



# REPUBLIC OF PERU

FIRST ENHANCED FOLLOW-UP  
REPORT AND TECHNICAL  
COMPLIANCE RE-RATING



January 2020



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## **PERU: FIRST ENHANCED FOLLOW-UP REPORT**

### **I. INTRODUCTION**

1. In accordance with GAFILAT's Fourth Round procedures, Peru's Mutual Evaluation Report (MER) was adopted in 2018 under the framework of the XXXVIII Plenary of Representatives of GAFILAT. This first follow-up report analyses Peru's progress in addressing the technical compliance deficiencies identified in its MER. New ratings are granted when sufficient progress is observed. This report also analyses Peru's progress in implementing the new requirements related to the FATF Recommendations that have changed since the on-site visit to the country<sup>1</sup>: Recommendations 2, 18 and 21. Overall, the expectation is that countries have addressed most, if not all, technical compliance deficiencies before the end of the third year since the adoption of their MER. This report does not address Peru's progress in improving its effectiveness. A subsequent follow-up evaluation will analyse the progress made on effectiveness, which may eventually result in a new rating of the Immediate Outcomes.

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

2. The MER rated Peru as follows in relation to technical compliance:

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

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

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

Source: Peru's Mutual Evaluation Report: <https://www.gafilat.org/index.php/es/biblioteca-virtual/miembros/peru/evaluaciones-mutuas-14/3284-informe-de-evaluacion-mutua-del-peru/file>

3. Considering the MER results, GAFILAT placed Peru under the enhanced follow-up process<sup>2</sup>. The Executive Secretariat of GAFILAT evaluated Peru's request for a new technical compliance rating and prepared this report.

<sup>1</sup>The on-site visit took place from May 21 to June 1, 2018.

<sup>2</sup> The regular follow-up is the default monitoring mechanism for all countries. The enhanced follow-up process is based on the FATF traditional policy that approaches members with significant (technical compliance or effectiveness) deficiencies in their AML/CFT systems, and it involves a more enhanced follow-up process.

4. Section III of this report summarizes Peru's progress in improving technical compliance, as well as the analysis of the FATF Recommendations that have changed since the on-site visit in the country. Section IV, moreover, presents the conclusion and a table showing which Recommendations were re-rated.

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

5. This section summarises Peru's progress in improving its technical compliance by:

- (a) Addressing the technical compliance deficiencies identified in the MER, and
- (b) Implementing the new requirements in cases where the FATF Recommendations have changed since the on-site visit to Peru.

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

6. Peru made progress in addressing its technical compliance deficiencies identified in the MER in relation to Recommendations 24, originally rated PC.

7. As a result of this progress, Peru was re-rated in relation to Recommendation 24.

#### *Recommendation 24 - (originally rated Partially Compliant – re-rated Largely Compliant)*

8. Peru's Mutual Evaluation Report (MER) established the following deficiencies in relation to R.24: 1. There are no mechanisms in place to ensure that information is updated in a timely manner. 2. The current legislation does not provide for the recordkeeping obligation, nor does it provide for proportionate and dissuasive sanctions for legal or natural persons who fail to comply with the relevant provisions. 3. The country does not have mechanisms to monitor the quality of assistance it receives from other nations in response to requests for basic and beneficial owner (BO) information or requests for assistance in locating BOs residing abroad.

9. With respect to the deficiency identified in criterion 24.1, Peru has approved Legislative Decree No. 1372, which was published on August 2, 2018, and its purpose is to regulate the obligation of legal persons to inform the SUNAT about the identification of their BO. (Article 1). It also approved the Regulations of Legislative Decree No. 1372, through Supreme Decree No. 003-2019-EF, published on January 8, 2019.

10. In this regard, Article 4.1 of the abovementioned Decree establishes the criteria for the determination of the BO of legal persons and quotes:

a) The natural person who, directly or indirectly, through any form of acquisition owns at least 10% of the capital of a legal person. Legal persons should report on the BO indicating the participation percentages in the capital of the legal person.

The information relating to the chain of ownership in cases where the BO is so indirectly is included in this subparagraph.

b) A natural person who, acting individually or with others as a decision-making unit, or through other natural or legal persons, has the power, by means other than ownership, to appoint or remove most of the administrative, management or supervisory bodies, or has decision-making power in the financial, operational and/or business agreements adopted, or exercises other form of control of the legal person.

Information relating to the chain of control is included in this subparagraph in cases where the BO is so by means other than ownership.

c) When no natural person is identified under the criteria indicated in subparagraphs a) or b), the natural person occupying the higher administrative position shall be considered as BO.

11. In addition, the same Decree states that for purposes of fighting against ML/TF, RIs shall apply the criteria and due diligence procedure to identify the BO in accordance with the provisions of Law 27693 and its regulations, as well as the rules issued by the SBS and the SMV, within the scope of their competencies. (Article 5).

12. In addition, under Article 6.1 of the aforementioned Decree, legal persons are required to implement an internal procedure that includes reasonable mechanisms for obtaining and retaining information on the identification of their BO. Information is understood to be adequate if it is sufficient, relevant and valid to support identification; and accurate if it is concrete, unequivocal and unambiguous.

13. Articles 6.2.a and 6.2.b of the same Decree establish that legal persons should adopt the following mechanisms:

a) Properly identify and validate the BO. To this effect, all persons who qualify as BO are required to disclose their identity to legal persons, as appropriate, as well as provide their names, surnames, identity document type and number, place of residence and other data established by Supreme Decree.

b) Access and keep available adequate, accurate and updated information on the identity data of the BO and other data established by Supreme Decree and regulatory standards, for which the BOs provide supporting and updated information of their status as such to legal persons and inform any change in their status.

14. In this sense, Article 8.1 of its Regulations establishes that in accordance with the paragraphs mentioned above (in relation to Article 6 of the Decree), the BO should provide legal persons with the supporting information and documentation on their identification that proves their condition as such.

15. In addition, Article 7 of the Regulations establishes the mechanisms that legal persons should adopt to obtain and keep updated information related to the BO:

a) In order to access the identification of the BO, they should implement the form, in which BOs should enter their identification data (...), and for which purpose they should consider the criteria of ownership and control provided in Articles 5 and 6, as appropriate. The aforementioned form may be physical, in which case it should have the signature of the BOs certified by a notary or consular authority, or be recorded in other media, provided that these allow the BO to be reliably identified in accordance with the provisions of the SUNAT through a superintendence resolution; likewise, it should be kept in the terms provided in paragraphs 7 and 8 of Article 87 of the Tax Code.

b) Communicate to the natural person in respect of whom there are reasonable grounds for believing that he or she is a BO, so that he or she presents the form referred to in subparagraph (a) of the preceding paragraph.

c) Without prejudice to the fact that the natural person that qualifies as BO complies or does not comply with the aforementioned form, the legal person is under the obligation to provide information on its BO to the SUNAT.

d) Validate the information and/or documentation provided by the BO referred to in subparagraph a) with the information contained in the registers or databases of the National Registry of Identification and Civil Status (RENIEC), the National Superintendence of Public Registries (SUNARP), the Superintendence of Banking, Insurance and Pension Fund Administrators (SBS), and with the data of the RUC that appears on the SUNAT website, among other sources of information.

e) In order to keep available adequate and accurate information of the BO, they should file and keep the documentation provided by the BO to support and/or prove their condition (...)

f) In order to keep the information of the BO up to date, a continuous follow-up on the identification of the BO should be carried out.

To this end, it should update the documentation of the BO at least at the end of each fiscal year<sup>3</sup>; without prejudice to the obligation to declare to the SUNAT the changes of the BO in accordance with the provisions of article 9.

g) Record and/or annotate the information of the BO, in the event that it has the condition of partner, shareholder or participant in the books and/or records that, in accordance with the legislation of the matter, they are required to keep.

16. In addition, Article 9 of the Regulations also indicates the obligation of legal persons to update all information on BO, particularly, numeral 1 refers that information updates should be submitted to the SUNAT through a new declaration within a period of thirty (30) working days from the day following the date of submission of the forms referred to in Articles 7 and 8.

17. In turn, Article 9 of Superintendence Resolution No. 185-2019/SUNAT establishes that the information declared should be updated within the periods established in Article 9 of the Regulations of the aforementioned Decree. For this purpose, a new declaration should be submitted in accordance with the provisions of Article 6.

18. In the declaration through which the update is made, the period to be considered is the month corresponding to the date on which the BO presents the form or, in its absence, the date of the communication made by legal persons, in accordance with the provisions of Article 9 of the Regulations.

19. Thus, Peru addresses the deficiency identified in the mutual evaluation report relating to criterion 24.1.

20. With respect to the deficiency identified in criterion 24.5, in Peru there are two mechanisms for timely and accurate updating the basic information on corporations:

1. In accordance with the provisions of the General Companies Law (Articles 14 and 16) and the Regulations of the Companies Registry (Article 3), the following basic information on companies is recorded in the registry: The articles of association which include the statute and **its amendments**, the appointment of directors, liquidators or any representative of the company, **their revocation, resignation, modification or substitution**, the establishment of branches and any registrable act related to them, among others.

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<sup>3</sup> The fiscal year starts from January 1 to December 31 each year; therefore, the closure is set on December 31 of each year.

The registration of these acts (which includes their updates), in accordance with Article 16 of the aforementioned law, should be requested from the Registry within a period of thirty (30) days from the date of execution of the act or approval of the act in which the respective agreement is recorded. And in this sense, according to the provisions of Article 18, the grantors or administrators, as the case may be, are jointly and severally liable for the damages they cause as a consequence of the delay they incur in the granting of public deeds or other instruments required or in the steps necessary for the timely registration of the acts and agreements mentioned in Article 16.

2. Pursuant to Legislative Decree No. 1427, which regulates the extinction of a company due to prolonged inactivity, there is the possibility of extinguishing a company, among other cases, for not registering corporate acts in the Registry of Legal Persons of the SUNARP for a certain period of time, which may occur in two ways: 1) By means of an ex officio procedure, at the expense of the registry, in those companies whose preventive entry due to an alleged prolonged inactivity<sup>4</sup> has elapsed for a period of 2 years (Article 10); or, 2) By means of a procedure at the request of the same company when the latter has 3 years of registration inactivity. It should be pointed out that the second case will only be valid during the year 2020, as required by the Single Transitory Complementary Provision of Legislative Decree No. 1427.

21. Thus, Peru addresses the provisions of criterion 24.5.

22. With respect to the deficiency identified in criterion 24.6, Article 6.1 establishes that, in order to ensure access and availability of adequate and precise information on the BO, legal persons should implement an internal procedure that includes reasonable mechanisms to obtain and maintain information on the identification of their BO. It should be understood that information is adequate if it is sufficient, relevant and valid to support identification; and accurate, if it is concrete, unequivocal and unambiguous.

23. In addition, Article 6.2.b of the same Decree establishes that legal persons should access and keep available adequate, accurate and updated information on the identity data of BOs and other data established by Decree, for which the latter provide supporting and updated information on their status as such to legal persons, as appropriate; and inform any change in their condition.

24. In this regard, Peru has addressed the corresponding provisions of criterion 24.6.

25. With regard to the deficiency identified in criterion 24.7, pursuant to Articles 6.2.b and 7.1.e, 8 and 9 of Supreme Decree No. 003-2019-EF of the Legislative Decree, BOs should provide the legal person with all supporting and updated documentation, and report any change in its status, which should be filed and kept, in order to ensure that its BOs' information is accurate.

26. Likewise, legal entities, in order to keep their BO information up to date, perform a continuous follow-up, and should update the documentation at least at the end of each fiscal year,<sup>5</sup> without prejudice to declaring before the SUNAT the changes in the BO (Articles 6.3.b of Legislative Decree No. 1372 and 7.f and 8 of Supreme Decree No. 003-2019-EF). The update of the information on the BO is communicated to the SUNAT, pursuant to article 9 of Supreme Decree No. 003-2019-EF.

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<sup>4</sup> Article 6.1 of Legislative Decree No. 1427 published on September 2018: The SUNARP automatically extends the preventive entry for alleged prolonged inactivity in the registry entries of companies that have not registered any corporate act within ten (10) years and that have not been registered in the RUC or that are registered in the RUC, have not filed determinative returns with the SUNAT within six (6) years, or in the case of withholding agents or tax collectors within ten (10) years, or in the case of informative returns within four (4) years, do not have a pending tax debt or audit, claim, appeal, contentious-administrative claim, amparo or any other procedure related to the tax debt in progress.

<sup>5</sup>The fiscal year starts from January 1 to December 31 each year; therefore, the closure is set on December 31 of each year.

27. The SUNAT (as well as the SBS and the SMV) may require the persons or legal entities the necessary information to corroborate the identification of the BO and other data of these, including the supporting documentation, and there is an obligation to provide it and / or allow timely access [art. 6, paragraph 6.3, subparagraph d) and art. 8, paragraph 8.2 of Legislative Decree No. 1372].
28. Additionally, all public entities are obliged to meet the requirements made by SUNAT (as well as SBS and SMV) to corroborate the information provided by the BO of persons or legal entities [art. 7, first paragraph of Legislative Decree No. 1352].
29. On the other hand, lawyers and accountants when they act, among others, as business owners, partners, shareholders, participationists, legal representatives, proxies, administrators, directors, cannot refuse to provide information related to the identification of the requested beneficiary by SUNAT (as well as SBS and SMV) [Third Final Complementary Provision of Legislative Decree No. 1372].
30. Likewise, notaries are required to include in the introduction of the Public Deeds the identification data of the BO of the persons or legal entities involved in the legal act [art. 54, subparagraph e, of Legislative Decree No. 1049, Law of Notaries].
31. The SUNAT, within the framework of its oversight function, which includes inspection, investigation and control, is empowered to carry out actions and procedures to control compliance with the obligation to declare information on the BO, and no person or entity, public or private, can refuse to provide the requested information [art. 62, first and last paragraph, of the Tax Code].
32. On the other hand, all the administrators are obliged to facilitate said inspection work, and in particular they must comply with certain specific obligations regarding BO [art. 87 of the Tax Code, paragraphs 7, 8 and 15].
33. Provisions of criterion 24.7 are thus complied with.
34. With respect to the deficiency concerning criterion 24.8.a, Article 6.3.d of the Decree establishes that all legal persons should provide and/or allow timely access by competent authorities to BO information, including access to supporting documentation. Competent authorities may require such information as may be necessary to ensure identification of the BO (Articles 3.e and 8, numeral 8.2, of Legislative Decree No. 1372).
35. With regard to criterion 24.8.b, information on BO of legal persons provided to competent authorities by legal, accounting or financial professionals and notaries does not constitute a breach of professional secrecy nor is it subject to confidentiality restrictions (Third Final Complementary Provision of Legislative Decree No. 1372).
36. Likewise, the SUNAT will make available to Notaries Public a virtual access through which they should verify the filing of the sworn statement of the BO, submitted by legal persons. If they become aware of the failure to submit the sworn statement, they should inform the SUNAT. (Article 9 of Legislative Decree No. 1372). Chapter III of Superintendence Resolution No. 185-2019/SUNAT of September 23, 2019 establishes the provisions for Notaries Public in this regard.

37. With regard to criterion 24.8.c, Article 7 of the Decree establishes that Public Administration entities are required to comply with requests for information made by the SUNAT, the SBS and the SMV and other competent authorities, so that they may identify and/or corroborate the information provided by the BOs of legal persons. The SMV and the SBS should provide the SUNAT with the information they have available from the BO referred to in Article 5 so that it may comply with the provisions of paragraph 8.1 of Article 8; they may not oppose any reservation to said duty of information.

38. Provisions of criterion 24.8 are thus complied with.

39. With regard to the deficiency identified in criterion 24.9, in accordance with the first complementary provision amending the Decree, Article 87, numerals 7 and 8 of the Tax Code establishes that the taxpayers have the obligation to store, file and keep books and records, kept manually, mechanized or electronically, as well as documents (...) containing the information of the BO, for five (5) years (...); maintain in operating conditions the systems of electronic programs, magnetic supports and other information storage media used in their applications that include data (...) containing the information of the BO, for five (5) years, and should communicate to the Tax Administration about any event that prevents compliance with such obligation.

40. In this sense, the term of five (5) years is computed from the first (1) of January of the year following the due date of the filing of the corresponding tax obligation.

41. Moreover, Article 2.2 of the same Decree refers that the obligations to identify, obtain, update, declare, keep and provide information on the BO referred to in this Decree are mandatory even when the legal person is under a procedure or agreement of dissolution, liquidation or bankruptcy; in which case, the liquidators or intervenors hold such obligations.

42. It emphasizes that after the extinction or term of duration or termination of the legal person, as appropriate, the term for keeping the supporting documentation of the information on the BO will be that provided in Article 49 of the Code of Commerce, unless a different one established in a special law is applicable.

43. Article 49 of the Code of Commerce provides that traders and their heirs or successors shall keep books, telegrams and correspondence of their general business for as long as it lasts and up to five years after the liquidation of all their businesses and commercial dependencies.

44. Documents concerning specific acts or negotiations may be rendered unusable or destroyed after the expiry of the statute of limitations for the actions arising therefrom, unless there is an outstanding question relating to them directly or indirectly, in which case they must be kept until the end of the proceedings.

45. In this sense, the 5-year term provided for in the Tax Code applies when the legal entity is in operation, which is computed as of January 1 of the year following the date of filing of the BO's affidavit and so forth with each update of the BO information. By contrast, the provisions of Article 2.2 of Decree No. 1372 only apply after the extinction or term of duration or termination of the legal person. Article 49 of the Code of Commerce only applies to such cases.

46. Provisions of criterion 24.9 are thus addressed.

47. With respect to the deficiency related to criterion 24.13, in accordance with the first complementary modifying provision that amends the tables of tax infractions and sanctions I and II of the Tax Code, Article 175 of the Tax Code (amended by Legislative Decree No. 1372) establishes the infractions related to the

recordkeeping obligation. Likewise, Article 177 numerals 2, 3 and 27 list the infractions related to the obligation to allow control by the administration, inform and appear before it.

48. In this regard, Article 180.b of the Tax Code provides that fines may be determined on the basis of a number of factors:

a) UIT: The Tax Unit in force on the date the infraction was committed and, when it is not possible to establish it, the one in force on the date the Administration detected the infraction.

b) IN: Total Net Sales and/or service revenues and other taxable and non-taxable income or net income or gains included in a taxable year.

49. In the case of tax debtors generating third category income under the General Regime and those under the MYPE Tax Regime, the information contained in the fields or boxes of the Annual Tax Return of the fiscal year prior to the commission or detection of the infraction, as applicable, shall be considered, in which the concepts of Net Sales and/or Service Income and other taxable and non-taxable income are included according to the Income Tax Law.

50. For infractions whose sanction is 0.6% of the IN:

- i. Submit other returns or communications that are incomplete or do not reflect reality. (Article 176.4 Tax Code amended by Legislative Decree No. 1372).
- ii. Conceal or destroy assets, books and accounting records, supporting documentation, reports, analysis and background of transactions or situations that (...) contain information from the BO, prior to five (5) years or the end of the statute of limitations of the tax, whichever is greater. (Article 177.2 Tax Code modified by Legislative Decree No. 1372).
- iii. Failure to exhibit or submit supporting documentation for other informative statements for compliance with mutual administrative assistance in tax matters or BO information (...) that support compliance with due diligence procedures, in the form, term and conditions required by the SUNAT. (Article 177.27 of the Tax Code as amended by Legislative Decree No. 1372).

51. For infractions whose sanction is 0.3% of the IN:

- i. Failure to keep books and records kept in a manual, mechanized or electronic system, supporting documentation, reports, analysis and background of transactions or situations that (...) contain information from the BO, for five (5) years or until the end of the statute of limitations of the tax, whichever is greater. (Article 175.7 of the Tax Code as amended by Legislative Decree No. 1372).
- ii. Failure to keep electronic accounting systems or programs, magnetic media, microfiles or other information storage media used in their applications that (...) contain information from the BO, for five (5) years or until the end of the statute of limitations of the tax, whichever is greater. (Article 175.8 of the Tax Code as amended by Legislative Decree No. 1372).
- iii. Failure to keep recorded microform carriers, magnetic media and other information storage media used in applications that (...) contain BO information in operating conditions, when records are made using microfiles or computerized electronic systems or in other information storage media. (Article 177.3 of the Tax Code as amended by Legislative Decree No. 1372).

52. In turn, Article 180.b of the Tax Code, as amended by Legislative Decree No. 1372, refers to sanctions for non-compliance with BO-related obligations:

i) For infractions sanctioned with 0.6% of the IN according to the Tables of Infractions and Sanctions: A fine equivalent to two percent (2%) of the amount entered in the total patrimony box of the Annual Affidavit corresponding to the previous fiscal year, or otherwise, a fine equivalent to one percent (1%) of the amount entered in the Net Assets box of the Annual Affidavit corresponding to the previous fiscal year, which may not be less than 5 UIT (s/21 thousand) nor greater than 50 UIT (s/208 thousand). If zero has been entered or no amount has been entered in these boxes, a fine equivalent to 5 UIT will be applied.

ii) For infractions sanctioned with 0.3% of the IN according to the Tables of Infractions and Sanctions: A fine equivalent to one percent (1%) of the amount entered in the total patrimony box of the Annual Affidavit corresponding to the previous fiscal year, or otherwise, a fine equivalent to half percent (0.5%) of the amount entered in the Net Assets box of the Annual Affidavit corresponding to the previous fiscal year, which may not be less than 3 UIT (s/12 thousand) nor greater than 25 UIT (s/104 thousand). If zero has been entered or no amount has been entered in these boxes, a fine equivalent to 3 UIT will be applied.

53. In this sense, the referred Article of the Tax Code establishes all applicable sanctions (fines) related to the non-compliance with the obligations of the BO based on 0.6% or 0.3% of the IN, establishing its calculation formula; it specifies that in no case may the amount of the fine be less or greater than the amount of the corresponding UIT mentioned above.

54. It is important to mention that for the year 2019, it must be considered that the value of an UIT is S/4,200 (S.D. No. 298-2018-EF), which is equivalent to 1.248 dollars, according to the SBS exchange rate of October 16, which amounts to S/, 3,365.

55. Thus, the deficiency with respect to proportionate and dissuasive sanctions has been addressed as appropriate for any legal person that does not comply with the requirements. However, there is no sanctioning framework for a natural person who does not comply with the requirements.

56. In addition, with regard to sanctions for legal persons that do not comply with the basic information requirements, criterion 24.5 analysed the extinction of a legal person in cases where it does not register corporate acts for a specified period of time (updates). However, there are still no sanctions for non-compliance with the obligations contained in criterion 24.4.

57. With regard to criterion 24.14 c) on using the powers of competent authorities to investigate, in accordance with their domestic laws, to obtain information on the BO on behalf of foreign counterparts, Article 8.1 of Legislative Decree No. 1372 states that information from the BO may be used by the SUNAT, the SBS and the SMV:

a) To comply with mutual administrative assistance in tax matters in accordance with the provisions of international treaties, the decisions of the Commission of the Andean Community and to exchange information among the above institutions in order to comply with the provisions of paragraphs b) to d).

b) For the fulfilment of the functions of control of compliance with tax obligations and fight against tax evasion and avoidance that correspond to the SUNAT.

c) For the fulfilment of the supervisory and financial analysis functions of the SBS.

d) For the fulfilment of the supervisory and control functions of the securities market by the SMV.

58. In accordance with paragraph 392 of the MER, in order to respond to requests for passive judicial assistance on the identification and exchange of basic information and on the BO of legal persons and other legal arrangements, the Public Prosecutor's Office, through the International Judicial Cooperation and Extraditions Unit, requires the SUNARP to provide the necessary information to answer these requests.

59. In addition, according to paragraph TC 390 of the MER, the FIU has the power to share information presumed to be related to ML/TF with competent authorities from other countries. For the purposes of this cooperation, account should be taken of the Technical Manual "Attention and preparation of communications with foreign agencies" No. SBS-MTC-SBS-595-01, approved by SBS Resolution No. 339-2018, which includes within the form of the RIE and CEAX, basic information on legal persons or arrangements, including that of their shareholders.

60. According to the Spanish/English RIE form that is part of the aforementioned manual, the FIU answers contain information from the databases of the National Superintendence of Public Registries (SUNARP) and the National Superintendence of Customs and Tax Administration (SUNAT); and, within the CEAX, according to its Spanish/English form, specific and detailed information on each person and their assets should be included as an annex.

61. Likewise, the SUNARP, pursuant to paragraph e) of Article 18 of Law 26366, may enter into national and international technical cooperation agreements to improve the quality of the registry service. In this sense, based on this provision, as well as the General Administrative Procedure Law, the SUNARP may enter into cooperation agreements with its counterparts abroad to exchange information in its possession.

62. Finally, the basic information of the Registries is available online, through the Online Registry Advertising System (SPRL), which is also accessible to foreign competent authorities.

63. Provisions of criterion 24.14 are thus addressed.

64. With regard to the deficiency identified in criterion 24.15, in accordance with paragraph TC 410 of the MER, the FIU has a feedback form that allows verification of the usefulness, timeliness and suitability of the information. However, there are no provisions to indicate that the other competent authorities have mechanisms to monitor the quality of the assistance received in response to requests for basic and BO information or requests for assistance in locating BOs residing abroad.

65. From the foregoing analysis, it should be noted that Peru has made significant efforts through the approval and publication of Legislative Decree No. 1372 and its Regulations, through which the deficiencies identified in its MER with respect to criteria 24.1, 24.5 to 24.9, 24.13 to 24.15 have been overcome.

66. However, there are still some minor deficiencies who need to be addressed in relation to the lack of a sanctioning framework for natural persons who do not disclose their BO status to legal persons, the lack of sanctions for non-compliance with the obligations contained in criterion 24.4 and that there are no provisions indicating that other competent authorities have mechanisms to monitor the quality of the assistance they receive in response to requests for basic information and on the BO or requests for assistance in locating BOs residing abroad.

67. It is therefore proposed that the rating be raised to **Largely Compliant**.

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

68. As noted in paragraph 1, since the adoption of Peru's MER, the FATF amended the following Recommendations. This section considers the country's compliance with the new requirements.

#### *Recommendation 2 - (originally rated C – not re-rated)*

69. With regard to criterion 2.5, in accordance with the analysis developed in relation to R.2 in the MER of Peru, it was established that the CONTRALAFI assists in the coordination and planning of actions by public and private entities and articulates the efforts targeted to prevent and combat ML, TF and FPWMD.

70. In this regard, paragraph TC 29 of the MER states that in the area of coordination among CONTRALAFI entities, a working group for the development of "Procedures for Information Exchange" was created, composed of the Judiciary, Public Prosecutor's Office (including FISLAAPD), PNP, MINJUSDH, and PRONABI, with the coordination of the SBS (FIU). This group seeks to improve or establish procedures or other mechanisms (conventions, agreements, memoranda and protocols) that allow access to and inter-institutional exchange of relevant and timely information to combat ML/TF.

71. Thus, there do not appear to be any limitations relating to Data and Privacy Protection and other similar provisions that prevent the competent authorities from developing their cooperation and coordination mechanisms in the field of AML/CFT.

72. Therefore, in accordance with the analysis carried out, Peru has the corresponding provisions for cooperation and coordination among competent authorities to guarantee AML/CFT requirements without limitations in relation to Data Protection and Privacy and other similar provisions. It is therefore proposed that the rating be maintained as **Compliant**.

#### *Recommendation 18 - (originally rated Compliant – not re-rated)*

73. Regarding criterion 18.2.b, the MER of Peru stated in paragraph TC 188 that in relation to FIs supervised by the SBS, the MTC, the SMV and the FIU, it is established that the economic groups conformed by companies that are subject to consolidated supervision according to the provisions of the SBS should develop corporate policies and procedures in relation to the SPLAFI, including:

b) Policies and procedures for exchanging information within the group for AML/CFT purposes, establishing adequate safeguards on confidentiality and use of exchanged information (SBS Resolution No. 2660-2015, SBS No. 6089-2016, CONASEV No. 033-2011-EF/94.01.1 and SBS No. 789-2018).

74. Thus, the regulations are broad enough to address the provisions of the amendment to criterion 18.2.b.

5. In relation to criterion 18.2.c, the analysis developed in paragraph TC 188 of the MER with respect to confidentiality safeguards, as well as the analysis of paragraph TC 203 are applicable to what is indicated in the amendment of the referred criterion, with respect to the inclusion of safeguards to prevent tipping-off. This addresses the amendment to criterion 18.2.c. It is therefore proposed that the rating be maintained as **Compliant**.

**Recommendation 21 - (originally rated Compliant – not re-rated)**

76. With respect to criterion 21.2, pursuant to paragraph TC 203 of Peru’s MER, Articles 12 of Law 27693 and 31.1 of Supreme Decree No. 020-2017-JUS, state that FIs, as well as their shareholders, directors, officers, employees, workers or third parties with professional ties, under responsibility, are prohibited from disclosing to any person, entity or agency the fact that any information has been requested and/or provided to the FIU.

77. In that sense, the provisions analysed in the MER mentioned above do not inhibit the exchange of information under R.18.

78. From the above analysis, the provisions analysed in paragraph TC 203 of the MER of Peru do not prevent the exchange of information under R.18 in line with the amendments to criterion 21.2. It is therefore proposed that the rating be maintained as **Compliant**.

**IV CONCLUSION**

79. Overall, Peru demonstrated progress in addressing the Technical Compliance deficiencies identified in its MER and has been re-rated in R.24 from Partially Compliant to Largely Compliant. It also notes that Peru’s regulatory framework is consistent with the amendments to Recommendations 2, 18 and 21 and therefore all have remained unchanged in their Compliant ratings.

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

**Table 2. Technical Compliance Ratings, December 2019**

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

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

Source: Peru Mutual Assessment Report, [[www.gafilat.org](http://www.gafilat.org)].

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