



# Anti-money laundering and Counter-terrorist financing measures

## Madagascar

9<sup>th</sup> Enhanced Follow Up Report and Technical Compliance Re-Rating

March 2023

Follow - Up Report





The Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) was officially established in 1999 in Arusha, Tanzania through a Memorandum of Understanding (MOU). As at the date of this Report, ESAAMLG membership comprises of 20 countries and also includes a number of regional and international observers such as Commonwealth Secretariat, East African Community, FATF, GIZ, IMF, SADC, United Kingdom, UNODC, United States of America, World Bank and World Customs Organization.

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

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**This report was approved by the ESAAMLG Task Force of Senior Officials at the March 2023 meeting in Arusha, Tanzania.**

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## Madagascar: 9<sup>th</sup> ENHANCED FOLLOW-UP REPORT & 2<sup>nd</sup> REQUEST FOR RE-RATING

### I. INTRODUCTION

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

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

2. The MER<sup>1</sup> rated Madagascar technical compliance ratings as follows:

**Table 1. Technical compliance ratings<sup>2</sup>, September 2018**

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

3. In the light of these results, Madagascar was placed in the enhanced follow-up process<sup>3</sup>.

4. The assessment of Madagascar's request for technical compliance re-ratings and the preparation of this report were undertaken by the following experts (Supported by ESAAMLG Secretariat: Bhushan Jomadar and Mofokeng Ramakhala):

- Bheki Khumalo (Eswatini)

<sup>1</sup>Mutual Evaluation Report (MER) of Madagascar, September 2018, <https://www.esaamlg.org/reports/Madagascar%20MER.pdf>

<sup>2</sup>Four technical compliance ratings are available: compliant (C), largely compliant (LC), partially compliant (PC), and non-compliant (NC).

<sup>3</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 systems and involves a more intense follow-up process.

- Nomfanelo Kunene - Thobela (Eswatini)
  - Hlobisile Langwenya (Eswatini)
  - Abby Dinka (Ethiopia)
  - M. Roopchand (Mauritius)
  - Thomas Mongella (Tanzania)
5. Part III of this report summarises the progress made by Madagascar on technical compliance. Part IV sets out conclusions and contains a table of Recommendations for which a new rating has been given.

### III. OVERVIEW OF PROGRESS IN TECHNICAL COMPLIANCE

#### 1.1 Progress in resolving the technical compliance deficiencies identified in the MER/FUR

6. Madagascar has made progress in addressing the technical compliance shortcoming identified in the MER and the ninth FUR for the following Recommendations:
- R. 1 and 13 which has been rated C
  - R. 19 and 32 which has been rated LC
  - R. 10, 16 and 34 which have been rated PC

Given the progress made, Madagascar's ratings have been revised for the following Recommendations: 1, 10, 13, 16 19, 32 and 34.

#### *3.1.1 Recommendation 1 – Assessing Risks and Applying a Risk-Based Approach (Originally rated NC- Upgraded to C)*

7. In its 2018 MER, Madagascar was rated Non-Compliant with the requirements of this Recommendation. The major deficiencies identified related to the lack of assessment of all ML/TF risk to which the country was exposed; the absence of a legal requirement for FIs and DNFBPs to assess their ML/TF risks and take mitigating actions.
8. Madagascar finalised its NRA exercise on 12 November 2021. The NRA exercise consisted of several working groups which included the competent authorities and the private sector as well. The Government Council which is led by the Prime Minister validated the NRA report which provides a fair reflection of the threats and vulnerabilities emanating within Madagascar and the AML/CFT strategy based on the outcome of the NRA in May 2022, and the Ministry Council which is the ultimate body headed by the President confirmed the NRA results on 22 June 2022 and approved the AML/CFT Strategy on 27 June 2022, previously endorsed by the relevant Malagasy authorities. The authorities also came up with an Action Plan in order to implement the recommendation based on the NRA. **Therefore c.1.1 is met.**
9. Further to the adoption in 22 June 2022 of Decree on Organization of the coordination and orientation committee on AML/CFT, the Coordination and Orientation Committee (CNOC) is the authority responsible for organizing and coordinating the assessment of risks related to ML/TF within Madagascar under Art 4 of the Decree No 2022-937. **Therefore c.1.2 is met.**

10. Since 22 June 2022, the Coordination and orientation committee (CNOC) is the new authority responsible for organizing and coordinating the assessment of risks related to ML/TF within Madagascar. The Permanent Secretariat is tasked to carry out any tasks related to the NRA including monitoring and evaluating the national strategy and regularly updating the NRA analysis and disseminating to the relevant stakeholders (Art 10(4) of the Decree N° 2022 - 937). In addition, SAMIFIN has already carried out two industry studies on rose wood trafficking and mobile banking which have already been assessed and taken into account in the NRA which has been finalized and validated by the Government Council. **Therefore c.1.3 is met.**
11. Since the validation of the NRA in June 2022, authorities have carried out sensitization sessions through the media informing the public at large on the adoption of the NRA in September 2022. The NRA was also disseminated to relevant Malagasy authorities (e.g. LEAs) and reporting institutions and is posted on the website of SAMIFIN to subscribed entities. The results of the studies on Rose wood trafficking and Mobile Money have been published in the Annual report of SAMIFIN and considered in the NRA report so that it is accessible to all competent authorities and the private sector. Moreover, with the adoption of the Decree on the function of the CNOC, the Permanent Secretariat is required to disseminate any future NRA analysis to the relevant stakeholders which includes competent authorities, SRBs and private sector involved in future NRA exercises under Art 10(4) of the Decree No 2022-937. **Therefore c.1.4 is met.**
12. Authorities developed an AML/CFT National Strategy, with strategic objectives and areas of intervention based on the findings of the NRA. The National Strategy provides for specific guidelines (first para page 8) on putting in place a risk based strategy for national authorities in order to prioritise targeted interventions which includes directing financial, technical and human resources towards those activities. The Strategic Objective 1 of this Strategy provides for the implementation of a risk-based approach to prevent, detect and punish ML and TF in addition Strategic objective 3 provides for the implementation of AML/CFT measures and a risk based supervisory framework. The Central bank has been working on enhancing its risk based supervisory framework with the allocation of resources based on the risks identified. **Therefore c.1.5 is met.**
13. Madagascar does not provide for exemptions to FATF Recommendations. **Therefore c.1.6 is N/A.**
14. While the National AML/CFT Strategy provides for the implementation of a mechanism to deal with high-risk situations with the implementation of a risk based framework to deal with such situation. In addition, Art 16(b) of the AML/CFT law requires reporting institutions (FIs and DNFBPs) to take enhanced CDD measures to manage and mitigate those risks. (b) Reporting institutions are required to include that information into their risk assessments as well under the same Art 6 of the AML/CFT law. **Therefore, c 1.7 is met.**
15. Supervisors and SRBs are required to ensure that reporting institutions are implementing their obligations under Art 31 of the AML/CFT law. The CSBF has now fully implemented a risk based approach to supervision framework which was identified to be deficient in the MER (refer to R.26) With the adoption of the National Strategy, the

Strategic objective 3 provides for the implementation of a risk based supervision framework for all reporting institutions in Madagascar. SAMIFIN is the supervisory authority for DNFBPs and it has started working on establishing a risk based framework with the implementation of the Global Directive issued in 14 June 2022 (refer to the deficiency in Rec 28 of the MER). **Therefore c.1.9 is met.**

16. Art 6 of the AML/CFT law requires reporting institutions to have appropriate measures to identify and assess the ML/TF risks associated with their business activities: (a) this assessment should be documented; (b) taking into consideration the various risks (nature and size of the risks and the volume of activities) in order to manage and mitigate the ML/TF risks identified; (c) the assessment should be updated; and (d) made available to the competent authorities and SRBs upon request. **Therefore c.1.10 is met.**
17. (a) Reporting entities are required to have policies, procedures and control mechanisms in order to manage and mitigate the ML/TF risks identified at their own level (Art 6 of the AML/CFT Law) and those policies and procedures have to be approved by senior management. Moreover, Art 2 of the CSBF instruction n° 001/2022 requires the Board of Directors to approve the AML/CFT policy for all banking institutions only; (b) Art 8(8) of the Global Directive issued by SAMIFIN that applies to all reporting institutions requires the implementation of measures to monitor and control the compliance with the internal systems for AML/CFT; (c) reporting institutions are required to take enhanced measures to manage and mitigate the risks where higher risk are identified (Art 16(b) of the AML/CFT law). SAMIFIN has also issued a Global Directive which requires financial institutions and DNFBPs to take appropriate measures to identify, understand, assess and mitigate their ML /TF risks. **Therefore c.1.11 is met.**
18. Madagascar legislative framework does not allow for simplified measures for ML/TF low risk situations. **Therefore c.1.8 and 1.12 are not applicable.**

### **Weighting and conclusion**

19. Madagascar was rated met on most of the criterion while, criteria 1.6, 1.8 & 1.12 were not applicable. Further to the approval of the NRA by the Government Council the NRA results was also disseminated to the Malagasy authorities, LEAs and reporting entities. Based on the outcome of the NRA the authorities have devised a National Strategy to address the shortcomings with regards to the implementation of a risk based approach at the national and supervisory level and have adopted an Action Plan that has also been approved at the Executive Level. Currently, there are no mechanisms to address high risk situations. **We are of the view that there is no outstanding deficiency, therefore R.1 should be re-rated from NC to C.**

### **3.1.2 Recommendation 2 – National Cooperation and Coordination (Originally rated PC – No re-ratings)**

20. Under its Second Round MER, Madagascar was rated Partially Compliant with the requirements of Recommendation 2. The deficiencies were that Madagascar has not developed national policies taking account ML / TF risks and it does not have a mechanism to fight the financing of the proliferation of weapons of mass destruction.

21. Further to the finalisation and approval of the NRA by the executive, the authorities have devised a National Strategy based on the outcome of the NRA. The National Strategy has been devised to address the ML/TF risks emanating from the NRA. The National Strategy has been approved in June 2022 by the executive and the authorities have already come up with an action plan with specific timelines to implement the National Strategy. The Permanent Secretariat of the CNOC under Decree N° 2022-937 is required to keep the risk assessment and the national strategy updated (Art 10(4) of the above Decree). The national Strategy also provides for the implementation of strategic objectives and targeted areas for intervention as prioritised based on the needs of the different competent authorities. **Therefore c.2.1 is met.**
22. Art 7 of the AML/CFT law requires the setting up of a coordination and orientation committee which will be set up by a Decree. The SNOLT was dissolved during the Government Council sitting of 12 February 2022 and the Coordination and orientation committee (CNOC) is the new authority responsible for organizing and coordinating the assessment of risks related to ML/TF within Madagascar. The CNOC under the Decree is the policy body and its mission and responsibilities are to adopt and evaluate the National Strategy and monitors the implementation of the Strategy and facilitates cooperation between various stakeholders on AML/CFT pursuant to Art 3 of the DECREE N° 2022-937. **Therefore, c2.2 is met.**
23. Art 7 of the AML/CFT law requires the setting up of a coordination and orientation committee which will be set up by a Decree responsible for the adoption and assessment of the National AML/CFT Strategy. It also ensures the monitoring and implementation of the strategy and facilitates cooperation between various stakeholders on AML/CFT. Through DECREE N° 2022-937 the CNOC was established and is responsible for monitoring the implementation of the National Strategy and facilitates cooperation between the various stakeholders in the fight against ML/TF (Art 10(6) of the same Decree). This platform is created at the level of the CNOC and the Permanent Secretariat composed of all the stakeholders (Art 12 of the same Decree) serves as a relay between the decision making authority (CNOC and at the operational level. **Therefore c.2.3 is met.**
24. Madagascar has not adopted a mechanism to implement the United Nations Resolutions to combat the financing of the financing of proliferation of weapons of mass destruction. **Therefore c.2.4 is not met.**
25. While Madagascar has a 2015 law (N 2014-038) on the protection of personal data, which set up the national body responsible for this subject, there are however no foreseen mechanism to cooperate with relevant authorities to ensure the compatibility of AML/CFT provisions with data protection and privacy rules. The National AML/CFT Strategy however has an intervention axis dedicated to the strengthening of operational cooperation and information exchange between key AML/CFT stakeholders. **Therefore c.2.5 is not met.**



### *Weighting and conclusion*

26. There are no mechanisms to implement the United Nations Resolutions to combat the financing of the financing of proliferation of weapons of mass destruction and mechanism to cooperate with relevant authorities to ensure the compatibility of AML/CFT provisions with data protection and privacy rules. **Therefore, R.2 should not be re-rated.**

### **3.1.3 Recommendation 10 – Customer Due Diligence (CDD) (Originally rated NC – re-rated from NC to PC)**

27. In the Second Round MER, Madagascar was rated Non-Compliant with the requirements of Recommendation 10. The identified deficiencies were : a) absence of obligation to implement due diligence measures in all cases provided for in R.10 and for all categories of financial institutions; b) vigilance measures imposed by the law and the instruction do not extend to the identification of the beneficial owner, as defined by the FATF, and to constant vigilance over business relationship; c) absence of specific due diligence measures applicable to legal persons, legal arrangements and life insurance contracts including absence of a risk-based approach; d) in case of suspicion of ML/TF, the law does not allow financial institutions not to fulfill their due diligence obligations when the implementation of these obligations could alert the client.
28. Although Madagascar has revamped its AML/CFT law, Art 12 of the new AML/CFT law restricts banks and FIs to hold anonymous accounts or account under obviously fictitious names. **Therefore c.10.1 is met.**
29. Article 13 of the AML/CFT law requires reporting institutions to ascertain the identity and address of their customers prior to opening an account or establishing any other businesses. This should be read with Art 17-19 of the CSBF instructions which provides the form and manner to establish the identity of the prospective client and verify the identity. FIs are also required to undertake CDD measures for any transfers (including wire transfers) above 3 million Malagasy Aria (USD 655) as per Art 26 of the CSBF instructions including when carrying out occasional transactions of that nature. Furthermore, Art 17 of the CSBF instruction n° 001\_2022 requires subject institutions to identify and verify the information when they have doubt about the veracity or relevance of previously obtained data. However, the provisions of the CSBF instructions does not cover instances where there is a suspicion of ML/TF regardless of any exemptions. **Therefore c.10.2 is mostly met.**
30. Article 13 to 15 requires FIs to ascertain the identity of their clients’ identity of their clients: for natural persons, by the presentation of a valid (i.e., unexpired) official photo I.D.; for legal persons, by the presentation of the statutes and any document establishing the registration and legal status/personality of the legal person. In both cases, it is specified that a copy of the identification documents must be taken. Moreover, legal persons and legal entities without legal personality are identified by the presentation of the original or a certified copy of any act or official register extract evidencing its name, its legal form and its headquarters. The Revamped AML/CFT Law stipulates that the identification and verification of the identity of occasional clients is to be done in the

same way. In addition to the identification of clients, the CSBF has issued an instruction which covers the above requirements and SAMIFIN has issued a Global Directive to reporting entities on the specific measures and process on identification of the different types of clients. **Therefore c.10.3 is met.**

31. Art 32 of the Global Directive of the SAMIFIN requires FIs and DNFbps to identify the person acting on behalf of a customer including the powers binding the person acting on behalf of the customer and using the verification mechanisms provided under Art 30 of the same Global Directive. **Therefore c.10.4 is met.**
32. Art 13 of the new AML/CFT law requires reporting institutions to take appropriate measures when verifying the identity of their customer. **Therefore c.10.5 is met.**
33. Art 17 of the CSBF instructions n° 001\_2022 requires FIs to identify the customer as well as its beneficial owner as per the CDD measures, and obtain the appropriate information on the operation of the accounts and the nature of the business relationship and any other relevant information that may have an impact on the business relationship. **Therefore c.10.6 is met.**
34. Art 31 of the CSBF instructions no: 006\_2007 requires reporting institutions to have: (a) a good understanding at all times of the normal and reasonable transactions carried out on any accounts and they should have systems in place to detect unusual transactions and the monitoring system should be adapted to the risk level. Art 31 above should be read with Art 55 of the AML/CFT Global Directive issued by SAMIFIN which requires reporting entities to understand the characteristics and nature of the transactions including the origin and destination of the funds for the purpose of the transaction and the identity of the principal, the BO and the beneficiaries; and (b) however, FIs are not required 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. **Therefore c.10.7 is partly met.**
35. Art 29 of the AML/CFT Global Directive issued by SAMIFIN requires reporting institutions to understand the nature of the customer business. Art 29 should be read in conjunction with Art 33 that requires reporting institutions to understand the ownership and control structure of any client. **Therefore c.10.8 is met.**
36. Art 19 of the CSBF instructions n° 001\_2022 to be read with Art 32 of the Global Directive and requires the identification of the legal person and arrangement of the (a) name, legal form and proof of existence; (b) Art 32 provides for the identification of the legal person and legal arrangement (legal entity that has no legal personality) on the basis of the certified copy of the extract of the legal person that provides for the name but is not extended to relevant persons holding senior management positions; (c) registered office address and perform the verification provided under Art 29 and 30 of the Global Directive. **Therefore c.10.9 is mostly met.**
37. Art 40 – 42 requires reporting entities to keep and update all information related to the BO of legal entities on a register and where the reporting entities could not establish or are no longer able to identify the BO they shall refrain or terminate the relationship. However, it does not require the verification of the information. Art 17 of the CSBF

instructions n° 001\_2022 requires subject institutions to identify their customers as well as their beneficial owners. However, the verification is only carried out when there is a change in the status of the customer, nature of business and other relevant information. **Therefore c.10.10 is partly met.**

38. Art 29 of the Global Directive of SAMIFIN requires FIs to identify the BO or the person in control of a legal arrangement under Art 32 of the same Global directive and review the trust documents in order to ascertain the validity of the trust or any other parties involved in the legal arrangement. However, both Articles mentioned above does not cater for the identification and verification of the beneficiaries. **Therefore c.10.11 is partly met.**
39. Article 16 (f) provides for specific measures applicable to the beneficiaries of life insurance including; taking the name of the beneficiary, obtaining sufficient information and ensures that verification of identity occurs at the time of the payout. **Therefore c.10.12 is met.**
40. FIs are required to include beneficiaries of life insurance policies as a relevant risk factor under Art 16(f) of the AML/CFT law in addition to the CDD measures. However, there is no guidance as to what additional measures the FI should undertake in cases of high risk situations where the beneficiary may be a legal person or arrangement. **Therefore c.10.13 is partly met.**
41. Art 13 of the new AML/CFT law to be read with Art 17 of the CSBF instructions no 001\_2022 and Articles 39 to 40 of the Global Directive issued by SAMIFIN requires reporting entities to verify the identity of the customer and beneficial owner before entering into a business relationship or conducting transactions for customers. The legal framework does not permit time delay in the verification process and the verification should be completed prior to the start of the business relationship as provided under Art 26 of the CSBF instructions in order to manage the ML/TF risks effectively. **Therefore c.10.14 is met.**
42. This criterion is not applicable since the legal framework does not allow the client to utilize any business relationship prior to verification. **Therefore c.10.15 is N/A.**
43. Art 17 of the CSBF instructions requires reporting institutions to ensure that CDD requirements are applied to existing customers, including their beneficial owners as soon as possible, and at the very least when a significant transaction occurs. These requirements also apply where the standards for the customer identification change substantially including when a material change occurs in the way the account operates and when the establishment realizes it does not have sufficient information on the existing customer. The verification of the information must also be updated when there is a change, in particular on the status, the customer's situation, the nature of the business relationship and other relevant information that may affect the business relationship generally. **Therefore c.10.16 is met.**
44. Art 57 of the AML/CFT Global Directive by SAMIFIN requires increased vigilance to transactions made by any higher risk customer including PEPs and NPOs. **Therefore c.10.17 is met.**

45. Although Madagascar legal framework provides for the appropriate CDD measures according to the customer's risk profile before and during the relationship pursuant to Art 17 of the CSBF instructions, there is no provision that allows for simplified measures to be undertaken. **Therefore c.10.18 is N/A.**
46. Art 15 of the new AML/CFT law provides for instance where the FI is doubtful of the customer, the FI should terminate the relationship and where applicable report a suspicious transaction, this also includes where CDD measures is not completed to the satisfaction of the FI. In addition, Art 27 of the CSBF Instruction n° 001\_2022 provides that where there is a doubt during the verification process of the identity of the BO, the FI should terminate the business relationship and proceed with the declaration of a STR as per Art 27 and 28 of the new AML/CFT law. **Therefore c.10.19 is met.**
47. There is no provision in the Madagascar AML/CFT framework that allows FIs to omit CDD and file a STR where they believe that the CDD process would tip off the customer. **Therefore c.10.20 is not met.**

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

48. Madagascar has addressed the deficiencies for criteria 10.1, 10.2, 10.4, 10.5, 10.6, 10.8, 10.12, 10.14, 10.16, 10.17 and 10.19, mostly meets criterion 10.2 & 10.9 and partly meets 10.7, 10.10, 10.11 & 10.13. While criterion 10.20 is not met, criteria 10.15 & 10.18 are not applicable. The identified deficiencies are that FIs are not required 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; there are no obligations to verify the BO information in case of legal arrangements; there are no identification and verification of the beneficiaries of life insurance policies; there are no guidance on what additional measures to be undertaken by FI in cases of higher risks situations for legal person/arrangements; there is no provision for simplified measures where such cases has been identified and there are no provision that allows FIs to omit CDD and file a STR where they believe that the CDD process would tip off the customer. ***Based on the deficiencies identified and the progress made R. 10 should be re-rated from NC to PC.***

#### ***3.1.4 Recommendation 12 – Politically Exposed Persons (PEPs) (Originally rated PC – no re-ratings)***

49. In the Second Round MER, Madagascar was rated Partially compliant with the requirements of Recommendation 12. The deficiencies noted were; obligations relating to PEPs are not applicable only to credit institutions and money changers; the concept of PEP only refers to new customers; some deficiencies in R.10 (relating to beneficial owners and enhanced supervision) are also applicable under R.12; absence of specific measure applicable to beneficiaries of life insurance contracts.
50. Art 4 provides for the definition of PEP, however, it prescribes a timeline for consider a person as a PEP, a PEP is considered a PEP for the duration of his term and 2 years after the termination of the function or title. Although, Art 16(b) of the AML/CFT law

requires reporting institutions in addition to the CDD measures in relation to foreign PEPs to (a) have appropriate risk management systems in place to determine whether the customer or beneficial owner is a PEP; (b) be authorized by senior management prior to establish or continue a business relationship, if the customer is an existing customer; (c) take reasonable measures to establish the source of the assets and origin of funds; (d) ensure ongoing monitoring of the business relationship. Criterion 12.1(c) is adequately addressed in Article 22 of the CSBF Instructions that requires reporting institutions take all reasonable measures to identify the origin of the assets and funds of customers and beneficial owners of customers identified as PEPs. However, the handling of the client who is no longer entrusted with a prominent function should be based on an assessment of risk and not on prescribed timeline as provided in the AML/CFT law. **Therefore, c12.1 is partly met.**

51. Article 4 provides a definition of PEP which is partly aligned to the FATF definition since it provides for a time limit for considering a client as PEP (2 years after termination of the function or title), distinguishing between foreign, domestic and international organization PEPs. (a) Moreover, Art 16(b) of the new AML/CFT law para 4 to be read with para 3 requires the implementation of appropriate risk management system to determine whether the customer (which includes a BO) is a PEP, (b) however, there is no risk assessment of the relationship since the law requires enhanced due diligence measures on all relationships with PEPs and requires the authorisation from senior management to establish or continue a business relationship for an existing customer, have reasonable measures to establish the source of assets and origin of funds and ensure ongoing monitoring of the business relationship. **Therefore, c12.2 is mostly met.**
52. Article 16 adequately addresses the deficiency by removing the limit previously placed on “family members” and now applies to family members and to persons closely associated to them also. However, the deficiency with regards to the prescribed time limit in Art 4 of the AML/CFT law will also impact ‘family members and to persons closely associated to them’. **Therefore, c12.3 is partly met.**
53. The provisions of Article 16(f) to be read with 16 (a) & (b) of the AML/CFT Law adequately address the requirements of c.12.4, in particular, to determine whether the beneficiaries and/or beneficial owner of the beneficiary, are PEPs and to take relevant measures where higher risks are identified, and where applicable to consider making a suspicious transaction report. The deficiency with regards to the prescribed time limit in Art 4 of the AML/CFT law will also have an impact with regards to the identification of risks at the time of pay-out. **Therefore, c12.4 is partly met.**

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

54. Although Madagascar legal framework provides for a definition of PEP, that definition is partly aligned to the FATF definition since it provides for a time limit for considering a client as PEP (2 years after termination of the function or title) this has an impact on how reporting entities risk rate a client who is no longer entrusted with a prominent function. Based on the identified deficiencies, ***therefore R.12 should not be re-rated.***

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

55. In the Second Round MER, Madagascar was rated PC on the requirements of this recommendation. The deficiencies noted were that there was no obligation to understand the respective responsibilities in respect of AML/CFT and the regulation of transit accounts including the absence of obligation ensure that bank correspondents do not allow shell banks to use their accounts.
56. Article 37 of CSBF Instruction N°001\_2022 on June 27, 2022 has been amended and requires FIs to: (a) gather information on the nature of the respondent institution’s activities and use publicly available information to evaluate the reputation of the institution and the quality of supervision to which it is subject; (b) assess the respondent institution’s AML/CFT controls; (c) obtain authorization of the executive body prior to establishing a correspondent banking relationship; and (d) understand the AML/CFT responsibilities of each institution. **Therefore, c13.1 is met.**
57. Article 37 of CSBF Instruction N°001\_2022 on June 27, 2022 now requires FIs, in respect of payable through accounts to (a) ensure that the respondent institution has performed CDD obligations on its customer, and; (b) is capable of providing relevant CDD information upon request. **Therefore, c13.2 is met.**
58. Article 4 of the new AML/CFT law adequately defines “shell bank” in line with the FATF definition. In addition, establishing or continuing a relationship with a shell bank by FIs in Madagascar is prohibited under Article 12 of the same new AML/CFT law. Reporting entities are under an obligation to make sure that they do not build or pursue business relationship with credit and financial institutions whether within or outside Madagascar (Art 39 & 40 of CSBF instructions and Art 52 of the Global Directive issued by SAMIFIN). Art 40 of the CSBF directive require FIs to ensure that respondent FIs are not permitted to allow shell banks to use their accounts. **Therefore, c13.3 is met.**

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

59. Madagascar has addressed the outstanding deficiencies that were noted in Recommendation 13. **Therefore R.13 should be re-rated from PC to C.**

### **3.1.6 Recommendation 16 – Wire Transfers (Originally rated NC – re-rated to PC)**

60. In the Second Round MER, Madagascar was rated PC on the requirements of this recommendation. The deficiencies noted was that the instruction does not provide for the case where the payer is a casual customer, absence of obligation regarding beneficiary information and batch transfers, for national transfers, the instruction does not specify how to communicate information on the payer to the competent authorities; the instruction does not prohibit that a transfer is made when information is missing; absence of obligations relating to the intermediary financial institutions and the beneficiary and the funds or securities transfer services.
61. Art 16 (d) of the AML/CFT law requires FIs to include accurate information on (a) the principal (originator) and (b) all the required information about the beneficiary of any electronic transfer. **Therefore, c16.1 is met.**

62. There are no specific obligations that applies to batch transfers. **Therefore, c16.2 is not met.**
63. Madagascar does not apply a de *Minimis* threshold for the requirements of criterion 16.1. **This criterion is not applicable.**
64. Art 26 of the CSBF instructions requires reporting entities to identify and verify identification of customers when the institution has a suspicion of ML/TF even for a minor transaction. **Therefore, c16.4 is met.**
65. Art 16 (d) of the AML/CFT law provides for the framework for all electronic transfers in Madagascar. Moreover, Article 36 of the CSBF Instructions reinforces that framework and requires obligated institutions to disclose full information on the originator in the transmission message for domestic transfers. **Therefore, c16.5 is met.**
66. Furthermore, for criterion 16.6 obligation institutions making the domestic wire transfer order must either include full information on the principal in the message payment form accompanying the transfer, or only include his bank account statement in the message or the payment form by communicating the complete information to the beneficiary institution within 3 working days of receipt of a request. In case the electronic transfer does not contain complete information required by the instructions, the subject institutions must request, complete and verify the missing information from the issuing or beneficiary institution and in case the subject institutions would not obtain this information, they should refrain from carrying out the transfer and inform SAMIFIN. Art 25 of the AML/CFT law provides that reporting institutions (including banks) are required to provide any preserved information within the time limit set in the request to the FIU, competent supervisor and any other relevant authorities. **Therefore, c16.6 is met.**
67. Art 17(2) of the new AML/CFT Law requires reporting entities to keep records of all transactions including originator and beneficiary information carried out by customers for at least 5 years after the execution of the transaction. Moreover, Art 46 of the CSBF instructions requires all documents relating to domestic and cross border transactions including unsuccessful transactions to be kept for a duration of at least 5 years after the closure of the account or termination of the relationship. **Therefore, c16.7 is met.**
68. Art 16(d) of the new AML/CFT law provide that should financial institutions not obtain information about the originator or the beneficiary for any electronic transfers they shall refrain from carrying out the transaction and report it to the Financial Intelligence Unit. **Therefore, c16.8 is met.**
69. Art 16(d) of the AML/CFT law requires FIs acting as intermediaries for cross border transfers to ensure that they hold all originator and beneficiary information of the electronic transfer remain attached to the transfer and take appropriate measures in the event of a failure to do so. **Therefore, c16.9 is met.**
70. Article 46 of the CSBF instructions requires institutions acting as wire transfer intermediaries to documents all information to both domestic and cross border operations including occasional transactions as follows (a) for customer identity documents to be kept at least 5 years after the closure of the account or termination of the relationship; (b)for documents relating to the transactions carried out by clients and reports on the monitoring of the transactions, at least 5 years after the execution of the transaction; (c) for account books, commercial correspondence made by customers and any analysis of customer transactions at least 5 years after the termination of the business relationship. **Therefore, c16.10 is met.**

71. Where a FI is acting as an intermediary FI, it should take reasonable measures to ensure that all cross border transfers should include complete information where the transaction is held through electronically (straight through processing) pursuant to Article 35 of the CSBF instructions n° 001/2022. **Therefore, c16.11 is met.**
72. Art 121 of the Banking Law requires credit institutions acting as intermediary to put in place internal AML/CFT systems which includes appropriate risk based diligence measures in line with the client profile, activities and nature of transactions and to also identify all information relating to the actual beneficiaries and transactions. FIs are not required to have risk-based policies and procedures to determine (a) when to execute, reject or suspend a wire transfer lacking originator or beneficiary information; (b) any appropriate follow up action. **Therefore, c16.12 is Not met.**
73. Article 35 of the CSBF instructions N°001\_2022 requires beneficiaries FIs acting for wire transfers to ensure that all originator and beneficiary information accompanying the wire transfer is attached to it and take reasonable measures, which includes post-event monitoring or real-time monitoring. **Therefore, c16.13 is met.**
74. Article 34 of the CSBF instructions N°001\_2022 requires that for all transfers, the beneficiary FIs must obtain and keep the information relating to the originator of the transfer and to the beneficial owners of the transfers, called complete information and listed below, and to verify the accuracy of this information. **Therefore, c16.14 is met.**
75. There is no provision for beneficiary FIs to have risk based policies and procedures for determining: (a) when to execute, reject or suspend a wire transfer lacking originator or beneficiary information; (b) any appropriate follow up action. **Therefore, c16.15 is Not met.**
76. Art 30 of the CSBF instructions N°001\_2022 requires MVTs operators and their agents to comply with the requirement to record all information of the originator and beneficiary including the origin of the funds and destination as well as purpose of the transactions. **Therefore, c16.16 is met.**
77. There are no provisions where an MVTs provider that controls both the ordering and beneficiary side of a wire transfer to (a) take into account all the information from both the ordering and beneficiary side to determine whether an STR has to be filed and (b) file an STR in any country affected by the suspicious wire transfer and make that information available to the FIU. **Therefore, c16.17 is not met.**
78. There is no requirement for FIs, in the context of processing wire transfers, to take freezing action and comply with prohibitions from conducting transactions with designated persons and entities, as per obligations set out in the relevant UNSCRs. **Therefore, c 16.18 is not met**

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

79. Whilst Madagascar has addressed the deficiencies identified in Criteria 16.1, 16.5, 16.6, 16.9, 16.10, 16.11, 16.13, 16.14, & 16.16 and partly addressed the deficiency in 16.12 it has not addressed the deficiencies identified in Criteria 16.15, 16.17 and 16.18 and has not submitted information on how it is addressing 16.2. The deficiencies remaining are that the law does not provide specific obligations to batch transfer. There are no provisions for beneficiary and intermediary FI to have appropriate measures when to execute, reject or suspend including the appropriate follow up action. And also there are no mechanisms where the MVTs controls both the ordering and beneficiary side to take into account all the information on the transaction and the filing of the STR in any



country and reporting the STR to SAMIFIN. And lastly, there are no mechanisms for the application of UNSCR 1267 and 1373. **Therefore R.16 should be re-rated from NC to PC.**

### **3.1.7 Recommendation 19 – Higher Risk Countries (Originally rated PC – Re-Rated from PC to LC)**

80. In the Second Round MER, Madagascar was rated PC on the requirements of this recommendation. The deficiencies noted was that the AML Law does not allow the implementation of countermeasures decided by the FATF, and the provisions of the instruction do not apply to insurance, CEM and postal financial services including the absence of measures for communicating to financial institutions the concerns raised by risky countries.
81. Article (5) to be read with 16(b) requires FIs to apply EDD proportionate to the risks on transactions or business relations with natural or legal persons, as well as with FIs located in high risk countries as classified by the Financial Action Task Force (FATF) or any similar international organization. **Therefore, c19.1 is met.**
82. FIs are under an obligation under Art 7 of the CSBF Instruction N°006\_2007 which requires branches and subsidiaries with inadequate standard to take into account the list of countries and organisations whose legal and administrative framework is not consistent with the FATF recommendations. Moreover, Art 32 of the CSBF Instruction N°001\_2022 requires reporting institutions to adopt special vigilance aimed in particular at establishing the origin and the beneficial owner sums in question with respect to all transactions from or to financial institutions which are not subject to obligations at least equivalent to those provided for in this instruction in terms of customer identification or transaction monitoring or which are located in countries which do not apply or insufficiently apply the FATF Recommendations. Although FIs normally apply those measures there are no mechanisms at the level of the jurisdiction to implement countermeasures in line with c19.2. **Therefore, c19.2 is Partly met.**
83. Art 16 of the AML/CFT Law provides for reporting institutions to take special measures (EDD) relating to transactions with customer's/business relationships with countries classified as high risk by the FATF or any other organisations. SAMIFIN publishes on its website the FATF list of high risk jurisdictions, the Basel Index and Corruption Index list. **Therefore, c19.3 is met.**

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

84. Madagascar has addressed the deficiencies identified in Criteria 19.1 & 19.3. FIs are required to implement countermeasures based on their internal compliance programs, however Madagascar does not have mechanisms to for the implementation of countermeasures to be applied proportionate to the risks (a) when called upon by the FATF and (b) independently of any call by the FATF. **In view of the minor deficiencies identified above, therefore R.19 should be re-rated from PC to LC.**

### **3.1.8 Recommendation 32 – Cash Couriers (Originally rated PC – re-rated from PC to LC)**

85. In its 2018 MER, Madagascar was rated PC on the requirements of this recommendation. The report noted the absence of coordination among competent authorities and the lack of international cooperation.

86. Art 11 of the new AML/CFT law provides an obligation on any person to report or communicate physical cross-border transportation of currency and bearer negotiable instruments. **Therefore, c32.1 is met.**
87. Art 11 of the AML/CFT law requires all interested parties travelling in or out of Madagascar at the border posts to declare currency and BNIs or traveler's cheques. This declaration is required for all types of transportation which includes physical transportation by a natural person. Shipment of cash or BNIs by containerized freight and shipment by courier by natural or legal person of cash or BNIs. **Therefore, c32.2 is met.**
88. The authorities have put in place mechanisms which includes the establishment of a centralized digital platform (called HAY ZARA/PNC) at SAMIFIN, which will be accessible to the competent authorities, which they can use to share and transmit information. The platform was launched in March 2020. SAMIFIN, the Anti-Corruption Bureau, Police, Gendarmerie and Customs are thus able to exchange information with SAMIFIN. These mechanisms promote adequate coordination among customs, immigration and other related authorities. **Therefore, c32.7 is met.**
89. SAMIFIN shares information to its counterparts with whom an MoU have been signed. International cooperation and assistance is also done through MLA. SAMIFIN receives all the declaration/disclosure from customs service. However, there is no evidence to suggest that the nature of information to be retained relates to (a) declarations exceeding 10,000 Euro, (b) false declarations, and (c) suspicions for ML/TF. **Therefore, c32.9 is not met.**

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

90. Madagascar has addressed most of the outstanding deficiencies identified with the exception that there is no evidence that the nature of the information to be retained relates to (a) declaration exceeding EUR 10,000, (b) false declaration and (c) suspicions for ML/TF for the purposes of international cooperation and assistance. ***Therefore R.32 should be re-rated from PC to LC.***

#### ***3.1.9 Recommendation 34 – Guidelines and Feedback (Originally rated NC – re-rated to PC)***

91. In the Second Round MER, Madagascar was rated NC on the requirements of this recommendation. The report noted a total absence of guidelines and feedback towards the financial and non-financial sectors.
92. Since the MER, the CSBF and SAMIFIN have issued CSBF instruction no. 001\_2022 (dated 27 June 2022) and SAMIFIN has developed an AML/CFT Global Directive which extensively provides guidance which may assist FIs and DNFBPs in applying AML/CFT measures which also includes indicators and reporting of STRs. Moreover, accountants and notaries have also revised their manual to provide guidance on their AML/CFT obligations. SAMIFIN has indicated that they have carried out sensitization sessions on the implementation of the Global directive, however, the authorities have not provided information on how the sensitization sessions have assisted the reporting institution in applying AML/CFT measures and in particular in detecting and reporting STRs. **Therefore, c34.1 is partly met.**

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

93. Although Madagascar has indicated that there are some guidelines on assisting reporting institutions in the application of AML/CFT measures present in Madagascar including the indicators and reporting of STRs. The authorities have not provided information on

how these sessions have assisted in the application of the AML/CFT measures at the level of the reporting institutions including measures in detecting and reporting STRs. ***Therefore R.34 should be re-rated from NC to PC.***

#### IV. CONCLUSION

94. Madagascar has made significant overall progress in resolving the technical compliance shortcomings identified in its MER and ratings for 7 Recommendations have been revised. The jurisdiction has addressed the deficiencies in respect of Recommendations 1 (initially rated NC), 10 (initially rated NC), 13 (initially rated PC), 16 (initially rated NC), 19 (initially rated PC), 32 (initially rated PC), 34 (initially rated NC) and the reviewers recommend to upgrade the rating for Recs. 1 and 13 with Compliant (C); Recs 19 and 32 with Largely Compliant (LC) and for Recs. 10, 16 and 34 with Partially Compliant (PC).

**Table 2. Technical compliance following revision of ratings, March 2023**

	<b>R1</b>	<b>R10</b>	<b>R13</b>	<b>R16</b>	<b>R19</b>	<b>R32</b>	<b>R34</b>
<b>Previous Rating</b>	NC	NC	PC	NC	PC	PC	NC
<b>Re-rated to</b>	<b>C</b>	<b>PC</b>	<b>C</b>	<b>PC</b>	<b>LC</b>	<b>LC</b>	<b>PC</b>

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

95. Based on the approved re-ratings above, Madagascar TC rating status is as follows:

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

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

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

