



Anti-money laundering and Counter-terrorist financing measures

MADAGASCAR

10th Enhanced Follow Up Report and Technical Compliance Re-Rating

April 2024

Follow - Up Report





The Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) was officially established in 1999 in Arusha, Tanzania through a Memorandum of Understanding (MOU). As at the date of this Report, ESAAMLG membership comprises of 21 countries and also includes a number of regional and international observers such as COMESA, Commonwealth Secretariat, East African Community, FATF, GIZ, IMF, SADC, United Kingdom, UNODC, United States of America, World Bank and World Customs Organization.

ESAAMLG's members and observers are committed to the effective implementation and enforcement of internationally accepted standards against money laundering and the financing of terrorism and proliferation, in particular the FATF Recommendations.

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MADAGASCAR: 10th ENHANCED FOLLOW-UP REPORT & 3rd REQUEST FOR TECHNICAL COMPLIANCE RE-RATING

I. INTRODUCTION

1. The Mutual Evaluation Report (MER) of Madagascar was adopted by the Task Force and approved by the Council of Ministers in September 2018. According to the Mutual Evaluation Report, Madagascar was Compliant (C) on 4 Recommendations, Largely Compliant (LC) on 9 Recommendations, Partially Compliant (PC) on 15 Recommendations and Non-Compliant (NC) on 12 Recommendations. Out of the 11 Immediate Outcomes (IOs), Madagascar was rated Moderate Level of Effectiveness on I.O. 6 and Low Level of Effectiveness on the remaining others. Details of the MER ratings are provided in the Table 2.1 below. This follow-up report assesses the progress made by Madagascar to resolve the technical compliance shortcomings identified in its MER. In general, countries are expected to have corrected most or all of their technical compliance shortcomings by the end of the third year of follow-up at the latest. This report does not cover the progress made by Madagascar in improving its effectiveness.

II. KEY FINDINGS OF THE MUTUAL EVALUATION REPORT

2. The MER¹ rated the Republic of Madagascar's technical compliance as set out in Table 2.1. In light of these results, the Republic of Madagascar was placed in the enhanced follow-up process²

Table 2.1 Technical compliance ratings³, September 2018

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

¹ Mutual Evaluation of the Republic of Madagascar, September 2018 available at [https://www.esaamlg.org/reports/MER of Madagascar-September 2018.pdf](https://www.esaamlg.org/reports/MER%20of%20Madagascar-September%202018.pdf).

² Enhanced follow-up is based on the traditional ESAAMLG policy for members with significant shortcomings (in technical compliance or effectiveness) in their AML/CFT/CPF systems and involves a more intense follow-up process.

³Four technical compliance ratings are available: compliant (C), largely compliant (LC), partially compliant (PC), and non-compliant (NC).

III. OVERVIEW OF PROGRESS IN TECHNICAL COMPLIANCE

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

3. Since the adoption of the MER in September 2018, the Republic of Madagascar has taken measures aimed at addressing the technical compliance deficiencies identified in the MER. This section of the report summarizes progress made by the Republic of Madagascar to improve its technical compliance by addressing the TC deficiencies identified in the MER.

4. ESAAMLG welcomes the steps that the Republic of Madagascar has taken to improve its technical compliance deficiencies. Following this progress, the Republic of Madagascar has been re-rated to Compliant with Recommendations 11, 12 and 17; Largely Compliant with Recommendations 10, 16 and 40; and Partially Compliant with Recommendation 35.

3.1.1 Recommendation 10 – Customer Due Diligence (Originally rated PC- Re-rated to C)

5. Under the Second Round MER, Madagascar was rated non-compliant with the requirements of Recommendation 10. The identified deficiencies were : a) absence of obligation to implement due diligence measures in all cases provided for in R.10 and for all categories of financial institutions; b) vigilance measures imposed by the law and the instruction do not extend to the identification of the beneficial owner, as defined by the FATF, and to constant vigilance over business relationship; c) absence of specific due diligence measures applicable to legal persons, legal arrangements and life insurance contracts including absence of a risk-based approach; d) in case of suspicion of ML/TF, the law does not allow financial institutions not to fulfill their due diligence obligations when the implementation of these obligations could alert the client.

6. Section Madagascar has revamped its AML/CFT law, Art 12 of the new AML/CFT law prohibits banks and FIs from holding anonymous accounts or account under obviously fictitious names. **Therefore c.10.1 is considered Met.**

7. Article 13 of the AML/CFT law requires (a) reporting institutions to ascertain the identity and address of their customers prior to opening an account or establishing any other businesses. This should be read with Art 17-19 of the CSBF instructions which provides the form and manner to establish the identity of the prospective client and verify the identity. (b) FIs are also required to undertake CDD measures for any transfers (including wire transfers) above 3 million Malagasy Aria (USD 655) as per Art 26 of the CSBF instructions including (c) when carrying out occasional transactions that are wire transfers of that nature. (d) In addition, the Art 17 of CSBF instruction no 001-2023 of 4 July 2023 now provides for the obligation to verify the ID of the customer whenever there is a suspicion of ML/TF. (e) Furthermore, Art 17 of the CSBF instruction n° 001_2022

requires reporting institutions to identify and verify the information when they have doubt about the veracity or relevance of previously obtained data. **Therefore c.10.2 is considered Met.**

8. Articles 13 to 15 requires FIs to ascertain the identity of their clients': for natural persons, by the presentation of a valid (i.e., unexpired) official photo I.D., the ID is verified through the presentation of documents and should verify the identity through appropriate measures having also regards to the risk; for legal persons, by the presentation of the statutes and any document establishing the registration and legal status/personality of the legal person. In both cases, it is specified that a copy of the identification documents must be taken. Moreover, legal persons and legal entities without legal personality are identified by the presentation of the original or a certified copy of any act or official register extract evidencing its name, its legal form and its headquarters. The new AML/CFT Law stipulates that the identification and verification of the identity of occasional clients is to be done in the same way. In addition to the identification of clients, the CSBF has issued an instruction which covers the above requirements and SAMIFIN has issued a Directive N°001 to reporting entities on the specific measures and process on identification and verification of the different types of clients. **Therefore c.10.3 is considered Met.**

9. Art 32 of the Global Directive of the SAMIFIN requires FIs to identify the person acting on behalf of a customer including the powers binding the person acting on behalf of the customer and using the verification mechanisms provided under Art 30 of the same Global Directive. **Therefore c.10.4 is considered Met.**

10. Art 13 of the AML/CFT law requires reporting institution to identify the BO and take appropriate measures to verify the identity of the person and also using a risk-based approach to the relationship. The term BO is defined in the AML/CFT law and is aligned to the definition of the FATF. **Therefore c.10.5 is considered Met.**

11. Art 17 of the CSBF instructions n° 001_2022 requires FIs to identify the customer as well as its beneficial owner as per the CDD measures and obtain the appropriate information on the operation of the accounts which would require to understand the purpose and the nature of the business relationship and any other relevant information that may have an impact on the business relationship. **Therefore c.10.6 is considered Met.**

12. Art 31 of the CSBF instructions no: 006_2007 requires reporting institutions to have: (a) a good understanding at all times of the normal and reasonable transactions carried out on any accounts and they should have systems in place to detect unusual transactions and the monitoring system should be adapted to the risk level. Art 31 above should be read with Art 55 of the AML/CFT Global Directive issued by SAMIFIN which requires reporting entities to understand the characteristics and nature of the transactions including the origin and destination of the funds for the purpose of the transaction and

the identity of the principal, the BO and the beneficiaries; and (b) moreover, CSBF Instruction n° 001_2023 of July 4, 2023: Article 17 now requires reporting institutions to keep the documents, data or information collected as part of the customer identification process up to date and to verify their relevance, by carrying out reviews of existing files, particularly for higher-risk customer categories. **Therefore c.10.7 is considered Met.**

13. Art 29 of the AML/CFT Global Directive issued by SAMIFIN requires reporting institutions to understand the nature of the customer business, which includes legal persons and legal arrangements. Art 29 should be read in conjunction with Art 33 that requires reporting institutions to understand the ownership and control structure of any client. **Therefore c.10.8 is considered Met.**

14. Art 19 of the CSBF instructions n° 001_2022 to be read with Art 32 of the Global Directive N°001 of SAMIFIN requires the identification of the legal person and arrangement of the (a) name, legal form and proof of existence; (b) Art 32 provides for the identification of the legal person and legal arrangement (legal entity that has no legal personality) on the basis of the certified copy of the extract of the legal person that provides for the name and should be read with CSBF Instruction n° 001_2023 of July 4th, 2023 which requires reporting institutions to also obtain the identity of the persons that hold a senior management position; (c) registered office address and perform the verification provided under Art 29 and 30 of the Global Directive N°001 of SAMIFIN. **Therefore c.10.9 is considered Met.**

15. (a) Art 13 of the AML/CFT law requires reporting institution to identify the BO and take appropriate measures to verify the identity of the person and also using a risk-based approach to the relationship. The definition of BO is set out in Art 4 of the AML/CFT law and extends to the natural person who ultimately controls the legal person. (b) Art 40 – 42 requires reporting entities to keep and update all information related to the BO of legal entities on a register and where the reporting entities could not establish or are no longer able to identify the BO they shall refrain or terminate the relationship. In addition, Art 17 of the CSBF Instruction n° 001_2023 of July 4th, 2023, provides for the customer identification to be kept up to date and their relevance must be checked regularly by reviewing existing files, particularly for higher-risk customer categories. (c) Art 19 of the CSBF Instruction n° 001_2023 of July 4th, 2023, requires FIs to verify the identity of the natural person who holds the key management position, where no natural person is identified under (a) and (b) above. **Therefore c.10.10 is considered Met.**

16. Art 29 of the Directive N°001 of SAMIFIN requires FIs to identify the BO or the person in control of a legal arrangement under Art 32 of the same Directive N°001 and review the trust documents in order to ascertain the validity of the trust or any other parties involved in the legal arrangement. Art 19 of the CSBF Instructions n° 001_2023 requires information for the customer's beneficial owner identity verification for legal arrangements. For legal arrangements the reporting institutions is required to identify the

settlor of the trust, the trustee or trustees, the protector, if any, the beneficiaries or class of beneficiaries and any other natural person ultimately exercising effective control over the trust and the identity of persons holding equivalent or similar positions for other types of legal arrangements. **Therefore c.10.11 is considered Met.**

17. Article 16 (f) provides for specific measures applicable to the beneficiaries of life insurance including taking the name of the beneficiary, obtaining sufficient information and ensure that verification of identity occurs at the time of the payout. **Therefore c.10.12 is considered Met.**

18. FIs are required to include beneficiaries of life insurance policies as a relevant risk factor under Art 16(f) of the AML/CFT law in addition to the CDD measures. Art 32 of the CSBF Instruction n° 001_2023 of July 4th, 2023, requires reporting entities to undertake EDD measures on high-risk situations. Moreover, where higher risk situation arose when a legal person or arrangement is involved, the reporting entity is required to take enhanced measures including the identification and verification of the BO of the life insurance contract, at the time of the payment of the benefits. **Therefore c.10.13 is considered Met.**

19. Art 13 of the new AML/CFT law to be read with Art 17 of the CSBF instructions no 001_2022 and Articles 39 to 40 of the Global Directive issued by SAMIFIN requires reporting entities to verify the identity of the customer and beneficial owner before entering a business relationship or conducting transactions for customers. The legal framework does not permit time delay in the verification process and the verification should be completed prior to the start of the business relationship as provided under Art 26 of the CSBF instructions in order to manage the ML/TF risks effectively. **Therefore c.10.14 is considered Met.**

20. This criterion is not applicable since the legal framework does not allow the client to utilize any business relationship prior to verification. **Therefore c.10.15 is N/A.**

21. Art 12 of the AML/CFT Law requires and Art 17 of the CSBF instructions requires reporting institutions to ensure that CDD requirements are applied to existing customers, including their beneficial owners as soon as possible, and at the very least when a significant transaction occurs. These requirements should be applied at appropriate times, based on materiality and risk, depending on the type and nature of the customer, the business relationship, products or transactions involved. Reporting entities must also consider when CDD measures were previously applied and whether adequate data was obtained at that time. **Therefore c.10.16 is considered Met.**

22. Art 57 of the AML/CFT Global Directive by SAMIFIN requires increased vigilance to transactions made by any higher risk customer including PEPs and NPOs. **Therefore c.10.17 is considered Met.**

23. Art 5 of the AML/CFT law requires the application of a risk-based approach based on the risks identified by the country. In addition, Art 16(b) of the same Act puts an obligation on the reporting institution to apply enhanced measures where they suspect or have reasonable ground they are potentially high risks. Although Madagascar legal framework provides for the appropriate CDD measures according to the customer's risk profile before and during the relationship pursuant to Art 17 of the CSBF instructions, there is no provision that allows for simplified measures to be undertaken. **Therefore c.10.18 is N/A.**

24. Art 15 of the new AML/CFT law provides for instance where the FI is doubtful of the customer, the FI is required not to open the account and should terminate the relationship and where applicable report a suspicious transaction, this also includes where CDD measures is not completed to the satisfaction of the FI. In addition, Art 27 of the CSBF Instruction n° 001_2022 provides that where there is a doubt during the verification process of the identity of the BO, the FI should terminate the business relationship and proceed with the declaration of a STR as per Art 27 and 28 of the new AML/CFT law. **Therefore c.10.19 is considered Met.**

There is no provision in the Madagascar AML/CFT framework that allows FIs to omit CDD and file a STR where they form a suspicion of money laundering or terrorist financing, and they believe that the CDD process would tip off the customer. **Therefore c.10.20 is not met.**

Weighting and conclusion

25. Madagascar has addressed the deficiencies identified in Criterion 10.2, 10.7, 10.9, 10.10, 10.11 & 10.13. There is a minor deficiency for measures permitting FIs when suspecting ML/TF to cease the CDD process due to reasonable concern that it will tip off the customer but rather file an STR. *In view of the minor deficiency the Reviewers recommend upgrading the current rating of Recommendation 10 from PC to LC.*

3.1.2 Recommendation 11 – Record Keeping (Originally rated PC – Re-rated to C)

26. Art 17 of the AML/CFT law 2018 requires reporting institutions to maintain all necessary records on transactions, both domestic and international for at least 5 years after the closure of the accounts or termination of the business relationship. **Therefore criterion 11.1 is considered Met.**

27. Art 17 of the AML/CFT law 2018 and Art 121 of the Banking Law 2020-011 requires reporting institutions to keep all records obtained through CDD measures, accounts files and business correspondence and results of any analysis for at least 5 years

following the termination of the business relationship. **Therefore criterion 11.2 is considered Met.**

28. Art 17 of the AML/CFT law requires reporting institutions to keep and make available records to the competent authorities and has to be read with Art 46 of the CSBF Instruction n° 001/2023 of July 4, 2023, now requires reporting institutions to sufficiently record all the information on transactions to enable them to be reconstructed. **Therefore criterion 11.3 is considered Met.**

29. Art 17 of the AML/CFT law 2018 requires FIs to keep all information which also include CDD information and transaction records, this information should be made available rapidly to the competent authorities in Madagascar under Art 18 of the same law and CSBF instruction 001-2023. **Therefore criterion 11.4 is considered Met.**

Weighting and conclusion

30. Madagascar has addressed the deficiencies identified in Criterion 11.2, 11.3 & 11.4. Since there are no remaining deficiencies. *Since there are no outstanding deficiencies, the Reviewers recommend upgrading the current rating of Recommendation 11 from PC to C.*

3.1.3 Recommendation 12 – Politically Exposed Persons (PEPs) (Originally rated PC – Re-rated to C)

31. In the Second Round MER, Madagascar was rated Partially compliant with the requirements of Recommendation 12. The deficiencies noted were; obligations relating to PEPs are not applicable only to credit institutions and money changers; the concept of PEP only refers to new customers; some deficiencies in R.10 (relating to beneficial owners and enhanced supervision) are also applicable under R.12; absence of specific measure applicable to beneficiaries of life insurance contracts.

32. Art 4 provides for the definition of PEP, although, it prescribes a timeline for consider a person as a PEP, a PEP is considered a PEP for the duration of his term and 2 years after the termination of the function or title reporting institutions are required to apply a risk-based approach to this relationship after the termination of this function or title under Art 21 of the CSBF Instruction N°001_2023 on July 4th, 2023. In addition to the CDD measures in relation to foreign PEPs Art 16(b) of the AML/CFT law requires reporting institutions to (a) have appropriate risk management (a) have appropriate risk management systems in place to determine whether the customer or beneficial owner is a PEP; (b) be authorized by senior management prior to establish or continue a business relationship, if the customer is an existing customer; (c) take reasonable measures to establish the source of the assets and origin of funds; (d) ensure ongoing monitoring of

the business relationship. Criterion 12.1(c) is adequately addressed in Article 22 of the CSBF Instructions that requires reporting institutions take all reasonable measures to identify the origin of the assets and funds of customers and beneficial owners of customers identified as PEPs. (d) Art 22 of the CSBF Instruction N°001_2023 on July 4th, 2023, and Art 51bis & 51ter of the SAMIFIN Directive of June 2023 reporting institutions are required to conduct enhanced ongoing monitoring on the relationship at all time. **Therefore, c12.1 is considered Met.**

33. Art 16(b) of the AML/CFT law puts an obligation on reporting institutions to apply the CDD measures on all types of PEPs as defined in the AML/CFT law which is aligned to the FATF standards. The measures applicable for criterion 12.1 also apply for domestic PEPs and persons entrusted with prominent function by an international organisation. **Therefore, c12.2 is considered Met.**

34. Article 16 of the AML/ CFT law adequately addresses the deficiency by removing the limit previously placed on “family members” and now applies to family members and to persons closely associated to them also. In addition, Art 21 of the CSBF instructions N°001_2023 on July 4th requires reporting entities to carry out risk assessment of the relationship and the timeline can be extended beyond the prescribed timeline based on the result of the risk assessment of the business relationship. **Therefore, c12.3 is considered Met.**

The provisions of Article 16(f) to be read with 16 (a) & (b) of the AML/CFT Law adequately address the requirements of c.12.4, in particular, to determine whether the beneficiaries and/or beneficial owner of the beneficiary, are PEPs and to take relevant measures where higher risks are identified, and where applicable to consider making a suspicious transaction report. In addition, Art 21 of the CSBF instructions N°001_2023 on July 4th requires reporting entities to carry out risk assessment of the relationship and the timeline can be extended beyond the prescribed timeline based on the result of the risk assessment of the business relationship. **Therefore, c12.4 is considered Met.**

Weighting and conclusion

35. Madagascar has addressed the deficiencies identified in Criterion 12.1, 12.2, 12.3 & 12.4. Since there are no remaining deficiencies, *the Reviewers recommend upgrading the current rating for Recommendation 12 from PC to C.*

3.1.4 Recommendation 16 – Wire Transfers (Originally rated PC – Re-rated LC)

36. Under its Second Round MER, Madagascar was rated PC on the requirements of this recommendation. The deficiencies noted was that the instruction does not provide

for the case where the payer is a casual customer, absence of obligation regarding beneficiary information and batch transfers, for national transfers, the instruction does not specify how to communicate information on the payer to the competent authorities; the instruction does not prohibit that a transfer is made when information is missing; absence of obligations relating to the intermediary financial institutions and the beneficiary and the funds or securities transfer services.

37. Art 16 (d) of the AML/CFT law to be read with Art 34 of the CSBF instruction n° 001/2022 – CSBF of June 27th, 2022 requires FIs to include accurate information on (a) (i) name of the principal (originator); (ii) originator account number where such account has been used to process the transaction and (iii) the originator address. (b) all the required information about the beneficiary (i) name of the beneficiary and (ii) the beneficiary account number where such an account is used to process any electronic transfer. **Therefore, c16.1 is considered Met.**

38. Art 34 of the CSBF Instruction N° 001_2023 on July 4th requires reporting entities to obtain and keep information on the originator (whether single or in batch wire transfer) for all transfers whether domestic or cross border. In addition, Art 35 of the CSBF instructions N° 001_2023 on July 4th, 2023, of CSBF the reporting institutions or intermediaries have to obtain and record full details of the originator information for cross border wire transfer and the beneficiary of the transfer information including the originator account number. **Therefore, c16.2 is considered Met.**

39. Madagascar does not apply a de Minimis threshold for the requirements of criterion 16.1. **Therefore, c16.3 is N/A.**

40. Art 26 of the CSBF instructions requires reporting entities to identify and verify identification of customers when the institution has a suspicion of ML/TF even for a minor transaction. **Therefore, c16.4 is considered Met.**

41. Art 16 (d) of the AML/CFT law provides for the framework for all electronic transfers in Madagascar. Moreover, Article 36 of the CSBF Instructions reinforces that framework and requires obligated institutions to disclose full information on the originator in the transmission message for domestic transfers. **Therefore, c16.5 is considered Met.**

42. Reporting institutions making the domestic wire transfer order must either include full information on the originator in the message payment form accompanying the transfer, or only include his bank account statement in the message or the payment form by communicating the complete information to the beneficiary institution within 3 working days of receipt of a request. In case the electronic transfer does not contain complete information required by the instructions, the reporting institutions must

request, complete and verify the missing information from the issuing or beneficiary institution and in case the reporting institutions would not obtain this information, they should refrain from carrying out the transfer and inform SAMIFIN. Art 25 of the AML/CFT law provides that reporting institutions (including banks) are required to provide any preserved information within the time limit set in the request to the FIU, competent supervisor and any other relevant authorities. **Therefore, c16.6 is considered Met.**

43. Art 17(2) of the new AML/CFT Law requires reporting entities to keep records of all transactions including originator and beneficiary information carried out by customers for at least 5 years after the execution of the transaction. Moreover, Art 46 of the CSBF instructions requires all documents relating to domestic and cross border transactions including unsuccessful transactions to be kept for a duration of at least 5 years after the closure of the account or termination of the relationship. **Therefore, c16.7 is considered Met.**

44. Art 16(d) of the new AML/CFT law provide that should financial institutions not obtain information about the originator or the beneficiary for any electronic transfers they shall refrain from carrying out the transaction and report it to the Financial Intelligence Unit. **Therefore, c16.8 is considered Met.**

45. Art 16(d) of the AML/CFT law requires FIs acting as intermediaries for cross border transfers to ensure that they hold all originator and beneficiary information of the electronic transfer remain attached to the transfer and take appropriate measures in the event of a failure to do so. **Therefore, c16.9 is considered Met.**

46. Article 46 of the CSBF instructions requires institutions acting as wire transfer intermediaries to documents all information to domestic wire transfers as follows (a) for customer identity documents to be kept at least 5 years after the closure of the account or termination of the relationship; (b)for documents relating to the transactions carried out by clients and reports on the monitoring of the transactions, at least 5 years after the execution of the transaction; (c) for account books, commercial correspondence made by customers and any analysis of customer transactions at least 5 years after the termination of the business relationship. **Therefore, c16.10 is considered Met.**

47. Where a FI is acting as an intermediary FI, it should take reasonable measures to identify all cross-border transfers that lack required originator information or required beneficiary information where the transaction is held through electronically (straight through processing) pursuant to Article 35 of the CSBF instructions n° 001/2022. **Therefore, c16.11 is considered Met.**

48. Art 121 of the Banking Law requires credit institutions acting as intermediary to put in place internal AML/CFT systems which includes appropriate risk-based diligence measures in line with the client profile, activities and nature of transactions and to also identify all information relating to the actual beneficiaries and transactions. Art 34 of the CSBF instructions N°001_2023 on July 4th introduced new obligations for reporting institutions to (a) have risk-based policies and procedures for deciding when to execute, reject or suspend wire transfers that do not contain the required originator or beneficiary information and (b) what appropriate follow-up actions to take. **Therefore, c16.12 is considered Met.**

49. Art 35 of the CSBF instructions N°001_2022 requires beneficiaries FIs acting for wire transfers to ensure that all originator and beneficiary information accompanying the wire transfer is attached to it and take reasonable measures, which includes post-event monitoring or real-time monitoring. **Therefore, c16.13 is considered Met.**

50. Art 34 of the CSBF instructions N°001_2022 requires that for all transfers, the beneficiary FIs must obtain and keep the information relating to the originator of the transfer and to the beneficial owners of the transfers (beneficiary?), called complete information and listed below, and to verify the accuracy of this information. **Therefore, c16.14 is considered Met.**

51. Art 34 of the CSBF instructions N°001_2023 on July 4th requires reporting institutions acting as intermediaries or beneficiaries to be obliged to obtain missing information in respect of a wire transfer. Moreover, the reporting institutions are required to have risk-based policies and procedures for deciding (a) when to execute, reject or suspend wire transfers that do not contain the required originator or beneficiary information and (b) what appropriate follow-up actions to take. **Therefore, c16.15 is considered Met.**

52. Art 30 of the CSBF instructions N°001_2022 requires MVTs operators and their agents to comply with the requirement to record all information of the originator and beneficiary including the origin of the funds and destination as well as purpose of the transactions. **Therefore, c16.16 is considered Met.**

53. Art 16 (d) of the AML/CFT law 2018 requires reporting institutions which controls both the ordering and beneficiary side of the transfer shall (a) take into account all information emanating from the principal and the beneficiary in order to decide if any STR is to be made and (b) make an STR in all the countries concerned by the suspicious electronic transfer, and make available to the FIU all the information about the transaction. **Therefore, c16.17 is considered Met.**

There is no requirement for FIs, in the context of processing wire transfers, to take freezing action and comply with prohibitions from conducting transactions with designated persons and entities, as per obligations set out in the relevant UNSCRs. **Therefore, c16.18 is considered Not Met.**

Weighting and Conclusion

54. The Madagascar has addressed most of the deficiencies in Criterion 16.2, 16.12, 16.15 & 16.17. The minor deficiency remaining is that Madagascar is in the process of implementing the obligations of the relevant UNSCRs 1267 and 1373. In view of the minor deficiency, *the Reviewers recommend upgrading the current rating for Recommendation 16 from PC to LC.*

3.1.5 Recommendation 17 – Reliance on Third Parties (Originally rated PC – Re-rated to C)

55. Art 16(e) of the AML/CFT law requires reporting institutions who relies on third parties FIs and DNFBPs to perform elements of CDD (identification of the customer, identification of beneficial owner, understanding nature of business, establishing whether the customer or beneficial owner is a PEP. The ultimate responsibility for CDD remain with the reporting institution relying on the third party. (a) Reporting institutions must ensure that third parties transmit the relevant CDD information to the FI; (b) reporting institutions are required to take appropriate steps to ensure that copies of identification and verification information is made available from the thirds party request without delay as provided under Art 12 of the CSBF instructions no. 001/2022 of June 27, 2022; (c) Art 16(e) of the AML/CFT law 2018 requires reporting institutions to ensure that the third parties with whom they are engaged are subject to AML/CFT regulations and monitoring and has adequate CDD measures and record keeping requirements. **Therefore, c17.1 is considered Met.**

56. Art 16(e) of the AML/CFT law 2018 to be read with Art 13 of Directive n°001 of SAMIFIN and Art 12 of the CSBF Instructions N°001_2022 on June 27requires reporting entities that intends to rely on a third party that is based in another country, the FI is required not to engage with third parties from high-risk countries and ascertain the adequacy of the CDD obligations are equivalent to Madagascar. **Therefore, c17.2 is considered Met.**

57. Art 11 of the CSBF instructions N°001_2023 on July 4th where reporting institutions relying on third party that are part of the same financial group are required to ensure that appropriate measures are implemented: (a) the group implements CDD and record keeping requirements and AML/CFT programs; (b) the effectiveness of the implementation in (a) is supervised at group level by a competent authority; and (c) the group AML/CFT policies can adequately mitigate high country risk. **Therefore, c17.3 is considered Met.**

Weighting and Conclusion

58. Madagascar has addressed the deficiencies identified in Criterion 17.1, 17.2 & 17.3. *Since there are no remaining deficiencies, the Reviewers recommend upgrading of Recommendation 17 from PC to C.*

3.1.6 Recommendation 35 – Sanctions (Originally rated NC – Re-rated to PC)

59. Under its Second Round MER, the Republic of Madagascar was assessed on the requirements of Rec 35 based on the Anti-Money Laundering Law, 2008 and was rated NC. Under the AML Law there are a range of proportionate and dissuasive sanctions is applicable to credit institutions and insurance companies that are subject to the AML Law. These sanctions do not extend to members of the board of directors or senior management of financial institutions. No financial penalty is provided for regarding electronic money institutions. Penalties for manual money changers are not sufficient, proportionate and dissuasive. No penalties apply to casinos and real estate agents. It is not certain that the existing sanctions apply to violations by lawyers, notaries and accountants regarding their AML obligations. Sanctions for violation of the freezing obligation are not proportionate nor dissuasive

60. Art 39 to 54 of the AML/CFT law 2018 provides for a range of proportionate and dissuasive criminal, civil and administrative sanctions for breaches of AML/CFT requirements to deal with natural or legal persons. (a) *Rec 6. Targeted Financial Sanctions* – Madagascar has not yet implemented a framework for the application of TFS (b) *Rec 8 – Non Profit Organisations* – the Regulators have access to a range of sanctions and NPO would be subject to the same sanction regime as a DNFBP under the AML/CFT law, there are major deficiencies in the regulation of NPOs in Madagascar (c) *Recs 9-23 (Preventive Measures and Reporting)* – The AML/CFT law, SAMIFIN Global Directive and the CSBF Instructions provides for a range of criminal sanctions against non-compliance with obligations related to preventive measures and reporting of suspicious transactions. The AML/CFT Act Art 39-54 provides for a range of proportionate and dissuasive criminal and administrative sanctions available to deal with natural or legal persons that fail to comply with the AML/CFT requirements. **Therefore, c35.1 is considered Partly Met.**

61. Art 39 - 55 of the AML/CFT Law 2018 provides for the sanctions that are applicable to the board members, directors, senior management and is also extended to beneficial owners (Art 39) of FIs and DNFBPs. **Therefore, c35.2 is considered Met.**

Weighting and Conclusion

62. Madagascar has addressed the deficiencies identified in Criterion 35.2. However, there are major deficiencies with regards to implementation of the TFS

requirements with regards to TF and the regulation of NPOs in Madagascar. *In view of the remaining deficiencies, the Reviewers recommend upgrading Recommendation 35 from NC to PC.*

3.1.7 Recommendation 40 – Other form of International Cooperation (Originally rated PC – Re-rated to LC)

63. Under its Second Round MER, the Republic of Madagascar was assessed on the requirements of Rec 40 based on the premises that competent authorities in Madagascar have a legal basis for exchanging information with some of their counterparts and it was rated PC. The Republic of Madagascar enacted the the Law n° 2017-027 on international cooperation in criminal matters. The Republic of Madagascar applied for the re-rating of R.40 based on these amendments. Given this, all the criteria of Rec 40 have been reviewed and where the law has not changed the analysis and the rating remain the same.

64. Madagascar legal and institutional framework allows its authorities to participate in international and regional networks (Interpol, ARINSA, etc.), as well as bilateral cooperation through a number of MoUs. The exchange of information is done upon request and carried out spontaneously. Art 9 of the Law n° 2017-027 on international cooperation in criminal matters allows for a wide range of information to be exchanged with foreign authorities in relation to ML, associated predicate offences and TF. Art 9 & 10 of the Law n° 2017-027 on international cooperation in criminal matters provides that competent Malagasy authorities may, without prior request, communicate information concerning criminal cases to a competent authority of another State, if they believe that this information could help the latter to undertake or to carry out criminal investigations and prosecutions, or bring the latter State to make a request for mutual legal assistance. SAMIFIN, CSBF and the Gendarmerie Nationale have powers to provide the widest range of international assistance and exchange of information to foreign counterparts and, where relevant, to other international organisations on a timely manner. **Therefore, c40.1 is considered Met.**

65. The The LEAs have legal basis to render international assistance and exchange information under Art 2 of the Law n° 2017-027 on international cooperation in criminal matters. SAMIFIN and the CSBF has the legal basis for sharing information under Art 24 of the AML/CFT law of 2018 and Art 94 of the Banking Act. Although most of the MOUs by SAMIFIN requires both signatories to facilitate, transmit and execute request, however, there is no means for requests to be prioritized to ensure timely responses. No information was provided how the other authorities ensure timely execution of requests. **Therefore, c40.2 is considered Partly Met.**

66. There are several treaties signed by the authorities of Madagascar with foreign counterparts or joined organisations/networks e.g., Police (Interpol), SAMIFIN and ARINSA. Art 94 of the Banking law provides for international cooperation by the CSBF. The CSBF has signed MoUs with the Bank of Mauritius and the Banking Commission of Central Africa. **Therefore, c40.3 is considered Met.**

67. Art 10 of the Law n° 2017-027 on international cooperation in criminal matters requires the transmission of the information spontaneously to an authority or a competent authority of a foreign state. However, there is no legal provision for feedback. **Therefore, c40.4 is considered Partly Met.**

68. Madagascar does not prohibit or place unreasonably restrictive conditions for the provision of assistance on grounds such as (a) where the request involves fiscal matters; (b) professional secrecy or confidentiality; (c) the fact that there is an investigation in progress is not sufficient for refusing cooperation to LEAs, except where the provision of information could be detrimental to the conduct of criminal investigation, legal proceedings and prosecution. **Therefore, c40.5 is considered Met.**

69. Madagascar demonstrated that SAMIFIN has controls and safeguards to ensure that information exchanged with it by competent authorities is only used for the sole purpose for which the information was sought or provided, unless prior authorization has been given by the requested or requesting competent authority. Additionally, under the Law n° 2017-027 on international cooperation in criminal matters, any other competent authority cooperation must maintain the confidentiality of the information received through international. **Therefore, c40.6 is considered Met.**

70. Under Art 42 of the Law n° 2017-027 on international cooperation in criminal matters require competent authorities to maintain confidentiality of the information exchanges in the same manner as they would protect domestic information. Art 43 of the same law further reinforces the fact that no one can disclose information requested under MLA, or face prosecution in Madagascar. **Therefore, c40.7 is considered Met.**

71. Art 9 of the Law n° 2017-027 on international cooperation in criminal matters provides that competent authorities of Madagascar may conduct investigations to satisfy MLA. **Therefore, c40.8 is considered Met.**

72. Art 24 of the AML/CFT law 2018 provides that SAMIFIN may exchange information with foreign counterparts on ML, associated predicate offences and terrorist financing. **Therefore, c40.9 is considered Met.**

73. SAMIFIN provides feedback to foreign counterparts upon request and whenever possible, on the use of the information provided, as well as on the outcome of the analysis conducted, based on the information provided. **Therefore, c40.10 is considered Met.**

74. Art 24 of the AML/CFT law 2018 empowers the SAMIFIN to exchange information with foreign counterparts. In addition, Art 25 of the same Act provides for the SAMIFIN to obtain all information required to be accessed for the purposes of discharging its FIU duties. Under the same Article SAMIFIN is empowered to request or have access to information from any regulator, reporting person or LEA. **Therefore, c40.11 is considered Met.**

75. Art 32 of the AML/CFT law 2018 empowers supervisory bodies to cooperate with their foreign counterparts on AML/CFT matters. In addition, Art 94 of the Banking law provides that the CSBF can also carry out joint inspections made upon request by both parties. **Therefore, c40.12 is considered Met.**

76. Art 32 of the AML/CFT law 2018 provides that supervisory authorities may disseminate to domestic or foreign authorities' information related to ML/TF. In addition, Art 94 of the Banking law provides that the CSBF can exchange all information, including information held by FIs, subject to professional confidentiality on a reciprocity basis. **Therefore, c40.13 is considered Met.**

77. Art 32 of the AML/CFT law 2018 empowers supervisory bodies to cooperate with their foreign counterparts on AML/CFT matters. In addition, Art 94 of the Banking law provides that the CSBF exchange information with their foreign counterparts including regulatory information, prudential information, fit and proper. There are no financial groups in Madagascar, however, there are subsidiaries of foreign banks which are regulated and supervised by the CSBF and Art 94 of the Banking law would apply to those subsidiaries. **Therefore, c40.14 is considered Met.**

78. Art 94 of Banking Law provides that the CSBF can carry out inquiries on behalf of foreign counterparts and can carry out joint inquiries by foreign counterparts in Madagascar. **Therefore, c40.15 is considered Met.**

79. Art 94 of the Banking Law requires confidentiality for sharing and disseminating information with other counterparts. Disclosure or dissemination of information or for use for other purposes by foreign counterparts, may be done through authorisation, in writing from the concerned party. **Therefore, c40.16 is considered Met.**

80. Art 7 & 9 of the Law n° 2017-027 on international cooperation in criminal matters provides the powers to LEAs for the exchange of information with their foreign counterparts for intelligence or investigative purposes related to ML/TF and underlying offences. **Therefore, c40.17 is considered Met.**

81. LEAs in Madagascar can use the powers conferred under Art 9 of the Law n° 2017-027 on international cooperation in criminal matters to carry out inquiries and gather information on behalf of foreign counterparts. The Police uses cooperation channels within Interpol and SAMIFIN in ARINSA to initiate investigation and obtain information on behalf of foreign counterparts and the provision of this Art is broad to carry out inquiries and gathering information on behalf of foreign counterparts. **Therefore, c40.18 is considered Met.**

82. Art 15 Law n° 2017-027 on international cooperation in criminal matters provides that LEAs can carry out joint investigations in order to cooperate in an inquiry for the purpose of the request on a bilateral basis. **Therefore, c40.19 is considered Met.**

83. Madagascar permits its competent authorities to exchange information indirectly with non-counterparts. Those requests should be clear and should always include the purpose and on whose behalf the request is made. **Therefore, c40.20 is considered Met.**

Weighting and Conclusion

84. Madagascar has addressed the deficiencies identified in Criterion 40.1, 40.3, 40.10, 40.12 to 40.16, however there are minor deficiencies whereby competent authorities does not have mechanisms for prioritization to ensure timely responses, in addition there are no legal provision for feedback on the assistance received. *In view of the minor deficiencies, the Reviewers recommend upgrading Recommendation 40 from PC to LC.*

IV. CONCLUSION

85. The Republic of Madagascar has made progress in addressing some of the technical compliance deficiencies identified in its MER. Reviewers considered information provided in support of the request for re-rating for Recommendations 11, 12 & 17 from PC to C; the Re-ratings for Recommendations 10, 16 and 40 from PC to LC; the Re-ratings for Recommendations 35 from NC to PC.

86. Considering overall progress made by the Republic of Madagascar since the adoption of its MER, its technical compliance with the FATF Recommendations has been revised as shown in Table 4.1 below.

Table 4.1 Technical Compliance Re-rating, April 2024

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

87. Madagascar will remain in enhanced follow-up and will continue to inform the ESAAMLG of the progress made in improving and implementing its AML/CFT measures.