



# **Anti-money laundering and Counter-terrorist financing measures**

## **KENYA**

**2<sup>nd</sup> Enhanced Follow Up Report and  
1<sup>st</sup> Technical Compliance 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 21 countries and also includes a number of regional and international observers such as COMESA, Commonwealth Secretariat, East African Community, Egmont Group of Financial Intelligence Units, FATF, GIZ, IMF, SADC, United Kingdom, United Nations, 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.

For more information about the ESAAMLG, please visit the website: [www.esaamlg.org](http://www.esaamlg.org)

This document and/or any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

**This report was approved by the ESAAMLG Task Force of Senior Officials at the April meeting in Lubango, Angola, 2024.**

Citing reference:

ESAAMLG (2024), <i>Anti-money laundering and counter-terrorist financing measures - Kenya, 2<sup>nd</sup> Enhanced Follow-up Report &amp; 1<sup>st</sup> Technical Compliance Re-Rating</i> , , ESAAMLG, Dar es Salaam <a href="http://www.esaamlg.org">http://www.esaamlg.org</a>
---

© 2024 ESAAMLG. All rights reserved.

No reproduction or translation of this publication may be made without prior written permission.

Applications for such permission, for all or part of this publication, should be made to the ESAAMLG Secretariat, P. O. Box 9923, Dar es Salaam-United Republic of Tanzania

Tel: +255 22221350/51

Email: [executivesec@esaamlg.org](mailto:executivesec@esaamlg.org)

## **KENYA: 2<sup>ND</sup> ENHANCED FOLLOW-UP REPORT & 1<sup>ST</sup> REQUEST FOR TC RE-RATING**

### **I. INTRODUCTION**

1. The ESAAMLG evaluated the Anti-Money Laundering and Combating the Financing of Terrorism and proliferation financing (AML/CFT/CPF) regime of the Republic of Kenya under its Second Round of Mutual Evaluations from 31<sup>st</sup> January to 11<sup>th</sup> February 2022. The Mutual Evaluation Report (MER) was adopted by the ESAAMLG Task Force of Senior Officials and the Council of Ministers in September 2022. According to the MER, the Republic of Kenya was Compliant (C) with 2 Recommendations, Largely Compliant (LC) with 1 Recommendation, Partially Compliant (PC) with 26 Recommendations and Non-Compliant (NC) with 11 Recommendations. Out of the 11 Immediate Outcomes (IOs), the Republic of Kenya was rated Moderate Level of Effectiveness on 2 IOs and Low Level of Effectiveness on 9 IOs. Details of the MER ratings are provided in Table 1.1. This follow-up report assesses the progress made by Kenya to address the technical compliance deficiencies identified in its MER. New Technical Compliance (TC) re-ratings are given where sufficient progress has been made. The report does not cover the progress made by the Republic of Kenya in improving its effectiveness.
2. The following experts (assisted by Tirivafi Nhundu, Kennedy Mwai, Vanevola Otieno, Valdane Joao and Bhushan Jomadar from the Secretariat) assessed Kenya's request for TC re-ratings and prepared its follow-up report:
  - Mr Bheki Khumalo (Eswatini);
  - Mrs Abby Dinka (Ethiopia);
  - Mr. Mitleshkumarsingh Roopchand (Mauritius),
  - Mrs. Nomfanelo Kunene (Eswatini);
  - Ms. Phephile Dlamini (Eswatini);
  - Matsebula Babhekile (Eswatini) and
  - Mr. Thomas Mongella (Tanzania).
3. Section III of this report summarises the progress made by Kenya on technical compliance. Section IV sets out conclusions and contains a table of Recommendations for which a new rating has been given.

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

4. The MER<sup>1</sup> rated the Republic of Kenya's technical compliance as set out in Table 1.1. In light of these results, the Republic of Kenya was placed in the enhanced follow-up process<sup>2</sup>

---

<sup>1</sup> Mutual Evaluation of the Republic of Kenya, September 2022 available at <https://www.esaamlg.org/reports/MER of Kenya-September 2022.pdf>.

<sup>2</sup> 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.

**Table 1.1. Technical Compliance Ratings<sup>1</sup> September 2022**

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

### III. OVERVIEW OF PROGRESS IN TECHNICAL COMPLIANCE

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

5. Since the adoption of the MER in September 2022, Kenya has taken measures aimed at addressing the technical compliance deficiencies identified in the MER. This section of the report summarises progress made by Kenya to improve its technical compliance by addressing the TC deficiencies identified in the MER.
6. ESAAMLG welcomes the steps that Kenya has taken to improve its technical compliance deficiencies. Following this progress, Kenya has been re-rated to Compliant with Recommendations 5, 10, 11, 13, 18, 19, 20, 21, 27, 29 and 36; Largely Compliant with Recommendations 23, and 32; and Partially Complaint with Recommendations 6 and 22.

##### 3.1.1 Recommendation 5 – Terrorist Financing Offence (Originally rated PC- Re-rated to C)

7. Under its Second Round MER, the Republic of Kenya was assessed on the requirements of Rec 5 based on the Prevention of Terrorism Act, 2012(POTA). Some amendments have been made to the POTA through the Anti-Money Laundering and Combating of Terrorism Laws (Amendment) Act, 2023 (“AML/CFT (Amendment) Act 2023”). The analysis will show whether the amendments that have been made to POTA, 2012 are consistent with the requirements of R.5.
8. **Criterion 5.1 (Met)-** Section 5 of POTA that criminalizes TF based on Art.2 of the UN Convention for the Suppression of TF (TF Convention) has not changed since the assessment. Thus, *the rating for criterion 5.1 remains Met.*
9. **Criterion 5.2 (Met)-** Section 5 of POTA, 2012 criminalises TF and defines offences relating to the collection of money or other property, and has not changed since the assessment. *Thus, the rating for criterion 5.2 remains Met.*
10. **Criterion 5.2 bis (Met)-** In the MER, the Assessment Team noted that there is no specific offence of financing the travel of individuals to a State other than their own for the purposes of terrorism or terrorist training. Kenya has amended the POTA through the AML/CFT (Amendment) Act 2023 and section 5A now provides for the offence of

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

financing of travel of an individual to a State other than their own for the purposes of terrorism or terrorist training. *Thus, the rating for criterion 5.2 bis is considered Met.*

11. **Criterion 5.3 (Met)**- In the MER, the assessors noted that the definition of “fund” does not include ‘however acquired’ or relate to instruments in any form, including electronic or digital as defined in the FATF Standards. To achieve this, Kenya re-defined the definition of funds under amended Section 2 of the POTA through the amendment of the AML/CFT (Amendment) Act 2023 and now extends to assets which are however acquired or related to instruments in any form, including electronic or digital. Thus, *the rating for criterion 5.3 is considered Met.*
12. **Criterion 5.4 (Met)**- TF offences under Kenyan law occur regardless of whether or not the funds or assets were used to carry out or attempted terrorist acts; or linked to a particular terrorist act (Section 5(2) of POTA, 2012), has not changed since the assessment. Thus, *the rating for criterion 5.4 remains Met.*
13. **Criterion 5.5 (Met)**- In Kenya, it is possible for the intent and knowledge required to prove the offence to be inferred from objective factual circumstances (S. 5(1) of POTA), which has not changed since the assessment. Thus, *the rating for criterion 5.5 remains Met.*
14. **Criterion 5.6 (Met)**-A natural person convicted of TF can be sentenced to a term of imprisonment of not more than 20 years, which is considered proportionate and dissuasive (Section 5(1) of POTA, 2012), which has not changed since the assessment. Thus, *the rating for criterion 5.6 remains Met.*
15. **Criterion 5.7 (Met)**- In the MER, the assessors noted that criminal liability and proportionate, dissuasive sanctions do not apply to legal persons. The only provisions available relate to administrative sanctions. POTA has been amended through the AML/CFT (Amendment) Act 2023 and now section 30H provides for criminal liability and sanctions not exceeding 20 – 30 million shillings (USD 131,500 – 197,266) for legal persons. Thus, *the rating for criterion 5.7 is considered Met.*
16. **Criterion 5.8 (Met)**- Section 5 (1) (c) of POTA creates criminal offences for TF-related activity where a person, directly or indirectly, collects, attempts to collect, provides, attempts to provide or invites a person to provide or make available any property, funds or a service, has not changed since the assessment. Thus, *the rating for criterion 5.8 remains Met.*
17. **Criterion 5.9 (Met)**- Kenya follows an all-offence approach and any offence under any law of Kenya becomes a predicate offence for ML. TF is an offence in Kenya and therefore a predicate offence for ML, and the law has not changed since the assessment. Thus, *the rating for criterion 5.9 remains Met.*
18. **Criterion 5.10 (Met)**- In Kenya, there has been no change to the legal framework concerning the application of TF offences. TF offences apply regardless of whether the defendant was in the same country or a different country from the one in which the terrorist or terrorist organisation is located, or where the terrorist act occurred or will occur (s. 38(2) of POTA). Thus, *the rating for criterion 5.10 remains Met.*

#### ***Weighting and conclusion***

19. The Kenyan Authorities addressed all the deficiencies under Rec 5. *The Reviewers recommend upgrading R 5 from PC to C.*



### 3.1.2 Recommendation 6 –Targeted Financial Sanctions Related to Terrorism and Terrorist Financing (Originally rated NC – Re-rated to PC)

20. The deficiencies in the MER in respect of R.6 were that: Kenya did not have legal or regulatory provisions for the implementation of TFS related to TF and issued Regulations but these were not tabled in Parliament as required by Section 50(4) of POTA. Therefore, assessors concluded that there was no legal basis for Kenya to implement Targeted Financial Sanctions under R.6. The Authorities enacted the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on the Suppression of Terrorism) Regulations, 2023.
21. **Criterion 6.1 (Met)**- In relation to c.6.1(a), Kenya has established the Counter Financing of Terrorism Inter-Ministerial Committee under section 40D of POTA as amended through the AML/CFT (Amendment) Act 2023. Moreover, Section 40E of the AML/CFT (Amendment) Act, 2023 provides that the Committee shall be responsible for implementing resolutions 1267, 1373, 1718 and 1988 including designating persons or entities under the above resolutions in terms of section 40E(2)(a). Thus, *the rating for sub-criterion 6.1(a) is considered Met.*
22. With regard to c. 6.1(b), Section 40E (2) (a) of POTA as amended provides the legal basis for the Counter Financing of Terrorism Inter-Ministerial Committee to identify persons or entities for designation. Section 40E (2) of the POTA as amended in 2023 as read with Regulation 2 of POTA Regulations 2023 clearly defines designated entities under the applicable UNSC Resolutions. Thus, *the rating for sub-criterion 6.1(b) is considered Met.*
23. For c.6.1(c), Regulation 5 (1) of POTA, 2023, allows Kenya to apply an evidentiary standard of proof of “reasonable grounds” or “reasonable basis” when deciding whether or not to propose designation. Such a proposal is not conditional upon the existence of any criminal proceeding (Regulation 5 (2) of POTA). Thus, *the rating for sub-criterion 6.1 (c) is considered Met.*
24. In relation to c.6.1(d), Regulation 5 (3) (a) of POTA, 2023, provides the procedure for listing, and therefore, it has to be in line with the standard forms for listing, as adopted by the relevant Committee (the 1267/1989 Committee or 1988 Committee). Thus, *the rating for sub-criterion 6.1 (d) is considered Met.*
25. With regard to c.6.1(e), Regulation 5 (3) (b) (i) of POTA, 2023, requires Kenya to provide as much relevant information as possible on the proposed name. Moreover, a statement of the case contains as much detail as possible based on the listing (Regulation 5 (3) (b) (ii) of POTA, 2023). Regulation 5 (3) (b) (i) of POTA, also requires Kenya to specify whether its status as a designating state may be made known. Thus, *the rating for sub-criterion 6.1(e) is considered Met.*
26. **Criterion 6.2 (Met)**- In relation to c.6.2(a), the Counter Financing of Terrorism Inter-Ministerial Committee is the Competent Authority for designating persons or entities that meet the specific criteria for designation, as outlined under the UNSCR 1373 (Section 40E(2)(b) of the POTA, as amended through the AML/CFT (Amendment) Act, 2023). Further, section 9 (10) of POTA Regulations, 2023 provides that, the Committee shall compile a domestic list comprising of specified entities under section 3 of the Act.

Therefore, POTA provides a legal basis for the designation to be done under the country's own motion. Thus, *the rating for sub-criterion 6.2 (a) is considered Met.*

27. For c.6.2(b), the National Police Service is responsible for identifying targets for designation, based on the designation criteria set out in UNSCR 1373 (Section 3 (1) of POTA, 2012). Furthermore, the National Police Service recommends to the Cabinet Secretary for matters relating to internal security, and where he is satisfied that there are reasonable grounds to support a recommendation made under subsection (1), declare, by order published in the Gazette, the entity in respect of which the recommendation has been made to be a specified entity. Thus, *the rating for sub-criterion 6.2 (b) is considered Met.*
28. With respect to c.6.2(c), Although the text on Reg. 12(4) provides that the Cabinet Secretary shall, upon receipt of a request under sub-regulation (3) and without delay, submit the request to the Committee for a determination as to whether there are reasonable grounds to designate an entity, the provision of this Regulation is insufficient to empower the Committee to make a prompt determination of whether they are satisfied that the request is supported by reasonable grounds, or a reasonable basis. Thus, the rating for sub-criterion 6.2 (c) is considered **Partly Met**.
29. In relation to 6.2(d) Regulation 9 provides that, the Committee shall compile a domestic list comprising of specified entities under section 3 of the Act. Section 3 of the Act gives a procedure for the designation of specified entities on the basis of reasonable grounds. This is not conditional upon the existence of criminal proceedings. Thus, *the rating for sub-criterion 6.2 (d) is considered Met.*
30. Regarding c.6.2(e), when Kenya requests another country to take action under the UNSCR 1373, Cabinet Secretary is required to circulate the domestic list containing as much identifying information and specific information supporting the designation, that the Committee considers relevant to that other country to take the actions as specified in the request (Regulations 13 of POTA, 2023). Thus, *the rating for sub-criterion 6.2 (e) is considered Met.*
31. **Criterion 6.3 (Met)**- With respect to c.6.3(a), under Regulation 10 (1) (b) of the POTA, 2023, the Counter Financing of Terrorism Inter-Ministerial Committee has the legal basis to collect or solicit information to identify a person an entity that, based on reasonable grounds, or a reasonable basis to suspect or believe, meet the criteria for designation. Thus, *the rating for sub-criterion 6.3 (a) is considered Met.*
32. In relation to c.6.3(b), the Counter Financing of Terrorism Inter-Ministerial Committee has the legal basis, Regulation 10 (2) of the POTA, 2023, to operate ex-parte against a person or entity who has been identified and whose proposal for designation is being considered. Thus, *the rating for sub-criterion 6.3 (b) is considered Met.*
33. **Criterion c.6.4 (Partly Met)**- Regulation 4 of the POTA, 2023, provides a basis for the implementation of targeted financial sanctions without delay. Furthermore, the term 'without delay' is defined as follows: '**Without delay**' means within twenty-four (24) hours of a designation by the United Nations Security Council or its relevant Sanctions Committee (Regulation 1 of the POTA, 2023). The process starts at the Kenyan Mission to the United Nations that has, without delay, to submit to the Ministry responsible for matters relating to foreign Circulation of United Nations 764 Kenya Subsidiary Legislation, 2023 affairs, all designations made by the Security Council and any

sanctions list or other similar list issued in connection therewith (Regulation 4 (1) of the POTA, 2023) sanctions list. Moreover, The Ministry shall, upon receipt of a designation or list under sub-regulation (1), submit such designation or sanctions list to the Cabinet Secretary without delay (Regulation 4 (2) of the POTA, 2023). The Cabinet Secretary or any member of the Committee designated in writing by the Cabinet Secretary for that purpose shall, without delay, upon receipt of the designation or sanctions list under sub-regulation (2), circulate it to the members of the Committee (Regulation 4 (3) of the POTA, 2023). The Committee shall, upon receipt of the designation or sanctions list under sub-regulation (3), circulate the designation or sanctions list without delay to the supervisory bodies, self-regulatory bodies, national security, law enforcement agencies as it may consider necessary, and any other person who is authorized. However, bearing in mind the definition of ‘without delay’ in the POTA Regulations, it means that at each of the above-mentioned stages, the respective competent authorities have up to a maximum of 24 hours within which to transmit the designation to the next stage of the process. While these competent authorities may act with the provisions of the POTA Regulations, it is possible that the cumulative number of hours may exceed 24 hours which is not in compliance with the requirements of c.6.4 which implies that the whole process from the UN to the reporting entities must be implemented without delay i.e. within 24 hours. Thus, *the rating for criterion 6.4 is considered Partly Met.*

34. **Criterion 6.5 (Mostly Met)**- In relation to c.6.5(a), under Regulation 6 (2) of the POTA, 2023, Kenya requires all natural and legal persons within the country to freeze, without delay, and without prior notice, the funds or other assets of designated persons and entities. Thus, *the rating for sub-criterion 6.5(a) is considered Met.*
35. With respect to c. 6.5 (b), the freezing obligation disseminated to all natural and legal persons should extend to: (i) all funds or other assets that are owned or controlled by the designated person or entity, and not just those that can be tied to a particular terrorist act, plot, or threat (Regulation 7 (a) (i) of the POTA, 2023); (ii) those funds or other assets that are wholly or jointly owned or controlled, directly or indirectly, by designated persons or entities (Regulation 7 (a) (ii) of the POTA, 2023); Funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons or entities (Regulation 7 (a) (iii) of the POTA, 2023); and (iv) Funds or other assets of persons and entities acting on behalf of, or at the direction of, designated persons or entities (Regulation 7 (a) (iv) of the POTA, 2023). Thus, *the rating for sub-criterion 6.5 (b) is considered Met.*
36. Regarding c.6.5 (c), Under Regulation 30G of the POTA as amended, Kenyan national or any other person or entity within Kenya shall not make available any funds or other assets, economic resources, or financial or other related services: directly or indirectly, wholly or jointly, for the benefit of designated persons and entities (regulation 30G (a) of the POTA, 2023); for entities owned or controlled, directly or indirectly, by designated persons or entities (regulation 30G (b) of the POTA); and (c) for persons and entities acting on behalf of, or at the direction of, designated persons or entities, unless licensed, authorised or otherwise notified in accordance with the relevant United Nations Security Council resolution (regulation 30G (a) of the POTA). Thus, *the rating for sub-criterion 6.5 (c) is considered Met.*
37. With respect to c.6.5(d), Regulation 4(5) of POTA, 2023 provides a mechanism for the Committee to communicate and provide clear guidance to financial institutions and



other persons or entities, including Designated Non-Financial Businesses and Professions (DNFBPs), that may be holding targeted funds or other assets, on their obligations in taking action under freezing mechanisms. Moreover, the definition of the word without delay is by the procedures. Thus, *the rating for sub-criterion 6.5 (d) is considered Met.*

38. In relation to c.6.5(e), A person who received the designation or sanctions list is required, within twenty hours of detecting the funds and freezing them, to file a suspicious transaction report with the Centre in terms of section 44 of the Proceeds of Crime and Anti-Money Laundering Act, 2009, or in such form as may be specified by the Committee (Regulation 7(1) (b) of POTA). Section 44 of the Proceeds of Crime and Anti-Money Laundering Act, 2009, requires the reporting institution to report all suspicious transactions, including attempted transactions to the Financial Reporting Centre. Moreover, the law defines a reporting institution as a financial institution and designated non-financial business and profession. Thus, *the rating for sub-criterion 6.5 (e) is considered Met.*
39. For c.6.5(f), in terms of Regulation 8 of POTA, 2023, Kenya has adopted measures that protect the right of bona fide third parties acting in good faith who have a claim on the funds or other assets of a designated person. However, it does not protect individuals implementing the obligations of Recommendation 6. Thus, *the rating for sub-criterion 6.5 (f) is considered Partly Met.*
40. **Criterion 6.6 (Met)-** Regarding c.6.6(a), Kenya has publicly known procedures to de-list and unfreeze the funds or other assets of a person or entities that do not, or no longer, meet the criteria for designation, which are contained in Regulation 18 (1) and Regulation 20 of POTA, 2023. Thus, *the rating for sub-criterion 6.6 (a) is considered Met.*
41. As for c.6.6(b), Regulation 16 (1) and (2) of POTA provides for the Counter Financing of Terrorism Inter-Ministerial Committee to consider the request made, and where reasonable grounds exist, revoke the order of designation against the applicant and publish a notice of revocation in the Gazette. Thus, *the rating for sub-criterion 6.6 (b) is considered Met.*
42. In relation to c.6.6(c), where the Counter Financing of Terrorism Inter-Ministerial Committee decides that no reasonable grounds exist to revoke the designation, the Committee shall, within 30 days of receiving the application, instruct the Cabinet Secretary to inform the applicant of its decision (Regulation 16 (3) of POTA, 2023). Moreover, within 60 days of receiving information of the decision referred to in sub-regulation (3), the applicant may apply to the High Court for review of that decision (Regulation 16 (4) of POTA, 2023). Thus, *the rating for sub-criterion 6.6 (c) is considered Met.*
43. With respect to c.6.6(d), the legal framework under regulation 18 (2) of POTA provides that an entity designated under Resolution 1267/1989 (Al-Qaida) or Resolution 1988 may request for his or her de-listing in terms of the guidelines or procedures adopted by the 1988 Committee, including the focal point mechanism established under UNSCR 1730. Thus, *the rating for sub-criterion 6.6 (d) is considered Met.*
44. Regarding c.6.6(e), concerning the designations on the Al-Qaida Sanctions List, regulation 18 (2) of POTA, 2023 provides information about the United Nations Office of the Ombudsperson. The said regulation provides for the steps to be taken by the

designated person and entities about the availability of the United Nations Office of the Ombudsperson, pursuant to UNSCRs 1904, 1989, and 2083 to accept de-listing petitions. Thus, *the rating for sub-criterion 6.6 (e) is considered Met.*

45. With regard to c.6.6(f), Regulation 15 of the POTA, 2023 provides that a designated entity may make an application for delisting that would consequently require the Committee within 24 hrs of delisting to unfreeze the funds or assets of entities or persons with similar names or who had been inadvertently been affected by the freezing and upon verification shows that the person or entity involved is not a designated person or entity. Thus, *the rating for sub-criterion 6.6 (f) is considered Met.*
46. As for c.6.6(g), under Regulation 16 (2) (b) the Counter Financing of Terrorism Inter-Ministerial Committee must publish a notice of revocation in the Gazette and it needs to provide clear guidance to financial institutions and other persons or entities, including Designated Non-Financial Businesses and Professions (DNFBPs), that may be holding targeted funds or other assets, on their obligations to respect the revocation order. Thus, *the rating for sub-criterion 6.6 (g) is considered Met.*
47. **Criterion 6.7 (Met)**- Kenya requires a person to request, in the manner specified by the Committee, to have such funds or part thereof released to cover – Access to frozen funds or other assets. (a) necessary and basic expenses, including payments for rent or mortgage, foodstuffs, monthly family expenses, medicines and medical treatment, taxes, insurance premiums, and public utility charges; (b) expenses exclusively for payment of reasonable professional fees, or reimbursement of incurred expenses associated with the provision of legal services; (c) fees or service charges for routine holding or maintenance of frozen funds or other financial assets or economic resources; (d) necessary for extraordinary expenses provided that such request is assessed by the Cabinet Secretary and if favourably considered, forwarded to the relevant Sanctions Committee for its approval. Thus, *the rating for criterion 6.7 is considered Met.*

#### ***Weighting and conclusion***

48. Kenya has addressed the deficiencies identified in c.6.1, c.6.3, 6.6 and 6.7; mostly addressed the deficiencies in c.6.2 & c.6.5. There are deficiencies in c.6.2 (c), c.6.4. and.6.5 (f). In relation to the implementation of TFS related to TF, the POTA Regulations do not clearly meet the definition of ‘without delay” since at each stage of the implementation process, the competent authorities have a maximum of 24 hours. The cumulative effect of this can potentially be more than 24 hours. Furthermore, the law is insufficient to empower the committee to make a prompt determination of whether they are satisfied that the request is supported by reasonable grounds or a reasonable basis. These are considered moderate deficiencies and therefore *the Reviewers recommend upgrading R.6 from NC to PC.*

### **3.1.3 Recommendation 10 – Customer Due Diligence (CDD) (Originally rated PC – Re-rated C)**

49. Under its Second Round MER, the Republic of Kenya was assessed on the requirements of Rec 10 based on the Prevention of Crime and Anti-Money Laundering Act, 2009 (POCAMLA) and was rated PC. The Republic of Kenya enacted the Proceeds of Crime and Anti-Money Laundering Regulations, 2023 (POCAMLR), and some amendments have been made to the POCAMLA through the Anti-Money Laundering and Combating of Terrorism Laws (Amendment) Act, 2023. The analysis will show

whether the amendments that have been made to POCAMLA through the Anti-Money Laundering and Combating of Terrorism Laws (Amendment) Act, 2023 and the newly enacted POCAMLR, 2023 are consistent with the requirements of R.10.

50. **Criterion 10.1 (Met)**- FIs are prohibited from opening or maintaining anonymous or fictitious accounts in the course of conducting their business as contained in Regulation 13(1) of POCAMLR, 2023. Thus, *the rating for criterion 10.1 remains Met.*
51. **Criterion 10.2 (Met)**- In relation to c.10.1(a), reporting institutions are still required to undertake CDD measures when entering into a business relationship as stipulated in the amended Section 45(1) of POCAMLA and Regulations 14(3) and 14(5)(a) of the POCAMLR, 2023. Thus, *the rating for sub-criterion 10.2 (a) remains Met.*
52. With respect to c.10.2 (b), Regulation 14 (5)(c) of the POCAMLR, 2023 requires reporting institutions to conduct CDD when carrying out all occasional transactions that are wire transfers. Notably, Kenya has adopted a comprehensive approach, as the regulation applies to all wire transfers, without the application of a threshold rule. Thus, *the rating for sub-criterion 10.2 (b) remains Met.*
53. Regarding c.10.2(c), in the MER, the assessors noted that the obligation to verify the originator information for accuracy is not contained in law. To achieve this, Kenya enacted POCAMLR 2023 where under Regulation 14, FIs are required to undertake CDD measures which provides for the CDD measures to include establishing and verifying the particulars regarding the applicant for business. Moreover, Regulation 14 (5)(c) of the POCAMLR, 2023 requires reporting institutions to conduct CDD when carrying out occasional transactions that are wire transfers. Thus, *the rating for sub-criterion 10.2 (c) is considered Met.*
54. In relation to c.10.2(d), in the MER, the assessors noted that the law does not include TF even when reporting suspicious transactions. Sections 2A of POCAMLA as amended through the AML/CFT (Amendment) Act 2023 now extend the scope of POCAMLA to also include TF. Specifically, Regulation 14(5)(d) of the POCAMLR, 2023 requires reporting institutions to conduct CDD measures when there is cause to be suspicious of money laundering and terrorism financing. In addition, Regulation 3 of the POCAMLR, 2023 applies to the preventive measures in respect of AML/CFT. Thus, *the rating for sub-criterion 10.2 (d) is considered Met.*
55. As for c.10.2(e)- reporting institutions are still obligated to conduct CDD measures when there is doubt about the veracity or adequacy of previously obtained customer information, including identification data as outlined in Regulation 14(5)(e) of the POCAMLR, 2023. Thus, *the rating for sub-criterion 10.2 (e) remains Met.*
56. **Criterion 10.3 (Met)**- In the MER, the assessor noted that the law does not require FIs to identify the applicant, nor does it provide for permanent or occasional customers. Section 45(1) (b) of the POCAMLA as amended now requires reporting institutions to identify and verify customers, whether permanent or occasional, by taking reasonable measures to establish their true identity. This involves requiring applicants or customers to produce an official record that is reasonably capable of establishing their true identity. In addition, Regulation 14(2)(a) of the POCAMLR, 2023 requires reporting institutions to identify the customer (natural or legal person or arrangement), whether permanent or occasional, and verify their identity using reliable, independent source documents, data, or information. Thus, *the rating for c.10.3 is considered Met.*

57. **Criterion 10.4 (Met)**- In the MER, the assessors noted that there is no obligation for FIs to verify the identity of a person or verify that the person is so authorised to act on behalf of a customer. To address this, Section 45(3) of the POCAMLA as amended in 2023 now requires reporting institutions to verify that any person purporting to act on behalf of the customer is so authorised and verify the identity of that person. Thus, *the rating for criterion 10.4 is considered Met.*
58. **Criterion 10.5 (Met)**- In the MER, the assessors noted that there is no legal requirement for FIs to identify and verify the identity of a BO and no obligation for the FI to be satisfied that it knows who the BO is. Section 45(4) of the amended POCAMLA in 2023 now provides that where it appears to a reporting institution that an applicant requesting to enter into any transaction, whether or not in the course of a continuing business relationship, is acting on behalf of another person, the reporting institution shall take reasonable measures; - (a) to establish the true identity of the person on whose behalf or for whose ultimate benefit the applicant may be acting in the proposed transaction, whether as trustee, nominee, agent or otherwise; and (b) to identify and verify the identity of the beneficial owner using the relevant information or data obtained from a reliable source. In addition, the definition of beneficial owner is provided in the POCAMLA as the natural person who ultimately owns or controls a customer or the natural person on whose behalf a transaction is being conducted, and includes any natural person who ultimately exercises effective control over a legal person or arrangement which is aligned to the FATF glossary... Thus, *the rating for criterion 10.5 is considered Met.*
59. **Criterion 10.6 (Met)**- FIs are required to understand and, as appropriate, obtain information on the purpose and intended nature of the business relationship as per the now Regulations 14(2)(c) of POCAMLR, 2023. Thus, *the rating for criterion 10.6 remains Met.*
60. **Criterion 10.7 (Met)**- For c.10.7 (a), In the MER, the assessors noted that there is no requirement to scrutinize transactions undertaken throughout the course of a business relationship to ensure that the transactions being conducted are consistent with the financial institution's knowledge of the customer, their business and risk profile, including where necessary, the source of funds. To address this, Regulation 35 (a) of the POCAMLR, 2023 now requires a reporting institution to conduct ongoing due diligence on the business relationship by scrutinising transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the financial institution's knowledge of the customer, their business and risk profile, including where necessary, the source of funds. Thus, *the rating for sub-criterion 10.7 (a) is considered Met.*
61. In relation to c.10.7(b), in the MER, the assessors noted that the laws do not provide for ensuring that documents, data or information collected under the CDD process is kept up-to-date and relevant, by undertaking reviews of existing records, particularly for higher-risk categories of customers. Kenya under Regulation 35 (b) of the POCAMLR, 2023 now requires a reporting institution while conducting ongoing due diligence on the business relationship to ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant, by undertaking reviews of existing records, particularly for higher risk categories of customers. Thus, *the rating for sub-criterion 10.7 (b) is considered Met.*

62. **Criterion 10.8 (Met)**- FIs are required to understand the nature of business, ownership and control structure when performing CDD measures in relation to customers that are legal persons or legal arrangements. (Now Regulation 22(2) of POCAMLR, 2023). Thus, *the rating for criterion 10.8 remains Met.*
63. **Criterion 10.9 (Met)**- In relation to c.10.9(a), Regulation 16 (1) (a) of POCAMLR, 2023 requires reporting institutions to identify and verify a legal person or other body corporate through its registered name. Additionally, Section 45(1A) (b)(i) of the POCAML, as amended in 2023 requires reporting institutions to identify and verify the evidence of registration or incorporation of a legal person. Thus, *the rating for sub-criterion 10.9 (a) remains Met.*
64. With respect to c.10.9(b), Regulation 16(1) (b) and 17(1) (b); (f)]; of POCAMLR, 2023 now contain, the powers that regulate and bind the legal person or arrangement, as well as the names of the relevant persons having a senior management position in the legal person or arrangement []. Legal provisions remain the same. Thus, *the rating for sub-criterion 10.9 (b) remains Met.*
65. Regarding c.10.9(c), Regulation 16(1) (b) and (c)] of POCAMLR, 2023 now provide for the address of the registered office and, if different, a principal place of business.]. The legal provisions remain the same. Thus, *the rating for sub-criterion 10.9 (c) remains Met.*
66. **Criterion 10.10 (Met)**- With respect to c.10.10(a), in the MER, the assessors noted that, for customers who are legal persons, there are no requirements in law for FIs to identify and take reasonable measures to verify the identity of beneficial owners. To address this, Section 45(1A) (b) of the POCAMLA as amended in 2023 as read together with Regulation 16(2) of the POCAMLR, 2023 which now requires a reporting institution to identify and take reasonable measures to verify the identity of beneficial owners through the following information—
- (a) the identity of the natural person (if any) who ultimately holds a controlling ownership interest in a legal person; or
  - (b) to the extent that there is doubt under (a) as to whether the person(s) with the controlling ownership interest is the beneficial owner(s) or where no natural person exerts control through ownership interests, the identity of the natural person(s) (if any) exercising control of the legal person or arrangement through other means; or
  - (c) furthermore, in cases where no natural person is identified in the aforementioned scenarios, the regulation now requires the verification of the identity of the relevant natural person holding the position of a senior managing official.
- Thus, *the rating for criterion 10.10 (a-c) is considered Met.*
67. **Criterion 10.11 (Met)**- In the MER, the assessors noted that the requirement to ensure the identification and verification of any other natural person exercising ultimate effective control over the trust (including through a chain of control or ownership) is not required. In relation to legal arrangements, Regulation 18 (4) of the POCAMLR, 2023, now requires reporting institutions to identify and take reasonable measures to verify the identity of beneficial owners. This involves obtaining information on (a)Trusts: Settlor, the trustee(s), protector (if any), beneficiaries or class of beneficiaries, and any individual exercising ultimate effective control over the trust, either directly

or through a chain of control or ownership. (b) Other legal arrangements: Persons in equivalent or similar positions. Additionally, pursuant to Regulations 22 (1) of the POCAMLR, 2023 reporting institutions are required to identify and verify the natural persons (ultimate beneficiaries) behind every legal person and legal arrangement. Thus, *the rating for criterion 10.11 is considered Met.*

68. **Criterion 10.12 (Met)**- In addition to the CDD measures required for the customer and the beneficial owner, FIs are required to conduct the following CDD measures on the beneficiary of life insurance and other investment-related insurance policies, as soon as the beneficiary is identified or designated [Regulation (20) (1) of POCAMLR, 2023]:
- (a) for a beneficiary that is identified as specifically named natural or legal persons or legal arrangements, taking the name of the person [Regulation (20)(1)(a) of POCAMLR, 2023];
  - (b) for a beneficiary that is a legal arrangement or designated by characteristics or by category such as spouse or children, at the time that the insured event occurs or by other means such as under a will, obtaining sufficient information concerning the beneficiary to satisfy the financial institution that it will be able to establish the identity of the beneficiary at the time of the pay-out [Regulation (20)(1)(b) of POCAMLR, 2023];
  - (c) In the MER the assessors noted that there are no legal provisions in place for the verification of the identity of the beneficiary to occur at the time of the pay-out for both cases above. To address this, Regulation 24(1) of POCAMLR, 2023 now requires financial institutions engaged in life or other investment-related insurance business to conduct additional CDD measures on beneficiaries as soon as they are identified or designated. Specifically, for beneficiaries identified as natural or legal persons or legal arrangements, financial institutions are required to take the name of the person and for beneficiaries designated by characteristics or by category, such as spouse or children, financial institutions must obtain sufficient information to ensure the establishment of the beneficiary's identity and the verification of the identity of the above beneficiaries should occur at the time of payout.

Thus, *the rating for criterion 10.12 is considered Met.*

69. **Criterion 10.13 (Met)**- In the MER the assessors noted that there is no explicit requirement to include the beneficiary of a life insurance policy as a relevant risk factor, instead, enhanced due diligence is generally applicable to persons and entities that present a higher risk to the institution. Also not provided for is the determination of risk posed by a beneficiary as a basis for implementing enhanced CDD measures. To address this, Regulations 14(3) and (4) of the POCAMLR, 2023 now require reporting institutions to include the beneficiary of a life insurance policy as a relevant risk factor in determining the applicability of enhanced customer due diligence measures. Moreover, when it is determined that a beneficiary who is a legal person or a legal arrangement presents a higher risk, reporting institutions are required to take enhanced measures to identify and verify the identity of the beneficial owner of the beneficiary, at the time of payout. Thus, *the rating for criterion 10.13 is considered Met.*
70. **Criterion 10.14 (Met)**- With respect to c.10.14(a), in the MER the assessors noted that the identity does not extend to the BO. Kenya through Regulation 25(3) of POCAMLR, 2023, now requires reporting institutions to verify the identity of both



the customer and beneficial owner before or during the course of establishing a business relationship or conducting transactions for occasional customers. Additionally, Regulation 25(4)(a) of the POCAMLR, 2023, allows for completion of the verification after the establishment of the business relationship, provided that it occurs as soon as reasonably practicable. Thus, *the rating for sub-criterion 10.14 (a) is considered Met.*

71. In relation to c.10.14(b), in the MER the assessors noted that there are no provisions for situations where it is essential not to interrupt the normal conduct of business on verification after the establishment of the business relationship. Kenya through Regulations 25(4)(b) of the POCAMLR, 2023, allows for completion of the verification after the establishment of the business relationship, provided that such delay is deemed essential to avoid interrupting the normal conduct of business. Thus, *the rating for sub-criterion 10.14 (b) is considered Met.*
72. Regarding c.10.14(c), in the MER the assessors noted that there are no provisions for situations where it is essential not to interrupt the normal conduct of business, and where the ML/TF risks are effectively managed. To address this, Regulations 25(4) (b) of the POCAMLR, 2023, allows for completion of the verification after the establishment of the business relationship, provided that the ML/TF risks are effectively managed. Thus, *the rating for sub-criterion 10.14 (c) is considered Met.*
73. **Criterion 10.15 (Met)-** In the MER the assessors noted that FIs are not obliged by law to adopt risk management procedures concerning the conditions under which a customer may utilise the business relationship prior to verification. To address this, Regulation 25(5) of the POCAMLR, 2023, now requires reporting institutions to establish risk management procedures governing the conditions under which a customer may utilise the business relationship before verification. Thus, *the rating for criterion 10.15 is considered Met.*
74. **Criterion 10.16 (Met)-** In the MER the assessors noted that FIs have no obligation to undertake CDD on existing customers or clients on the basis of materiality and risk, or to do so at appropriate times, taking into account whether and when CDD measures have previously been undertaken and the adequacy of data obtained. Kenya through Section 45(2)(2) of the POCAMLA as amended in 2023 now requires reporting institutions to undertake customer due diligence on existing customers or clients on the basis of materiality and risk and taking into consideration the previous due diligence measures conducted on customers and the accuracy of the data collected. Thus, *the rating for criterion 10.16 is considered Met.*
75. **Criterion 10.17 (Met)-** In the MER the assessors noted that the application of enhanced due diligence measures is limited specifically to persons and entities that present a higher risk, thereby failing to provide for any other areas where ML/TF risks are found to be higher. To address this, Regulation 20(4) of the POCAMLR, 2023, now requires a reporting institution to perform enhanced due diligence where the ML/TF risks are higher, requires reporting institutions to conduct enhanced due diligence in cases of a higher risk of money laundering and terrorism financing. Thus, *the rating for criterion 10.17 is considered Met.*
76. **Criterion 10.18 (Met)-** In the MER the assessors noted that Kenyan laws do not have a provision for the application of simplified CDD measures where lower risks have been identified. To address this, Regulation 21 of the POCAMLR, 2023, now provides that

a reporting institution may apply simplified CDD measures where lower risks have been identified, through an adequate analysis of risks by the country or the reporting institutions and where the simplified measures are commensurate with the lower risk factors. Notably, the regulation prohibits the application of simplified CDD measures whenever there is suspicion of money laundering, terrorism financing, proliferation financing, or when specific higher-risk scenarios apply. Thus, *the rating for criterion 10.18 is considered Met.*

77. **Criterion 10.19 (Met)**- In relation to c.10.19(a), Regulation 25 (2) (a) and (b) of POCAMLR, 2023 requires reporting institutions to not open the account, or commence any business relationship or perform the transaction for the customer for which they are unable to take measures to satisfy itself as to their true identity or beneficial ownership. Thus, *the rating for sub-criterion 10.19 (a) remains Met.*
78. With regard to c.10.19(b), Regulation 25 (2) (e) of POCAMLR, 2023 requires reporting institutions to file a suspicious transaction report (STR) for customers for whom they cannot take measures to satisfy itself as to their true identity or beneficial ownership. Thus, *the rating for sub-criterion 10.19 (b) remains Met.*
79. **Criterion 10.20 (Met)**- In the MER the assessors noted that Kenya law overlooks instances where they reasonably believe that performing the CDD process will tip-off the customer and further there are no provisions in place permitting FIs not to pursue the CDD process, and rather file an STR. Kenya through, Regulation 25(6) of the POCAMLR, 2023, now stipulates that notwithstanding the general CDD requirements, where a reporting institution forms a suspicion of money laundering or terrorism financing and reasonably believes that carrying out the customer due diligence process might tip-off the customer, the reporting institution can forego the customer due diligence process. Instead, it is mandated to file a Suspicious Transaction Report. Thus, *the rating for criterion 10.20 is considered Met.*

#### ***Weighting and Conclusion***

80. The Kenyan Authorities addressed all of the outstanding deficiencies identified in the MER- Criteria 10.2, 10.3, 10.4, 10.5, 10.7, 10.10, 10.11, 10.12, 10.13, 10.14, 10.15, 10.16, 10.17, 10.18 & 10.20. *The Review Group recommends upgrading R 10 from PC to C*

#### ***3.1.4 Recommendation 11 – Record Keeping (Originally rated PC – Re-rated to C)***

81. Under its Second Round MER, the Republic of Kenya was assessed on the requirements of Rec 11 based on the Prevention of Crime and Anti-Money Laundering Act, 2009 (POCAML) and it was rated PC. The Republic of Kenya enacted the Proceeds of Crime and Anti-Money Laundering Regulations, 2023 (POCAMLR), and some amendments have been made to the POCAML through the Anti-Money Laundering and Combating of Terrorism Laws (Amendment) Act, 2023. The assessment will show whether the amendments that have been made to POCAML through the Anti-Money Laundering and Combating of Terrorism Laws (Amendment) Act, 2023 and the newly enacted POCAMLR, 2023 are consistent with the requirements of R.11.
82. **Criterion 11.1 (Met)**- In the MER the assessors noted that the law does not specify that the records should be on both international and domestic transactions and the gap on TF may exclude it from the “necessary” records. Kenya through Section 2A & 46 (1)(a) of the AML/CFT (Amendment) Act 2023 now requires FIs to keep all records (related

to ML/TF matters as well), both domestic and international transactions for a period of 7 Years after the transactions have been completed. Thus, *the rating for criterion 11.1 is considered Met.*

83. **Criterion 11.2 (Met)**- In the MER the assessors noted that there being no requirements in place for TF, such records are limited to ML. To address this, Section 2A of the POCAMLA through the AML/CFT (Amendment) Act 2023 now covers records related to TF. FIs are now required to keep all records through CDD measures, account files, and business correspondence and results of any analysis undertaken for at least 7 years following the termination of the business relationship. Or the date of the occasional transaction. Thus, *the rating for criterion 11.2 is considered Met.*
84. **Criterion 11.3 (Met)**- According to S. 46 (3)(a)-(f) of the POCAMLA, FIs shall maintain details that are sufficient to permit the reconstruction of individual transactions so as to provide, if necessary, evidence for the prosecution of criminal activity. This includes details regarding the person(s) conducting the transaction, the documentation used to verify their identity, their address, principal activity, account number, the type and amount of currency involved, and the reporting institution(s) involved in the transaction. Thus, *the rating for criterion 11.3 remains Met.*
85. **Criterion 11.4 (Met)**- In the MER the assessors noted that CDD information and transaction records are not specifically required to be done upon the appropriate authority. To address this, Regulation 42(5) of the POCAMLR, 2023, now requires reporting institutions to ensure that all CDD information and transaction records under the main Act and the regulations are made available swiftly to domestic competent authorities upon appropriate authority. Thus, *the rating for criterion 11.4 is considered Met.*

### **Weighting and Conclusion**

86. The Republic of Kenya has addressed the deficiencies identified in Criterion 11.1, 11.2 and 11.4. Since no deficiencies are remaining, *the Review Group recommends upgrading Rec 11 from PC to C.*

### **3.1.5 Recommendation 13 – Correspondent Banking (Originally rated PC – Re-rated to C)**

87. Under its Second Round MER, the Republic of Kenya was assessed on the requirements of Rec 13 based on the Prevention of Crime and Anti-Money Laundering Act, 2009 (POCAMLA) and was rated PC. The Republic of Kenya enacted the Proceeds of Crime and Anti-Money Laundering Regulations, 2023 (POCAMLR), and some amendments have been made to the POCAMLA through the Anti-Money Laundering and Combating of Terrorism Laws (Amendment) Act, 2023. The analysis will show whether the amendments that have been made to POCAMLA through the Anti-Money Laundering and Combating of Terrorism Laws (Amendment) Act, 2023 and the newly enacted POCAMLR, 2023 are consistent with the requirements of R.13.
88. **Criterion 13.1 (Met)**- In the MER the assessors noted that there are no requirements in place regarding respondent institutions on obligations for gathering information and assessing AML controls and Kenya has no legal provisions requiring FIs to clearly

understand the respective AML/CFT responsibilities of each institution, that is, the correspondent and the respondent institution. Kenya through Regulation 29(1) (a-d) of the POCAMLR, 2023, now requires FIs in relation to cross-border correspondent banking or other similar relationships to (a) gather sufficient information about the respondent institution to fully understand the nature of the respondent's business and to determine from publicly available information, the reputation of the institution and the quality of supervision, including whether it has been subject to ML/TF investigation or regulatory action; (b) assess the respondents' institution's AML/CFT controls; (c) obtain approval from senior management before establishing new correspondent relationships. (d) Regulation 29(1)(e) of the POCAMLR, 2023 requires FIs in relation to cross-border correspondent banking and other similar relationships to clearly understand the respective AML/CFT responsibilities of each institution. Thus, *the rating for criterion 13.1 is considered Met.*

89. **Criterion 13.2 (Met)**- In the MER the assessors noted that the laws do not impose any obligations on FIs with respect to “payable-through accounts”. To address this, Regulation 29(4) (a) & (b) of the POCAMLR, 2023, now provides with respect to ‘payable-through accounts’. FIs should satisfy themselves that the respondent bank: (a) has performed the CDD obligations on its customers that have direct access to the accounts of the correspondent FI; and (b) is able to provide relevant CDD information upon request to the correspondent FI. Thus, *the rating for criterion 13.2 is considered Met.*

90. **Criterion 13.3 (Met)**- In the MER the assessors noted that FIs are not required to satisfy themselves that respondent FIs do not permit their accounts to be used by shell banks. Kenya through Regulation 30(1) of the POCAMLR, 2023, prohibits FIs from entering into or continuing correspondent banking relationships with shell banks. In addition, Regulation 30(2) of the above regulations now requires FIs to satisfy themselves that a respondent FI does not permit its accounts to be used by shell banks. Thus, *the rating for criterion 13.3 is considered Met.*

#### ***Weighting and Conclusion***

91. The Kenyan Authorities addressed the deficiencies identified in criteria 13.1, 13.2 and 13.3. Since there are no outstanding deficiencies, the Review Group *recommends upgrading R 13 from PC to C.*

### ***3.1.6 Recommendation 18 – Internal Controls and Foreign Branches and Subsidiaries. (Originally rated PC – Re-rated to C)***

92. Under its Second Round MER, the Republic of Kenya was assessed on the requirements of Rec 18 based on the Prevention of Crime and Anti-Money Laundering Act, 2009 (POCAML) and it was rated PC. The Republic of Kenya enacted the Proceeds of Crime and Anti-Money Laundering Regulations, 2023 (POCAMLR), and some amendments have been made to the POCAML through the Anti-Money Laundering and Combating of Terrorism Laws (Amendment) Act, 2023. The analysis will show whether the amendments that have been made to POCAML through the Anti-Money Laundering and Combating of Terrorism Laws (Amendment) Act, 2023 and the newly enacted POCAMLR, 2023 are consistent with the requirements of R.18.
93. **Criterion 18.1 (Met)**- In the MER the assessors noted that FIs are not required to formulate, adopt and implement internal control measures regarding ML/TF risks and

the size of the business. In addition, the scope of this requirement does not extend to TF; there is no obligation that screening procedures be in place to ensure high standards when hiring employees; there is no requirement in place for ongoing training of employees on an ongoing basis and the independent audit function is limited to ML. To address this, Section 2A of the POCAML amended through the AML/CFT (Amendment), 203 as read with Regulation 3 of the POCAMLR, 2023, now covers ML/TF/PF. Regulation 11 of the POCAMLR, 2023, requires FIs to adopt and implement programmes against ML/TF based on the ML/TF risks and size of the business which includes having internal controls policies, measures and other relevant procedures including (a) having compliance management arrangement (which also includes the appointment of an MLRO at management level); (b) Regulation 11(b) of the POCAMLR, 2023, require FIs to adopt and implement programmes against ML/TF based on the ML/TF risks and size of the business which includes having internal controls policies, measures and other relevant procedures including screening procedures to ensure high standards when hiring employees; (c) Regulation 11(c) of the POCAMLR, 2023, requires FIs to adopt and implement programmes against ML/TF based on the ML/TF risks and size of the business which includes having internal controls policies, measures and other relevant procedures including having an ongoing employee training programme. Thus, *the rating for criterion 18.1 is considered Met.*

94. **Criterion 18.2 (Met)**- In the MER the assessors noted that the law does not address the requirements of c.18.2. Kenya through Regulation 28(a) of the POCAMLR, 2023, requires reporting institutions to implement group-wide programmes against ML/TF which shall also apply to all branches and majority-owned subsidiaries of the reporting institutions in addition to the measures required for ML/TF programmes under Regulation 11 which shall include (a) policies and procedures for sharing information required for the purposes of CDD and ML/TF risk management. Moreover, Regulation 28 (b) of the POCAMLR, 2023 includes (b) the provision, at group-level compliance, audit, or AML/CFT functions, of customer, account, and transaction information from branches and subsidiaries when necessary for AML/CFT purposes which shall include information and analysis of transactions or activities which appear unusual (if such analysis was done), noting that similarly branches and subsidiaries shall receive such information from these group-level functions when relevant and appropriate to risk management; and Regulation 28 (c) of the POCAMLR, 2023, requires implementation of (c) adequate safeguards on the confidentiality and use of information exchanged, including safeguards to prevent tipping-off. Thus, *the rating for criterion 18.2 is considered Met.*
95. **Criterion 18.3 (Met)**- In the MER the assessors noted that, where the host country does not permit the proper implementation of AML/CFT measures, FIs are not required to apply appropriate additional measures to handle the additional ML/TF risks. To address this, Regulation 27 (4) of the POCAMLR, 2023, now requires reporting institutions to ensure that where the host country of their foreign branches and majority-owned subsidiaries does not permit the proper implementation of AML/CFT measures consistent with the measures under the Kenyan AML/CFT laws, the reporting institutions shall apply appropriate additional measures to manage the ML/TF risks and inform the FIC and relevant supervisory body. Thus, *the rating for criterion 18.3 is considered Met.*

### ***Weighting and Conclusion***

96. Kenya addressed the deficiencies identified in Criteria 18.1, 18.2 and 18.3. Since there are no outstanding deficiencies, *the Review Group recommends upgrading Rec 18 from PC to C.*

### ***3.1.7 Recommendation 19 – Higher-Risk Countries. (Originally rated PC – Re-rated to C)***

97. Under its Second Round MER, the Republic of Kenya was assessed on the requirements of Rec 19 based on the Prevention of Crime and Anti-Money Laundering Act, 2009 (POCAML A) and it was rated PC. The Republic of Kenya enacted the Proceeds of Crime and Anti-Money Laundering Regulations, 2023 (POCAML R), and some amendments have been made to the POCAML A through the Anti-Money Laundering and Combating of Terrorism Laws (Amendment) Act, 2023. The analysis will show whether the amendments that have been made to POCAML A through the Anti-Money Laundering and Combating of Terrorism Laws (Amendment) Act, 2023 and the newly enacted POCAML R, 2023 are consistent with the requirements of R.19.
98. ***Criterion 19.1 (Met)-*** FIs are required to apply enhanced CDD on business relationships and transactions with any natural and legal persons, legal arrangements or FIs originating from countries identified as posing a higher risk of ML, TF or proliferation by the FATF (Section 45A (1) (a) of amended POCAML A, 2023). In addition, Section 45A (2) of POCAML A amended by the AML-CFT (Amendment) Act, 2023 now requires a reporting institution to apply appropriate countermeasures, proportionate to the risk presented by countries—(a) when called upon to do so by the Financial Action Taskforce; (b) independently of any call by the Financial Action Taskforce to do so; or (c) as advised by the Cabinet Secretary. Thus, *the rating for criterion 19.1 remains Met.*
99. ***Criterion 19.2 (Met)-*** In the MER the assessors noted that the law is silent on applying measures when called upon to do so by the FATF. To address this, the Centre may issue instructions, directions, guidelines, or rules to reporting institutions, as it may consider necessary, for the better carrying out of its functions (Section 45(1) of POCAML A as amended through AML/CFT (Amendment Act, 2023). In addition to enhanced customer-due-diligence measures, a reporting institution shall apply appropriate countermeasures when called upon to do so by the Financial Action Taskforce, and independently of any call by the Financial Action Taskforce to do so (Section 45A (2) of the AML/CFT(Amendment) Act 2023. Thus, *the rating for criterion 19.2 is considered Met.*
100. ***Criterion 19.3 (Met)-*** In the MER the assessors noted that there are no measures put in place by Kenya to advise FIs on weaknesses in the AML/CFT systems of other countries. To address this, Section 45A(4)(a), (c) & (d) POCAML A, as amended in the AML/CFT (Amendment) Act 2023, requires the FRC as the authority in Kenya to disseminate to reporting institutions (a) any high-risk country identified pursuant to this section; (c) concerns regarding the weaknesses of the AML/CFT systems of that country and (d) any publicly available information by the FATF on any jurisdiction which has been identified by having significant or strategic deficiencies in their AML/CFT measures. Thus, *the rating for criterion 19.3 is considered Met.*



### *Weighting and Conclusion*

101. The Republic of Kenya addressed the deficiencies identified in criteria 19.2 and 19.3. Since there are no remaining deficiencies, **the Review Group recommends upgrading R 19 from PC to C.**

### *3.1.8 Recommendation 20 – Reporting of Suspicious Transactions. (Originally rated NC – Re-rated to C)*

102. Under its Second Round MER, the Republic of Kenya was assessed on the requirements of Rec 20 based on the Prevention of Crime and Anti-Money Laundering Act, 2009 (POCAML A) and it was rated NC. The Republic of Kenya enacted the Proceeds of Crime and Anti-Money Laundering Regulations, 2023 (POCAML R), and some amendments have been made to the POCAML A through the Anti-Money Laundering and Combating of Terrorism Laws (Amendment) Act, 2023. The analysis will show whether the amendments that have been made to POCAML A through the Anti-Money Laundering and Combating of Terrorism Laws (Amendment) Act, 2023 and the newly enacted POCAML R, 2023 are consistent with the requirements of R.20.
103. **Criterion 20.1 (Met)**- In the MER the assessors noted that, reporting entities are required to file STRs in relation to ML. However, the obligation to submit STRs on TF is limited in scope as it is restricted to a terrorist act only. There are also ambiguities in the law that cast doubt as to whether Kenya meets the need to report suspicious transactions “promptly”. Kenya through Section 2A of the POCAML A as amended through the AML/CFT (Amendment) Act 2023 now covers matters related to TF. In addition, Section 44(2) of the AML/CFT (Amendment) Act 2023 now requires FIs upon suspicion of any suspicious transactions or activities that are unusual to the pattern of a customer transaction with no apparent economic or lawful purpose a reporting institution is required to report the suspicious or unusual transaction or activity within two days after the suspicion arose. Thus, **the rating for criterion 20.1 is considered Met.**
104. **Criterion 20.2 (Met)**- In the MER the assessors noted that the deficiency concerning TF-related obligation has been given significant weight considering the TF risk profile of the country. Kenya through, Section 2A of the AML/CFT (Amendment) Act 2023 now extends the scope of POCAML A to also include TF. In addition, Section 44(3) of the POCAML A requires reporting institutions to report all suspicious transactions, regardless of the amount, including attempted transactions to the FRC. Thus, **the rating for criterion 20.2 is considered Met.**

### *Weighting and Conclusion*

105. Kenya has addressed the deficiencies identified in criteria 20.1 and 20.2. Since there are no outstanding deficiencies, **the Review Group recommends upgrading Rec 20 from NC to C.**

### *3.1.9 Recommendation 21 – Tipping-off and confidentiality. (Originally rated PC – Re-rated to C)*

106. Under its Second Round MER, the Republic of Kenya was assessed on the requirements of Rec 21 based on the Prevention of Crime and Anti-Money Laundering Act, 2009 (POCAML A) and it was rated PC. The Republic of Kenya enacted the Proceeds of Crime and Anti-Money Laundering Regulations, 2023 (POCAML R), and some amendments have been made to the POCAML A through the Anti-Money

Laundrying and Combating of Terrorism Laws (Amendment) Act, 2023. The analysis will show whether the amendments that have been made to POCAMLA through the Anti-Money Laundering and Combating of Terrorism Laws (Amendment) Act, 2023 and the newly enacted POCAMLR, 2023 are consistent with the requirements of R.21.

107. **Criterion 21.1 (Met)**- In the MER the assessors noted that the protection is in relation to ML and does not extend to cover TF. Section 2A of the AML/CFT (Amendment) Act 2023 now extends the scope of POCAMLA to also include TF. Section 19 of the POCAMLA provides immunity to the FIs, government entity, or any officer, partner or employee from criminal and civil liability when reporting suspicions in good faith to the FIC. The provision is wide enough to cover any person who submits an STR to the FRC irrespective of whether or not the offence occurred. Thus, *the rating for criterion 21.1 is considered Met.*
108. **Criterion 21.2 (Met)**- In the MER the assessors noted that the requirement of c.21.2 does not cover TF. Section 8(1) of the POCAMLA provides that any person who ought to have known that a report is being prepared or has been sent to the FRC is prohibited from disclosing to another person that an STR has been filed with the FRC. The definition of a “person” is broad enough to cover officers in a reporting institution including its directors, officers and employees. Further, Section 2A of the AML/CFT (Amendment) Act 2023 now extends the scope of POCAMLA to also include TF. Thus, the rating for criterion 21.2 is considered Met.

#### ***Weighting and Conclusion***

109. The Kenyan Authorities addressed the deficiencies identified in criteria 21.1 and 21.2. Since there are no remaining deficiencies, *the Review Group recommends upgrading Rec 21 from PC to C.*

#### ***3.1.10 Recommendation 22 – DNFBPs: Customer due diligence. (Originally rated NC – Re-rated to PC)***

110. Under its Second Round MER, the Republic of Kenya was assessed on the requirements of Rec 22 based on the Prevention of Crime and Anti-Money Laundering Act, 2009 (POCAMLA) and it was rated NC. The Republic of Kenya enacted the Proceeds of Crime and Anti-Money Laundering Regulations, 2023 (POCAMLR), and some amendments have been made to the POCAMLA through the Anti-Money Laundering and Combating of Terrorism Laws (Amendment) Act, 2023. The analysis will show whether the amendments that have been made to POCAMLA through the Anti-Money Laundering and Combating of Terrorism Laws (Amendment) Act, 2023 and the newly enacted POCAMLR, 2023 are consistent with the requirements of R.22.
111. **Criterion 22.1 (Met)**- In the MER the assessors noted that there were no provisions in the law which require lawyers, notaries or other independent legal professionals and other DNFBPs to comply with the requirements set out in R.10. To address this, DNFBPs are required to comply with the CDD requirements as outlined in Rec 10:
  - (a) Casinos are designated as DNFBPS under Section 2 of the POCAMLA as amended in 2023 designate casinos as DNFBPs and the POCAMLA requires all reporting entities to comply with the above requirements for any transaction regardless of the amount under the amended section 45 of the POCAMLA.
  - (b) Real estate agents are captured under Section 2 of the POCAMLA as amended in 2023 as DNFBPS and they are required to comply with the CDD

requirements when carrying out a transaction which involves the buying and selling of real estate under Section 45 of the amended section 45 of the POCAMLA.

- (c) DPMS are categorised as DNFBPs under section 2 of the POCAMLA as amended in 2023 and are required to undertake the above requirements for every transaction regardless of the amount involved under section 45 of the amended section 45 of the POCAMLA.
- (d) Lawyers, notaries & other legal professionals and accountants are designated as DNFBPs under section 2 of the POCAMLA as amended in 2023 designate lawyers, notaries & other legal professionals and accountants as DNFBPs are required to carry out the above requirements under section 45 of the amended section 45 of the POCAMLA and as set out for this criterion.
- (e) TCSPs are designated as DNFBPs under section 2 of the POCAMLA as amended and are required to comply with the above requirements under section 45 of the amended section 45 of the POCAMLA.

Thus, *the rating for criterion 22.1 is considered Met.*

112. **Criterion 22.2 (Met)**- In the MER the assessors noted that there were no provisions in the law which require lawyers, notaries or other independent legal professionals to comply with the requirements set out in R.11. Kenya through, Section 2 of the POCAMLA as brought through the AML/CFT (Amendment) act 2023 now includes all the categories of DNFBPs as defined by the FATF. Moreover, Section 46(1)(a) of the POCAMLA as brought through the AML/CFT (Amendment) Act 2023 now provides for record-keeping requirements for reporting institutions (including DNFBPs). Thus, *the rating for criterion 22.2 is considered Met.*

113. **Criterion 22.3 (Met)**- In the MER the assessors noted that there were no provisions in the law which require lawyers, notaries or other independent legal professionals to comply with the requirements set out in R.12. Section 2 of the POCAMLA as brought through the AML/CFT (Amendment) act 2023 now includes all the categories of DNFBPs as defined by the FATF. *\*Kenya has not submitted a re-ratings request for Rec 12, however, the Reviewers have looked at the elements of Rec 12 in the POCAML Regulations 2023 and based on the review, the Reviewers are of the view that it meets the requirements.* Thus, *the rating for criterion 22.3 is considered Met.*

114. **Criterion 22.4 (Partly Met)**- Section 2 of the POCAMLA as brought through the AML/CFT (Amendment) Act 2023 now includes all the categories of DNFBPs as defined by the FATF. However, Kenya has not addressed the deficiencies as highlighted in Rec 15. Thus, *the rating for criterion 22.4 is considered Partly Met.*

115. **Criterion 22.5 (Partly Met)**- Section 2 of the POCAMLA as brought through the AML/CFT (Amendment) Act 2023 now includes all the categories of DNFBPs as defined by the FATF. However, Kenya has not addressed the deficiencies as highlighted under Rec 17. Thus, *the rating for criterion 22.5 is considered Partly Met.*

#### **Weighting and Conclusion**

116. Kenya has addressed the identified deficiencies against c.22.1 (a-e), c.22.2 and c.22.3. The major deficiencies under c.22.4 and c.22.5 remain not addressed. Kenya has not addressed the deficiencies as highlighted in the MER in relation to Rec 15 and Rec 17. Given the importance of the remaining deficiencies, *the Reviewers recommend upgrading Rec 22 from NC to PC.*

**3.1.11 Recommendation 23 – DNFBPs: Other measures. (Originally rated PC – Re-rated to LC)**

117. Under its Second Round MER, the Republic of Kenya was assessed on the requirements of Rec 23 based on the Prevention of Crime and Anti-Money Laundering Act, 2009 (POCAML A) and it was rated PC. The Republic of Kenya enacted the Proceeds of Crime and Anti-Money Laundering Regulations, 2023 (POCAMLR), and some amendments have been made to the POCAML A through the Anti-Money Laundering and Combating of Terrorism Laws (Amendment) Act, 2023. The analysis will show whether the amendments that have been made to POCAML A through the Anti-Money Laundering and Combating of Terrorism Laws (Amendment) Act, 2023 and the newly enacted POCAMLR, 2023 are consistent with the requirements of R.23.
118. **Criterion 23.1 (Partly Met)**- In the MER the assessors noted that there were no provisions in the law which require lawyers, notaries or other independent legal professionals to comply with the requirements set out in R.20. The requirements to file STRs as set out in R.20 are also applicable to all DNFBPs. Section 2 of the POCAML A as brought through the AML/CFT (Amendment) Act 2023 now includes all the categories of DNFBPs as defined by the FATF. With the amendment of the POCAML A through the AML/CFT (Amendment) Act 2023, lawyers, notaries and other independent legal professionals are required to submit suspicious reports through the Law Society that shall establish channels to report to the FRC under Section 44(3). Although, section 44(3) of the POCAML A as amended through the AML/CFT (Amendment) Act 2022 requires the Law Society of Kenya to establish mechanisms to cooperate on the exchange of information related to STR. The reviewers were not provided with further information to indicate the manner and timeframe that the STRs are being submitted to the FRC. However, the requirements of Recommendation 20 are that, the STRs should be submitted to the Financial Intelligence Unit and not to any other statutory body.; (b) DPMS are categorised as reporting institutions under section 2 of the POCAML A as amended in 2023 and are under an obligation to file STRs under section 44(2) of the POCAML A as amended in 2023 and Regulations 38 of the POCAML A regulations 2023; (c) TCSPs are categorised as reporting institutions under section 2 of the POCAML A as amended in 2023 and are under an obligation to file STRs under section 44(2) of the POCAML A as amended in 2023 and Regulations 38 of the POCAML A regulations 2023. Thus, *the rating for criterion 23.1 is considered Partly Met.*
119. **Criterion 23.2 (Met)**- In the MER the assessors noted that there were no provisions in law which require lawyers, notaries or other independent legal professionals to comply with the requirements set out in R.18. To address this, Section 2 of the POCAML A as brought through the AML/CFT (Amendment) Act 2023 now includes all the categories of DNFBPs as defined by the FATF. DPMS and TCPS are reporting persons and are under an obligation to file suspicious transactions and activities irrespective of the amount under section 44 of the POCAML A. Thus, *the rating for criterion 23.2 is considered Met.*
120. In the MER the assessors noted that there were no provisions in law which require lawyers, notaries or other independent legal professionals to comply with the requirements set out in R.19. Kenya through Section 2 of the POCAML A as brought through the AML/CFT (Amendment) Act 2023 now includes all the categories of

DNFBPs as defined by the FATF. Kenya has addressed the deficiencies identified at Rec 19. Thus, *the rating for criterion 23.3 is considered Met.*

121. **Criterion 23.4 (Met)**- In the MER the assessors noted that there were no provisions in law which require lawyers, notaries or other independent legal professionals to comply with the requirements set out in R.21. To address this, Section 2 of the POCAMLA as brought through the AML/CFT (Amendment) Act 2023 now includes all the categories of DNFBPs as defined by the FATF. Kenya has addressed the deficiencies identified at Rec 21. Thus, *the rating for criterion 23.4 is considered Met.*

**Weighting and Conclusion**

122. Kenya has addressed the deficiencies identified in criteria 23.2, 23.3 and 23.4. The remaining deficiency in c.23.1 relates to lawyers, notaries and other independent legal professionals' reporting of STRs to the Law Society which has to establish mechanisms for onward submission of those reports to the FRC. Further, the requirements of Recommendation 20 are that, the STRs should be submitted to the Financial Intelligence Unit and not to any other statutory body.; No information has been provided to the Reviewers in order to make a determination on the promptness of submission of the STRs since the law requires the reports to be submitted within 2 days. In view of this minor deficiency, *the Review Group recommends upgrading Rec 23 from PC to LC.*

**3.1.12 Recommendation 27 – Powers of Supervisors. (Originally rated NC – Re-rated to C)**

123. Under its Second Round MER, the Republic of Kenya was assessed on the requirements of Rec 27 based on the Prevention of Crime and Anti-Money Laundering Act, 2009 (POCAMLA) and it was rated NC. The Republic of Kenya enacted the Proceeds of Crime and Anti-Money Laundering Regulations, 2023 (POCAMLR), and some amendments have been made to the POCAMLA through the Anti-Money Laundering and Combating of Terrorism Laws (Amendment) Act, 2023. The analysis will show whether the amendments that have been made to POCAMLA through the Anti-Money Laundering and Combating of Terrorism Laws (Amendment) Act, 2023 and the newly enacted POCAMLR, 2023 are consistent with the requirements of R.27.
124. **Criterion 27.1 (Met)**- In the MER the assessors noted that the powers of Supervisors do not extend to TF requirements. Kenya through Sections 2A of POCAMLA as amended through the AML/CFT (Amendment) Act 2023 now extends the scope of POCAMLA to also include TF. A further amendment was brought through section 36C by the AML/CFT (Amendment) Act 2023 which now requires supervisory bodies, namely the CBK, IRA, CMA and the FRC to supervise, monitor and ensure compliance with AML/CF/CPF requirements by reporting institutions under their respective purview. Thus, *the rating for criterion 27.1 is Considered Met.*
125. **Criterion 27.2 (Met)**- In the MER the assessors noted that the scope of laws of the Supervisors are limited to prudential supervision and does not include AML/CTF supervision and the requirements of the law do not cover CTF inspections. To address this, Sections 2A of POCAMLA as amended through the AML/CFT (Amendment) Act 2023 now extend the scope of POCAMLA to also include TF. Section 36A(3A) of the POCAMLA as amended in 2023 now provides powers for a supervisory body or SRBs to supervise and enforce AML/CFT obligations to their respective institutions under



their purview. In addition, section 36C(b) of the amended POCAMLA provides the powers for supervisory bodies to carry out AML/CFT inspections on reporting entities. The provisions of Section 2A, 36A(3A), 36C(b) of the POCAMLA as amended in 2023 have been incorporated in the Banking Act at Section 33D, Section 51A of the Central Bank of Kenya Act, Section 36B of the Microfinance Act, Section 17A of the National Payment System Act, Section 196B of the Insurance Act and Section 12B of the Capital Markets Act. Thus, *the rating for criterion 27.2 is considered Met.*

126. **Criterion 27.3 (Met)**- In the MER the assessors noted that the powers of Supervisors on the production of information or documents relevant to monitoring compliance with the AML/CFT requirements are limited to ML does not apply to TF. Kenya through Sections 2A of POCAMLA as amended through the AML/CFT (Amendment) Act 2023 now extends the scope of POCAMLA to also include TF. Section 36C(1)(c) of the POCAMLA as amended by the AML/CFT(Amendment) Act, 2023, provides that supervisory bodies are empowered to compel the production of any information or documents relevant to monitoring compliance with the AML/CFT requirements of reporting institutions regulated or supervised by it. The amendment through section 36C (1)(c) of the POCAMLA now empowers the relevant supervisors to compel the production of any documents from reporting entities. The provisions of Section 2A, 36A(3A), 36C(b) of the POCAMLA as amended in 2023 have been incorporated in the Banking Act at Section 33D, Section 51A of the Central Bank of Kenya Act, Section 36B of the Microfinance Act, Section 17A of the National Payment System Act, Section 196B of the Insurance Act and Section 12B of the Capital Markets Act. Thus, *the rating for criterion 27.3 is Considered Met.*
127. **Criterion 27.4 (Met)**- In the MER the assessors noted that Supervisors do not have the power to impose sanctions for violation of the POCAMLA. To address this, Section 36C(1)(e) of the POCAMLA as amended through the AML/CFT (Amendment) Act 2023 now empowers supervisors to impose sanctions under their respective relevant regulatory regime for failure to comply with AML/CFT requirements. Sections 6 and 33A of the Banking Act provide that the CBK can revoke, withdraw, restrict or suspend the licence of an institution under its purview as per the cases provided in the same section. The CMA has also the power to suspend or revoke a licence of an institution where it is deemed that the institution has not complied with the relevant requirements of the Capital Markets Act, section 26. Thus, *the rating for criterion 27.4 is considered Met.*

### ***Weighting and Conclusion***

128. FRC and financial sector supervisors have the powers to supervise and enforce compliance with AML/CFT obligations as set out in POCAMLA and all instruments issued under POCAMLA. The Republic of Kenya has addressed the deficiencies identified in criteria 27.1, 27.2 and 27.3. Since there are no outstanding deficiencies, *the Review Group recommends upgrading Rec 27 from NC to C.*

### **3.1.13 Recommendation 29 – Financial Intelligence Units. (Originally rated PC – Re-rated to C)**

129. Under its Second Round MER, the Republic of Kenya was assessed on the requirements of Rec 29 based on the Prevention of Crime and Anti-Money Laundering Act, 2009 (POCAMLA) and it was rated PC. The Republic of Kenya enacted the



Proceeds of Crime and Anti-Money Laundering Regulations, 2023 (POCAMLRL), and some amendments have been made to the POCAMLA through the Anti-Money Laundering and Combating of Terrorism Laws (Amendment) Act, 2023. The analysis will show whether the amendments that have been made to POCAMLA through the Anti-Money Laundering and Combating of Terrorism Laws (Amendment) Act, 2023 and the newly enacted POCAMLRL, 2023 are consistent with the requirements of R.29.

130. **Criterion 29.1 (Met)**- In the MER the assessors noted that POCAMLA does not include TF and there are deficiencies in the dissemination of information. Kenya through, Section 2A of POCAMLA as amended through the AML/CFT (Amendment) Act 2023 now extends the scope of POCAMLA to also include TF. Section 24(b) of the POCAMLA has been amended through the AML/CFT (Amendment) Act, 2023, which now requires the FRC to send the analysed reports received to the appropriate LEAs, any intelligence agency, or any appropriate supervisory body for further handling where the DG of the FRC has reasonable grounds to suspect that the transaction or activity involves proceeds of crime, ML/TF. Thus, *the rating for criterion 29.1 is considered Met.*
131. **Criterion 29.2 (Met)**- In the MER the assessors noted that the law is limited in terms of TF-related STR obligations. Section 2A of POCAMLA as amended through the AML/CFT (Amendment) Act 2023 now extends the scope of POCAMLA to also include TF. In addition, section 24(a)(iv) of the POCAMLA as revised by the AML/CFT (Amendment) Act, 2023, now requires (a) the FRC to receive, analyse and interpret information disclosed to it pursuant to Section 42 of the POTA 2012. With the amendment the FRC is empowered to receive any information for the purposes above mentioned under the POTA; (b) the FRC receives cash transaction reports (CTRs) in terms of S.44(6) of POCAMLA, exceeding USD 10,000 or its equivalent in any currency, whether they appear to be suspicious or not. In addition, the FRC is also designated to receive reports from the Kenya Revenue Authority in relation to the conveyance of monetary instruments in excess of USD 10,000 or its equivalent in any currency to or from Kenya in terms of S.12 of POCAMLA. The definition of 'monetary instruments' includes cash and bearer negotiable instruments. Thus, *the rating for criterion 29.2 is considered Met.*
132. **Criterion 29.3 (Met)**- Under POCAMLA the FRC can (a) obtain and use additional information from reporting entities, as needed to perform its analysis properly such as Section 24(e) of POCAMLA empowers the FRC to request additional information from any reporting institution. This includes the grounds upon which the entity filing the report based its suspicion and copies of the relevant particulars; (b) Section 2A of POCAMLA as amended through the AML/CFT (Amendment) Act 2023 now extend the scope of POCAMLA to also include TF. In addition, section 24(r) of the POCAMLA has been revised through the AML/CFT (Amendment) Act 2023 which now empowers the FRC to have access to investigative authorities and any other competent authority. Thus, *the rating for criterion 29.3 is considered Met.*
133. **Criterion 29.4 (Met)**- In the MER the assessors noted that the law is silent on TF and s.24(b) of POCAMLA provides that FRC shall send the reports it has received under the Act to LEAs and is silent on analysis of reports received. Section 2A of POCAMLA as amended through the AML/CFT (Amendment) Act 2023 now extends the scope of POCAMLA to also include TF. Moreover, section 24(b) of the POCAMLA has been amended through the AML/CFT (Amendment) Act 2023 now provides that the FRC is

required to send analysed reports received under the POCAMLA to the appropriate LEAs, any intelligence agency or any other appropriate supervisory body where the Director General of the FRC has reasonable grounds to suspect that a transaction or activity involves proceeds of crime, ML/TF. Thus, *the rating for criterion 29.4 is considered Met.*

134. **Criterion 29.5 (Met)-** In the MER the assessors noted that the law is silent on TF and the law provides that FRC shall send the reports it has received under the Act to LEAs. Kenya through, Section 2A of POCAMLA as amended through the AML/CFT (Amendment) Act 2023 now extends the scope of POCAMLA to also include TF. Section 24(b) of the POCAMLA has been amended through the AML/CFT (Amendment) Act 2023 now provides that the FRC is required to send analysed reports received under the POCAMLA to the appropriate LEAs, any intelligence agency or any other appropriate supervisory body where the DG of the FRC has reasonable grounds to suspect that a transaction or activity involves proceeds of crime, ML/TF. Thus, *the rating for criterion 29.5 is considered Met.*
135. **Criterion 29.6 (Met)-** The authorities have provided information/ documents to demonstrate that (a) FRC has rules in place governing the security and confidentiality of information, including procedures for handling, storage, dissemination, and protection of, and access to, information; (b) pursuant to s.32 of POCAMLA, the Director-General, the Deputy Director General and staff of the Centre are required to take and subscribe before a Magistrate or Commissioner for Oaths the oath of confidentiality before they begin to perform any duties under this Act. They are also required to maintain, during and after their employment, the confidentiality of any matter which they come across during their tenure of office.
136. Pursuant to s.32 of POCAMLA, the Director-General, the Deputy Director General and staff of the Centre are required to take and subscribe before a Magistrate or Commissioner for Oaths the oath of confidentiality before they begin to perform any duties under this Act. They are also required to maintain, during and after their employment, the confidentiality of any matter which they come across during their tenure of office.
137. In addition, the Analysis Unit of the FRC is segregated from the other Business Units and access to the operational space is restricted to those tasked with analysis work. The FRC implements the ISO 27001 and the ICTA-3.002:2019 information security standards to improve its information security. The standards provide for the best practices in information security looking at confidentiality, Integrity and availability. The standards ensure that only authorized persons have access to the information and that authorized persons or systems can change information. Further, the FRC has implemented the goAML system, a secure UNODC system, for receiving reports, secure communication and information sharing with reporting entities. The system is accessible by authorized and authenticated personnel. In addition, a secure encrypted email channel with a dedicated email address to handle requests and share information has been put in place. Where necessary, financial intelligence reports are sealed and disseminated physically to authorized/designated persons who are permitted to deliver and receive them. All disseminations are made to a designated focal contact at all LEAs. Thus, *the rating for criterion 29.6 remains Met.*

138. **Criterion 29.7 (Met)**- The FRC is an independent institution, and the Director General has (a) full authority and independence to deploy the resources of the institution and the ability to carry out its functions freely [S.24 POCAMLA]. The Director General is appointed by the Minister of Finance and the grounds for his removal are clearly set out in POCAMLA (s. 25 & 27 of POCAMLA). The FRC has the mandate to appoint its own staff necessary for the proper discharge of its functions under the Act [s.31 of POCAMLA] and may do all that is necessary or expedient to perform its functions effectively including doing anything that is incidental to the exercise of any of its powers without undue influence in the analysis and dissemination of financial disclosures [s. 24 of POCAMLA].
139. Section 2A of POCAMLA as amended through the AML/CFT (Amendment) Act 2023 now extends the scope of POCAMLA to also include TF. Section 23(2)(a) & (b) of the POCAMLA has been amended through the AML/CFT (Amendment) Act 2023 which now extends the powers of the FRC to be able to exchange information independently with other domestic and foreign counterparts and the FRC is not located within an existing structure of another authority.
140. Section 31 POCAMLA, FRC determines its own staff establishment and appoints staff within general terms and conditions approved by the Minister. The FRC has a budget allocation within the national budget which is approved by Parliament [s.40 of POCAMLA]. The FRC has powers to make independent financial decisions and its Director General is the Accounting Officer, responsible for the direction and control of its funds/accounts as s. 68 of the Public Financing Management Act. Thus, s31 and s40 of POCAMLA as well as s68 of the Public Financing Management Act enable the FRC to obtain and deploy resources to carry out its functions as required without influence or interference. Thus, *the rating for criterion 29.7 is considered Met.*
141. **Criterion 29.8 (Met)**- The FRC has submitted an unconditional application for membership to the Egmont Group and fully engaged itself in the application process. Thus, *the rating for criterion 29.8 remains Met.*

#### ***Weighting and Conclusion***

142. Kenya addressed the deficiencies identified in criteria 29.1, 29.2(a), 29.3(b), 29.4, 29.5 and 29.7(b). *The Review Group recommends upgrading Rec 29 from PC to C.*

#### ***3.1.14 Recommendation 32 – Cash Couriers. (Originally rated PC – Re-rated to LC)***

143. Under its Second Round MER, the Republic of Kenya was assessed on the requirements of Rec 32 based on the Prevention of Crime and Anti-Money Laundering Act, 2009 (POCAMLA) and it was rated PC. The Republic of Kenya enacted the Proceeds of Crime and Anti-Money Laundering Regulations, 2023 (POCAMLR), and some amendments have been made to the POCAMLA through the Anti-Money Laundering and Combating of Terrorism Laws (Amendment) Act, 2023. The analysis will show whether the amendments that have been made to POCAMLA through the Anti-Money Laundering and Combating of Terrorism Laws (Amendment) Act, 2023 and the newly enacted POCAMLR, 2023 are consistent with the requirements of R 32.
144. **Criterion 32.1 (Met)**- In the MER the assessors noted that the law does not cover cross-border transportation of currency or BNIs by mail and cargo. To address this, under regulation 12 (1) of the Anti-Money Laundering and Combating of Terrorism Financing Laws expands the requirement for whether as a traveller or through mail or cargo. Further, regulation 10 (1) of the POCAMLR, 2023, Kenya has adopted and

- implemented a monetary declaration system for all physical cross-border transportation of currency and BNIs., Thus, *the rating for criterion 32.1 is considered Met.*
145. **Criterion 32.2 (Met)**- Kenya requires a written declaration from all travellers carrying in or out of Kenya monetary instruments equivalent to or exceeding US\$ 10,000 or its equivalent in Kenya shillings or any other currency and shall do so before travelling. Thus, *the rating for criterion 32.2 remains Met.*
  146. **Criterion 32.3 (N/A)**- In a disclosure system, travellers should be required to give a truthful answer and provide the authorities with appropriate information upon request, but are not required to make an upfront written or oral declaration. There are no changes to the legal framework. Thus, *the rating for criterion 32.3 remains N/A.*
  147. **Criterion 32.4 (Mostly Met)**- Authorized persons/ Customs Officers have the authority to request and obtain further information from the cash carrier with regard to the origin of the currency or BNIs, and their intended use (s. 12(5)(a) of POCAMLA, 2009. Further, Reg.10(3) provides that where the customs officer has reason to suspect that the person has not made a true declaration or has failed to declare the monetary instruments, the customs officer shall require that person to produce and show to the customs officer all the monetary instruments in his or her possession. However, this Regulation does not provide for the obligation to 'obtain further information from the carrier with regard to the origin of the currency or BNIs, and their intended use. Thus, *the rating for criterion 32.4 remains Mostly Met.*
  148. **Criterion 32.5 (Met)**- In the MER the assessors noted that the sanctions for making false declarations are not proportionate and dissuasive. To address this, Kenya applies proportionate and dissuasive sanctions against a person who makes a false declaration. Section 16 (3) of POCAMLA (as amended) provides for the offence of making false declaration thus "A person who contravenes the provisions of section 12(3) is, on conviction, liable to a fine not exceeding fifty percent of the amount of the monetary instruments involved in the offence, or imprisonment for a term not exceeding five years, or to both". Thus, *the rating for criterion 32.5 is Considered Met.*
  149. **Criterion 32.6 (Met)**- The information obtained by Customs from the currency declaration is submitted to FRC. S.12 (2) POCAMLA - A person authorised to receive a report made in subsection (1) shall, without delay, send a copy of the report to the Centre. Reg. 8 (2) POCAML Regs - The customs officer shall submit the completed declaration forms to the Director of the Centre in accordance with section 12 (2) of the Act. Thus, *the rating for criterion 32.6 remains Met.*
  150. **Criterion 32.7 (Met)**- The Kenya Citizenship and Immigration Act establishes a committee to be known as the Border Control Operations and Coordination Committee (s.5A (1) of the Kenya Citizenship and Immigration Act). The committee incorporates a wide range of competent authorities and outlines a set of functions including coordination among customs, immigration and other authorities (s. 5B (1) (b) of the Kenya Citizenship and Immigration Act). Thus, *the rating for criterion 32.7 remains Met.*
  151. **Criterion 32.8 (Met)**- Section 12(4) POCAMLA, 2009 - an authorised officer may temporarily seize tainted property for as long as necessary to obtain a restraint or preservation order under Sections 68 or 82 respectively and not later than 5 days. A customs officer is an 'authorised officer' under the Act. Tainted property is defined as

any property involved in crime or the proceeds of crime, accordingly, this includes any property involved in ML/TF or a predicate offence. Section 68(3)(a) allows a court, on a successful application by the Agency Director, to restrain the property if a criminal investigation has been started. The authorised officer has powers to restrain and stop currency which is suspected to be tainted property where there has been a failure to make the necessary declaration. Thus, *the rating for criterion 32.8 remains Met.*

152. **Criterion 32.9 (Met)-** The FRC retain information relating to the declaration system in Kenya. This information relates to (a) Declarations made in relation to amounts exceeding the prescribed amounts. (b) Where there is a false declaration. (c) When there is suspicion on ML/TF. Section 24(l) POCAMLA provides that the FRC may, on the basis of mutual agreement and reciprocity, enter into any agreement or arrangement, in writing, with a foreign financial intelligence unit which the Director-General considers necessary or desirable for the discharge or performance of the functions of the Centre. Thus, *the rating for criterion 32.9 remains Met.*
153. **Criterion 32.10-(Met)-** Information collected through the declaration system is strictly for the prevention of ML/TF offences and does in no way restrict trade payments or freedom of capital movement. This can be discerned from the provisions of POCAMLA. There is no deficiency identified in this criterion. Thus, *the rating for criterion 32.10 is considered Met.*
154. **Criterion 32.11 (Partly Met)-** Kenya applies proportionate and dissuasive sanctions against a person who makes a false declaration. Section 16 (3) of POCAMLA (as amended) provides for the offence of making false declaration thus “A person who contravenes the provisions of section 12(3) is, on conviction, liable to a fine not exceeding fifty percent of the amount of the monetary instruments involved in the offence, or imprisonment for a term not exceeding five years, or to both”. There have not been any changes to the legislative framework regarding measures consistent with Recommendation 4 which would enable the confiscation of currency or BNIs. Thus, *the rating for this criterion is Partly Met.*

#### ***Weighting and Conclusion***

155. Kenya has addressed the deficiencies identified in criteria 32.1, 32.5, 32.10 and 32.11(a). However, the authorities have not provided new information on criterion 32.11(b). In view of the remaining deficiency, the Review Group *recommends upgrading Rec 32 from PC to LC.*

### **3.1.15 Recommendation 36 – International Instruments. (Originally rated PC – Re-rated to C)**

156. Under its Second Round MER, the Republic of Kenya was assessed on the requirements of Rec 36 based on the Prevention of Terrorism Act, 2012(POTA) and was rated PC. Some amendments have been made to the POTA and Kenya enacted the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on the Suppression of Terrorism) Regulations, in 2023. The analysis will show whether the amendments that have been made to both POTA, 2012 and the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on the Suppression of Terrorism) Regulations, 2022 are consistent with the requirements of R.36.

157. **Criterion 36.1 (Met)**- Kenya acceded to the Vienna Convention on 19th October 1992; the Palermo Convention on 16th June 2004; signed and ratified the UNCAC on 9th December 2003; signed (4th December 2001) and ratified the UN International Convention for the Suppression of Terrorist Financing (27th July 2003). Thus, *the rating for criterion 36.1 remains Met*.
158. **Criterion 36.2 (Met)**- In the MER the assessors noted that TF is not an extraditable offence. To address this, the POTA regulations issued under section 50 of the POTA 2012 and the amendment brought through the AML/CFT (Amendment) Act 2023 brought changes to the Extradition (Contiguous and Foreign Countries) Act Chapter 76, with the inclusion that TF is an extraditable offence under the schedule. In addition, the POTA has been amended to include Section 5A which criminalised the financing of travel of any persons planning, or preparing, or participating or the provision or receiving of terrorist training. Thus, *the rating for criterion 36.2 is considered Met*.

#### **Weighting and Conclusion**

159. Kenya has issued the POTA regulations 2023 under section 50 of the POTA 2012 an amendment has been made to make TF an extraditable offence. In addition, the POTA has been amended to include Section 5A which criminalised the financing of travel of any persons planning, or preparing, or participating or the provision or receiving of terrorist training. Kenya has addressed the outstanding deficiencies identified in the MER; *The Review Group recommends upgrading Rec 36 from PC to C*.

#### **IV. CONCLUSION**

160. The Republic of Kenya 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 20 and 27 from NC to C; the Re-ratings for Recommendations 5, 10, 11, 13, 18, 19, 21, 29, and 36 from previously PC to C; the Re-ratings for Recommendation 32 from previously PC to LC; the Re-ratings for Recommendations 23 from NC to LC; and the Re-ratings for Recommendations 6 and 22 from previously NC to PC;
161. Considering the overall progress made by the Republic of Kenya since the adoption of its MER, its technical compliance with the FATF Recommendations has been revised as shown in Table 1.2 below.

**Table 1.2 Technical Compliance following revision of ratings after the adoption of the Kenya MER, September 2023.**

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

Note: Four technical compliance ratings are available: compliant (C), largely compliant (LC), partially compliant (PC), and non-compliant (NC). 1.



162. Kenya 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.

