

Anti-money laundering and counter-terrorist financing measures

Ethiopia

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

April 2022



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ETHIOPIA: 10TH ENHANCED FOLLOW-UP REPORT

I. BRIEF BACKGROUND INFORMATION

1. The Mutual evaluation of Ethiopia was conducted by the World Bank and the mutual evaluation report (MER) was approved by the ESAAMLG Council of Ministers on the 5th of June 2015. This follow-up report (FUR) analyses the progress of Ethiopia in addressing the technical compliance deficiencies identified in its MER. Re-ratings are given where sufficient progress has been made.

II. FINDINGS OF THE MUTUAL EVALUATION REPORT

2. Ethiopia's ratings for technical compliance¹ are as set out in Table 2.1 below. As a result of these ratings, the country was placed under enhanced follow-up.

Table 2.1: MER Ratings, June 2015

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

3. Subsequent to the adoption of the MER, Ethiopia submitted its requests for re-rating and were considered and adopted in September 2018, September 2019

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

December 2020 and April 2021, respectively for Recommendations 1, 2, 6, 7, 8, 14, 19, 24, 28, 32, 33, 34, 36 and 40. The Task Force has so far approved the re-rating of Recommendations 1, 2, 6, 7, 8, 14, 19, 28, 33, 34, 36 and 40. These were published on the ESAAMLG website as shown in Table 2.2 below:

Table 2.2: Technical Compliance Ratings

R.1	R.2	R.3	R.4	R.5	R.6	R.7	R.8	R.9	R.10
C	LC	LC	LC	LC	LC	LC	LC	C	LC
R.11	R.12	R.13	R.14	R.15	R.16	R.17	R.18	R.19	R.20
C	C	C	C	PC	C	C	LC	LC	C
R.21	R.22	R.23	R.24	R.25	R.26	R.27	R.28	R.29	R.30
LC	LC	LC	PC	N/A	LC	C	LC	LC	LC
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	C	LC	LC	LC	PC

4. The assessment of Ethiopia's request for TC re-ratings and the preparation of this report were undertaken by the following experts (supported by the ESAAMLG Secretariat: Joseph Jagada and Mofokeng Ramakhala):

- Zenobia Barry (Namibia)
- Evans Siziba (Zimbabwe)
- Susan Mangori (Botswana)
- Motsisi Mongati (Botswana)
- Erivelto Bastos (Angola)

5. Section III of this report highlights the progress made by Ethiopia and analysis undertaken by the Reviewers in respect of Recommendation 24. Section IV sets out the conclusion and a table showing which Recommendations have been recommended for re-rating.

III. OVERVIEW OF PROGRESS TO IMPROVE TECHNICAL COMPLIANCE

6. This section summarises the progress made by Ethiopia per its request for re-rating in respect of Recommendation 24.

2.1 Recommendation 24- Transparency and beneficial Ownership of Legal Persons: Originally rated PC- Re-rated LC)

7. Under its MER, 2015 Ethiopia was rated Partially Compliant with the requirements of Recommendation 24. The outstanding deficiencies were that, there was absence of clear mechanisms to identify and describe legal persons, processes for creation of those legal persons and for obtaining and recording basic and beneficial ownership information (c 24.1). There had not been assessment of ML/TF risks associated with all types of legal persons (24.2). Register of shareholders did not include all categories of shares (including nature of the associated voting rights)(24.4). The EFIC directive was not applicable to all legal persons, since Article 5 of the Proclamation was not a basis for issuing the Directive (24.8 and 24.9). There was no specification of what powers were available to competent authorities to obtain timely access of basic and BO information (24.10). Bearer shares were also permissible under Ethiopian law (24.11). Requirements under FIC directive were not applicable to all legal persons, since neither Article 5, or Article 30 of the Proclamation were a basis for the Directive (24.13). There was a limitation on whether competent authorities could use their investigative powers, in accordance with their domestic law, to obtain beneficial ownership information on behalf of foreign counterparts (24.14). There were no provisions for a country to monitor the quality of assistance they would receive from other countries in response to requests for basic and beneficial ownership information (24.15).

8. During its 6th FUR it was determined that the following deficiencies were still outstanding; authorities had not provided evidence that the information on 24.1(a) and (b) was publicly available, thus, 24.1 was rated mostly met. In respect of c. 24.2 the FUR found that although Ethiopia had carried out a national risk assessment as well as a targeted assessment of NPOs, it had not conducted a specific focused risk assessment of legal persons thus, c.24.2 was rated **not met**. The deficiency identified in the MER still remained for 24.4. Moreover, the Authorities had not provided a corresponding clause that extended to non-commercial entities and those whose activities were not subject to a business licence, hence 24.8 was rated **partly met**. Again in respect of c.24.9 the problem noted was that the term 'books of a company' seemed to refer only to financial statements (balance sheet and profit and loss statement), based on the contents of the preceding Articles. The Proclamation did not define the words and it was not clear whether the term includes any other 'information and records'. Thus, 24.9 was rated **partly met**. Furthermore, it was noted that Article 5(2) of proclamation no.780/2013 did not specifically mention that competent authorities should have timely access. Thus 24.10 was rated **mostly met**. The deficiency identified in the MER still remained for 24.11. In regards to c.24.13 authorities had not provided information relevant to sanctions against failure to comply with the requirements under this Recommendation. The deficiency identified in the MER still remained for 24.15.

9. In the current FUR, Ethiopia has provided the following website which is intended to make information publicly available: <http://www.motin.gov.et>. However, the requirements for registration of business set out under the link provided by the authorities are not adequate to satisfy the requirements of criterion 24.1. The site does not provide information on the different types, format and basic features of the legal persons which can be created in Ethiopia. The site highlights the process for creating a private limited company and share company, including the

required supporting documents. However, in relation to both of these legal persons, an applicant is instructed to visit the closest service centre in order to complete a form. Since the form is not available on the website, it is not possible to establish whether or not the form requires the applicants to provide information on shareholders, directors and beneficial owners. Due to this deficiency, c.24.1 should remain **mostly met**.

10. The current FUR finds that subsequent to the NRA that was contacted in 2016 Ethiopia has conducted a specific sectoral ML/TF risk assessment of legal persons, first focusing on NPOs (the report was finalised in March 2018) and later on conducted a specific risk assessment focusing on legal persons that engage in business activites (the report was finalised in September 2021). For the legal persons that engage in business activities, it is noted that the assessment team comprised representatives from EFIC, Ministry of trade and industry, Ethiopia Investment Commission, Authentication and Registration Centre and Tana Copenhagen Project. These entities were also used to source relevant information by the team. The team also sourced information from industry players in particular to determine vulnerability. The supervisory authorities and law enforcement authorities information was used mainly to detemine the level of threat of the legal persons. The sectoral risk assessment was finalised in 2021. In order to detemine the vulnerabilities of these types of legal persons the team took into account the structural elements, the cash based business activities, non-face to face and international transactions. The team assessed and rated the ML/TF vulnerabilities of all the business organisations, namely, private limited Companies (PLC), Share companies (SC), Limited Partners (LP), General partners (GP), One Member Private Company (OMPC), Limited Liability Partnership (LLP) and Joint Venture (JV). The team also assessed and rated the ML/TF threat. This was based on the statistics from administrative sanctions and predicate offences convictions and sanctions. There

was no data available to assess LLPs and OMPCs as they had just been introduced in the revised Criminal Code 2021 but were not yet created in Ethiopia. The team concluded that PLC for instance posed the highest threat compared to other types of legal persons. This is because they appear the highest in the administrative sanctions and also appeared highest in criminal convictions on the highest proceeds generating offences such as tax evasion, fraud and corruption. There was no data that linked all these legal persons to TF offence. Thus, their threat to TF offence was rated low. The overall ML risk of legal persons that engage in commercial activities was considered **medium low** and the TF risk was considered **medium low** as well..

11. As noted in paragraph 10 above, Ethiopia did undertake targeted ML/TF risk assessment of the non-governmental organisations in 2016 and the 6th FUR of Ethiopia did consider this targeted risk assessment of the NPOs which addressed both the money laundering risk and terrorist financing risk of the NPO.

12. Based on the foregoing two paragraphs it is considered that Ethiopia has conducted a focused risk assessment on legal persons that engage in business activities as well as other types of legal persons that are not engaged in business namely NPOs, notably referred to as non-governmental organisations in the context of Ethiopia. Based on these risk assessments, Ethiopia has an understanding of vulnerabilities and potential abuse for ML/TF of legal persons that are engaged in business activities, as well as, the non-governmental organisations (NPOs) created in Ethiopia, and has taken determined measures to put in place to mitigate the risks they face. On the basis of this there are no further deficiencies observed. It is considered that a rating of met is warranted for c.24.2.

13. In regards to addressing requirements of c.24.4 Reviewers observed that the relevant Article 274 of Commercial Code 2021, provides that every share company

shall keep a register of shareholders at its head office (head office can also be abroad, Article 85 of the Code). The register shall contain the following:

- (i) The names and address of shareholders
- (ii) Number and numeration of shares
- (iii) Amount paid
- (iv) Date and entry of shares in the register
- (v) Article 313(1) further require that where directors hold shares/debentures in the company, its subsidiary, or in a holding company of which the company is a subsidiary, a register showing the value and number of the shares and debentures owned by the director(s) be kept at head office.
- (vi) The information is also accessible to the public

14. At the time of applying for incorporation/creation of a legal person, the applicant provides a Memorandum and Articles of Association which, among others contain: (1) its company name; (2) the form and status – whether it is a private limited company or public limited company etc; (3) list of initial shareholders; (4) list of initial directors; (5) its registered office. There is however, no requirement to have a company maintain this information. On the other hand, it was considered that the nature of associated voting right is covered during the formation of a company where a Memorandum of Association should contain the form and classes of shares [Art 255(6) of the Code] and the share certificate content has to indicate whether the share is ordinary or preferential. It is considered therefore, that the ordinary shares commonly confer voting rights, giving the shareholder more control over the business. Thus, c.24.4 is considered **mostly met**.

15. In regards to c.24.5, Reviewers noted that in terms of Article 10 of Proclamation 980/2016, any alteration or amendment on commercial organization registration shall be registered with the registering office within 60 days after its

authentication by a notary. This may lead to a longer period being taken before the information is filed with the company registry.

16. It was noted also that Article 72 of the Commercial Code establishes a Central Commercial Register and lays out the role of the Ministry of Trade and Industry in relation to the register. Article 78 of Commercial Code 2021 provides that entries in the Commercial Register shall consist of all principal, subsidiary or complementary registrations, and of all alterations and deletions whereas Article 80 of the Commercial Code 2021 empowers an official in charge of a register to verify accuracy of the statement made by a person applying for registration.

17. Moreover, in terms of Article 90 of the Commercial Code, any registered person shall, within sixty consecutive days from the occurrence of a fact making necessary an alteration in the particulars of registration, apply for the entry to be altered. As noted above, this may lead to a longer period being taken before the information is filed with the company registry. Article 91 of the Commercial Code addresses a trader not a commercial/business organisation but Article 92 of Commercial Code is relevant as it allows for additional entries in respect of business organizations. Article 182 of the Code on the other hand, relates to winding up and dissolution of the business organisation which then has to be cancelled from the commercial register, and it ceasing to have legal personality.

18. Based on the information provided Reviewers note that in terms of Proclamation 980/2016, a notary is responsible to ensure that alterations or amendments made to the commercial organisation registration are accurate through authentication of such information. The registering officer in terms of Commercial Code is empowered to verify accuracy of statement made by a person applying for registration. It was also noted that the Commercial Code 2021 describes processes that

occur when entry is made on the commercial registration. However, what kind of procedure or process is followed when alteration has to take place on the shareholder's register kept by the company is not stated. Thus, c.24.5 is considered **mostly met**.

19. In regards to c.24.8 it is noted that, in terms of Article 341 of the Commercial Code 2021, the Secretary of a company is empowered among others to provide reports and other necessary information promptly to a concerned body. The **concerned body** in the Commercial Code is not defined and in the absence of the definition it makes it difficult for the reviewers to clearly determine if it refers to a competent authority as required under this criterion. It is considered that other necessary information may include basic and available beneficial ownership information. However, the Commercial Code does not explicitly provide that the Secretary should be resident in the country in performing these functions as such, LEA may not promptly access the information from the company, in particular where the Secretary of the company is not a resident of Ethiopia. Furthermore, Article 10(2) of the Proclamation 780/2013 requires FIs and DNFBPs to avail records kept pursuant to the provisions of this proclamation to the Centre and competent authorities. [See also the analysis in R.31 in the Ethiopian MER 2015]. It has also been noted that Ethiopia has identified that administrative measures can be taken to ensure that companies comply with the requirements of criterion 24.8. [See Article 26(11) of Proclamation 980/2016]. The above deficiencies are considered moderate. Thus, c.24.8 is considered partly **met**.

20. In regards to c.24.9, Reviewers have discerned from the provision of the Commercial Code 2021, how the word "books" has been used. Reviewers have considered that the phrase "company books", in Article 491 of the Commercial Code 2021, would ordinarily contain the information on the company shareholders,

officers and/or directors and their physical/residential addresses and any changes to the register including all founding papers of the company as well as resolutions and other correspondence made, to mention but a few. Authorities have also explained that a specific template had been developed by the country to obtain BO information as required by Article 5 of the Proclamation 780/2013. On the other hand, Article 66 of the Commercial Code, 2021 provides for keeping of company accounts which would ordinarily contain financial records. FIs and DNFBPs are required to keep records in terms of Proclamation 780/2013 for at least 10 years after business relationship with the client or customer has ended. However, under the Commercial Code 2021 the obligation to keep books of a company for 10 years, following dissolution of a company, is imposed only on the relevant Government authority. Thus, c.24.9 is considered **mostly met**.

21. In regards to 24.10, Reviewers take the view that “access to the information in a timely fashion” under Art 5(2) of Proclamation 780/2013 is akin to “obtaining access timely”. Therefore, this deficiency is addressed. Thus, c.24.10 is **met**.

22. In relation to criterion 24.11 it is noted that the Commercial Code 2021, requires a bearer share to be registered in the name of the shareholder. The relevant provision states that, *a person who happens to have been issued bearer shares before the coming into effect of this law shall apply to the company having issued bearer shares to convert them for him into registered shares within three years* [Article 267(2) of the Commercial Code 2021]. The fact that bearer shares shall have been converted into registered shares after three years from the time of their existence means that they shall not confer any membership rights after the expiry of this three-year transition period [see Article 267(4) r/w Article 267(2) of the Commercial Code 2021]. Thus c.24.11 is considered **met**.

23. The remaining deficiency on c. 24.13 was to the effect that there was no information on the relevant sanctions for failure to meet the requirements of R. 24. Reviewers note in the current FUR that Article 43 of Procl 847/2014 does not address failure to file annual returns but the failure by a reporting entity to comply with a financial reporting and auditing or directive issued under this proclamation. Thus, the sanction imposed would not be relevant for failure to file annual returns by a legal person. Furthermore, Ethiopia has not indicated whether the sanctions envisaged under Art. 29, 30 and 46 of Procl 980/2016 and under Art 78 of Procl 1113.2019 emanate from breaching or contravening the provisions of Proclamation 847/2014 or not.

24. In regards to failure to keep accurate and up to date information, it was noted that Article 30(1)(c) of Procl 780/2013 criminalises failure to keep accurate and up to date information. Furthermore, such a contravention is punishable with imprisonment for a period of 3 to 5 years and a fine of Birr 5000.00 to Birr 10000 (USD 100 to 200). The punishment appears proportionate and dissuasive for both the company and the legal entity as over and above this a relevant authority may also impose an administrative penalty.

25. Article 29(1)(c) of Procl 980/2016 empowers a relevant authority to suspend a business licence where the business person fails to provide information accurately and timely upon request by a relevant authority. Furthermore, a person who intentionally or by gross negligence fails to provide access to information or records shall be guilty of an ancillary offence and may be imprisoned or fined and an administrative sanction may be imposed upon such a person. The penalties appear proportionate and dissuasive [Article 30(1)(c)(3) and (4) of Proclamation 780/2012]. The shortcoming for c.24.13 thus, relates to absence of evidence on the sanction imposed for failure to file annual returns. . Thus, c24.13 is **considered mostly met**.

26. In addressing deficiencies under criterion 24.15 it was noted that in terms of Article 47 of Proclamation 780/2013, the Ethiopia Financial Intelligence Centre (EFIC) is the Central Authority for MLA on ML/TF. Furthermore, in temrs of Article 14 of the same Proclamation, the EFIS has the power to seek and provide international cooperation with its foreign counter parts on ML/TF and other associated predicate offenses. Based on this power, the EFIS has developed Forms and established mechanisms to monitor the quality of the Basic and BO information being shared with foreign authorities. The EFIC has also entered into MoUs with the Ministry of Trade, Ministry of Justice and other competent authorities to receive and exchange information including basic and BO information. In addition to the EFIS, institutions such as the Ministry of Justice are seeking and providing international cooperation through MLA and the Ministry has its own mechanism to monitor the quality of assistance as part of its case management system.

Thus, c.24.15 is considered **met**.

Weighting and conclusion

27. Ethiopian laws once published can be accessed by members of the public. The process of creating legal persons (business organisations) can to some extent be accessed on the website of the Minsitry of Trade. However, the website does not contain information required in c.24.1(a) and (b) as noted in the analysis of this sub-criterion. It is noted that Ethiopia has undertaken risk assessment of its legal persons that engage in commercial activities (business organisations) in September 2021 and tageted risk assessment for the NPO in the National Risk Assessment of 2016. Although companies in Ethiopia can keep information pertaining to c.24.4 at their registered office, there is no legal requirement to keep information pertaining to c.24.3 at the companies' registered offices. In respecct of c.24.5, it was noted that the period of 60 days allowed to update the Commercial Registry may be too long

resulting, in some instances, limiting competent authorities' access to accurate and updated information. The current FUR addresses deficiencies identified during Ethiopia's 6th FUR in respect of c.24.8 (a) to (c) save that the Commercial Code 2021 does not explicitly provide that the Secretary should be resident in the country in performing the functions under c.24.8(a). Although FIs and DNFBPs are required to keep records in terms of Proclamation 780/2013 for 10 years after ceasing business relationship with the client or customer, the Commercial Code 2021 puts this obligation on the relevant Government Authority. Reviewers have taken the view that "access to information in a timely fashion" under Article 5(2) of Proclamation 780/2013 is akin to "obtaining timely access" to information under c.24.10. Furthermore, it is noted that the Commercial Code 2021 requires bearer shares which used to be allowed in Ethiopia to be registered in the name of a shareholder and that these bearer shares shall not confer any membership rights after the expiry of the three-year transition period. In regards to sanctions Ethiopia has not demonstrated relevant provisions for failure to file annual returns. Finally, Ethiopia has a mechanism to monitor the quality of assistance they receive from other countries in response to requests for basic and beneficial ownership information or requests for assistance in locating beneficial owners residing abroad.

28. Based on the above outstanding minor deficiencies **Recommendation 24 has been upgraded from PC to LC.**

IV. CONCLUSION

29. Overall, Ethiopia has made significant progress in addressing deficiencies in technical compliance identified in its MER in respect of R.24. Given minor shortcomings noted, Recommendation 24 has been upgraded from PC to LC.

30. Considering overall progress made by Ethiopia 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 2022

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

30. Ethiopia will remain in enhanced follow-up given outstanding deficiencies in other Recommendations as well as in the Immediate Outcomes.