or part of another national and/or foreign commercial company, it will be a requirement to successively identify the beneficial owner of the companies of which it is a member, in accordance with the chain of ownership or complexity until determining the natural person(s) exercising control. When one of the members is a foreign legal person, in addition to the aforementioned information, a certified copy of the following must be attached: incorporation deed; articles of incorporation of the company and its statutes; updated registry certificate containing the registration data of the company; and an updated certificate of the shareholding held by the company, which must contain the respective authentication or apostille.

75. The references to beneficial ownership were also added as a result of amendments in August 2020, coinciding with the creation of a separate Register of Beneficial Ownership of Commercial Companies within SINARE. However, instead of creating a new section dedicated to the new register, the specifications relating to beneficial ownership were added under the chapter of the law relating to the Commercial Registry, which convolutes the content of the two registers.

76. Similarly, with regard to foreign companies, Article 156 provides that it is necessary to file with the Commercial Registry:

> The social contracts and bylaws of foreign companies that establish branches or agencies in Nicaragua; the appointments of managers or agents; and the registration of said contracts or documents at the domicile of said companies. To the deed should be attached a certified copy of the deed of incorporation of the company and its statutes, an updated registration certificate containing the registration data of said company and an updated certificate of the company's shareholding structure, the identification of the beneficial owner independently of the ownership chain, which must contain the respective authentication or apostille.

77. Once incorporated and registered, Article 28 of the Code of Commerce provides that companies and commercial[16] or industrial entities are required

16. A commercial company is defined as a company whose objective is to carry out acts of commerce or, more generally, an activity subject to commercial law (see Preguntas Frecuentes (https://www.registropublico.gob.ni/MonoX/Pages/MarcoLegal/Preguntas/PreguntasFrecuentes.aspx).

to keep a number of books, including a register of nominative shares and "remuneration" shares, a book of bearer shares (see however section A.1.2 regarding the prohibition of bearer shares in mid-2018) and a book of the minutes of meetings.

78. Article 37 specifies that the register of nominative shares and "remunerative" shares must include the names of the subscribers and the number of shares they hold; the payments made for each share; the number and value of the shares, indicating their owners; and their transfer. The provision also requires that the register specify the nominative shares that are converted to bearer shares and the corresponding securities issued (see however section A.1.2 regarding the prohibition of bearer shares in mid-2018).

79. The register of nominative shares may be inspected by any shareholder (Article 229), and the ownership and transmission of nominative or remuneration shares has no effect on either the company or third parties if not reflected in the share register (Article 230). Therefore, the effect is self-executing.

80. As such, the register of nominative shares that companies are required to keep is a key source of legal ownership information. This is also reflected in the information manual on beneficial ownership issued by SINARE, which advises that the register of nominative shares should first be consulted in order to determine beneficial ownership by controlling ownership interest.

81. Changes in shareholding structure, participation or ownership, control of commercial companies and their legal representatives are to be submitted to the Commercial Registry, but it is not described how or when this is to be done, and whether it is enforced.[17] In particular, without a regular filing requirement, it is difficult to detect non-complying companies and therefore ones that are potentially inactive.

82. Access to information in the Commercial Registry is through the provision of certifications, reports or copies provided upon request to the relevant regional office.[18]

Retention of information and companies that cease to exist

83. Article 46 of the Code of Commerce provides that merchants will keep the books, telegrams and correspondence relating to their operations for the duration of their business and up to ten years after their liquidation.

17. In comparison, in the context of the Register of Beneficial Owners, an *ad hoc* updating requirement applies within 30 days of a change declared with the Commercial Registry (see paragraph 155).

18. The provisions on publicity of information are contained in Articles 51 to 57 of the General Law on the Public Registries.

The provision states that heirs of the merchant are presumed to keep this documentation after the merchant has stopped existing. This is primarily applicable to individual entrepreneurs.

84. For SAs and SCAs that cease to exist, Article 285 of the Code of Commerce specifies that the person/s who is to keep all legally required documentation must be designated in the last meeting of the members prior to liquidation or dissolution. If the liquidation has been undertaken by the judicial authorities or no designation is made at the last meeting, the documents must be deposited in the file of the relevant court. The provision requires that the documentation referred to is kept for ten years.

85. In addition, Article 25(2) of the AML Law provides that the Commercial Registry and the legal persons themselves or their administrators/managers, liquidators or any other persons involved in their dissolution, must maintain for a period of five years from the date on which the legal person ceases to exist registers of the company's name; constitutive documents; statutes; domicile; and list of directors and beneficial owners (as applicable). It is not known whether there exists a means by which entities can be struck off the Register without being formally dissolved.

86. The above provisions are complemented by Article 156 of the General Law of Public Registers, which provides that amongst the commercial acts that need to be registered with the Registry are the appointments and dismissals of the administrators/managers, liquidators and auditors of entities, meaning that the identity of the person expected to hold the information after the company ceases to exist is registered. Together, the retention of information in line with the standard is therefore required based on the legal framework, but it is unknown if this is done in practice, or if it is effectively monitored.

87. It is unknown whether dissolved companies can be reinstated or whether companies can be redomiciled abroad.

Tax law requirements

88. The Tax Code provides that all taxpayers are required to register with the tax administration and to obtain a taxpayer unique identification number (*numéro de Registro Único de Contribuyente*, RUC) (Article 26 of the Tax Code[19]).

89. Natural and legal persons must complete the relevant registration form and provide identity information and documents, as well as proof of residence. For legal persons, this includes the deed of incorporation and statutes registered with the Commercial Registry, identity and residence information

19. See also the Law Creating the Single Registry of the Ministry of Finance, Decree No. 850 of October 1981.

of the legal representative. It also includes the identity information of each of the members of the board of directors.

90. The information provided to the tax administration must be kept updated (Articles 25 and 103(1) of the Tax Code). In terms of information on legal ownership however, the tax administration has information directly on the shareholding structure of the company as at the time of incorporation only, and to updates in the statutes of the company, which do not however necessarily reflect updates to the ownership structure (as well as on the composition of the senior management, identity of the legal representative, etc.). No information has been located in the legal framework specifically regarding the treatment and supervision of inactive entities.

91. The tax administration has access to original legal ownership information upon request through the Commercial Register.

Implementation in practice

92. The first practical steps required for incorporation in Nicaragua involve the preparation of a notarised deed of incorporation, including appointment of a legal representative resident in Nicaragua, and the acquisition of accounting and corporate books at local bookstores.

93. The following steps can be undertaken through one-stop-shop facilities that combine registration with the Commercial Registry and the tax authority, namely through:

- submitting the deed of incorporation and payment of the corresponding fee, for processing by the Commercial Registry (the fee amounts to 1% of the company's capital up to a maximum of NIO 30 000 (USD 840)
- registering as a merchant and registration of accounting books, also for processing by the Commercial Registry, upon completion of the first step. This triggers the issuance of a registration number that exists perpetually, and an electronic file is created for the entity in question (Article 154 of the General Law on Public Registers)
- obtaining single registration document (*documento único de registro*), a step which may be undertaken simultaneously to registering as a merchant. This triggers issuance by the tax administration of the municipal licence, the licence of the Nicaraguan social security institute and the RUC. The single registration document requires a payment of a further 1% of the company's capital for companies with a capital of over NIO 50 000 (USD 1 400).[20]

20. For companies with a capital of less than NIO 50 000 (USD 1 400), the fee is NIO 505 in Managua and NIO 500 elsewhere in the country (both approximately USD 14).

94. The above steps may also be completed individually via the Commercial Registry and the tax administration. In the case of the former, electronic inscription of new companies is available since 2013, but not obligatory. In the case of the latter, the procedure is in-person and must be undertaken at the revenue office closest to the address where the economic activity will be carried out.

95. Foreign companies seeking to register with the tax administration must also first present their constitutive documents for certification by the Ministry of Foreign Affairs.

96. For foreign investors investing above USD 30 000, it is possible to register with the Ministry of Development, Industry and Trade to obtain a Foreign Investor Certificate, which also contributes to applying for the Nicaraguan residency and for certifying investments made in the country.

97. For tax purposes, all legal persons having registered with the tax administration are required to register for access to the electronic tax window (*ventanilla electrónica tributaria*) via the webpage of the DGI.

Nominees

98. The concept of nominees does not exist under Nicaraguan law. Rather, where a person holds property for the benefit of or on behalf of another person, this is considered equivalent to a "*mandato*" under the Civil Code and that person has no legal rights to the property.

99. There is no recognition given to nominees in any of Nicaragua's laws, including its AML framework. Nevertheless, the UAF's Directive of Best Practices for the Identification of Beneficial Owners, issued in February 2019, explains the concept of formal and informal nominee arrangements as per the international concept and the risks they pose in relation to occulting ownership. This promotes an awareness that further reduces the risk of nominee arrangements in Nicaragua.

Legal ownership information – Enforcement measures and oversight

100. Enforcement measures with regard to company law obligations are few, but the obligations are generally self-executing. In particular, registration with the Commercial Registry is required to attain legal personality (though a fine may also be imposed if the matter of the lack of registration comes to light in the context of court proceedings), and share transfers have no effect if not reflected in the share register.

101. For foreign companies, it is further stipulated that the failure to comply with the requirements of the Code of Commerce triggers personal and joint

liability of those contracting for all obligations contracted by the company in Nicaragua, or on its behalf (Article 338).

102. In the tax context, several enforcement measures are available, but given the limited contribution of the tax law framework to the availability of legal ownership information, their relevance seems minimal. They are nevertheless set out in the paragraphs that follow for completeness.

103. Article 117(1) of the Tax Code provides that the failure by a taxpayer to comply with its duties and obligations under the Code constitutes a tax breach, and Article 112 provides that legal persons, entities and *de facto* entities (i.e. unregistered entities) can each be sanctioned for tax breaches.

104. Article 118 clarifies that when a person is responsible for various breaches, the respective sanction will be applied for each breach.

105. The types of breach covered by Article 126 include the failure to register with the tax administration, not to provide the necessary information or to fail to update it; and not to maintain in good order during the prescribed period all records and documentation of tax interest, as well as supporting documentation that illustrates the fulfilment of taxpayers' obligations.

106. The sanctions available include fines, the closure of the business and the loss of concession or tax rights (Article 124). Fines are calculated on the basis of fine units, and Article 8 of the Tax Code provides that the value of a unit will be the equivalent in national currency to one United States dollar, based on the official exchange rate established by the Central Bank of Nicaragua, in force on the date of imposition of the fine (currently NIO 25).[21]

107. The failure to register with the tax administration, or to keep information up to date, is subject to a fine of 30 to 50 fine units, i.e. USD 30 to 50, per month of delay or out-of-datedness (Article 127(1)). The failure to maintain in good order during the prescribed period all records and documentation of tax interest, as well as supporting documentation, is subject to a fine of between 90 and 110 fine units/USD, per day (Article 127(4)).

108. In addition, the failure to submit a complete tax return or the submission of an erroneous return; the complete or partial omission of financial statements or annexed documents which can result in the application of a lower amount of tax, are subject to a fine of between 70 and 90 fine units/USD, per day of refusal/lack of provision of information (Articles 134 and 127(3)). This focus on the perspective of the Nicaraguan treasury's loss (through the reference to "which can result in the application of a lower

21. To facilitate comparison, the applicable fines will therefore be expressed as dollar amounts that are equivalent to the unit numbers, throughout the report.

amount of tax") suggests the focus is not one of availability of information for wider, or international, purposes.

109. However, Article 135, which deals with the sanction rather than the concept in Article 134, is more generally worded, suggesting that a fine (and other sanctions) may be applied for the failure to submit a tax return or for submitting a lacking one, without the need to link this to a loss to the Nicaraguan treasury.

110. The Ministry of Finance and Public Credit releases on a bi-annual basis a "Budget Execution Report". Whilst this provides revenue figures for the semester concerned, the compliance rate with the annual tax return declaration is not stated.

111. No information is available publicly on the application of relevant enforcement measures in either the domestic or EOIR context.

Availability of legal ownership information in EOIR practice

112. There is no information available with regard to the availability of legal ownership information in EOI practice.

Availability of beneficial ownership information

113. The EOIR standard requires that beneficial ownership information be available on companies. In Nicaragua, this aspect of the standard is generally met through the anti-money laundering and the company law frameworks. Each of these legal regimes is analysed below.

Companies covered by legislation regulating beneficial ownership information

Type	Company law	Tax law	AML law/ Obligations on entities	AML law/CDD
SA	All	None	All	Some
SCA	All	None	All	Some
Foreign companies (tax resident)[22]	All	None	All	Some

22. Where a foreign company has a sufficient nexus, then the availability of beneficial ownership information is required to the extent the company has a relationship with an AML-obligated service provider that is relevant for the purposes of EOIR (2016 TOR, A.1.1, Footnote 9).

Definition of beneficial owners

114. The same definition applies in both the AML framework and the company law framework. The concept of beneficial ownership, and the process for identifying the beneficial owners, is defined in Article 4(6) of the AML Law as follows:[23]

> a. The natural person or persons on whose behalf a transaction 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.

115. The definition further clarifies that the term "ownership" refers to *de facto* as well as *de jure* ownership and that likewise, the term "control" deals with the ability to take and impose relevant decisions, whether such control is exercised through formal or informal means, and whether by one or more persons jointly. The notions of control through ownership and other means apply simultaneously. The definition of beneficial ownership is aligned with the standard.

116. The definition of beneficial ownership in the AML Law does not cover the backstop obligation to identify a senior managing officer in case no natural person meets the definition of beneficial owner.

117. This point is nonetheless covered by most of the regulations issued by supervisors based on the AML Law. For example, pursuant to Article 24 of UAF Resolution, UAF-N-019-2019, applicable to AML-obliged persons supervised by the UAF that are financial institutions, the methodology for identifying the beneficial owner is as follows:

a. Natural persons exercising control of the legal person through ownership of 25% or more of the shares shall be beneficial owners. If the holder of such percentage is a legal person, the person who controls the legal person through a percentage equal to or greater than 25% of the capital must be identified and so on, until the natural person who controls the customer through the chain of ownership is identified.

b. Only where it cannot be determined who exercises control of the legal person through this information, the AML-obliged person shall, in accordance with its resources and experiences, develop an analysis to identify who exercises control of the legal person.

23. A different definition applies for *fideicomisos*, as set out under section A.1.4.

c. If the AML-obliged person fails to identify the natural person who is the beneficial owner even in compliance with this, it must identify the natural persons holding senior administrative positions in the legal person. Where the designated administrator is a legal person, control shall be deemed to be exercised by the natural person appointed by the administrator to act as its legal representative.

118. Therefore, control by means other than ownership is considered in order to identify the beneficial owner only where no natural person exerts control through ownership interests, and not whenever there is doubt as to whether a person(s) with a controlling ownership interest is the beneficial owner(s). In addition, the backstop option is available in case of failure to identify a beneficial owner, though in such cases the AML-obliged person should refuse to enter into the business relationship; the backstop option should be used only when it is clear that no natural person meets the definition of beneficial owner.

119. An almost identical methodology is set out in Article 18 of the Counter-ML/FT/PF Regulations for lawyers and notaries, as well as in Article 14 of Resolution 01-2019-JD/CCPN-PLA/FT/FP relating to accountants. However, in the case of the Resolution applicable to accountants, it is specified that the second step may be reached not only where it cannot be determined who exercises control, but also where the information resulting from the first step raises doubts as to who exercises control. This provides for a more comprehensive approach and aligns more closely to the standard.

120. No such methodology is provided in the SBOFI AML Norms applicable to banks and financial institutions, and alternative cross-sector guidance or directives on the identification of beneficial owners of client of entities under the SBOFI's supervision does not seem to be available.

121. Therefore, in the case of UAF-supervised entities, accountants, lawyers and notaries, the regulations and guidance available complement the content of the AML Law, but do not ensure the availability of adequate, accurate and up-to-date beneficial ownership information in all cases because of the shortcomings identified further above. As discussed further under section A.3, the situation in relation to SBOFI-supervised entities is further removed from the standard. **Nicaragua should ensure that adequate, accurate and up-to-date beneficial ownership information is available for all relevant entities and legal arrangements**.

122. The UAF issued comprehensive guidance in February 2019, in the form of a Directive of Best Practices for the Identification of Beneficial Owners, applicable to those AML-obliged entities for whom the UAF is responsible, i.e. those with no natural supervisor. This Directive sets out

the FATF definition of beneficial owner and includes examples of ownership chains and graphics for the identification of beneficial owners. The methodology for identification follows the cascading approach, with the second step (control through other means) following the first (controlling ownership interest) not only if no natural person with a direct or indirect controlling ownership interest can be identified, but also where there are doubts as to whether that person is the beneficial owner. The third step – identification of senior manager/executive – is only considered where the first two steps did not serve to identify the beneficial owner. The Directive also emphasises the necessity to verify identity information.

123. As such, the Directive contradicts the content in the UAF Resolutions mentioned above. Furthermore, it is only applicable to those AML-obliged entities for whom the UAF is responsible and the useful guidance and examples on the identification of beneficial ownership therefore only targeted at a small portion of AML-obliged entities.[24]

124. In the case of the Register of Beneficial Owners of Commercial Companies, described below, Article 10 of the Regulations for the Register provides that the following criteria will be taken into account in the determination and identification of the beneficial owner, which is to be reflected in a standard form declaration:

- The natural person who holds a shareholding of 25% or more in the commercial company. This includes information regarding the chain of ownership in cases where the beneficial owner holds this share indirectly (effective and final control through a chain of ownership).
- In the event that the beneficial owner is not determined by applying the above criteria, he/she will be identified through the natural person who, acting as a decision-making unit individually or through other natural or legal persons, has powers, by means other than ownership, to appoint or remove most of the administrative, management

24. I.e.: (a) Companies that, in carrying out the following activities, do not maintain ownership, management, use of corporate image or control links with banks or other regulated non-bank financial institutions: (i) Issuing and administering means of payment; (i) Factoring operations; iii. Financial leasing; (iv) Remittances; (v) Purchase and sale and/or currency exchange; (b) Microfinance institutions that are outside the regulation of *CONAMI*, regardless of their legal form. (c) Co-operatives which, among the activities they carry out with their members, grant any form of financing or which include financial intermediation. (d) Pawnshops and pawnbrokers. (e) Casinos. (f) Real estate brokers. (g) Dealers in precious metals and/or precious stones. (h) Dealers and distributors of new and/or used vehicles. (i) Trust service providers. These regulations shall also be applicable to any other natural or legal person that, in accordance with Law No. 977, is designated as a regulated entity under the competence of the UAF or by the specific law creating it.

or supervisory organs, or has decision-making power in the financial, operational and/or commercial agreements that are adopted, or who exercises another form of control over the company.

- If no natural person is identified under the criteria indicated in sub-paragraphs a) or b), the natural person who occupies the senior administrative position will be considered the beneficial owner, or the legal representative of the company.

125. Hence, as with the UAF methodology described above, although "*In the event that* the beneficial owner is not determined by applying the above criteria" appears wider than "*Only where* it cannot be determined who exercises control […]", it does not appear to cover situations whenever there is doubt as to whether a person(s) with a controlling ownership interest is the beneficial owner(s). In addition and also as per the UAF methodology, the backstop option is available in case of failure to identify a beneficial owner.

Anti-money laundering law – Customer due diligence requirements

126. AML-obliged persons are those listed at Article 9 of the AML Law. They include entities supervised by the SBOFI, i.e. banks, financial corporations, insurance and reinsurance companies and capital market and investment companies; entities supervised by CONAMI; entities supervised by the UAF; and public accountants, lawyers and notaries. Given the scope of coverage, the probability of coming across one at some stage – whether a bank, currency exchange house, legal professional or accountant – is high. There is nonetheless no requirement to engage in an ongoing relationship[25] with an AML-obliged person.

127. Pursuant to Article 17(1) of the AML Law, AML-obliged persons are required to identify their clients or users, including occasional ones, in accordance with documents and information to be established by their supervisors. This provision does not refer to the identification of beneficial owners, but Article 22, which emphasises the *verification* obligation, does. Accordingly, pursuant to the AML Law, AML-obliged persons are required to verify the identity of the beneficial owners of their clients, as well as verifying the identity of their client. This is the case when the relationship is established or, in the case of occasional clients, when a transaction is conducted on their behalf. Presumably therefore, this would include the scenario where a client is representing a legal person and opening an account on behalf of that legal person.

128. In addition, Article 17(2) requires that supervisors establish the way in which AML-obliged persons are to obtain from their clients adequate,

25. It is however mandatory to engage a notary at the time of the creation of a company.

accurate and up-to-date information on their beneficial owners, as well as the reporting obligations on the nature of the business, the shareholding structure and the control of legal persons (and arrangements). The definition of CDD in the AML Law further refers to the set of measures applied by AML-obliged persons to identify the natural and legal persons with whom they establish and maintain or attempt to establish business or service relationships, including the obtention, verification and preservation of updated and complete information on aspects including beneficial ownership (Article 4).

129. Verification can take place up to 10 days after the establishment of the relationship or conduct of the transaction where the associated risk is assessed as being low. However, a specific process must be put in place to manage associated risks (Article 22 of the AML Law).

130. AML-obliged persons are exempt from undertaking CDD if they suspect money laundering or terrorist financing, in which case they are required to file a suspicious transaction report directly (Article 17(5)). It is not stated whether a suspicious transaction report should also be filed if the beneficial owner cannot be identified or if the relationship should not be pursued.

131. The elements to be recorded as a result of this verification or acceptable sources of identification are not stipulated in the AML Law.

132. Overall, the AML Law therefore provides a framework for CDD which supervisors are required to develop further for purposes of application by the entities under their responsibility. Accordingly, in the UAF Resolution UAF-N-019-2019, for example, it is stated that verification should be done on the basis of "legal, official, in effect, trustworthy and undoubtable documents" (Article 11(4)) (but in contradiction to the content of the AML Law, this verification targets only the client – see paragraph 140).

133. The AML Law stipulates that simplified CDD may be applied to low-risk clients (Article 18), whilst enhanced processes are to be applied to high-risk clients (Article 19). Simplified CDD is not defined in the Law, but with regard to enhanced CDD, it is stated that this covers enhanced requirements in relation to each of identification, verification and CDD. Details are left to supervisors. For entities supervised by the SBOFI, examples of enhanced processes include more rigorous verification of information provided by clients and potential *in situ* visits to clients (Article 16 of the Norms of the SBOFI).

134. Reliance on third party CDD is expressly prohibited with the exception of local finance groups in accordance with specific rules established by their supervisor (Article 17(6) of the AML Law).

135. Supervisors that have issued regulations and guidance include the SBOFI for banks and other financial institutions, the Ministry of Justice for

lawyers and notaries, the Board of Directors of the Association of Public Accountants of Nicaragua for public accountants, and the UAF for entities not otherwise supervised.

136. The details of the process for identifying the beneficial owner, for verifying information and for keeping it up-to-date consequently varies slightly across AML-obliged persons, but is documented in all cases, except for banks and other financial institutions, where it appears to be left to the individual institutions to define.

137. For example, Article 24 of UAF Resolution, UAF-N-019-2019, provides that AML-obliged persons supervised by the UAF that are financial institutions are required to identify the person or natural persons on whose behalf a transaction is carried out or who ultimately owns or controls a legal person. The information is to be reflected in a document to this effect. If the client is a legal person, it is also necessary to request the information on the ownership and control structure in conformity with Article 13 of the AML Law.[26]

138. With regard to the existing methodologies, the content and sources of information for purposes of identification and verification of beneficial owners are standardised and encompass the full name, address, date of birth and tax registration number, based on national identity cards or passports, commercial registry certificates, company statutes, etc. (as applicable depending on whether a legal or natural person is concerned).

139. A distinction applies across methodologies in relation to the format in which the information needs to be kept (the exception to which is generally where the client is a natural person him/herself and is identified as the beneficial owner, in which case there is no requirement as to format): for lawyers and notaries, the beneficial ownership information must be in the format issued by the responsible authority within the Ministry of Justice for this purpose (Article 18); for accountants, it must be a document or form signed by the client or legal representative (and include the ownership and control structure of the legal person) (Article 15); for UAF entities that are designated non-financial businesses or professions, it must be in the form of a document designated for the purpose, unless a trust is concerned, in

26. Articles 14 to 16 of Resolution UAF-N-019-2019 refer to the duty of UAF-supervised financial institutions to identify and verify the identity of a client (natural or legal person, regular or occasional, as well as the trustee), indicating the documents to be requested; the time to perform the verification; and what the financial institutions should do to identify the authenticity of the documents submitted by clients, where applicable.

which case special rules apply[27] (Article 15); and for UAF entities that are financial institutions, it must be in the form of a document designated for the purpose (Article 24).[28]

140. However, for UAF-supervised entities as well as lawyers and notaries, the same provisions specify that verification is conducted on the basis of the sources set out at paragraph 138 only in cases of doubt as to the identity information on the beneficial owner provided by the client.[29] In other circumstances, verification is limited to the identity of the client (or contractor or trustee, in the case of UAF-supervised entities). In addition to being contrary to the content of the AML Law, this falls short of taking reasonable measures to verify the identity of the beneficial owners, as required by the standard.

141. The guidance of the individual supervisors generally requires the AML-obliged entities to establish policy manuals on the subject and to provide further guidance on preventative measures.

142. In relation to updating requirements, lawyers and notaries are required to update identification information every year for high-risk customers, every two years for medium-risk customers and every three years for low-risk customers (Article 12 of the AML/FT Regulation of Ministry of Justice). The same applies to accountants (Article 10.a.iii of Resolution 01-2019-JD/CCPN-PLA/FT/FP-Regulation CCPN-PLA/FT/FP) and to entities supervised by the UAF (Article 21 of UAF Resolution, UAF-N-019-2019). On the other hand, the UAF Directive provides that it is important to keep information updated, without this necessarily being linked to the periodic updates of the client file or being dependent on the level of ML/TF risk of the client, unlike what is indicated in the UAF Resolutions. This provision could be interpreted as requiring that the information be updated each time there is a doubt on the accuracy of the information maintained.

143. The timeframe for high-risk clients pursuant to the Norms of the SBOFI is every two years, and whenever changes, variation or unusual or significant increases are detected for low or medium-risk clients (Article 12(e)). Therefore, there is no specified frequency for the updating of beneficial ownership information in relation to all customers of entities supervised by the SBOFI. Nicaragua should ensure that there is a specified frequency for the

27. Nicaragua applies the FATF definition of designated Non-financial Business or Profession. The special rules are in Article 17(3) and are described under A.1.4.

28. For banks and other financial institutions, the information would presumably be expected to be integrated into the *Perfil Integral del Cliente*, PIC, the integrated client profile, though this is not expressly stated in the SBOFI AML Norms.

29. In such cases, the methodologies also indicate that the grounds for identification of the beneficial owners are documented in the client file.

updating of beneficial ownership information in relation to all customers of all anti-money laundering-obliged persons (see Annex 1).

144. Finally, in relation to retention of information, AML-obliged persons are required to keep registers of information, including CDD information and documents for a period of at least five years following the end of the commercial relationship or the date of the occasional transaction (Article 25(1)(c) of the AML Law). This retention period is in line with the standard. On the other hand, it is not known what happens to the records where an AML-obliged person ceases to exist.

Anti-money laundering law – Obligations on all persons (and legal arrangements)

145. Article 13 of the AML Law provides that all persons (and legal arrangements) established in Nicaragua must keep adequate, accurate and up-to-date information on their beneficial owners and their ownership and control structure. The obligation may provide context as to why the emphasis under the AML Law is on verification rather than identification for CDD purposes. The definition is the one in the AML Law and it does not appear that this is complemented by any regulation.

146. This obligation appears to apply at least throughout the existence of the entity concerned. It continues following the dissolution or merger of a company registered with the Commercial Registry, whereupon the obligation lies with a person designated by the company (Article 9). It is not stated who bears this responsibility if no such designation is made, but the information would be kept in the beneficial ownership register.

Beneficial ownership registry

147. The Law Amending the General Law on Public Registries and the Code of Commerce (Law No. 1035 of 25 August 2020) creates the Register of Beneficial Owners of Commercial Companies. The Register covers all commercial entities registered in Nicaragua. This register is integrated within SINARE, which contains four other registers:

- the Public Property Register, which includes the Property and Mortgage, Ship and Aircraft Registry
- the Public Commercial Register
- the Public Register of Persons
- the Public Register of Movable Guarantees.

148. Article 3 of the Law stipulates that the Register of Beneficial Owners is of an administrative nature, is governed by public law and has the following functions:

- to register the information on beneficial owners reported by the commercial entity
- to ensure the integrity, confidentiality, traceability and security of the data held in accordance with generally accepted international standards in data handling and protection
- to guarantee the access of the commercial entities concerned, the competent authorities and relevant institutions, to the information on beneficial ownership.

149. Entities in existence at the time of the coming into force of the Law were expected to populate the Register of Beneficial Owners as well as being required to update in the Commercial Registry their basic information[30] and information on their beneficial owners, in accordance with the updating cycles indicated by the National Directorate of Registers (Article 155). This presumably refers to the updating requirements specified in relation to the Register of Beneficial Owners, i.e. every 12 months and within 30 days[31] of any changes or modifications to the constituent documents that affect the basic information and the determination and identification of the beneficial owner(s). A 30-day deadline for declaration of beneficial ownership information in the Register of Beneficial Owners applies to entities constituted after 19 April 2021 (Article 5(1) of the Regulations for the Register).

150. Related obligations fall also on foreign companies, as set out in the context of the Commercial Registry rather than the Register of Beneficial Owners (see paragraph 76).

151. It is not evident from public sources to what extent the Register has been populated to date and therefore what the extent or scope of the information available is. However, the Register is operational and according to initial plans, declarations by existing companies were due based on their name and alphabetical order, between April 2021 and April 2022. Moreover, on 16 November 2021 the National Directorate of Registers

30. Basic information is not defined, but seems to concern at least information provided at the time of registration such as address, legal representative, etc. It is unclear whether it extends to basic information as defined by the FATF under the Interpretive Note to Recommendation 24, which refers to this including, at a minimum, information about the legal ownership and control structure of the company such as information about the status and powers of the company, its shareholders and its directors.

31. For foreign-domiciled companies, this period is 60 days.

informed all commercial companies that the Commercial Registry would no longer carry out actions relating to the Commercial Register in respect of the companies that do not comply with their obligation regarding the Register of Beneficial Owners. At the time of writing, the SINARE website continued to encourage the submission of declarations, but also issued "publications on non-compliance" on its website (see paragraph 173).

152. Article 121 of the Code of Commerce was further amended in August 2020 so as to require that entities identify and update information on beneficial owners, and declare these before the relevant Registry.

153. As required by the Law, the Special Registration Commission of the Supreme Court of Justice issued specific Regulations for the Register in November 2020. These provide that the Register of Beneficial Owners is in electronic form. They also reproduce a. and b. of the definition of beneficial ownership in the AML Law, as well as the related precisions on "ownership" and "control" (see paragraph 114). In addition, "effective control" is defined as the capacity to take and impose relevant decisions and select management and administrative positions through a chain of ownership distinct from direct control.

154. The declaration of beneficial owners needs to be accompanied by supporting documents (Article 7(4) of the Regulations for the Register) and signed by the designated beneficial owner (Article 7(5)). The process itself is undertaken by the legal representative (who may or may not be a beneficial owner) (Article 6 of the Regulations for the Register).

155. The information must be updated every 12 months via a specific online form, regardless of whether there have been changes, and within 30 days[32] of any changes or modifications to the constituent documents that affect the basic information and the determination and identification of the beneficial owner(s). The latter are stipulated as being registered with the Commercial Registry beforehand, but it is clarified that for reasons of confidentiality, the information on beneficial ownership shall be contained only in the Register of Beneficial Owners (Article 8 of the Regulations for the Register). Hence, whilst the updating obligation is on the company and this is due to function as a mechanism for detecting changes in beneficial ownership, it is complemented, where ownership through controlling interest or other means reflected in constituent documents are concerned, by the obligation to declare changes in the constituent documents with the Commercial Registry (see paragraphs 65 et seq.).

156. The obligation to keep beneficial ownership information applies throughout the existence of the commercial company. It applies to the

32. For foreign-domiciled companies, this period is 60 days.

company itself and there are no provisions requiring the beneficial owners themselves to co-operate and/or report changes to the companies.

157. AML-obliged persons have no particular relationship with the Register of Beneficial Owners of Commercial Companies and do not have access to the register.

158. Overall, the Register of Beneficial Owners of Commercial Companies will be an important source of beneficial ownership information, at least in relation to companies and partnerships.

Beneficial ownership information – Enforcement measures and oversight

159. In relation to obligations under the AML Law, Article 30 of the AML Law provides that relevant supervisors are able to establish administrative provisions that put into practice the AML Law and to impose corresponding sanctions.

160. Accordingly, the UAF has a sanctions regime for non-compliance with anti-money laundering/countering the financing of terrorism (AML/CFT) requirements, applicable to those AML-obliged persons that it oversees. Article 17 of the UAF Law (Law No. 976), stipulates that sanctions and coercive measures are available for the failure to identify clients and their beneficial owners or to keep records as required. The administrative sanctions available include fines of 500 to 15 000 fine units/USD,[33] and the temporary suspension of operations.

161. Resolution UAF-N-022-2019 describes the sanctions regime in more detail and appears to offer a suitable range of sanctions based on the seriousness of the offence. In addition, the measures apply to the directors, administrative managers and compliance officers of AML-obliged entities, as well as to the entities themselves.

162. However, no sanctions regime has been put in place for SBOFI-supervised entities, lawyers and notaries, or accountants.

163. Moreover, it is not clear how the important obligation that is contained in Article 13 for all persons and legal arrangements established in Nicaragua to keep adequate, accurate and up-to-date information on their beneficial owners and their ownership and control structure is supervised or enforced. The provision states that "legal persons and arrangements shall provide such information in their dealings with public financial institutions or other AML-obliged entities, when they are required to do so by these". Presumably therefore, in the absence of a supervision mechanism,

33. See paragraph 106.

non-compliance would only be detected when such information is requested. Even then, it is unclear how and by whom it would be enforced. This is notwithstanding that the Register of Beneficial Owners and related sanctions and enforcement may compensate for this shortcoming in relation to entities.

164. The deficiency in laying down provisions for sanctions for non-compliance in relation to entities supervised by the SBOFI was highlighted by GAFILAT in and since the Mutual Evaluation Report of 2017. In response, the SBOFI issued a series of "norms on the imposition of sanctions" for the insurance, capital markets and banking sectors individually in 2021. These list sanctions for non-compliance with certain obligations of the AML framework, but are focused on the non-proliferation of weapons of mass destruction and the detection of illicit financial flows. Therefore, they do not contribute towards ensuring the availability of beneficial ownership information existing as a result of the CDD requirements of AML-obliged persons. **Nicaragua should ensure that appropriate supervision mechanisms and effective, proportionate and dissuasive sanctions are in place to accompany all obligations relating to the availability of beneficial ownership information**.

165. In terms of enforcement in practice, the GAFILAT's Mutual Evaluation Report of 2017 found that supervisors do not use monetary sanctions or fines as a mechanism to achieve an adequate compliance level of the obligations set out in the AML/CFT regulations, and that monitoring authorities have scarce resources to achieve an efficient oversight. Two related priority actions were therefore included in the Report.[34]

166. With regard to obligations associated with the Register of Beneficial Owners, according to Article 155, the Registrars may impose sanctions for non-compliance with the provisions of the Law Amending the General Law on Public Registries and the Code of Commerce and related Regulations. What these sanctions are is not specified in the Law itself.

167. The related administrative sanctions for entities in breach of their registration obligations more generally are however: they may not register any document in the Register, nor take advantage of associated legal

34. These were "Provide monitoring authorities with greater resources for oversight duties on MLA/CFT matters" and "Monitoring authorities must secure, through effective oversight and use of sanctions, when applicable, compliance with the obligation of reporting suspicious ML/TF transactions". Moreover, GAFILAT has noted that the established sanctioning regime does not appear to have a wider range of sanctions that would allow violations to be sanctioned in a sufficiently proportionate and dissuasive manner (for example, through the application of warnings, reprimands, more onerous fines, suspension or cancellation of the licence to operate).

effects; they will not have legal personality; and a judge will not process claims filed by entities that should be registered and therefore do not attach the corresponding certification to the claim.

168. The Regulations issued by the Special Registration Commission of SINARE with regard to the Register provide further details on sanctions for non-compliance with the obligations relating to the Register of Beneficial Owners, and breaches are defined as any infringement of an obligation or provision in the related law, regulations or other norms concerning the Register. Accordingly, access to the Register and technical aspects are overseen by the General Centralising Directorate of Information and Prevention, and the actual compliance of the provisions of the Regulations and Law and the imposition of related sanctions by the Registrar of Companies (Article 22 of the Regulations).

169. Breaches are qualified as light, serious or very serious pursuant to the Regulations. Light breaches consist of submitting incomplete information to the Registry or failing to designate or update the legal representative/personal responsible for submitting information to the Registry. Serious breaches include companies not identifying beneficial owners in accordance with the provisions of the Law and Regulations, failing to update the information as required and not providing requested information to the competent authorities within the time limits defined. Very serious breaches include the refusal to update information; refusal to provide information within the time limits defined or submitting incomplete or inexact information; and the refusal to provide requested information to the competent or providing erroneous or false information. The imposition of sanctions is communicated via the Registry portal itself.[35]

170. Where an error or omission is identified by the Registry, the company will be informed thereof and given 15 days to rectify it, after which sanctions shall be imposed (Article 20). The sanctions imposed depend on the qualification of the seriousness of the offence, and as basic principles, the seriousness and impact of the breach, as well as intent, are considered (Article 23). No sanctions appear to be foreseen in relation to the beneficial owners themselves where they fail to provide the necessary information to the company, hence the obligation depends on the enforcement vis-à-vis the company itself.

171. For light breaches, written notice is given; for serious and very serious breaches, the breach is publicised. In all cases, a fine is applied (according to three brackets, each corresponding to the seriousness of the

35. See https://www.registropublico.gob.ni/App_Themes/Default/Videos/Garantia%20Mobiliarias/Manual_de_Usuario_Registro_de_Beneficiario_Final_v6.pdf, pages 43 to 47.

offence and the lowest starting at 100 fine units/USD and the highest ending at 1 500 fine units/USD). In addition, in all cases the "commercial registry traffic is immobilised" (Article 21).

172. The amount of the fines is qualified by the following:

- For companies with a share capital equal to or less than NIO 100 000 (USD 2 790), the fine imposed may not be higher than the average of the applicable minimum and maximum amount of the bracket concerned.
- For companies with a share capital of over NIO 100 000 but less than 500 000 (USD 13 950), the fine imposed may not be less than the average of the applicable minimum and maximum amount of the bracket concerned.
- For companies with a share capital of over NIO 500 000, the fine imposed is 500 fine units/USD for light breaches; 1 000 fine units/USD for serious breaches; and 1 500 fine units/USD for very serious breaches.

173. Therefore, the obligations associated with the Register of Beneficial Owners are accompanied by effective, proportionate and dissuasive sanctions. No information is however available on the effectiveness of supervision and enforcement, though the website of SINARE contains over 30 "publications of non-compliance", each setting out that the companies named in them have failed to comply with the requirements of the Regulations and therefore been sanctioned.[36]

174. Overall, the recent progress on the availability of beneficial ownership information is largely due to the creation of the Register of Beneficial Owners, which has also served to increase the information required for purposes of the Commercial Register. However, its effectiveness remains to be tested as the system is fully put in place, and **Nicaragua should ensure the full and effective implementation of the Register of Beneficial Owners of Commercial Companies and put in place the necessary supervisory and enforcement mechanisms to monitor compliance by legal persons to ensure that adequate, accurate and up-to-date beneficial ownership information is available**.

Availability of beneficial ownership information in EOIR practice

175. There is no information available with regard to the availability of beneficial ownership information in EOI practice.

36. See https://www.registropublico.gob.ni/MonoX/Pages/ManualesBeneficiarioFinal.aspx?Id=manual.

A.1.2. Bearer shares

176. The Code of Commerce of Nicaragua allows SAs and SCAs to issue bearer shares, but the AML Law prohibits this since mid-2018.

177. Article 124 of the Code of Commerce provides that the information to be included in the public deed establishing SAs and SCAs must include a stipulation as to whether the shares of the company are nominative or bearer shares, and that shares listed as nominative may be converted into bearer shares and vice versa. Article 224 in turn provides that the shares of SAs may be nominative or bearer shares, and the same applies to SCAs, with the exception of shares held by the *socios gestores* (who have joint and unlimited liability and are responsible for the company's management) (Article 229).

178. On the other hand, Article 21 of the AML Law, in force since 20 July 2018, prohibits the issuance of bearer shares and the conversion of nominative shares into bearer shares.

179. The same article provides that notaries cannot authorise the public deeds of companies with shares and bearer share certificates. Given the requirement that companies be created by public deed and the possibility of sanctioning notaries for a breach of their professional duties (for example, through reprimand, a fine of NIO 200 to NIO 1 000 (USD 30 to USD 140) and a two-year suspension[37]), this provision should at least contribute to avoiding companies being created with bearer shares. Notaries' control would capture newly created companies but not the ones in existence before 20 July 2018.

180. Article 46 of the AML Law provides that companies that hold or have issued bearer shares at the time of the entry into force of the law were required to convert shares into nominative shares within 12 months, i.e. by 20 July 2019. The conversion must have been reflected in the Commercial Register.

181. If the conversion is not undertaken, the shares concerned cannot be transferred in acts or contracts after this date. However, no sanctions or other effects are set out. The rights attached to the shares, e.g. voting and dividend rights, appear to be maintained. From the perspective of share-holders intending to hold on to their shares, there is therefore little incentive to convert them.

182. To date, consolidated information is not available publicly on the number of companies having issued bearer shares before 2018 and the level of compliance with the obligation to convert the bearer shares by 20 July 2019, as the Commercial Register does not allow for a search by

37. Article 3 of Decree 1618, Sanctions Applicable to Lawyers and Notaries for Offences Committed in the Exercise of their Profession.

types of shares. In any event, supervision of the obligation is uncertain, given that under the AML Law, enforcement is left to relevant supervisors. Therefore, **Nicaragua is recommended to ensure that the prohibition and conversion of bearer shares is properly supervised and enforced, and accompanied with appropriate sanctions.**

183. In addition, in order to avoid ambiguity as to the possibility of issuing bearer shares or converting nominative shares into bearer shares, Nicaragua should ensure that the content of the Code of Commerce is aligned with the prohibition of bearer shares in the AML Law (see Annex 1).

A.1.3. Partnerships

Types of partnerships

184. As set out under section A.1.1, Article 118 of the Code of Commerce provides that four types of *sociedad* exist in Nicaragua, including two forms of partnership:

- *Sociedades en nombre colectivo* (SNC) – joint partnerships – are governed by Articles 133 to 191 of the Code of Commerce and are formed by at least two partners (either natural or legal persons), who are jointly, personally and severally liable for the obligations of the partnership, unless otherwise agreed amongst the partnership (Article 137).
- *Sociedades en comandita simple* (SCS) – limited liability partnership – are governed by the special provisions in Articles 192 to 200 of the Code of Commerce, and otherwise by the same provisions as SNCs. Although constituted by shares, SCSs are formed by two kinds of partners: (i) *socios gestores* that are jointly, personally and severally liable for the partnership's obligations and (ii) *socios comanditarios*, whose liability is limited to the amount of their capital contribution, with the exception of tax and labour liabilities.

185. The number of partnerships in Nicaragua is unknown. Foreign partnerships can act in Nicaragua. If they have their main place of business and management in Nicaragua and their general assembly take place there, they are subject to the same obligations as domestic partnerships. If not, then there is no information on the availability of information on their partners, but they are subject to the requirement to appoint a legal representative resident in Nicaragua. Information on beneficial ownership of all relevant foreign partnerships is available pursuant to the AML framework, with the same deficiencies as identified below for domestic partnerships. **Nicaragua should ensure that adequate, accurate and up-to-date identity information is kept for all relevant foreign partnerships**.

Identity information

186. SNCs and SCSs are formed by public notarised deed, in the same way as companies, pursuant to amended Article 121 of the Code of Commerce.

187. Article 123 sets out the information the deed must contain, and this includes the name and domicile of the founding partners; the objectives, domicile and legal form of the partnership; the duration of its activities; the contributions of each founding partner to the capital of the partnership; and a stipulation of the partners that will hold managing or administrative responsibilities. Any omission is stated to nullify the social covenant between members (Article 125), but not to the detriment of a contracting third party (Article 126).

188. The requirement described in relation to companies to keep a share register and a book of the minutes of meetings pursuant to Article 28 of the Code of Commerce applies to partnerships in the same way as to other companies (see paragraphs 77 and 78).

189. As for companies, changes in participation or ownership, control or legal representatives are to be submitted to the Commercial Registry, but it is not described how or when this is to be done, and whether it is enforced.

Beneficial ownership

190. The availability of beneficial ownership information in relation to partnerships is the same as with regard to companies, described under A.1.1.

191. Overall, beneficial ownership information in relation to partnerships should be available: (i) as concerns the clients of UAF-supervised entities, accountants, lawyers and notaries, based on the regulations and guidance complementing the content of the AML Law with regard to these actors (but see A.1.1 as to the related shortcomings); (ii) through the partnerships themselves, as Article 13 of the AML Law requires all persons established in Nicaragua to keep adequate, accurate and up-to-date information on their beneficial owners and their ownership and control structure; and (iii) through the Register of Beneficial Owners.

192. The AML framework does not however distinguish between the identification of beneficial owners of partnerships and companies. Given that partners are not necessarily jointly and severally liable as far as quota partners in SCSs are concerned (*socios comanditarios*), in those cases, identification based on a controlling ownership interest may be appropriate. For SNCs and managing partners of SCS (*socios gestores)* however, it would be appropriate to identify all partners. This distinction and the need to identify all partners in the cases set out is not documented.

193. Therefore, **Nicaragua should ensure that adequate, accurate and up-to-date beneficial ownership information is available for all relevant entities (including partnerships) and legal arrangements**.

194. In addition, the related enforcement framework is overall weak, with effective, proportionate and dissuasive sanctions only being available with regard to the Register of Beneficial Owners of Commercial Companies, as described under section A.1.1 above. Therefore, **Nicaragua should ensure that appropriate supervision mechanisms and effective, proportionate and dissuasive sanctions are in place to accompany all obligations relating to the availability of beneficial ownership information**.

195. With regard to partnerships that cease to exist, like for companies, Article 25(2) of the AML Law provides that the Commercial Registry and the legal persons themselves or their administrators/managers, liquidators or any other persons involved in their dissolution, shall maintain registers for a period of five years from the date on which the legal person ceases to exist of their name; constitutive instruments; statutes; domicile; and list of directors and beneficial owners (as applicable). As noted above, it is not known whether there exists a means by which entities can be struck off the Register without being formally dissolved. This provision is complemented by Article 156 of the General Law of Public Registers, which provides that amongst the commercial acts that need to be registered with the Registry are the appointments and dismissals of the administrators/managers, liquidators and auditors of entities, meaning that the identity of the person expected to hold the information after the company ceases to exist is registered. Together, the retention of information in line with the standard is therefore required based on the legal framework, but it is unknown if this is done in practice, or if it is effectively monitored.

Oversight and enforcement

196. Partnerships, as another type of *sociedad*, are subject to the same obligations under company and tax laws as companies, and the oversight and enforcement information provided in relation to companies and set out under A.1.1 thereby applies in the same way to partnerships.

Availability of partnership information in EOIR practice

197. There is no information available with regard to the availability of information on partnerships in EOI practice.

A.1.4. Trusts

198. Nicaragua is not a party to the Hague Convention on the Law Applicable to Trusts and on their Recognition. Nicaraguan law does not provide for the establishment of common law trusts, but nothing prevents a Nicaraguan resident acting as a trustee of a foreign law trust.

199. In addition, Nicaraguan law allows for the establishment of "*fideicomiso*" arrangements, which have common law trust-like features. The Law on *Fideicomiso* Contracts defines them as:

> Arrangements by virtue of which a fideicomitente (settlor) transfers the title to an asset or set of assets or specific rights to a fiduciario (trustee), who undertakes to manage them in favour of the fideicomisario (beneficiary) and transfer them to the fideicomisario or to the settlor when a term, condition or other cause for termination of the obligation is met.

200. The Law on *Fideicomiso* Contracts also describes a *fideicomiso* more generally as "an instrument for asset management, the channelling of public and private investments, the constitution of guarantees, amongst others" (Article 1).[38] The Law provides that trustees may be professional (for example, a lawyer or company trust, who is paid to act as a fiduciary in the course of their business) or non-professional (for example, a person acting without compensation on behalf of a family or friends).

201. Before the assets and rights are transferred to the beneficiary, the trustee is responsible for their management and receives a fee for this from the settlor. While the arrangement is in place – generally until whatever specified condition is met – the trustee is considered the owner of the property. Once the condition has been met, the assets and rights are transferred to the beneficiary without restriction.

202. All kinds of property, immovable or movable, and rights may be subject to a *fideicomiso*, except those that, by law, cannot be exercised other than directly or individually by the person to whom they belong.

203. *Fideicomisos* over immovable property or rights *in rem* can only be formed by deed or testament (in which the trustee must accept their responsibility) and registered in the public property registry (Article 7). Those over movable property must be created in writing, and the signatures of the trustee and settlor authenticated by a notary.[39]

38. The examples of types of *fideicomiso* given in the Law are administrative; guarantee; investment; and pensions.
39. Article 10 provides that oral, presumed or implicit *fideicomisos* are not recognised.

Identity information

204. The *fideicomiso* contract must include certain information at a minimum, notably: the identification of the trustee, settlor and beneficiary, if already designated (or, if future beneficiaries or a class of beneficiaries is concerned, this must be described in sufficient detail to allow for their identification); the domicile of the trust in Nicaragua; a description of the assets at issue; the obligations, limitations, prohibitions, powers and rights of the trustee in the exercise of their responsibility; the terms and conditions for management of the trust; the dates and periods for the financial accounts; the dates and periods for presenting reports to the settlor, and beneficiaries if applicable; and the duration and causes of termination (Article 14).

205. Comprehensive information on the *fideicomiso*, its purposes and the identity of all trust parties is therefore available in the *fideicomiso* contract, held by at least the trustee. This is expected to remain the case throughout the life of the *fideicomiso* because although the Law on *Fideicomiso* Contracts is silent on whether the contract requires amendment if there is a change in the trustee or beneficiary/ies, such a change is only possible in limited circumstances under the Law. Specifically, with regard to the beneficiary/ies, renunciation is listed as one of the circumstances leading to the extinction of the *fideicomiso* (Article 48(h)). As concerns the trustee, renunciation is only possible for "just cause" and their removal only possible in specific circumstances, both being defined in the Law.

206. In addition, pursuant to guidance applicable to AML-obliged persons supervised by the UAF, both the identification and the verification of the identity of a trustee client is required. Given the definition of *fideicomiso* quoted above, this should cover a foreign trust or similar arrangement as well as a Nicaraguan *fideicomiso*. Pursuant to the Norms of the SBOFI, "customers or regular users of trusts" are classed as high-risk clients, and *fideicomisos* as high-risk products (Article 15), triggering enhanced CDD and therefore and more rigorous verification and more frequent updating of information. However, there is no accompanying obligation to file that contract somewhere or to disclose one's status as a trustee.

207. According to the Law on *Fideicomiso* Contracts, any natural or legal person who has the legal capacity to contract and be bound, and especially, to give the assets the effect established in the trust, may be trustee. However, in the case of legal persons, other than those authorised and supervised by the SBOFI, they must be constituted as exclusive-purpose SAs (Article 24).[40]

40. In contrast, any natural or legal persons, private, public or mixed, national or foreign, or entities endowed with legal personality with the capacity to transfer ownership of the goods or rights subject to the trust may be settlor (Article 16).

208. A *fideicomiso* is a taxable arrangement, and trustees or administrators of the trust are required to register the trust with the tax authority and to provide the related basic information.[41] Article 60 of the Law on *Fideicomiso* Contracts in turn confirms that tax obligations in relation to the *fideicomiso* assets lie with the trustee, who is to deduct from the yields produced by the *fideicomiso* fund the amounts necessary to cover the taxes.

Beneficial ownership

209. The AML Law defines the beneficial owner of a trust as follows:[42]

> c. The natural person or persons who ultimately own or control a fideicomiso, 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 also the natural person or persons on whose behalf a trust transaction is conducted.

210. This definition is partially aligned with the standard as it captures the natural person exercising ultimate effective control, but it omits reference to the need to identify each of the settlor, the trustee(s), the protector (if any), the beneficiaries or class of beneficiaries.

211. As far as professional trustees are concerned, this is compensated by provisions requiring them to identify all parties to the trust. Given the definition of *fideicomiso* quoted above, this appears to cover a foreign trust or similar arrangement as well as a Nicaraguan *fideicomiso*. Specifically, Article 25(3) of the AML Law provides that professional trustees are required to retain information on the settlor, trustee, beneficiaries and any other natural person exercising control over the trust, as well as on those that provide services to the trust, including investment analysts, tax advisors and accountants, for a period of five years from the date on which the relationship ceases to exist. This is therefore in line with the standard.

212. Professional trustees are further required to maintain, for the same amount of time, registers of *inter alia* all operations and transactions and the CDD information collected (Article 25(3) and (1) of the AML Law). However, it is not known what happens to the records where a professional trustee ceases to exist.

213. Article 13 of the AML Law further contains a provision applicable to *fideicomisos*, regardless of whether the trustee is professional or not,

41. This was clarified in Article 6(3) of Decree 01-2013, the Regulations on the Tax Co-ordination Law, Law No. 822.
42. Article 4(6) of the AML Law.

according to which legal arrangements established in Nicaragua must keep adequate, accurate and up-to-date information on their beneficial owners and their ownership and control structure. This obligation is incumbent on the trustee and appears to apply at least throughout the existence of the entity concerned. However, there is again no indication that for trusts, this involves the identification of all parties to the trust.[43] Moreover, it is applicable only to *fideicomisos* "established in Nicaragua", and therefore not to foreign trusts.

214. The identity of beneficial owners is to be verified on the basis of official identification documentation and can be undertaken after the relationship is established if this is necessary so as not to interrupt the normal conduct of the transaction, as long as it is done as soon as possible, and the AML risks are low (Article 10).[44]

215. Pursuant to the definition of CDD in the AML Law, CDD consists of the set of measures applied that include the obtention, verification and preservation of "updated" and complete information on aspects including beneficial ownership (Article 4). What is considered up-to-date information is not defined in the AML Law. GAFILAT's Fourth Follow-up Report on Nicaragua noted remaining deficiencies on the transparency of legal entities and arrangements, in particular the absence of a legal obligation for the trustee to update the information on the beneficial owner of a trust.[45] Consequently, Recommendation 25 on the transparency and beneficial ownership of legal arrangement is currently rated as Largely Compliant (initially Non-Compliant).

216. Further guidance on the identification of beneficial owners of trusts can be found in the regulations and guidance of individual supervisors. Depending on the identity of the (professional) trustee, these will be the UAF, SBOFI, Supreme Court or College of Public Accountants.

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43. The Register on Beneficial Owners of Commercial Companies covers only, as the name suggests, commercial companies and not legal arrangements, and is therefore not a relevant source of information on the beneficial owners of trusts.
44. Article 17(7) of the AML Law was amended as a result of the changes made to the AML Law in 2021 and provides that the supervisors of trust service providers can establish minimum services or amounts for transactions as a threshold for the obligation to identify and verify clients. It does not appear that such thresholds have been set by supervisors to date.
45. Pursuant to UAF Resolution UAF-N-020-2019, the trust service provider is required to update the identification information and documents, data and information of the settlor periodically in accordance with the risk level (Article 11). Article 42 in turn provides an annual updating requiring for professional trustees, based on the general requirement in Article 25(3) of the AML Law to keep information updated. However, this is applicable only to DFNBs supervised by the UAF.

217. Resolution UAF-N-019-2019 applies to financial institutions supervised by the UAF, which may include those offering trustee services, and Resolution UAF-N-020-2019 applies to designated non-financial business or professions, Article 2(5) clarifying that trust service providers come under its scope. Both are therefore applicable to trusts, to the extent that these are supervised by the UAF and not by the SBOFI or Ministry of Justice as in the case of banks and lawyers, respectively.

218. Resolutions UAF-N-019-2019 (Article 24) and UAF-N-020-2019 (Article 15) provide that the beneficial owners of trusts are the trustee/s; trust interest certificate holders; the members of trust "Technical Committees"; and, where the trustee is a legal person, the beneficial owner shall be determined following the process for legal persons (see section A.1.1 above). The UAF's Directive of Best Practices for the Identification of Beneficial Owners, issued in February 2019, also includes a section dedicated to raising awareness of the possible structures and risks associated with *fideicomisos*, but is again applicable only to entities under its supervision. The same notions are expressed in the guidance for lawyers and notaries and accountants.[46]

219. The trust service provider is required to periodically update the identification information and documents, data and information of the settlor, and the time to update this information must be determined according to its risk level (Article 11 of Resolution UAF-N-020-2019). Also, professional trustees supervised by the UAF are required to keep adequate, accurate and updated information – at least annually – about the settlor, trustee, beneficiaries and any other natural person who exercises effective subsequent control over the trust (Article 42 of Resolution UAF-N-020-2019). This also applies to lawyers and notaries and accountants, the guidance for which includes specific provisions on CDD in the context of trust.[47]

220. However, in relation to the SBOFI, the most relevant provision in the SBOFI AML Norms relates to the classification of trusts as high-risk clients and products (Article 15), as noted above. They therefore do not set out specific CDD measures to be undertaken in relation to trust clients, whether in relation to updating or otherwise.

221. Given the foregoing, other than for professional trustees under the AML Law, there is no specific obligation to identify each of the identity of

46. Article 18 of the AML/FT Regulation of Ministry of Justice and Article 14 of Resolution No. 05-2019-JD/CCPN-PLA/FT/FP.

47. Paragraph 2.2.3 of the Manual on the Policies, Measures and Procedures for the Prevention of ML/TF and proliferation financing for Lawyers and Public Notaries of the Republic of Nicaragua, further defining a system to mitigate AML risks in accordance with Article 9 of the AML/FT Regulation of Ministry of Justice and Article 10 of Resolution No. 05-2019-JD/CCPN-PLA/FT/FP.

the settlor, the trustee(s), the protector (if any), the beneficiaries or class of beneficiaries. As a result of the potential lack of beneficial ownership information held by non-professional trustees and the absence of a specified frequency for updating the information in the legal or regulatory framework that covers all trusts, **Nicaragua should ensure that adequate, accurate and up-to-date beneficial ownership information is available for all relevant entities and legal arrangements**.

Oversight and enforcement

222. In relation to the obligations contained in the Law on *Fideicomiso* Contracts, the identity information included in the trust contract and the requirement to register trusts for immovable property or rights *in rem* are required to be complied with to ensure their legal effect. More generally, responsibility for regulation under the Law on *Fideicomiso* Contracts lies with the SBOFI for banks and financial institutions involved in trust transactions, and with the President of the Republic for all others.

223. In practice, the SBOFI, UAF, Supreme Court and College of Public Accountants have an important role to play in ensuring the availability of information in relation to trusts, given the actors they regulate. Whilst guidance has been issued by each of these bodies, they are limited in relation to their application to trusts in the case of the SBOFI, and only the UAF has introduced a sanctions regime.[48] No information is available on the practical verification or enforcement of obligations.

224. GAFILAT's Mutual Evaluation Report of Nicaragua of 2017 and the analysis in the country's Second Follow-Up Report of 2019 stated that "also, the country does not have provisions relating to the sanctioning framework to ensure the availability and updating of information linked to the settlor, trustee and acts carried out in the administration of the assets in trust; and that the information held by the trust service providers be available to competent authorities when required". This finding was not revised in more recent Follow-Up Reports.

225. Hence, it appears that the related enforcement framework is overall weak and that effective, proportionate and dissuasive sanctions are only available in relation to professional trustees supervised by the UAF.

48. For one particular information requirement relating to trusts, namely the retention for a period of at least five years of the identification information of service providers to the trust, UAF Resolution UAF-N-022-2019 on sanctions sets out that entities under its supervision (and their directors, administrative managers and compliance officers) are liable to a (a) warning; and (b) fine of between 500 and 3 000 fine units/USD (Articles 8.1 and 14). More generally, the sanctions set out in relation to companies apply to trustees supervised by the UAF.

Therefore, **Nicaragua should ensure that effective, proportionate and dissuasive sanctions are in place to accompany all obligations relating to the availability of beneficial ownership information.**

Availability of trust information in EOIR practice

226. There is no information available with regard to the availability of information on *fideicomisos* or foreign trusts in EOI practice.

A.1.5. Foundations

227. In Nicaragua, the concept of private foundation does not exist. Rather, pursuant to the General Law on Non-Profit Legal Persons, No. 147, foundations may be formed for civil or religious, non-profit purposes, alongside associations, federations and confederations.

228. Federations are made up by two or more associations; confederations by two or more federations. Associations are wider in definition than foundations, to which additional conditions attach, and may be national, regional or departmental in nature, with corresponding membership thresholds.[49]

229. In particular, foundations are not linked to the existence of members; rather, they consist of assets intended to serve a public purpose and their administration is highly regulated (Article 4). Moreover, whilst the constitutive acts of each type of non-profit entity must be in the form of public deeds, the deeds of foundations are required to originate from an authentic act of generosity of their founder/s and be based on the purposes assigned (Article 3).

230. The deed establishing the foundation (or other non-profit legal person) and constituting its statutes must include the nature, object, finality and denomination of the entity; the name, domicile and other details of the associates and founders; the seat of the association and place of activity/business; the name of its representative; and its duration (Article 8).

231. Legal personality is granted and cancelled by the National Assembly, i.e. the Nicaraguan legislature. The decree that is issued, as well as the statutes, are made public through publication in the Official Gazette. The statutes must be registered in the Register of Non-Profit Legal Persons within 15 days of publication in the Official Gazette, and presented to the Department for the Registration and Control of Associations of the Governance Ministry within 30 days (Articles 6 and 13), thereby ensuring publicity of existence and membership.

49. See Law-Decree No. 1346 of 15 November 1983, through which associations have been regulated since 1983.

232. All non-profit legal persons are required to register with the tax authority as taxpayers, notwithstanding any exemptions applicable to them, and to provide the related basic information. They must keep books of their acts, associates and accounts, and all books must be stamped by the responsible person of the Department for the Registration and Control of Associations of the Governance Ministry. In particular, they are required to submit each year a memorandum of their activities, their balance sheet and the profit and loss account, as well as a work and budget plan for the following year (Article 13).

233. The Department for the Registration and Control of Associations of the Governance Ministry can impose administrative sanctions for the breach of obligations arising under the Law on Not-for-Profit Legal Persons, including the registry, bookkeeping and accounting requirements set out in Article 13. These involve a fine of between NIO 1 000 and NIO 5 000 (USD 30 to USD 140), or, in case of repeated breach, an "intervention" for the term strictly necessary to solve the irregularities that the breach of Article 13 gives rise to (Article 22).

234. In addition, Article 38 of the AML Law provides that non-profit legal persons have AML obligations, including the application of the rule of "know-your-beneficiaries-and-associated-non-profits" and the keeping of formal accounts. They are required to keep for a period of 10 years their annual financial statements and registers of transactions. Upon dissolution, the relevant documents are to be deposited with the relevant supervisor. The retention of information in line with the standard is therefore required based on the legal framework, but it is unknown if it is respected in practice, or if it is effectively monitored.

235. Non-profit legal persons are also taken into account in the context of the identification of beneficial owners by AML-obliged entities. Article 24 of UAF Resolution UAF-N-019-2019 provides that the beneficial owner of a non-profit will be the person who has control pursuant to a legal provision and that where no natural person meets this criterion, the beneficial owners shall be the members of the administrative body.

236. Foreign foundations that wish to carry out activities in Nicaragua are required to request authorisation and present their founding documentation to the Department for the Registration and Control of Associations of the Ministry of Governance. Once authorised, they are required to comply with the domestic requirements set out above.

237. Therefore, the purpose of foundations and other non-profit legal persons is limited to non-profit activities, and their operations significantly regulated, ensuring the availability of accounting and membership information. In fact, the regulation of the sector is such that the UN has recently criticised Nicaragua for indirectly curtailing the freedom of expression and association through such regulation.

Other relevant entities – co-operatives

238. Co-operatives come under the responsibility of the Ministry of Family, Community, Co-operative and Associative Economy (MEFCCA). Their existence is made public through the issuance of a certificate of legal personality.

239. Until 1971, co-operatives were classed alongside the four other types of "*sociedad*" under Article 118 of the Code of Commerce, but are now governed by the General Law on Co-operatives.

240. Co-operatives are defined as "an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise" (Article 5 of the General Law on Co-operatives). A total of 5 143 co-operatives existed as at 2015.[50]

241. Co-operatives were created to provide an alternative method of participation in the economy, including for micro and small rural and urban production and in particular in the agriculture and crafts sectors. The MEFCCA grants co-operatives their legal personality and holds the National Registry of Co-operatives. Their members must be natural persons or non-profit legal persons and they submit to certain training and social obligations. Therefore, they are of limited relevance to the exchange of information for tax purposes. However, they are also well regulated, thereby ensuring that information is available on them. Specifically, pursuant to Article 108 of General Law on Co-operatives, they are required to:

- keep books of acts; accounts; registration of contribution certificates; and a register of associates, each duly stamped by the National Registry of Co-operatives, for the duration of their existence (Article 108 of the General Law on Co-operatives)
- submit to the National Registry of Co-operatives within 30 days following their election or appointment, the names of the persons appointed to positions on the Board of Directors, Surveillance Board and Commissions
- submit to the MEFCCA a complete list of members, specifying the active and inactive members, at least 90 days prior to the General Assembly of members and the close of the fiscal year, and to submit periodically changes in the membership
- submit to the MEFCCA within 30 days of the end of each financial year a report containing the financial statements of the co-operative.

50. GAFILAT, Mutual Evaluation Report of the Republic of Nicaragua, July 2017, paragraph 49.

242. Co-operatives are also required to register with the tax authority as taxpayers and to provide the related basic information.

243. With regard to foundations and co-operatives that cease to exist, Article 25(2) of the AML Law provides that the entities supervising non-profit entities, the Ministry of Family, Community, Co-operative and Associative Economy and the legal persons themselves or their administrators, liquidators or any other persons involved in their dissolution, shall maintain registers of their name, constitutive instruments, statutes, domicile, list of directors and beneficial owners, as applicable, for a period of five years from the date on which the legal person ceases to exist. The retention of information in line with the standard is therefore required based on the legal framework, but it is unknown if it is respected in practice, or if it is effectively monitored.

244. There is no information available with regard to the availability of information on foundations and other non-profit legal persons or co-operatives in EOI practice.

A.2. Accounting records

Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements.

245. The Code of Commerce and Tax Code together require that reliable accounting records are kept for all relevant entities. In terms of retention period, according to the former, records must be kept for up to ten years after the liquidation of the business and according to the latter, for the period of statute of limitation – i.e. four years. Given that for purposes of enforcement the tax law framework is relied on, a recommendation is made to resolve the discrepancy this results in.

246. In addition, a recommendation is made in relation to the retention period for accounting records relating to *fideicomisos*, to ensure their availability after the *fideicomiso* has ceased to exist.

247. On the other hand, insufficient information is available to conclude on the practical implementation of the standard in relation to the availability of accounting records. Therefore, the conclusions are as follows:

Legal and Regulatory Framework: in place, but certain aspects of the legal implementation of the element need improvement

Deficiencies identified/Underlying factor	Recommendations
Accounting records should generally be available with the trustee of *fideicomisos* based on the obligations contained in the Law on *Fideicomiso* Contracts. Where the trustees are professionals and their role in the trust is therefore covered by the obligations in the Code of Commerce, they are subject to the obligation to keep books for the duration of their business and for up to ten years after its liquidation. This does not apply to non-professional trustees, and there is no general obligation to maintain the accounts of *fideicomiso* or any specific period of time after a *fideicomiso* has ceased to exist under the Law on *Fideicomiso* Contracts.	Nicaragua is recommended to ensure the availability, for at least five years, of accounting records of *fideicomisos* that have ceased to exist.

Practical implementation of the Standard: Partially Compliant

Deficiencies identified/Underlying factor	Recommendations
The Code of Commerce and Tax Code together require that reliable accounting records are kept for all relevant entities. In terms of retention period, records must be kept for up to ten years after the liquidation of the business pursuant to the commercial framework, and for four years pursuant to the tax framework. Enforcement measures with regard to commercial law obligations are however few, and the tax law context must therefore be relied on for enforcement purposes. This means that only a retention period of four years is accompanied with enforcement measures.	Nicaragua is recommended to ensure that all accounting records are maintained in line with the standard for a period of at least five years by applying appropriate control and enforcement measures.

A.2.1. General requirements

248. The standard is generally met by a combination of company and tax law requirements. The applicable legal regimes and their implementation are discussed below.

Company law

249. Accounting obligations of merchants – covering both companies and partnerships – are primarily dealt with in Articles 28 to 48 of the Code of Commerce. No distinction in relation to the accounting obligations is made based on the level of economic activity of merchants.

250. Accounts are to be kept on a double-entry basis (Article 29) and merchants are required to keep at least four types of books (Article 28):

- An inventory journal, reflecting not only stock or assets, but also credit, debt and receivables. This book is also to contain a corresponding balance sheet that is to be drawn up annually (Article 33)
- A general journal, the first entry of which must reflect the content of the inventory journal, and then be followed by entries reflecting day-by-day transactions (Article 34)
- A general ledger, reflecting the accounts, with each object or person organised by debit and credit entries (Article 35)
- A book of copies of letters and telegrams.

251. Financial statements other than a balance sheet (i.e. income statement, statement of cash flows, and statement of changes in equity) or explanatory notes are not explicitly required, but information on individual transactions, income and expenditure is available through the combination of information in the individual books.

252. All but the book of copies of letters and telegrams are required to be presented to, and stamped by, the Commercial Registry at the time of registration of the company or partnership (but only at this time). It is not stated expressly that the accounting records should be in the possession or control of someone in the registered office or jurisdiction, but this is assumed based on the focus on the availability of physical books.

253. The books must be kept clearly, in date order, without blanks, erasures or other signs of having been altered (Article 41).

254. Retail traders, defined as those merchants who sell only to consumers directly and regularly, are required to keep only a book in which they record their purchases and sales on a daily basis, whether on credit or in cash, and in which they prepare a corresponding balance sheet annually (Articles 47 and 48).

255. Pursuant to Article 248 of the Code of Commerce, SAs are required to publish annually in the Official Gazette a balance sheet that clearly shows their assets and liabilities. The same applies to foreign companies with share capital that establish themselves in Nicaragua or have an agency or branch there, who are also required to include the name of the persons in charge of their administration and management (Article 337). This requirement is additional to the bookkeeping obligations described above.

256. Therefore, accounting information is available in line with the standard for both companies and partnerships.

Tax Law

257. Taxpayers are required to keep the appropriate accounting records in order to support the information in their tax returns, including in relation to profit and loss, and to maintain the other records that the tax administration may require (Article 102(3) of the Tax Code).

258. Taxpayers are required to register the books and records of their activities and operations that link to their tax obligations and to maintain their accounting records updated (Article 103 (2) and (4)). "Up-to-date" is defined as being when the general journal is not more than three months old.

259. The time period during which taxpayers are required to maintain in good order all records and documentation of tax interest is the period of statute of limitations (i.e. four years for the retention of information according to Article 43). This is shorter than the five years required by the standard, but compensated by the retention period required under the Code of Commerce.

Trusts

260. As set out under section A.1.4, the Law on *Fideicomiso* Contracts describes the requirements of the trust contract. Accordingly, the trustee is required to account for the assets of the trust separately from its own whilst carrying out its obligations. This means that accounts of the trust are required to be available with the trustee.

261. The trustee is also required to report on its management of the trust to the settlor or beneficiary, as applicable, and to report to the beneficiary the income, fruit and products of the trust, and any investment or acquisition activities, as provided for under the trust contract or within 10 days of the occurrence (Articles 30 and 33). Accounting records should therefore generally be available with the trustee.

Entities and arrangements that cease to exist and retention period

262. Article 46 of the Code of Commerce provides that the books of individual merchants must be kept for the duration of the business of the merchant and for up to ten years after its liquidation (Article 46). For individual merchants, their heirs are presumed to keep this documentation after the merchant has stopped existing.

263. For SAs and SCA that cease to exist, Article 285 of the Code of Commerce provides that the person/s who is to keep all legally required documentation is designated in the last meeting of the members prior to liquidation or dissolution. If the liquidation has been undertaken by the judicial authorities or no such designation is made, the documents must be

deposited in the file of the relevant court.[51] The provision requires that the documentation referred to be kept for ten years. It is unknown whether the same would in practice apply to SNCs or SCSs.[52]

264. On the other hand, after a *fideicomiso* has ceased to exist, there is no obligation to maintain accounting records for any specific period of time. Where trustees are professionals and their role in the trust covered by the obligations in the Code of Commerce, they should be subject to the obligation to keep books for the duration of their business and for up to ten years after its liquidation (Article 46). There is no equivalent obligation in other cases. **Nicaragua is recommended to ensure the availability, for at least five years, of accounting records of *fideicomisos* that have ceased to exist**.

A.2.2. Underlying documentation

265. Pursuant to the Code of Commerce, the main category of underlying documentation that merchants are required to keep are letters and telegrams sent and received in relation to their business and negotiations, in orderly bundles (Articles 41 and 42), as well as all "correspondence relating to their transactions in general" (Article 46).

266. Pursuant to the Tax Code, taxpayers are required to maintain in good order all records and documentation of tax interest, as well as supporting documentation that illustrates the fulfilment of their obligations (Article 103(3)). This therefore includes underlying documentation.

267. In addition, taxpayers are required to issue invoices and proofs of payment in the form required by law and to support their expenses with legal documents that meet the requirements established for this effect (Article 103(5) and (13)).

268. Taken together, this requires that underlying documentation be available.

Oversight and enforcement

269. Enforcement measures with regard to commercial law obligations are few. A fine of NIO 8 to 40 (i.e. up to approximately USD 1) applies for failure to keep double-entry accounts and accounts in the Spanish

51. It does not appear to be the case that retention requirements apply to a liquidator and Article 283 of the Code of Commerce provides that the role of the liquidators subsists until the final approval of their liquidation and partition of the accounts.

52. Information retention requirements not specific to accounting records are discussed for companies, partnerships and foundations and co-operatives at paragraphs 85, 195 and 243 respectively.

language, but no other sanctions are referred to in relation to accounting requirements (Article 29 of the Code of Commerce).

270. The tax law context must therefore be relied on for enforcement purposes.

271. Article 117(1) of the Tax Code provides that the failure by a taxpayer to comply with its duties and obligations under the Code constitutes a tax breach, and Article 112 provides that legal persons, entities and *de facto* entities, can each be sanctioned for tax breaches.

272. The types of breach covered by Article 126 include the failure to register the books and accounting records as required by the Code; not to sign the financial statements when so required; not to maintain in good order during the period of statute of limitations all records and documentation of tax interest, as well as supporting documentation that illustrates the fulfilment of their obligations; and not to keep books and accounting records updated.

273. The sanctions available include fines, the closure of the business and the loss of concession or tax rights (Article 124). Specifically:

- The failure to maintain updated books and accounting records is subject to a fine of fine units/USD 110 to 130 per day (Article 127(4)).
- The failure to register the books and accounting records as required by the Code is subject to a fine of fine units/USD 30 to 50 per month of delay (Article 127(1)).
- Not signing the financial statements when so required is subject to a fine of fine units/USD 30 to 50 per month of delay (Article 127(1)).[53]

274. The tax authorities are entitled to conduct a tax audit of the taxpayer when considered necessary. Based on public sources, tax audits are determined randomly; however, high taxpayers or taxpayers who request reimbursement of tax credits are considered to be more likely to be audited.[54]

275. The compliance rate with the annual tax return declaration is not publicly available. Indeed, no detailed information is available publicly on the application of relevant enforcement measures, for example the regularity of supervision, audit strategy or approach to the verification of accounts, in either the domestic or EOIR context.

276. The difference in retention period under the company and tax law requirements means that a retention period of only four years is accompanied

53. See paragraph 106.
54. Nicaragua Corporate Tax administration (https://taxsummaries.pwc.com/nicaragua/corporate/tax-administration).

with enforcement measures. Therefore, **Nicaragua is recommended to ensure that all accounting records are maintained in line with the standard for a period of at least five years from the date a company or partnership ceases to exist**.

Availability of accounting information in EOIR practice

277. There is no information available with regard to the availability of accounting information in EOI practice.

A.3. Banking information

Banking information and beneficial ownership information should be available for all account holders.

278. The AML Law requires that banks keep up-to-date registers of information, including of their clients' operations and transactions, for a period of at least five years following the finalisation of the operation or transaction, thereby requiring the availability of banking information. This holds true until the bank ceases to exist, following which the availability of information is not ensured.

279. The AML Law further requires banks to verify the identity of the beneficial owners of their clients, but this is not required expressly in the provision on identification and therefore falls short of unequivocally requiring the identification of the beneficial owners of accounts. Moreover, the corresponding CDD norms put in place by the Superintendence of Banks and Other Financial Institutions (SBOFI) are outdated and lacking overall. For example, the definition of beneficial owner in them does not necessarily require the identification of a natural person, and there is no specified frequency for the updating of beneficial ownership information in relation to customers that are not high-risk. Other sources of beneficial ownership information referred to under section A.1.1 do not necessarily cover all entities and legal arrangements that may be account holders.

280. In addition, the AML Law requires supervisors to establish appropriate sanctions, something that has been done by the SBOFI only in respect of the non-proliferation of weapons of mass destruction and the detection of illicit financial flows, further to recommendations from FATF to this effect. This means that there are no sanctions in place to help ensure enforcement of the availability of beneficial ownership information on account holders.

281. No recommendation is made in relation to the practical implementation of the standard, but the conclusions take into account that application and enforcement in practice should be ensured once the recommendations on the legal and regulatory framework are addressed:

Legal and Regulatory Framework: in place, but certain aspects of the legal implementation of the element need improvement

Deficiencies identified/Underlying factor	Recommendations
Banks are required to keep up-to-date registers of information, including of their clients' operations and transactions, for a period of at least five years following the finalisation of the operation or transaction. However, it is unknown what occurs to the records where a bank ceases to exist, merges with another or where a foreign bank ceases its operations in Nicaragua.	Nicaragua should ensure the availability of banking information for at least five years, including in cases where a bank ceases to exist, merges with another or where a foreign bank ceases its operations in Nicaragua.
The anti-money laundering law provides a framework for customer due diligence obligations, which supervisors are required to develop further for purposes of application by the entities under their responsibility. The norms developed by the Superintendence of Banks and Other Financial Institutions for application by banks date from 2012 and their content is outdated and leaves considerable space for banks to develop the details of customer due diligence processes. The closest provision to requiring that beneficial ownership information be available in respect of account holders that are legal persons is a provision that requires banks to implement measures to verify the identity of the beneficial owners of accounts (or transactions) in all cases where the client is acting on behalf of others as a representative, or where there is reason to believe that the client is so acting. The result is that the identification and verification of beneficial owners is not unequivocally required, and the information may therefore not be available in respect of all account holders. In addition, there is no specified frequency in the legal or regulatory framework for the updating of beneficial ownership information in relation to customers that are not high-risk.	Nicaragua is recommended to ensure that adequate, accurate and up-to-date beneficial ownership information be available in respect of all account holders.
Article 30 of the main anti-money laundering law requires supervisors to establish administrative provisions that put into practice the law and impose corresponding sanctions. This has been done by the Superintendence of Banks and Other Financial Institutions only in respect of the non-proliferation of weapons of mass destruction and the detection of illicit financial flows. Therefore, they do not contribute towards ensuring the availability of banking information and beneficial ownership information on account holders existing as a result of the CDD requirements of banks.	Nicaragua should ensure that effective, proportionate and dissuasive sanctions are in place to accompany all obligations relating to the availability of banking and beneficial ownership information.

Practical implementation of the Standard: Partially Compliant

Once the recommendations on the legal framework are addressed, Nicaragua should ensure that they are applied and enforced in practice. Insufficient information is otherwise available publicly to conclude on the practical implementation of the standard in relation to the availability of banking information.

A.3.1. Record-keeping requirements

Availability of banking information

282. Pursuant to Article 9 of the AML Law, entities supervised by the SBOFI are AML-obliged persons, i.e. including banks.

283. As such, banks are required to keep up-to-date registers of information, including of their clients' operations and transactions, for a period of at least five years following the finalisation of the operation or transaction (Article 25(1)(a) of the AML Law). This requires the availability of banking information in accordance with the requirements of the standard, but it is unknown what occurs to the records where a bank ceases to exist, where it merges with another or where a foreign bank ceases its operations in Nicaragua. Therefore, **Nicaragua should ensure the availability of banking information for at least five years, including in cases where a bank ceases to exist, merges with another or where a foreign bank ceases its operations in Nicaragua**.

284. There is no similar or complementary provision to this effect in the Banking Law.

Beneficial ownership information on account holders

285. The standard was strengthened in 2016 to specifically require that beneficial ownership information be available in respect of all account holders.

286. As AML-obliged persons, banks are required to verify the identity of their clients and their beneficial owners when the relationship is established or, in the case of occasional clients, when a transaction is to be conducted on their behalf (Article 22 of the AML Law).

287. The obligation to identify the beneficial owners, prior to verification, is not expressly stipulated in the principal provision dealing with the identification of clients (Article 17(1)). As explained under section A.1.1, the AML Law however provides a framework for CDD, which supervisors are required to develop further for purposes of application by the entities under their responsibility.

288. The SBOFI AML Norms date from 2012 and are incomplete. They include a simplified definition of beneficial owner compared with the AML Law and the norms of other supervisors:

> All those natural or legal persons who, without being or having the quality of customer of the Supervised Entity, are the owners or final recipients of the resources, securities or goods that are the object of the contract or business relationship, and/or who are the resources, securities or goods that are the object of the contract or business relationship, and/or who are authorised or empowered to dispose of the same, including those who exercise effective final control over a legal person.

289. The definition is outdated as it does not correspond to that in the more recent AML Law, and insufficient compared with the standard, notably because it does not necessarily require the identification of a natural person as beneficial owner.

290. In addition, unlike in the regulations or directives developed by other supervisory bodies, the SBOFI AML Norms do not set out a detailed definition of beneficial owner or a method for identifying the beneficial owners, whether through a cascade or other approach/es. A search of public sources does not reveal any more recent or complementary norms or regulations.

291. Rather, the SBOFI AML Norms provide general CDD requirements that banks could further develop themselves in the context of their CDD policies. Specifically, the Norms provide that it is the non-delegable responsibility of each bank, in the development of its CDD, to identify, verify, know and adequately monitor all its usual customers, including their co-owners, representatives, signatories and beneficial owners, whether natural or legal persons, national or foreign, and to keep evidence in the customer files of the verification of the information obtained (Article 8(c)).[55]

292. In relation to new clients for example, the benchmarks provided in the Norm include the following:

- When opening an account or initiating the commercial relationship with the client, adequate information must be obtained to ascertain the unequivocal identity of the client and/or the beneficial owner (Article 8(d)(i)).
- CDD should include requirements, procedures and forms for the identification of clients, representatives, managers and beneficial

55. The Norms provide that for occasional customers who are non-recurrent, non-permanent and low risk, or other persons who intervene such as managers, the bank is required as a minimum to identify them based in identity documentation.

owners, using legal, official, current, reliable and indubitable sources and documents in accordance with the relevant laws (Article 9(a)).

- When initiating a contractual relationship with regular clients in lending, deposit or trust operations or any other service, the client must be identified, including its representatives or managers, and beneficial owners, as appropriate (Article 9(b)).
- For legal persons, up-to-date documentation and evidence must be obtained of legal incorporation and registration with the competent registry; domicile, the names of its owners or majority or significant shareholders; directors; trustees (where applicable); or other persons exercising control over the client; as well as identification of the persons authorised to represent, sign or act for the client, or to bind the client to the bank, which should understand the ownership and control structure of the customer (Article 9(c)).

293. In relation to existing clients, the benchmarks include that banks must determine the scope of CDD procedures according to the significance and level of ML/FT risks, based on the risk-rating matrix that they are required to develop and document, "giving special attention to [existing] relationships and accounts where the identity of the customer or beneficial owner is not properly established, verified, or is not transparent" (Article 8(h)).

294. Examples of high-risk clients according to Article 15 of the Norms are entities who offer transactions that are not carried out "face-to-face" or which do not require the physical presence of client or facilitate anonymity, and legal persons incorporated, established, domiciled or present in/with operations in territories known as tax havens or offshore destinations. The Norms also provide that enhanced CDD shall be undertaken when there are doubts about the validity or sufficiency of client information arising from the identification and verification process. This is described to require more rigorous verification processes and potential *in situ* visits to the client (Article 16).

295. The scope of simplified CDD is not described in detail, but the identification of the client based on reliable documentation and the establishment of a comprehensive client profile cannot be circumvented, leaving it potentially open as to whether the beneficial owner of the client nevertheless needs to be identified (Article 17).

296. The above falls short of unequivocally requiring the identification of the beneficial owners of accounts, regardless of the definition of beneficial owner that is applicable.

297. Article 11(e) on the other hand deals with verification and requires banks to implement measures to verify the identity of the beneficial owners of accounts (or transactions) in all cases where the client is acting, or where there is reason to believe that the client is acting on behalf of others as a

representative, attorney-in-fact, agent, or trustee. Measures are to include procedures to inquire into whether or not the customer is acting on behalf of another person, and into the legal capacity under which the customer is acting. This appears to include the scenario where a client is representing a legal person and opening an account on behalf of that legal person.

298. Given that the requirement is however open to interpretation and not included in a manner that is central to the principal obligations in the Norms, it does not seem that Article 11(e) can be relied on to ensure the availability of beneficial ownership information in relation to account holders in all cases.

299. Moreover, as noted under section A.1.1, the timeframe for high-risk clients pursuant to the Norms of the SBOFI is every two years. For low or medium-risk customers, it is whenever changes, variation or unusual or significant increases are detected for (Article 12(e)). Therefore, the requirement to update information on this occasional basis means that there is no specific frequency for updating the information that would apply to all customers.

300. In addition, other sources of beneficial ownership information referred to under section A.1.1 (the entities and legal arrangements themselves and the Register of Beneficial Owners of Commercial Companies) do not compensate for the shortcomings in the CDD obligations of banks because they do not necessarily cover all entities and legal arrangements that may be account holders, notably non-residents.

301. Therefore, **Nicaragua is recommended to ensure that adequate, accurate and up-to-date beneficial ownership information be available in respect of all account holders**.

Oversight and enforcement

302. The Law on SBOFI provides for sanctions in relation to certain obligations of the entities it supervises. Article 25 provides that in cases of non-compliance with the provisions contained in the Law for which no special sanction has been established, the Superintendent may impose pecuniary sanctions adjusted to the seriousness of the offence, from 500 to 50 000 fine units/USD.

303. Article 164 of the Banking Law requires the Board of Directors of the SBOFI to issue general rules to be observed by the financial institutions regulated by the Law, recognising that these are AML-obliged persons, as well as rules establishing offences and administrative penalties in relation to non-compliance with legal, regulatory or normative provisions issued by the competent authority, as well as resolutions, directives or instructions to prevent ML/FT.

304. Article 164 stipulates that sanctions are to be based on the seriousness of offences, and that fines are to be imposed on banks as follows:

- for minor infringements, a fine of 20 000 to 50 000 fine units/USD or 0.015% of the equity of the bank, whichever is greater
- for serious infringements, a fine of 50 001 to 250 000 fine units/USD or 0.065% of equity of the bank, whichever is greater
- for very serious infringements, a fine of 250 001 to 500 000 fine units/USD or 0.150% of equity the bank, whichever is greater.

305. However, it does not appear that the SBOFI has issued such rules or norms in relation to the enforcement of provisions of the AML framework. As noted under section A.1.1, the deficiency in laying down provisions for sanctions for non-compliance in relation to banks was highlighted by GAFILAT in, and since, the Mutual Evaluation Report of 2017.

306. In 2021, the SBOFI therefore issued a series of "norms on the imposition of sanctions", including for the banking sector, listing sanctions for non-compliance with certain obligations of the AML framework, but they are focused on the non-proliferation of weapons of mass destruction and the detection of illicit financial flows based on decrees dating from 2018 and 2014, respectively.[56] Therefore, they do not contribute towards ensuring the availability of banking information or beneficial ownership information on account holders existing as a result of the CDD requirements of banks.[57]

307. **Nicaragua should ensure that effective, proportionate and dissuasive sanctions are in place to accompany all obligations relating to the availability of banking and beneficial ownership information**.

Availability of banking information in EOIR practice

308. There is no information available about the availability of banking information in EOI practice.

56. Namely Decree no. 05-2018: the Implementing Regulations of the Law against Money Laundering, the Financing of Terrorism and the Financing of the Proliferation of Weapons of Mass Destruction and Decree no. 17-2014: Decree for the Application of Measures Regarding the Immobilisation of Funds or Assets Related to Terrorism and its Financing Pursuant to Resolutions 1267 (1999) and 1989 (2011) et seq., Resolution 1988 (2011) et seq., and Resolution 1373 (2001) of the United Nations Security Council.

57. This followed an amendment to the Law on SBOFI of August 2021 according to which was added to the list of competences of the Board of Directors of the SBOFI under Article 10 "to approve general rules to ensure the lawful origin of the capital of financial institutions and to prevent money laundering, the financing of terrorism and the financing of the proliferation of weapons of mass destruction within the financial system under its supervision".

Part B: Access to information

309. Sections B.1 and B.2 evaluate whether competent authorities have the power to obtain and provide information that is the subject of a request under an EOI arrangement from any person within their territorial jurisdiction who is in possession or control of such information, and whether rights and safeguards are compatible with effective EOI.

B.1. Competent authority's ability to obtain and provide information

Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information).

310. Access to information by the tax administration is generally possible through access-related provisions in the Nicaraguan Tax Code. This comprises access to accounting records, but access is uncertain with regard to beneficial ownership information available as a result of obligations contained in the AML Law. Furthermore, access to beneficial ownership information contained in the Register of Beneficial Owners of Commercial Companies is officially subject to a collaboration agreement to this effect with the Supreme Court of Justice. A recommendation is therefore made in relation to access to beneficial ownership information.

311. Importantly, banking information is subject to bank secrecy, and the access powers of the tax administration do not override this premise. A recommendation is therefore made to this effect.

312. In addition, the scope of professional secrecy is such that the tax administration would have to rely on the "legitimate justification" exception under the Criminal Code for access to such information. The concept is undefined and therefore uncertain, and a recommendation is made in this regard.

313. Finally, insufficient information is available to conclude on the practical implementation of the standard in relation to access powers. Therefore, no recommendation is made in relation to the practical implementation of

the standard, but the conclusions take into account that Nicaragua should ensure application and enforcement in practice once the recommendations on the legal and regulatory framework are addressed.

Legal and Regulatory Framework: not in place

Deficiencies identified/Underlying factor	Recommendations
Banking information is subject to bank secrecy, and the access powers of the tax administration do not override this premise. Accordingly, banking information cannot be accessed by the Nicaraguan tax authority unless authorised by the client or requested by the judicial authorities.	Nicaragua should ensure that banking information may be obtained and provided in accordance with the standard so as not to prevent the effective exchange of information in tax matters.
The interrelation between the access-related provisions in the Nicaraguan Tax Code and the content of the AML Law is unclear and it cannot therefore be concluded, based on information publicly available, that the tax administration may obtain beneficial ownership information available as a result of AML obligations, including for EOIR purposes. In particular, the anti-money laundering law is silent as to whether confidentiality obligations applicable to anti-money-laundering-obliged persons may be waived for the tax administration. The information available on beneficial ownership with the entities themselves pursuant to the Law is to be accessible to specified authorities which are not defined to include the tax authority. In addition, access to the beneficial ownership information contained in the Register of Beneficial Owners of Commercial Companies is officially subject to a collaboration agreement to this effect with the Supreme Court of Justice.	Nicaragua should ensure that beneficial ownership information may be obtained and provided in accordance with the standard so as not to prevent the effective exchange of information in tax matters.

Deficiencies identified/Underlying factor	Recommendations
The ethics rules of lawyers and notaries are wide, comprising the obligation to maintain confidential all information received from a client, not just communications produced in the context of obtaining legal advice or for legal proceedings. Exceptions to professional secrecy in other laws, such as the Tax Code and anti-money laundering law, are very narrow. The Nicaraguan Criminal Code exempts from the professional secrecy provision information disclosed with "legitimate interest". Whilst the provision of the information for tax investigation purposes would presumably satisfy this requirement, "legitimate justification" is not further defined or explained in the Nicaraguan legal framework and the presumption cannot be confirmed. As such, the tax administration would have to rely on the "legitimate justification" exception for access to information covered by the professional secrecy, with the inherent uncertainty this involves.	Nicaragua should ensure that the information covered by professional secrecy which is not related to communications produced in the context of obtaining legal advice or for legal proceedings, can be obtained for EOIR purposes in accordance with the standard.

Practical implementation of the Standard: Non-Compliant

Once the recommendations on the legal framework are addressed, Nicaragua should ensure that it is applied and enforced in practice. Insufficient information is otherwise available publicly to conclude on the practical implementation of the standard in relation to access powers.

B.1.1. Ownership, identity and banking information

Accessing information generally

314. The Nicaraguan Tax Code provides for several complementary access-related provisions. First, Article 27 of the Tax Code comprises the general access powers of the tax administration, providing that:

> Solely for tax purposes and effects, all state institutions or private institutions are obliged to provide all information they have on the matter in question that is required by the Tax Administration, except for information that, by law, can only be accessed with prior authorisation from the competent judicial authorities.

315. By law, this power is limited by bank secrecy, as explained below. The third paragraph of the provision further limits the scope of the information that can be accessed, but given its narrow and specific nature, this is unlikely to have a material effect:

> "The obligation of professionals to provide information with tax significance to the Tax Administration will not extend to non-patrimonial private data that they are aware of through the exercise of their activity and whose disclosure would violate the honour or the personal and family privacy of the persons concerned."

316. Whilst the "privacy" proviso could be interpreted broadly, it is qualified by the reference to "non-patrimonial" data, which can be expected to exclude even beneficial ownership information. Non-patrimonial information may nevertheless be relevant in establishing control through other means in circumstances where this is based on private or secret relationships.

317. Second, Article 69 on the Tax Code gives the tax administration a document access right vis-à-vis the taxpayer directly, by providing that the tax administration may:

> [R]equire and obtain documents of a fiscal nature with the prior knowledge of the taxpayer. It will be the obligation of the taxpayer or responsible party to provide a copy of the tax information required by the tax authorities, provided that it has not previously been officially provided by him/her.

318. Third, Article 148 of the Tax Code provides that tax auditors or inspectors may request from taxpayers the submission of "any information whatsoever, be it in electronic form, via Internet or others, relative to the determination of taxes and their correct audit, in accordance with institutional norms". Similarly, they may request taxpayers to attend the offices of the tax administration to provide information of a tax nature. These access powers – allowing for access to "any information" and in whatever form, beyond documents of a fiscal nature – therefore go beyond the document access power in Article 69.

319. In addition, the tax administration may carry out inspections in offices, commercial or industrial establishments, means of transport or in premises of any kind used by taxpayers and responsible parties (Article 148(6)). This triggers obligations on the part of the taxpayers and related enforcement powers (see paragraph 342 below).

320. Certain limits apply to the conduct of tax audits (Article 67 of the Tax Code):

- A taxpayer may not be subject simultaneously to more than one audit concerning the same taxes, concepts, tax periods or periods of exercise.

- A taxpayer may not be subject to an audit concerning taxes, concepts, tax periods or periods of exercise that are time-barred.
- A taxpayer may not be audited for taxes, concepts, tax periods or periods of exercise that have already been subject to an audit.

321. This could pose difficulties in the context of EOIR, given that there may be overlap between a national audit, whether current or previous, and the international investigation and/or domestic statute of limitations rules. However, it does not appear to be the case that a tax audit is a prerequisite for any of the access powers described above.

322. These powers appear to cover access to information for both civil and criminal tax matters as there is no explicit restriction in this respect.

323. Therefore, overall and taken together, the access powers of the tax administration therefore appear sufficient.

Accessing beneficial ownership information

324. As described under section A.1.1, information on beneficial ownership of relevant entities and legal arrangements is available (i) via certain AML-obliged entities with comprehensively defined CDD obligations (i.e. UAF-supervised entities, accountants, lawyers and notaries); (ii) through the entities and legal arrangements themselves; and (iii) through the Register of Beneficial Owners of Commercial Companies, once properly established.

325. The AML Law is silent as to whether confidentiality obligations applicable to AML-obliged persons may be waived for the tax administration. Furthermore, the information available on beneficial ownership with the entities themselves according to Article 13 of the AML Law is to be accessible to "the judicial, supervisory, investigative authorities, the UAF and other competent authorities". Other competent authorities are defined in Article 4 as authorities that are accorded responsibilities relating to AML-obliged persons in the AML/CFT framework and those that have a role in the investigation, prosecution and sanctioning in the same context. Investigative authorities are not defined. Hence, the tax administration does not appear to be part of the authorities that have direct access to information gathered for AML purposes.

326. With regard to the Register, it is not stated specifically in the Law Amending the General Law on Public Registries and the Code of Commerce that the tax administration will be able to access information in the Register of Beneficial Owners. The access provision in the relevant law refers to access by "competent authorities and relevant institutions", but these are not defined. The accompanying Regulations issued by the Supreme Court of Justice provide that such institutions shall have access "in accordance

with the collaboration agreements signed with the [Court]" (Article 11), suggesting that access may be possible upon signature of an agreement to this effect.[58] Whether such an agreement has been entered into, is or could be contemplated by the tax administration, is not public knowledge.

327. The same Regulations specify that "competent authorities" may request commercial companies to provide the information on their beneficial owners directly, and that in the absence of a response (which will be considered an infringement), the Registry will provide the information within 72 hours of a request (Article 13). Again, the application of this provision will depend on the tax administration benefiting a collaboration agreement.

328. Article 14 further foresees the sharing of information on beneficial ownership by the National Directorate of Registers in the international context based "on legally established mechanisms". The Article provides that information may be requested from homologous or non-homologous institutions for the purpose of verifying the basic and beneficial ownership information on foreign commercial companies, but this is to take place under mutual legal assistance agreements or similar. No mention is made of agreements for the exchange of information for tax purposes.

329. As such, although the relevant access powers in the tax law could cover access to beneficial ownership information given that they do not exclude this possibility in the same way as for banking information (discussed below), it is not clear that the tax administration would have access to information available as a result of obligations under the AML Law. In addition, it may have to enter into a collaboration agreement for purposes of the Register (if this is possible). Therefore, **Nicaragua should ensure that beneficial ownership information may be obtained and provided in accordance with the standard so as not to prevent the effective exchange of information in tax matters**.

Accessing banking information

330. Bank secrecy applies in Nicaragua (see section B.1.5 below). Article 27 of the Tax Code, which comprises the general access powers of the tax administration, provides that:

> If the institutions from which this information is requested are those subject to supervision and oversight by the Superintendency of Banks and other Financial Institutions, they shall act in strict compliance and observance of the legal provisions and regulations relating to banking secrecy.

58. The Regulations also provide that commercial companies may authorise temporary access to the Register by other natural or legal persons.

331. Therefore, the tax administration cannot access banking information. The SBOFI may access such information, but only for the effects set out in the Banking Law, notably for AML-related purposes, i.e. not for EOIR purposes.[59]

332. It is unclear to what extent banks would be able to provide information on the identification of their clients, notably their beneficial owners, as the focus of the secrecy provisions is on the operations of the clients. Given the lack of information available in this respect however (as discussed under section A.3), this is currently moot.

B.1.2. Accounting records

333. The accounting obligations of merchants (covering both companies and partnerships) are primarily dealt with in Articles 28 to 48 of the Code of Commerce, as described under section A.2.

334. In terms of access, Article 43 of the Code of Commerce provides that enquiries made *ex officio* by a judge or court – "or any authority whatsoever" – as to whether merchants keep their books in accordance with the provisions of the Code are not permitted, nor may enquiries or a general examination of accounts be made at the offices or desks of merchants.

335. In the same vein, Article 44 provides that "[n]or may the communication, delivery or general inspection of the books, correspondence and other documents of merchants be ordered at the request of a party, except in cases of liquidation, universal succession or bankruptcy".

336. Article 45 in turns provides that "[a]part from the cases provided for in the preceding Article, the books and documents of merchants may only be ordered to be produced at the request of a party or *ex officio*, when the persons to whom they belong have an interest or responsibility in the matter in which the production is required. The examination shall be carried out at the merchant's desk, in his presence, or in the presence of the person commissioned for that purpose, and shall relate exclusively to the points at issue, which alone may be verified".

337. The access to accounting records by third persons, including the tax authority, is therefore restricted under the Code of Commerce.

59. In the same vein, Article 157 of the Banking Law allows the SBOFI to enter into exchange of information or co-operation agreements with other supervisory authorities, including at an international level, but only for purposes of supervision. It is further stipulated that the counterparty may not share the information with third parties without prior authorisation of the requested party.

338. However, Article 102(3) of the Tax Code, which requires taxpayers to keep the appropriate accounting records in order to support the information reflected in their tax returns and maintain the other records that the tax administration requires in accordance with the applicable administrative provisions, also provides that any information requested by the tax administration must be provided to it.

339. Article 103(8) of the Tax Code in turn requires taxpayers to provide to the tax administration financial statements, their annexes, declarations and other documents of tax application.

340. Given that the Tax Code and the Code of Commerce occupy the same position in the hierarchy of norms, access to accounting information by the tax administration should be assured as a result of the tax law framework. Nevertheless, Nicaragua should clarify the articulation between the two Codes to clearly provide for the possibility for the tax administration to obtain accounting information, including for EOIR purposes (see Annex 1).

B.1.3. Use of information gathering measures absent domestic tax interest

341. Article 146(12) of the Tax Code stipulates that the tax administration has the ability to request from foreign public institutions information necessary to avoid tax evasion or avoidance. The provision further stipulates that the tax administration is to provide, in accordance with the principle of reciprocity, the assistance that supervising bodies or regulators of other countries request pursuant to international agreements to this effect. Given how this is worded, and though there is no mention of the competent authorities being responsible for the channel of communication, it appears that information can be provided absent a domestic tax interest, but based on reciprocity.

B.1.4. Effective enforcement provisions to compel the production of information

342. Search of premises is possible under the Tax Code. Article 103(7) of the Tax Code requires taxpayers to provide facilities to officials authorised by the Tax Administration to carry out inspections and verifications of any premises, warehouse, commercial or industrial establishment, offices, warehouses, ships, trucks, aircraft and other means of transportation; and to provide the information that was requested within a period of 10 business days from the date of the request.

343. Financial sanctions are also available for not providing the information requested by the competent authority, although not all provisions seem to be applicable in the EOIR context.

344. Article 117(1) of the Tax Code provides that the failure by a taxpayer to comply with its duties and obligations under the Code constitutes a tax breach, and Article 112 provides that legal persons, entities and *de facto* entities, can each be sanctioned for tax breaches. However, Article 116, which establishes the concept of a tax breach, stipulates that "[a]ny act or omission to comply with the substantial duties of the taxpayer that cause pecuniary damage to the treasury and that involves a breach of tax laws and regulations, constitutes an administrative tax infraction punishable to the extent and scope established in this Code". The two requirements are worded cumulatively – i.e. the act or omission must cause pecuniary damage to the [Nicaraguan] treasury and involve a breach. In the context of an EOI request, it is therefore not ensured that a non-co-operating taxpayer or information holder would be subject to a sanction, since there may be no impact on the Nicaraguan treasury.

345. In any event, Article 126 of the Tax Code on the other hand covers administrative breaches such as the failure to provide information requested by the tax administration and related documentation; the failure to allow the tax administration to carry out actions or activities it is permitted to carry out under law; not to facilitate the inspection or verification *in situ* of taxpayer premises; and not to appear before the administration when summoned to do so. Whilst the content of Article 116 creates ambiguity in relation to its application in the EOIR context, the failure to provide information is expressly covered in Article 126. Nevertheless, Nicaragua should clarify the articulation between these two provisions of the Tax Code to clearly provide for the possibility of issuing a sanction for failure to provide the requested information in the EOIR context (see Annex 1).

346. Furthermore, the sanctions available for failure to provide information consist of a fine of between 70 and 90 fine units/USD, per day of refusal/lack of provision of information (Article 127(3)).

347. No information is available publicly on the application of enforcement measures in either the domestic or EOIR context.

B.1.5. Secrecy provisions

Bank secrecy

348. Bank secrecy applies in Nicaragua and is reflected in two principal provisions of the General Law on Banks, Non-banking Financial Institutions and Financial groups, Law No. 561, Articles 113 and 114. Accordingly, banking information may not be shared by banks and other institutions supervised by the SBOFI unless authorised by the client or requested by the judicial authorities. Furthermore, with the exception of the SBOFI, no administrative

authority may directly request from banks specific or individual information on their clients:

> Article 113: Banks and other regulated institutions may not provide information on the passive operations they carry out with their clients, except, as the case may be, to their legal representatives or to those who have the power to withdraw funds or to intervene in the operation in question, unless expressly authorised by the client or when requested by the judicial authorities by virtue of a case that is being dealt with, by means of a written order in which said case must be expressed with respect to which the depositor, saver or subscriber is linked. In the event of the depositor's death, information may be provided to the beneficiary, if any.
>
> The following are excepted from these provisions:
>
> 1. The requirements in this matter of the Superintendent of Banks. Similarly, the Superintendent is empowered to process information regarding money laundering as provided for by law and international treaties.
>
> 2. The information requested by other banking companies as part of the normal administrative process for the approval of operations with their clients.
>
> 3. Publications by any means issued by banks of the names of clients in arrears or in judicial recovery, as well as those clients who write checks without funds.
>
> 4. The information that is channelled through exchange and co-operation agreements subscribed to by the Superintendent with national financial supervisory authorities or those of other countries.
>
> 5. Other exceptions provided for by law.
>
> No administrative authority, with the exception of the Superintendency, may request directly from banks, specific or individual information on their banking clients.
>
> The active operations and provision of services that the banks carry out for their clients are subject to reservation and may only be disclosed to the authorities and institutions indicated in the preceding subparagraphs.
>
> Article 114: The officials and employees of banks will be responsible, in accordance with the Law, for the breach of secrecy established in the previous article. In the case of breach, the

> responsible banks and employees or officials will be jointly and severally liable for the damage caused.

349. The provisions therefore allow for the sharing of banking information with the judicial authorities, but the lack of access to banking information by the tax administration directly (and therefore for EOIR purposes) is confirmed by Article 27 of the Tax Code. The UAF on the other hand does have access to banking information pursuant to Article 9 of the AML Law, constituting a recent diminution of banking secrecy for purposes of the AML context.[60]

350. Article 12 of Decree No. 713,[61] which forms part of the tax law framework, also explicitly states that banking institutions are not required to provide any information to the tax administration on the deposit accounts of their clients. It is unknown whether the tax administration may spontaneously request banking information for domestic and EOIR purposes from the judicial authorities or supervisors such as the UAF or SBOFI, but nothing in the legal or regulatory framework appears to suggest this.

351. Considering the apparent restriction in access to banking information by the tax administration, **Nicaragua should ensure that banking information may be obtained and provided in accordance with the standard so as not to prevent the effective exchange of information in tax matters**.

Professional secrecy

352. Article 196 of the Criminal Code contains a general provision on professional secrecy, according to which:

> Whoever, by reason of his responsibility, trade, position, employment, profession or art, has knowledge of a secret the disclosure of which could cause harm, and discloses it without legitimate

60. Article 35 of the AML Law, which deals with the co-operation with other countries in terms of supervision, also hints at banking secrecy: accordingly, supervisors have the power to sign collaboration agreements with their counterpart authorities in other countries in order to exchange information on supervision but in the case of financial groups, this is to be subject to the Banking Law. The Law on the UAF on the other hand provides that bank and professional secrecy is lifted for the purposes of reporting suspicious transactions (Article 8(7)). In 2016, SBOFI accordingly entered into a memorandum of understanding with other banking superintendents in the region for the exchange of information and mutual co-operation for purposes of consolidated cross-border supervision in the AML/FT-context: https://ssf.gob.sv/images/stories/descarga_convenios/internacio/MOU%20multilateral%202016.pdf.

61. http://legislacion.asamblea.gob.ni/normaweb.nsf/($All)/9C443A5DA16B8DCA062572AD007788AD?OpenDocument.

> justification, shall be punished with imprisonment of one to three years and special disqualification from the office, profession or trade in question for two to five years.

353. As such, the provision extends only to disclosure (i) causing harm; and (ii) disclosure without legitimate reason. Whilst the provision of the information for tax investigation purposes could "cause harm", an information request from the tax administration would presumably satisfy the requirement of a "legitimate reason". Nevertheless, as the "legitimate justification" is not further defined or explained in the Nicaraguan legal framework, this presumption cannot be confirmed.

354. The ethics rules of lawyers and notaries reflect the obligation to maintain confidential all information received from a client, including after termination of the relationship.[62] This provision goes beyond the standard as it does not specifically limit the scope of the confidential information to communications produced in the context of obtaining legal advice or for legal proceedings. The same applies to the ethics rules applicable to public accountants, though an exception applies where there is a legal or professional obligation to reveal the information,[63] and it does not appear that an information request from the tax administration would be caught by this. Breach of professional secrecy may consequently result in disciplinary, civil or criminal liability for the offending professionals.

355. There are two exceptions to professional secrecy. First, Article 27 of the Tax Code, which comprises the general access powers of the tax administration, provides that "[p]rofessionals may not invoke professional secrecy in order to prevent verification of their tax situation." This exception relates only to the case where a professional would need to provide the relevant information for the purpose of his/her/its own tax audit and where this information would have potential consequences on his/her/its own tax situation. Therefore, although the powers of access of the tax administration override professional secrecy in such a situation, this is not sufficient to ensure that relevant confidential information covered by professional secrecy can be provided to the tax administration in cases where the information relates to a client.

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62. The Code of Ethics of Lawyers and Notaries of Nicaragua, Principle 5 and Article 3.7: https://portaljuridico.net/wp-content/uploads/Recursos/Recursos%20Educativos/C%C3%B3digo%20de%20%C3%89tica%20del%20Abogado%20Nicaragua.pdf.

63. The Code of Ethics of the College of Public Accountants of Nicaragua, Article 3(d); Articles 32-37; and Article 75: https://www.ccpn.org.ni/sites/default/files/2020-08/Codigo_de_Etica_CCPN.pdf. See also Article 8 of https://jalfaroman.files.wordpress.com/2009/10/codigo-de-etica-profesional-en-nic.pdf.

356. Second, Article 9 of the AML Law provides that AML-obliged persons are subject to any information obligation vis-à-vis the UAF notwithstanding any potential secrecy provisions. This exception does not allow the tax administration to access information covered by professional secrecy.

357. Consequently, although the tax administration could rely on "legitimate justification" for accessing information covered by the professional secrecy, as provided under the Criminal Code (see paragraphs 352 and 353), the legal and regulatory framework of Nicaragua does not provide for clear and unambiguous access to such an information. Therefore, **Nicaragua should ensure that the information covered by professional secrecy which is not related to communications produced in the context of obtaining legal advice or for legal proceedings, can be obtained for EOIR purposes in accordance with the standard**.

B.2. Notification requirements, rights and safeguards

The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information.

358. There are no safeguards in place in Nicaragua that would unduly prevent or delay effective exchange of information, but it is noteworthy that there is a requirement to notify the information holder of the fact that information is requested for tax investigation purposes, both at the time that the information is requested, and at the time it is received. There is however no indication that this information must thereafter be passed from the information holder to the taxpayer or other subject of the information concerned, or on the contrary, that it may not be transmitted. Nor is there further indication as to what such notice must include, and an in-text recommendation is therefore included in this regard.

359. The appeal procedure available relates to the challenge of the decisions of the tax administration, rather than to recourse for the actions taken by the tax administration.

360. However, several provisions are indicative of an approach of protecting the information right of the taxpayer. The impact of this in practice cannot be determined based on the information available. Therefore, no recommendation is made on the practical implementation of the standard either, but the conclusions are as follows:

Legal and Regulatory Framework: in place

The rights and safeguards that apply to persons in Nicaragua appear to be compatible with effective exchange of information.

Practical implementation of the Standard: Partially Compliant

Insufficient information is available publicly to conclude on the practical application of the rights and safeguards and their compatibility with effective exchange of information.

B.2.1. Rights and safeguards should not unduly prevent or delay effective exchange of information

Notification

361. Article 27 of the Tax Code, which comprises the general access powers of the tax administration, provides *inter alia* the following:

> When the Tax Administration requests the information referred to in the first paragraph of this article and when it obtains it, it is for purposes and effects of [tax] investigation, such facts must be notified to the natural or legal person from whom the information has been requested, at the time of making the request and immediately after having obtained the response, respectively. The information obtained must be of unrestricted access to the natural or legal person from whom it was requested. In the event that the Tax Administration does not comply with this requirement, no information obtained in this way may be presented as evidence in any administrative or civil proceeding.

362. In other words, the information holder must be notified of the fact that information is requested for tax investigation purposes, both at the time that the information is requested, and at the time it is received. There is no provision that indicates that this information must thereafter be passed from the information holder to the taxpayer or other subject of the information concerned, or on the contrary, that it may not be transmitted.

363. The same applies to information obtained from foreign tax authorities according to the fifth paragraph of Article 27, which provides that the tax administration may enter into EOIR agreements, but stipulates that "[a]ll information that is requested and obtained in this way must also comply with the requirement established in the second paragraph [in relation to notice] of this article."

364. There are no exceptions to such notification. No further information is publicly available as to what information precisely such notification shall contain, and whether a mere mention of the use for tax audit/verification/investigation purposes (without mention of the EOI purpose of the request of the tax administration) may be sufficient to satisfy the requirement in the Tax Code. Therefore, Nicaragua should ensure that the notification to information holders does not unduly prevent or delay effective exchange of information (see Annex 1).

365. In addition, in the same vein, one of the express rights of the taxpayer in relation to formal tax audits is to request from the authorities the credentials of the audit, setting out the taxes, concepts, tax periods or periods of exercise subject to investigation (Article 67(2) of the Tax Code). Similarly, at the end of the audit, the tax administration is required to inform the taxpayer in writing of the completion of the audit and preliminary findings. As noted above, it does not appear to be the case that a tax audit is a prerequisite for any of the access powers described and there do not appear to be equivalent provisions applicable to other access powers.

366. Overall, the above indicates that Nicaragua has an approach of protecting the information right of the taxpayer, and there are no exceptions applicable in case the notification to the information holder were to unduly prevent or delay access to the information. However, it is difficult to assess the situation fully without information on how notification is implemented in practice.

Appeal rights

367. Article 93 of the Tax Code provides that "[t]he acts and resolutions issued by the Tax Administration by which taxes, fines and sanctions are determined, or that affect in any way the rights of taxpayers or those responsible, as well as its omissions, may be challenged by those affected in the form and within the deadlines established by this Code". The focus is therefore on decisions of the tax administration, rather than on access itself. Nevertheless, the provision appears to cover any sanction issued by the tax administration where the information holder does not provide the requested information in the EOIR context.

368. Article 94 of the Tax Code sets out the information to be included in such a challenge, including the petition, statement of the direct or indirect damage caused and the legal and technical grounds on which the appeal is based.

369. The following recourses are provided for (Article 96):

- replenishment recourse, filed before the official or authority that issued the contested resolution or act

- review recourse, filed before the Head of the tax administration
- appeal, filed before the Head of the Tax Administration and transferred to the Administrative Tax Court
- recourse of fact, founded and substantiated according to the procedures, requirements and rules established in the Code of Civil Procedure.

370. A resolution issued by the Administrative Tax Court exhausts the administrative route and the taxpayer may make use of the rights established in the Tax Code before making recourse to the courts.

371. This is indicative of an approach of protecting the right of review of the taxpayer, but difficult to assess fully without information on how it is implemented in practice.

Other rights and safeguards

372. The rights of the taxpayer are set out in Titles IV and X of the Tax Code and are considered to derive from certain constitutional rights. They can be limited based on notions including legality, impartiality and established powers and faculties, but the underpinnings are confidentiality concerning taxes and assurance that the information requested from the taxpayer must be relevant for tax purposes.

373. This is embodied in the provisions in the Tax Code in relation to notification of the information holder and access to recourses to challenge the decisions of the tax administration as well as to request to review its decisions.

374. As noted above, the actual impact of these provisions and the extent of the approach is difficult to assess fully without an appreciation of implementation in practice, which cannot be assessed on the basis of public sources.

Part C: Exchange of information

375. Sections C.1 to C.5 evaluate the effectiveness of Nicaragua's network of EOI mechanisms – whether these EOI mechanisms provide for exchange of the right scope of information, cover all Nicaragua's relevant partners, whether there were adequate provisions to ensure the confidentiality of information received, whether Nicaragua's network of EOI mechanisms respects the rights and safeguards of taxpayers and whether Nicaragua can provide the information requested in an effective manner.

C.1. Exchange of information mechanisms

Exchange of information mechanisms should provide for effective exchange of information.

376. Nicaragua does not participate in the Convention for Mutual Administrative Assistance in Tax Matters and has a very limited EOI network for tax purposes.

377. Nicaragua's only exchange of information mechanism is the Convention on Mutual Assistance and Technical Co-operation among the Central American Tax and Customs Administrations (the Central American Convention). The Central American Convention was signed on 25 April 2006 and has been ratified and brought into force by all parties. Nicaragua therefore has four EOI relationships that are in line with the standard, namely with Costa Rica, El Salvador, Guatemala and Honduras.

378. However, the existence of bank secrecy in the domestic law framework prevents the exchange of banking information under the Central American Convention (and any other mechanism) and therefore also prevents the effective exchange of information as outlined in the standard. A recommendation is therefore made in this regard.

379. Nicaragua does not engage in any other forms of exchange of information.

380. The conclusions are as follows:

Legal and Regulatory Framework: not in place

Deficiencies identified/Underlying factor	Recommendations
Though the exchange of banking information is allowed pursuant to the terms of its only exchange of information mechanism, the Convention on Mutual Assistance and Technical Co-operation among the Central American Tax and Customs Administrations, bank secrecy rules in Nicaragua prevent Nicaragua from exchanging banking information.	Nicaragua should ensure it can access and exchange all information relevant for tax purposes in accordance with the standard in order for it to give full effect to any EOI mechanisms.

Practical implementation of the Standard: Non-Compliant

Once the recommendation on the legal framework is addressed, Nicaragua should ensure that it is applied in practice in accordance with the standard. Insufficient information is otherwise available publicly to conclude conclusively on the practical implementation of exchange of information mechanisms by Nicaragua.

C.1.1. Standard of foreseeable relevance

381. Exchange of information mechanisms should allow for exchange of information on request where it is foreseeably relevant to the administration and enforcement of the domestic tax laws of the requesting jurisdiction.

382. The Central American Convention does not use the language "foreseeably relevant", but provides at its Article 4 that the Convention applies to "information and documentation *related* to taxes in effect, to any legislation that modifies them or establishes new taxes, following the signature of the Convention" (emphasis added). Whilst "related" is indicative of a need for a nexus, it is arguably wider in meaning than "foreseeably relevant" and therefore allows for information exchange to the widest possible extent, in line with the standard regarding foreseeable relevance. Whether the term gives rise to potential fishing expeditions would depend on the practical application of the term, of which there is no evidence.

Clarifications and foreseeable relevance in practice

383. There is no information available with regard to the application by the Nicaraguan competent authority of the concept of foreseeable relevance in EOI practice. Furthermore, no EOIR manual appears to exist to provide further context.

Group requests

384. Neither the Central American Convention nor Nicaragua's domestic law contain language that would prohibit group requests.

385. There is no information available with regard to how the competent authority approaches group requests in EOI practice.

C.1.2. Provide for exchange of information in respect of all persons

386. The Central American Convention does not restrict the scope of information exchange to certain persons. Rather, it provides that application covers the territory of the parties (Article 5). There is no information available with regard to its application in practice.

C.1.3. Obligation to exchange all types of information

387. The Central American Convention provides at Article 8 that the information that can be exchanged includes "commercial, financial, industrial, intellectual property transactions or operations or those pertaining to any other economic activity". In addition, a catch-all provision is included, according to which "any other aspect to assure the correct imposition and collection of taxes" is covered.

388. Whilst information held by financial institutions is therefore theoretically included, bank secrecy in Nicaragua would prevent such exchange in practice (see section B.1).

389. Therefore, **Nicaragua should ensure it can access and exchange all information relevant for tax purposes in accordance with the standard in order for it to give full effect to any EOI mechanisms**.

C.1.4. Absence of domestic tax interest

390. Article 4(2) of the Central American Convention provides for the exchange of information relating to taxes in effect and any legislation modifying these or establishing new taxes that post-date the signature of the Convention. Therefore, there is no domestic tax interest requirement in the agreement.

391. There does not appear to be a domestic tax interest requirement in domestic law either. Article 146(12) of the Tax Code, which stipulates that the tax administration may provide information to foreign public institutions necessary to avoid tax evasion or avoidance, requires the application of reciprocity.

392. No information is available with regard to application in practice.

C.1.5 and C.1.6. Civil and criminal tax matters and dual criminality

393. The Central American Convention provides in its preamble for mutual assistance and technical co-operation in the tax context, in relation to both administrative and judicial actions. In addition, Article 16 provides that information and documents obtained as a result of the application of the Central American Convention may be used as means of conviction or evidence in administrative and judicial procedures. It is therefore implied that the Central American Convention allows for the exchange of information in both civil and criminal matters related to taxes.

394. Moreover, no reference is made to a requirement for dual criminality in case of exchange in criminal tax matters.

395. However, there is no information available with regard to application in practice.

C.1.7. Provide information in specific form requested

396. There are no restrictions in the Central American Convention that would prevent information from being provided in a specific form. However, once again, there is no information available with regard to application in practice.

C.1. 8 and C.1.9. Signed agreements should be in force and be given effect through domestic law

397. Nicaragua's only exchange of information mechanism, the Central American Convention, is in force. It was signed by Nicaragua on 25 April 2006 and ratified on 28 April 2011. It came into force on 31 October 2012. The timeline for ratification is roughly in line with that of other parties to the Central American Convention, albeit being five years.

398. In Nicaragua, the President of the Republic is the representative of the nation before the international community. In this sense, pursuant to Article 150(8) of the Constitution, he oversees directing the international relations of the country, including the negotiation and signature of treaties. In the case of the Central American Convention, this power was delegated to the Minister of Finance and Public Credit.

399. The National Assembly must approve the signed treaty for it to become law. The treaty can only be debated, approved or refused; no changes may be introduced or made.

EOI mechanisms

Total EOI relationships, including bilateral and multilateral or regional mechanisms	**4**
In force	4
In line with the standard	4
Not in line with the standard	0
Signed but not in force	0
Total bilateral EOI relationships not supplemented with multilateral or regional mechanisms	**0**

C.2. Exchange of information mechanisms with all relevant partners

The jurisdiction's network of information exchange should cover all relevant partners, meaning those jurisdictions who are interested in entering into an information exchange arrangement.

400. Nicaragua's only exchange of information mechanism is the Central American Convention, covering four exchange partners: Costa Rica, El Salvador, Guatemala and Honduras.

401. Decree No. 77-2006 of December 2006 expressly authorises the Minister of Finance of Nicaragua to co-ordinate and conduct negotiations with a view to entering into double taxation conventions and tax or customs information exchange agreements. In the same vein, the Decree enables the Ministry of Finance to request the Ministry of Foreign Affairs to approach another jurisdiction to propose the negotiation of any such treaties.

402. In addition, Article 27(5) of the Tax Code provides: "The Tax Administration may sign international information agreements with foreign Tax Administrations that allow strengthening the investigative actions of the Institution". Nicaragua can thus sign Tax Information Exchange Agreements.

403. Nicaragua has not signed any such treaties.

404. Therefore, the EOI network of Nicaragua is very limited. In the preparation of this report, no Global Forum members however indicated that Nicaragua refused to negotiate or sign an EOI instrument with it. Nicaragua should enter into EOI agreements (whatever their form) with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement with it (see Annex 1).

405. Nicaragua's network of information exchange mechanisms is impacted by the existence of bank secrecy in the domestic law framework, as set out under section B.1, which prevents the exchange of banking information under its network and therefore the effective exchange of information in accordance with the standard, as set out under section C.1. Hence, **Nicaragua should ensure it can access and exchange all information**

relevant for tax purposes in accordance with the standard, such that it may give full effect to its exchange of information network.

406. The conclusions are as follows:

Legal and Regulatory Framework: not in place

Deficiencies identified/ Underlying factor	Recommendations
The existence of bank secrecy in Nicaragua prevents the exchange of banking information, regardless of the content of its exchange of information mechanism and consequently its exchange of information network.	Nicaragua should ensure it can access and exchange all information relevant for tax purposes in accordance with the standard, such that it may give full effect to its exchange of information network.

Practical implementation of the Standard: Non-Compliant

Once the recommendations on the legal framework are addressed, Nicaragua should ensure that they are applied in practice in accordance with the standard. Insufficient information is otherwise available publicly to conclude conclusively on the practical implementation of Nicaragua's exchange of information network.

C.3. Confidentiality

The jurisdiction's information exchange mechanisms should have adequate provisions to ensure the confidentiality of information received.

407. The confidentiality provisions in the Central American Convention conform to the standard by requiring information received to be treated as confidential, in line with Article 26(2) of the OECD Model Tax Convention and Article 8 of the OECD Model Tax Information Exchange Agreement. The relevant provisions further imply that information exchanged could be used for other tax purposes. Furthermore, domestic laws are in line with the standard.

408. However, insufficient information is available to conclude on the practical implementation of the standard in relation to confidentiality. Therefore, no recommendation is made but the conclusions are as follows:

Legal and Regulatory Framework: in place

No material deficiencies have been identified in the EOI mechanisms and legislation of Nicaragua concerning confidentiality.

Practical implementation of the Standard: Partially Compliant

Insufficient information is available publicly to conclude on the practical implementation of the standard in relation to the confidentiality of information exchanged.

C.3.1. Information received: disclosure, use and safeguards

409. The Central American Convention provides for the confidentiality of information exchanged under its Articles 2(b) and 9:

> Article 2(b): [on the objects of the treaty] Confidentiality: Obliging the Administrations to keep confidential the information and documentation obtained pursuant to this Convention in accordance with the legislation of the State Parties.
>
> Article 9: All information provided by an Administration to a requesting Administration is confidential. The information will be used only for the fulfilment of the functions and powers of the requesting Administration. Each Administration will adopt and maintain procedures to guarantee the confidentiality of the information.

410. The 2016 TOR clarified that, although it remains the rule that information exchanged cannot be used for purposes other than tax purposes, an exception applies where the EOI agreement provides that the information may be used for such other purposes under the laws of both contracting parties, and the competent authority supplying the information authorises the use of information for purposes other than tax purposes.

411. The Central American Convention does not provide for the possibility to use the information for other purposes, and the possibility appears to be excluded from the reference in Article 9 to use "for the fulfilment of the functions and powers of the requesting [tax] administration". It is, however, unknown how Nicaragua would apply this in practice.

412. Moreover, based on academic debate on the matter,[64] the question arises whether a person concerned by an EOI request has the right to access the EOI file (whether directly or as part of the personal data on him/her available to the tax administration). Nicaragua should ensure that any right of a person concerned by an EOI request to access the EOI file protect

64. See, for example, *Límites Constitucionales Aplicables a la Administración Tributaria durante el Proceso de Fiscalización versus el Derecho a la Privacidad de los Contribuyentes*, Alfredo Antonio Artiles Mendiera, Universidad Centroamericano, April 2017.

the confidentiality of information and ensures that the use of the information is in line with the standard (see Annex 1).

413. Though the hierarchical relationship between treaties and ordinary laws is not established in the Nicaraguan Constitution, the domestic law contains provisions that complement the content of the Central American Convention. There are no exceptions to tax confidentiality other than by order of the judiciary. It is not clear whether any such order would be limited to tax matters. Article 68 of the Tax Code contains the main confidentiality provision:

> Taxpayers or responsible parties have the right to privacy of the information provided to the Tax Administration. Consequently, the information that the Tax Administration obtains from taxpayers and responsible parties by any means, will be of a confidential character. It may only be communicated to the judicial authorities on the basis of an order from the latter.
>
> The Tax Administration, through the corresponding institutional regulations, will establish the implementation of control programs and specific computed programs for the administration and control of the information of taxpayers and responsible parties.

414. The provision is focused on information on Nicaraguan taxpayers and responsible parties, but encompasses information obtained "by any means", and therefore also presumably from third parties. It establishes generally the confidentiality of information received on taxpayers.

415. Similarly, Article 45(4) of the Civil and Administrative Career Law, Law No. 70, provides that the obligations of civil servants include to "Observe the necessary prudence, reserve and discretion on matters related to their work".

416. The Criminal Code contains provisions that cover information received by civil servants in the exercise of their role more generally, and includes reference to corresponding sanctions in case of failure to comply with their confidentiality obligations:

> Article 440 on Improper access to confidential documents or public information: "The authority, public official or employee who accesses or allows access to public documents or information the access to which is reserved in accordance with the law on the matter, shall be punished with one to three years' imprisonment and disqualification from public employment or office for two to four years."
>
> Article 441 on Revelation, disclosure and use of information: "The authority, public official or employee who discloses or

> divulges information or documents declared as reserved public information or private information in accordance with the law on the matter, shall be punished with three to five years' imprisonment and disqualification from public employment or office for the same period. If the perpetrator is in charge of the custody of the information or document, the penalty to be imposed shall be four to eight years' imprisonment and disqualification from public employment or public office for the same period. Any private individual who takes advantage of reserved public information or private information disclosed by the authority, public official or employee under the conditions set out in the previous paragraphs and obtains profit or benefit for himself or for a third party, shall be punished with three to five years' imprisonment."
>
> Article 442 on Reckless facilitation: "The authority, public official or employee who, through recklessness, gives rise to the conduct described in this Chapter, shall be punished with disqualification from public employment or office for a term of six months to two years."

417. The above provisions do not distinguish between current or former public officials, though disqualification can only apply to current officials. The focus in the Tax Code on the right to confidentiality of the taxpayer suggests that confidentiality obligations would generally continue indefinitely after the end of the employment relationship, given the right and existence of the information persist.

418. In addition, it is expected that employees of the tax authority will also be subject to confidentiality obligations set out in the terms of their employment and subject to administrative sanctions in the case of breach.

419. Overall, the confidentiality of information received by the tax administration would therefore be ensured by the legal framework.

C.3.2. Confidentiality of other information

420. The confidentiality provisions in Nicaraguan domestic law relating to public officials or employees set out above and the associated sanctions for breach, apply equally to protect the request for information itself, because no distinction is made with regard to the source or destination of the information, though Article 68 of the Tax Code, which contains the main confidentiality provision, is focused on information on Nicaraguan taxpayers and responsible parties (see paragraphs 413 and 414). The protected information would include, therefore, background documents provided by a requesting jurisdiction, as well as any other information related to the request, such as communications between the EOI partners in respect of the request.

Confidentiality in practice

421. There is no information available with regard to confidentiality practice, including the handling, marking, storage or potential comingling of information received. No information is available publicly in relation to verification and enforcement in practice.

C.4. Rights and safeguards of taxpayers and third parties

The information exchange mechanisms should respect the rights and safeguards of taxpayers and third parties.

422. The Central American Convention is silent on the protection of rights and safeguards of taxpayers and third parties, as provided in Article 26(3) of the OECD Model Tax Convention and Article 7 of the OECD Model Tax Information Exchange Agreement, but these rights and safeguards are reflected in domestic law provisions. That is, information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or that would be contrary to public policy, is not required to be exchanged.

423. However, insufficient information is available to conclude on the practical implementation of the standard in relation to the rights and safeguards of taxpayers and third parties. Therefore, no recommendation is made but the conclusions are as follows:

Legal and Regulatory Framework: in place

No material deficiencies have been identified in the information exchange mechanisms of Nicaragua in respect of the rights and safeguards of taxpayers and third parties.

Practical implementation of the Standard: Partially Compliant

Insufficient information is available publicly to conclude on the practical implementation of the standard in relation to the rights and safeguards of taxpayers and third parties.

C.4.1. Exceptions to the requirement to provide information

424. The Central American Convention does not provide for specific rights and safeguards. In fact, Article 8(b) provides that information can be exchanged on transactions or operations of a commercial, financial, industrial, intellectual property nature or of any other economic activity. The Central American Convention does however provide for the possibility of

declining a request based on reciprocity (Article 2) and on constitutional limitations (Article 10).

425. Nicaraguan domestic law provides for the protection of industrial and commercial secrets in its intellectual property law framework, which refers to the protection of trade secrets.[65] The scope of this is consistent with the Commentary on Article 26 of the Model Tax Convention.

426. In addition, as set out under section B.1, bank secrecy prevents access to banking information, and the scope of professional secrecy is such that the tax administration would have to rely on the "legitimate justification" exception under the Criminal Code for access to such information. The concept is however undefined and therefore uncertain.

C.5. Requesting and providing information in an effective manner

The jurisdiction should request and provide information under its network of agreements in an effective manner.

427. As explained under section C.2, the only exchange of information mechanism that Nicaragua has in place is the Central American Convention, covering four exchange partners, all of which are Global Forum members: Costa Rica, El Salvador, Guatemala and Honduras. None of these jurisdictions have reported to have exchanged information with Nicaragua.

428. No information could be located on Nicaragua's organisational processes and resources, for example on the website of the DGI or reflected in an EOIR manual. The Central American Convention provides that the Competent Authority is the senior official of the Tax or Customs Administration of the parties to it, or the person delegated by the same, but it is unknown whether such a delegation is in place in Nicaragua who would therefore be responsible for the receipt or sending of EOIR requests. Hence, it is unknown whether such person/s form part of a dedicated team, whether their practice would be guided by any specific materials or systems, or whether they receive training. SICA, the System for Central American Integration, is the depository of the Central American Convention, but did not provide information as to the identification and contact of the competent authority of Nicaragua when contacted for purposes of this report.

65. See, for example, Ley No. 354, Ley de Patentes de Invención, Modelo de Utilidad y Diseños Industriales. Article 125 of the Constitution provides *inter alia* that the State guarantees and protects intellectual property.

429. In terms of unreasonable, disproportionate, or unduly restrictive conditions on the exchange of information, it bears recalling that bank secrecy prevents access to banking information in Nicaragua.

430. Overall, insufficient information is available to conclude on the practical implementation of the standard in relation to the request and provision of information in an effective manner, even from a theoretical perspective, given the absence of exchange and available material. Overall therefore, **Nicaragua should ensure that it has in place the organisational processes necessary for it to provide and request information under exchange of information agreements in an effective manner**. The conclusions are as follows:

Legal and Regulatory Framework

This element involves issues of practice. Accordingly, no determination has been made.

Practical implementation of the Standard: Partially Compliant

Deficiencies identified/ Underlying factor	Recommendations
It is not known whether Nicaragua has put in place the necessary processes and resources to ensure effective exchange of information, including internal guidelines and the training of staff in relation to exchange of information. In addition, Nicaragua has not received any requests from its treaty partners during the review period to test the effectiveness of its exchange of information framework in practice.	Nicaragua should ensure that it has in place the organisational processes necessary for it to provide and request information under exchange of information agreements in an effective manner.

Annex 1: List of in-text recommendations

The Global Forum may identify issues that have not had and are unlikely in the current circumstances to have more than a negligible impact on EOIR in practice. Nevertheless, the circumstances may change, and the relevance of the issue may increase. In these cases, a recommendation may be made; however, it should not be placed in the same box as more substantive recommendations. Rather, these recommendations can be stated in the text of the report. A list of such recommendations is reproduced below for convenience.

- **Element A.1.1:** Nicaragua should ensure that there is a specified frequency for the updating of beneficial ownership information in relation to all customers of all anti-money laundering-obliged persons, including those supervised by the Superintendence of Banks and other Financial Institutions (paragraph 143).
- **Element A.1.2:** Nicaragua should ensure that the content of the Code of Commerce is aligned with the prohibition of bearer shares (paragraph 183).
- **Element B.1:**
  - Nicaragua should clarify the articulation between the Tax Code and the Code of Commerce in relation to access to accounting information in order to clearly provide for the possibility for the tax administration to obtain accounting information, including for EOIR purposes (paragraph 340).
  - Nicaragua should clarify the articulation between Articles 116 and 126 of the Tax Code to clearly provide for the possibility of issuing a sanction for failure to provide the requested information in the EOIR context (paragraph 345).
- **Element B.2:** Nicaragua should ensure that the notification required to be given by the tax administration to information holders upon a request for information does not unduly prevent or delay effective exchange of information (paragraph 364).

- **Element C.2:** Nicaragua should enter into EOI agreements (whatever their form) with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement with it (paragraph 404).
- **Element C.3:** Nicaragua should ensure that any right of a person concerned by an EOI request to access the EOI file protect the confidentiality of information and ensures that the use of the information is in line with the standard (paragraph 412).

Annex 2: Nicaragua's EOI mechanism

Central American Mutual Assistance Convention

Pursuant to the Mutual Assistance and Technical Co-operation among Central American Tax and Custom Administrations Convention, Nicaragua can request and provide the mutual assistance and technical co-operation from and to the other contracting jurisdictions, as well as obtaining and providing information and documentation on, inter alia, tax matters, commercial transactions and identification information in relation to natural or legal persons in their capacity as taxpayers, legal representatives, shareholders or other members of companies.

The Central American Mutual Assistance Convention was signed by Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua on 25 April 2006, and came into force on 31 October 2012.

Annex 3: Methodology for the review

The reviews are based on the 2016 TOR and conducted in accordance with the 2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum in October 2015 and amended in 2020 and 2021, and the Schedule of Reviews.

Reviews of non-members should be conducted only after a jurisdiction has been given the opportunity to participate in the Global Forum. Nicaragua was invited to join the Global Forum in 2021, but has not responded to the invitation.

The present review has been carried out in application of Chapter III of the Methodology, relating to the procedures for reports on non-members.

As Nicaragua did not respond to the EOIR questionnaire or to any written communications from the Assessment Team, publicly available information was relied on for purposes of the evaluation. Sources are mentioned in footnotes in the report, as well as below.

The evaluation is based on information available to the assessment team, including the exchange of information arrangements signed, laws and regulations in force or effective as at 25 November 2022, Nicaragua's EOIR practice in respect of EOI requests made and received during the three-year period from 1 October 2018 to 30 September 2021 and inputs from partner jurisdictions.

Review	Assessment team	Period under review	Legal framework as on	Date of adoption by Global Forum
Round 2 combined	Mr Wayne Brown (Bermuda) Assistant Financial Secretary, Ministry of Finance of Bermuda; Mr José Orlando Pérez (Mexico) Head of the Unit for Exchange of Information, Mexican Tax Administration Service; and Ms Natalie Limbasan from the Global Forum Secretariat	1 October 2018 to 30 September 2021	25 November 2022	27 March 2023

List of laws and regulations

Links accessed between March and November 2022.

Tax

Tax Code of the Republic of Nicaragua (*Código Tributário de la República de Nicaragua*), Law no. 562

Law Creating the Single Registry of the Ministry of Finance (*Ley Creadora del Registro Único del Ministerio de Finanzas*), Decree no. 850

Common Tax Legislation Reforms to Decree No. 713 (*Legislación Tributaria Común Reformas al Decreto* No. 713), Decree no. 742

Tax Co-ordination Law (*Ley de Concertación Tributaria*), Law no. 822

Implementing Regulations of Law no. 822, Tax Co-ordination Law (*Reglamento de la Ley No. 822, Ley de Concertación Tributaria*), Decree 01-2013

Commerce and commercial registration

Code of Commerce of the Republic of Nicaragua (*Código de Comercio de la República de Nicaragua)*

General Law on the Public Registries (*Ley General De Los Registros Públicos*), Law no. 698

Reform Law regarding the General Law on the Public Registries and the Code of Commerce of the Republic of Nicaragua (*Ley de Reforma a la Ley No. 698, Ley General De Los Registros Públicos, y al Código de Comercio de la República de Nicaragua*), Law no. 1035

Regulation for the Functioning of the Register of Beneficial Ownership of Commercial Companies (*Normativa de Funcionamiento del Registro del Beneficiario Final de las Sociedades Mercantiles*), Supreme Court of Justice, 2020

Banking

General Law on Banks, Non-Banking Financial Institutions and Financial Groups (*Ley General de Bancos, Instituciones Financieras no Bancarias y Grupos Financieros*), Law no. 561

Reform Law regarding the General Law on Banks, Non-Banking Financial Institutions and Financial Groups (*Ley de Reforma a la Ley No. 561, Ley General de Bancos, Instituciones Financieras no Bancarias y Grupos Financieros*), Law no. 1078

Law on the Superintendence of Banks and Other Financial Institutions (*Ley de la Superintendencia de Bancos y de Otras Instituciones Financieras*), Law no. 316

Reform Law regarding the Law on the Superintendence of Banks and Other Financial Institutions (*Ley de Reforma a la Ley No. 316, Ley de la Superintendencia de Bancos y de Otras Instituciones Financieras*), Law no. 1080

Anti-money laundering

Law against Money Laundering, the Financing of Terrorism and the Financing of the Proliferation of Weapons of Mass Destruction (*Ley contra el Lavado de Activos, el Financiamiento al Terrorismo y el Financiamiento a la Proliferación de Armas de Destrucción Masiva*), Law no. 977

Reform Law regarding the Law against Money Laundering, the Financing of Terrorism and the Financing of the Proliferation of Weapons of Mass Destruction and Additions to the General Law on Banks, Non-Banking Financial Institutions and Financial Groups (Ley de Reforma a la Ley No. 977, *Ley contra el Lavado de Activos, el Financiamiento al Terrorismo y el Financiamiento a la Proliferación de Armas de Destrucción Masiva, y adición a la Ley no. 561, Ley General de Bancos, Instituciones Financieras no Bancarias y Grupos Financieros*), Law no. 1072

Implementing Regulations of the Law against Money Laundering, the Financing of Terrorism and the Financing of the Proliferation of Weapons of Mass Destruction (*Reglamento de la Ley No. 977, Ley contra el Lavado de Activos, el Financiamiento al Terrorismo y el Financiamiento a la Proliferación de Armas de Destrucción Masiva)*, Decree no. 05-2018

Law Establishing the *Unidad de Análisis Financiero* (*Ley Creadora de la Unidad de Análisis Financiero*), Law no. 793

Implementating Regulations of the *Unidad de Análisis Financiero* (*Reglamento de la Unidad de Análisis Financiero*), Decree no. 07-2013

Law on the *Unidad de Análisis Financiero* (*Ley de la Unidad de Análisis Financiero*), Law no. 976

Decree for the Application of Measures Regarding the Immobilisation of Funds or Assets Related to Terrorism and its Financing Pursuant to Resolutions 1267 (1999) and 1989 (2011) et seq., Resolution 1988 (2011) et seq., and Resolution 1373 (2001) of the United

Nations Security Council (*Decreto para la Aplicación de Medidas en Materia de Inmovilización de Fondos o Activos Relacionados con el Terrorismo y su Financiamiento Conforme las Resoluciones 1267 (1999) y 1989 (2011) y sucesivas, Resolución 1988 (2011) y sucesivas y Resolución 1373 (2001) del Consejo de Seguridad de la Organización de las Naciones Unidas*), Decree no. 17-2014

Norm for the Management of Prevention of the Risks of the Laundering of Money, Goods or Assets and the Financing of Terrorism, Superintendence of Banks and Other Financial Institutions, CD-SIBOIF-721-1-MAR26-2012

Regulations for the Prevention, Detection and Reporting of Activities Related to ML/TF/PF through Financial Institutions Regulated and Supervised by the UAF (*Normativa de Prevención, Detección y Reporte de Actividades Relacionadas con el LA/FT/FP a través de Instituciones Financieras Reguladas y Supervisadas por la UAF*), UAF Resolution UAF-N-019-2019

Regulations for the Prevention, Detection and Reporting of Activities Related to ML/TF/PF through Designated Non-Financial Activities and Professions (*Normativa de Prevención, Detección y Reporte de Actividades Relacionadas con el LA/FT/FP a través de Actividades y Profesiones No Financieras Designadas*), UAF Resolution UAF-N-020-2019

Regulations to Establish the Procedures for the Imposition of Sanctions on Obligated Subjects Regulated and Supervised by the Financial Analysis Unit, their Directors, Administrative Managers and Compliance Officers *(Normativa para Establecer los Procedimientos para la Imposición de Sanciones a los Sujetos Obligados Regulados y Supervisados por la Unidad de Análisis Financiero, a Sus Directores, Gerentes Administrativos y Oficiales de Cumplimiento*), UAF Resolution UAF-N-022-2019

CCPN Certification-Resolution No. 01-2019-JD/CCPN-PLA/FT/FP and CCPN Certification-Resolution No. 05-2019-JD/CCPN-PLA/FT/FP

AML/CFT/Counter-Proliferation Financing Regulations for Lawyers and Notaries, Supreme Court of Justice, Agreement 451 of 2019.

Manual on the Policies, Measures and Procedures for the Prevention of ML/TF/FP for Lawyers (AS) and Public Notaries (AS) of the Republic of Nicaragua (*Manual De Políticas, Medidas y Procedimientos se Prevención se LA/FT/FP para Abogados (AS) y Notarios (AS) Públicos de la República de Nicaragua*), Judiciary of Nicaragua

Directive of Best Practices for the Identification of Beneficial Owners (*Directriz de Mejores Prácticas para la identificación del Beneficiario Final en los SO regulados por la UAF*), UAF, February 2019

Various Norms for the Imposition of Sanctions by the Superintendence of Banks and Other Financial Institutions (*Normas de Imposición de Sanciones*), 2021: CD-SIBOIF-849-3-AGOST20-2014; CD-SIBOIF-1269-8-SEP10-2021; CD-SIBOIF-1269-7-SEP10-2021; CD-SIBOIF-1269-6-SEP10-2021; CD-SIBOIF-1269-5-SEP10-2021; CD-SIBOIF-1269-4-SEP10-2021; CD-SIBOIF-1269-3-SEP10-2021; CD-SIBOIF-1269-2-SEP10-2021; and CD-SIBOIF-1123-3-JUL30-2019.

Civil and administrative

Civil Service and Administrative Career Law (*Ley de Servicio Civil y la Carrera Administrativa*), Law no. 476

Organic Law of the Judiciary (*Ley Orgánica del Poder Judicial*), Law no. 260

EOIR

Decree Authorising the Ministry of Finance and Public Credit to Co-ordinate and Conduct Negotiations of International Tax Conventions, Decree 77-2006

Other

Constitution of the Republic of Nicaragua

Law on Associations and the Central Registry of Legal Entities (*Ley Sobre Asociaciones y Registro Central de Personas Jurídicas*), Decree-Law no. 1346

General Law on Non-Profit Legal Persons (*Ley general sobre personas jurídicas sin fines de lucro*), Law no. 147

General Law on Co-operatives (*Ley General de Co-operativas*), Law no. 499

Law on *Fideicomiso* Contracts (*Ley sobre el Contrato de Fideicomiso*), Law no. 741

Criminal Code the Republic of Nicaragua (*Código Penal de la República de Nicaragua*), Law no. 641

Notary Law (*Ley de Notariado*), Law of 7 November 1905

Law on Patents for Inventions, Utility Models and Industrial Designs (*Ley de Patentes de Invención, Modelo de Utilidad y Diseños Industriales*), Law no. 354

List of other publicly available materials

World Bank population statistics: Population, total | Data (https://data.worldbank.org/indicator/SP.POP.TOTL)

Pronicaragua, Investor Guideline 2019: http://pronicaragua.gob.ni/media/publications/Investor_Guideline_2019_D6yuVmj.pdf

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Annex 4: Nicaragua's response to the review report

Nicaragua has not provided a response.

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request NICARAGUA 2023 (Second Round)

The Global Forum on Transparency and Exchange of Information for Tax Purposes is a multilateral framework for tax transparency and information sharing, within which over 160 jurisdictions participate on an equal footing.

The Global Forum monitors and peer reviews the implementation of international standard of exchange of information on request (EOIR) and automatic exchange of information. The EOIR provides for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. All Global Forum members have agreed to have their implementation of the EOIR standard be assessed by peer review. In addition, non-members that are relevant to the Global Forum's work are also subject to review. The legal and regulatory framework of each jurisdiction is assessed as is the implementation of the EOIR framework in practice. The final result is a rating for each of the essential elements and an overall rating.

The first round of reviews was conducted from 2010 to 2016. The Global Forum has agreed that all members and relevant non-members should be subject to a second round of review starting in 2016, to ensure continued compliance with and implementation of the EOIR standard. Whereas the first round of reviews was generally conducted as separate reviews for Phase 1 (review of the legal framework) and Phase 2 (review of EOIR in practice), the EOIR reviews commencing in 2016 combine both Phase 1 and Phase 2 aspects into one review. Final review reports are published and reviewed jurisdictions are expected to follow up on any recommendations made. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

This publication presents the results of the Second Round Peer Review on the Exchange of Information on Request for Nicaragua.

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