



1st Follow-Up Report

Mutual Evaluation of the Philippines

August 2020





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THE PHILIPPINES: 1ST ENHANCED EXPEDITED FOLLOW-UP REPORT 2020

I. INTRODUCTION

1. The mutual evaluation report (MER) of the Philippines was published in October 2019. This FUR analyses the progress of the Philippines in addressing the technical compliance deficiencies identified in its MER. Technical compliance re-ratings are given where sufficient progress has been demonstrated. This report also analyses progress made in implementing new requirements relating to FATF Recommendation 15 which has changed since the MER was adopted. This report does not analyse any progress the Philippines has made to improve its effectiveness. Progress on improving effectiveness will be analysed as part of a later follow-up assessment and, if found to be sufficient, may result in re-ratings of Immediate Outcomes (IOs) at that time.

2. The assessment of the Philippines' request for technical compliance re-ratings and the preparation of this report was undertaken by the following experts:

- *Lim Boon Beow, Strategy & Policy Division, Financial Intelligence & Enforcement, Bank Negara Malaysia*
- *Robert Milnes, Principal Advisor (AML), Department of Internal Affairs, New Zealand*

3. Section III of this report summarises the progress made to improve technical compliance. Section IV contains the conclusion and a table illustrating the Philippines' current technical compliance ratings.

II. FINDINGS OF THE MUTUAL EVALUATION REPORT

4. The MER rated¹ the Philippines as follows:

IO 1	IO 2	IO 3	IO 4	IO 5	IO 6	IO 7	IO 8	IO 9	IO 10	IO 11
Sub.	Mod.	Mod.	Mod.	Low	Mod.	Low	Low	Low	Low	Low

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

5. Given these results, the Philippines was placed on enhanced (expedited) follow-up².

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

² There are three categories of follow-up based on mutual evaluation reports: regular, enhanced and enhanced (expedited). For further information see the APG Mutual Evaluation Procedures.

III. OVERVIEW OF PROGRESS TO IMPROVE TECHNICAL COMPLIANCE

6. In keeping with the APG Mutual Evaluation Procedures, this FUR considers progress made up until 1 February 2020. This section summarises the progress made by the Philippines to improve its technical compliance by:

- a) addressing the technical compliance deficiencies identified in the MER, and
- b) implementing new requirements where the FATF Recommendations have changed since the MER was adopted.

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

7. The Philippines requested re-ratings of the following Recommendations: 20, 29 (which were rated PC).

8. The APG welcomes the steps that the Philippines has taken to improve its technical compliance with Recommendations 20 and 29. Following this progress, the Philippines has been re-rated largely compliant with R.20 and compliant with R.29. In light of the additional requirements placed in R.15, the Philippines is re-rated partially compliant with R.15.

Recommendation 20 (Originally rated PC)

9. The Philippines MER identified three key deficiencies which resulted in R.20 rated as partially compliant. The three key deficiencies were the lack of enforceable obligations to report attempted transactions, promptness in reporting STRs, as well as the absence of a requirement to report STRs related to tax offences.

10. The Philippines issued the *Anti-Money Laundering Council (AMLC) Regulatory Issuance A, B, and C No. 1 Series of 2020* (ARI No. 1-2020) on 29 January 2020, aimed to address two out of the three deficiencies highlighted in the MER as follows:

- Section 8 of ARI No. 1-2020 amended Section 1.1 of Rule 22 of the *2018 Implementing Rules and Regulations* (IRR) to define STRs to cover all transactions, whether completed or attempted; and
- Section 9 of ARI No. 1-2020 amended Section 2.2 of Rule 22 of the IRR to require STRs to be filed promptly within the next working day upon establishment or determination of suspicion.

11. The Philippines' effort in amending the Rule 22 of the IRR is commendable. The issuance of the ARI No. 1-2020 addressed the deficiency of lack of enforceable obligations to report attempted transactions. In addition, section 9(c) of AMLA permits the AMLC to prescribe a different reporting period from the originally prescribed five working days. Since the ARI No. 1-2020 has the force of law³, there is no need to amend the main legislation (AMLA) for the new reporting period to be in effect. Accordingly, the Philippines has established the obligation for prompt reporting of STRs through amending the Rule 22 of the IRR.

³ Administrative issuances partake of the nature of a statute and have in their favor a presumption of legality (*Land Bank vs. America Rubber Corp*, GR No. 188046, 24 July 2013). In this case, the 2018 Implementing Rules and Regulations of the AMLA, as amended by ARI 1-2020, has the force and effect of the law. ARI 1-2020 is superior to the ARRG, as the latter supplements the law and the IRR on how covered persons can comply with their reporting obligations.

12. The scope gap in relation to reporting STRs related to tax offences has not yet been addressed. It is noted that the Philippines is progressing in the proposed amendments to the AMLA to designate tax crimes as predicate offences to money laundering, subjecting them to the STR reporting requirement.

13. The Philippines has addressed the remaining deficiencies under criterion 20.2, and made progress to address the deficiencies under criterion 20.1. The Philippines has also begun to address the remaining deficiencies under criterion 20.1, however this process is not yet complete.

14. **The Philippines is re-rated to largely compliant with R.20.**

Recommendation 29 (Originally rated PC)

15. The Philippines MER identified two moderate deficiencies in relation to Recommendation 29. These were the lack of an explicit mandate for the AMLC to disseminate ML-related financial analysis to other relevant authorities, and the prohibition of sharing information related to politically exposed persons (PEPs) to relevant authorities outside of the AMLC during an election period.

16. The issuance of ARI No. 1-2020 on 29 January 2020 amended Section 1.6.7 of Rule 6 of the 2018 IRR to explicitly require the AMLC to disseminate, spontaneously and upon request, information and the results of its analysis to a wide range of recipients (Section 10 of ARI No. 1-2020). This addresses the deficiency related to criterion 29.5.

17. *The Internal Guidelines on the Exchange, Sharing and Dissemination of Financial Intelligence and Other Information* contained in the *AMLC Resolution No. 246* issued on 11 December 2019 has provided provision for dissemination of analysis of the suspected ML/TF or any associated unlawful activities and deleted the provision previously contained in the *AMLC Resolution No. 40, Series of 2018* that limits the sharing of PEP information during an election period. The amendment addresses the deficiency which the MER noted in relation to criteria 29.5 and 29.7. With these amendments, the AMLC may now disseminate all information and analysis not only in relation to ML as well as share information on PEPs like any other type of information, without prior approval from the Council. The AMLC Secretariat is only required to report the sharing of PEP information for notation of the Council.

18. The Philippines has addressed the moderate deficiencies noted in the MER with regard to R.29 and no further deficiencies remain.

19. **The Philippines is re-rated to compliant with R.29.**

3.2. Progress on Recommendations which have changed since adoption of the MER

Recommendation 15 (Originally rated C)

20. Since the adoption of the Philippines' MER, R.15 has been amended to extend a range of AML/CFT requirements related to virtual assets (VAs) and to virtual asset service providers (VASPs). In its 2019 MER, Philippines was rated C with R.15 with no remaining deficiencies.

21. The Philippines has taken some steps to identify and assess the ML/TF risks relating to virtual assets and VASPs. In 2016, the Philippines undertook an environmental scan of the VASP sector and determined that services involving transfers of VC in or out of fiat currency were of significant ML/TF risk. In 2018, the Philippines undertook strategic analysis and published a report containing comment around predicate offending and ML involving VC. This was based on analysis of CTR and STR reporting by two registered Virtual Currency Exchanges (VCEs). While these steps are welcome and include some content on typologies relating to VASPs, the study primarily focuses on transfers in or out of VC. The study does not consider any unregistered VCEs (who may have since registered) that were operating in

2018, nor risks associated with VASPs that may intentionally operate in the Philippines underground. The Philippines has not sufficiently identified and assessed the full range of ML/TF risks emerging from virtual asset activities and the activities or operations of VASPs.

22. There are scope deficiencies regarding the definition of VCE in the Philippines. Only entities engaging in activities that provide facility for the conversion or exchange of fiat currency to virtual currency or vice versa are declared as financial institutions (FIs) and covered persons. Activities (ii) to (v) of the FATF definition of VASP are not currently subject to AML/CFT requirements in the Philippines. This gap affects compliance with a number of the obligations in the revised R.15.

23. It is noted that the Philippines is currently in the process of amending the coverage of the *Bangko Sentral Ng Pilipinas (BSP) Circular No. 944* which includes the Guidelines for VCEs. The proposed amendments extend the coverage to other types of VASPs that perform virtual asset exchange between one or more forms of virtual assets, transfers of virtual assets and safekeeping and/or administration of virtual assets or instruments enabling control over virtual assets. These amendments are not yet in force.

24. The VCEs that are FIs are declared as money service businesses (MSBs), supervised by BSP and required to comply with all AML/CFT requirements. There are minor deficiencies relating to the application of the wire transfer provisions to VCEs.

25. Noting gaps with the identification and assessment of ML/TF risks and gaps in requirements stemming from the gap in the scope of coverage of natural or legal persons who may be VASPs (arising from the Philippines' narrower definition of VCE), there are moderate deficiencies in the Philippines' implementation of the requirements of the amended R.15.

26. **The Philippines is re-rated to partially compliant with R.15.**

3.3. Brief overview of progress reported on other recommendations rated NC/PC

27. **Recommendation 4** (rated PC) – The MER noted as a deficiency the inability to void or prevent actions that prejudice the Philippines' ability to freeze, seize or recover property subject to confiscation. The Philippines is in the process of addressing this deficiency through amendments to the AMLA. A new unit for asset management was created in 2018, and new asset management guidelines have been approved in January 2020. These developments are welcome progress.

28. **Recommendation 6** (rated PC) – There are pending legislative amendments before the Philippine legislature to address deficiencies related to R.6 (rated PC). These include amendments to the designation mechanism for UNSCRs 1267 and 1373.

29. **Recommendation 7** (rated NC) – Legislative amendments are pending to implement a comprehensive legal framework for targeted financial sanctions against WMD proliferation.

30. **Recommendation 22** (rated PC) – The Philippines has taken the following steps to address deficiencies under R.22 (rated PC):

- The Philippines Amusement and Gaming Corporation (PAGCOR) has issued clarifications to the CDD and record keeping requirements for casinos. CDD requirements are applicable to all casino customer, regardless of type. This includes junket players;
- Proposed legislative amendments to the AMLA will bring real estate brokers in scope of the AMLA as covered persons;

- The 2018 IRR has been amended to require additional measures with regard to family members and close associates of PEPs; and
- Amendments have been made to the third party reliance framework implemented by PAGCOR, such that casinos may only rely on third-party financial institutions and DNFBPs to perform elements of the CDD measures.

31. **Recommendation 23 (rated PC)** – With regard to STR filing, the analysis of R.20 above applies. As also noted under R.22, real estate agents are proposed to be brought in scope of the AMLA as covered persons. Further, amendments have been made to require casinos to apply enhanced measures in line with R.19.

32. **Recommendation 24 (rated PC)** – The Philippines is expecting to complete a risk assessment of legal persons in 2020, addressing a deficiency. The Securities and Exchange Commission (SEC) has also issued new guidelines for all registered domestic corporations to obtain and submit up-to-date beneficial ownership information to the SEC. The information will not be publicly available on SEC's database but it will be made available to competent authorities in a timely manner (as per the SEC Memorandum Circular No. 15, 2019).

33. **Recommendation 28 (rated PC)** – The Philippines has extended the application of the market entry procedures for casinos licenced by PAGCOR. In addition to the board of directors of the licence applicant, fit and proper checks are expected from the applicant's shareholders and beneficial owners owning 20% or more of the casino.

34. **Recommendation 32 (rated PC)** – The Philippines has designated the Bureau of Customs (BoC) as the competent authority with the authority to request additional information from the carrier in cases of a false declaration or a failure to declare.

IV. CONCLUSION

35. The Philippines has made progress to address the technical compliance deficiencies identified in its MER, including through new legislative instruments.

36. The Philippines requested re-ratings in relation to two recommendations (R.20 and R.29), and has made sufficient progress on R.20 to be re-rated from PC to LC, and on R.29 to be re-rated from PC to C.

37. With respect to R.15, which was amended after the MER was adopted, the Philippines has been re-rated to PC. This is due primarily to the insufficient coverage of VASPs in the AML/CFT framework.

38. Overall, in light of the progress made by the Philippines since its MER was adopted, its technical compliance with the FATF Recommendations as follows as of the reporting date (February 2020):

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

39. The Philippines FUR was adopted out-of-session by the APG membership in July 2020. In keeping with the APG third round procedures, the Philippines will remain in enhanced (expedited) follow-up, and will continue to report back to the APG on progress to strengthen its implementation of AML/CFT measures.