



Anti-money laundering and counter-terrorist financing measures

Madagascar

Mutual Evaluation Report

September 2018





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 18 countries and also includes a number of regional and international observers such as AUSTRAC, COMESA, Commonwealth Secretariat, East African Community, Egmont Group of Financial Intelligence Units, FATF, 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.

The Republic of Madagascar (Madagascar) is a member of the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG). This mutual evaluation of Madagascar was conducted by the World Bank and was adopted as an ESAAMLG first Mutual Evaluation Report of Madagascar on AML/CFT using the Revised FATF Standards by its 35th Task Force of Senior Officials which met in Arusha in April 2018 and approved by the Council of Ministers at its 18th meeting in Mahe, Seychelles in September 2018.

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This assessment was conducted under the responsibility of the World Bank, adopted by the ESAAMLG Council of Ministers in September 2018.

Citing reference:

ESAAMLG (2018), *Anti-money laundering and counter-terrorist financing measures - Madagascar*, Mutual Evaluation Report, ESAAMLG, Dar es Salaam <http://www.esaamlg.org/reports/me.php>

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**THE REPUBLIC OF MADAGASCAR
DETAILED ASSESSMENT REPORT ON ANTI-
MONEY LAUNDERING AND COMBATING THE
FINANCING OF TERRORISM AND
PROLIFERATION**



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ACRONYMS

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|---------|---|
| AML/CFT | Anti-Money Laundering and Combating the Financing of Terrorism |
| BIANCO | Independent Anti-Corruption Bureau |
| CCP | Code of criminal procedure |
| CDD | Customer Due Diligence |
| CEM | Caisse d'Épargne de Madagascar |
| CPAC | Anti-corruption Penal Chain (Chaîne Pénale Anti-Corruption) |
| CPEAC | Economic and Anti-Corruption Criminal Chain (Chaîne pénale économique et anti-corruption) |
| CSBF | Banking and Financial Supervision Commission (Commission de supervision bancaire et financière) |
| CSLCC | Supreme Council for Fighting Corruption (Conseil Supérieur de Lutte Contre la Corruption) |
| DGI | Tax authority (Direction Générale des Impôts) |
| DNFBP | Designated Non-Financial Businesses and Professions |
| ESAAMLG | Eastern and Southern Africa, Eastern and Southern Africa Anti-Money Laundering group |
| FATF | Financial Action Task Force |
| FI | Financial Institution |
| FIU | Financial Intelligence Unit |
| FSAP | Financial Sector Assessment Program |
| FSRB | FATF-style Regional Body |
| FT | Financing of terrorism |
| IOB | intermediary in banking operations |
| MFI | Microfinance institutions |
| MoF | Ministry of Finance |
| MOU | Memorandum of Understanding |
| ML | Money laundering |
| MLA | Mutual legal assistance |
| NGO | Non-Governmental Organization |
| NPO | Nonprofit organization |
| NRA | National Risk Assessment |
| OLCS | Office in charge of fighting against narcotics |
| OLCT | Office in charge of fighting against terrorism |
| PAC | Anti-Corruption Poles (Pole anti-corruption) |
| PEP | Politically-exposed person |
| RCS | Trade and Companies Register (Registre du Commerce et des Sociétés) |
| ROSC | Report on Observance of Standards and Codes |
| SAMIFIN | Malagasy Financial Intelligence Unit |
| SRB | Self-regulatory body |
| SA | Limited company (Société anonyme) |
| SARL | Limited liability company (Société à responsabilité limitée) |
| SCS | Limited partnership companies (société en commandite simple) |
| SNC | General partnership Companies (Société en nom collectif) |
| SNOLT | National Structure for the Orientation of the Fight against Terrorism and Organized Crime |
| STR | Suspicious Transaction Report |
| UN | United Nations Organization |
| UNSCR | United Nations Security Council Resolution |

EXECUTIVE SUMMARY

1. This document presents the anti-money laundering and combating the financing of terrorism (AML/CFT) measures in place in Madagascar at the time of the on-site visit from January 30 to February 8, 2017. It analyzes the level of compliance with the 40 FATF recommendations and of effectiveness of the Malagasy AML/CFT system, and issues recommendations with a view to strengthening this system.

Key Findings

2. Madagascar is facing significant ML risks related to the importance of certain underlying offenses (corruption, tax and customs offenses) as well as the natural (natural resource trafficking) and geographical (drug trafficking) characteristics of the island. At the time of the evaluation, no national risk assessment had been conducted; nonetheless, the financial intelligence unit, SAMIFIN, conducted two thematic studies on issues specific to Madagascar: on rosewood traffic and on mobile banking. The FT risk is moderate.

3. The country is also experiencing vulnerabilities that hinder the effective implementation of the AML/CFT system. Among these vulnerabilities, the most important ones are: judicial corruption; the weakness of state institutions, especially after the 2009 political crisis, and the largely informal nature of the economy and the low banking penetration rate.

4. SAMIFIN, the financial intelligence unit of Madagascar, is the central figure of the AML/CFT system. The service has been operational since 2008; it receives and processes a significant number of suspicious transaction reports. It performs operational and strategic analysis. Such analysis is of adequate quality to open criminal proceedings and meets the needs of other competent authorities. The feedback from private sector actors on the quality of SAMIFIN's work (which also covers awareness raising and training) is also positive, and it is everybody's wish to see intensifying relations between them in the future.

5. In addition to SAMIFIN, the Independent Anti-Corruption Bureau, BIANCO, also sends cases to the courts. However, since 2004, when the AML Act was passed¹, only four money laundering cases have been tried, of which two resulted in a conviction. Most investigations result from information provided by SAMIFIN, but the number of investigations is also limited. This is explained by the weak human, material and financial means of the penal chain and the prosecuting authorities, but also by corruption, interference and threats.

6. The AML/CFT system is implemented differently depending on reporting entities. Commercial banks, especially those supported by an international financial group, are the most advanced ones. The implementation of AML/CFT obligations in the insurance sector is limited to identification requirements. With respect to designated non-financial businesses and professions (DNFBP), the legal and accounting professionals (i.e., lawyers, notaries and accountants) consider that they are not reporting entities, and dealers in precious stones and metals, as well as trust service providers and service companies are not subject to the AML/CFT law, whereas these professions, particularly dealers in precious stones and metals, represent significant ML risks in view of the importance of the mining resources traffic. Knowledge and understanding of ML/FT risks

¹ LAW N° 2004-020 OF 19 AUGUST 2004 ON MONEY LAUNDERING, TRACING, CONFISCATION AND INTERNATIONAL COOPERATION WITH REGARDS TO CRIME (GAZETTE n°2939 of 08.11.04, p.4349), (herein after: AML Law)

to which private sector actors are exposed vary depending on the type of entity or profession in question: commercial banks have a better understanding of the risks.

7. The AML/CFT law has many shortcomings in almost every aspect of the obligations of vigilance towards the clients. To this must be added an erroneous interpretation of the obligation to report suspicion. Indeed, the assessment team has highlighted that, with the exception of commercial banks, reporting entities make declarations when they face transactions of more than 10 million Ariary (approximately 3200 USD), an amount beyond which cash payments are prohibited. The 'suspicion' then arises from crossing the threshold of 10 million Ariary. Now, the law explicitly provides that a report shall be made when funds appear to come from the commission of a crime or offense.

8. Finally, the financial sector actors also expressed fears or doubts about the confidentiality of STRs, without specifying where the flaw would come from. If they have a very good opinion of SAMIFIN, they have doubts about the effectiveness of the criminal chain. All wish to see convictions for ML, which would remobilize them. Indeed, to date, they question the appropriateness of the national AML/CFT system, as well as the opportuneness of their participation in AML/CFT.

9. The Banking and Financial Supervision Commission (CSBF) provides basic documentary and on-site AML/CFT supervision of credit institutions, bureau de change, and microfinance institutions. This inspection is limited to a review of the completeness of a sample of client files and the superficial review of the responses to annual questionnaires. There is no systematic verification or provisions in place to combat ML/TF or their implementation. AML/CFT supervision of the insurance sector is recent and embryonic.

Risks and General Situation

10. Madagascar has not yet conducted its national ML/TF risk assessment. The evaluators' ML/TF risk analysis is therefore based on the exchanges and information provided by the competent authorities met during the on-site visit, as well as on various public resources and documents. Despite the absence of a structured and comprehensive analysis of the country's ML /TF risk situation, the risks identified by the evaluators are generally shared by AML/CFT actors in the country, both in the public and private sectors, and all agree that Madagascar is facing significant ML risks: corruption, trafficking of natural resources (fauna, flora, mining resources), customs and fiscal offenses, and drug trafficking are considered underlying offenses that generate significant proceeds. The FT risk is moderate.

Overall Level of Effectiveness and Technical Compliance

11. Madagascar's AML/CFT system is based mainly on Law no. 2004-020, supplemented by Law no. 2014-005. This system does not cover all entities and professions that should be subject to the AML/CFT framework. It has many shortcomings, be they relating to the offenses of ML/FT or due diligence obligations. Madagascar does not have the requisite mechanisms for the implementation of financial sanctions related to terrorism financing and to the financing of proliferation of weapons of mass destruction. On the other hand, the legal framework concerning the authorities in charge of investigations and prosecutions, as well as the one applicable to international cooperation generally comply with international standards.

12. Overall, the level of implementation of the AML/CFT system is low. This is due to (i) lack of capacity among the competent authorities, (ii) insufficient awareness and training of private sector actors, although SAMIFIN is making significant efforts in this direction, (iii) but also by structural factors, (corruption that defeats investigations and prosecutions.)

National AML/CFT Policies and Coordination (Chapter 2 – OI.1; R.1, R.2, R.33)

13. Outside of SAMIFIN, ML/TF risks understanding in Madagascar - by both public and private sector actors - is limited to the ML underlying offenses.

14. In the absence of risk assessment, Madagascar has not yet developed an AML/FT strategy. Nonetheless, there is an anti-corruption strategy, which includes an AML component and the recovery of illicit assets.

15. Madagascar has nevertheless already endowed itself with a coordinating structure for CFT and organized transnational crime, the National Structure for Orienting the Fight Against Terrorism Financing and Organized Crime (SNOLT). But this structure is not mobilized on AML aspects.

16. Entities and individuals in the financial and non-financial sectors subject to the AML/CFT system are not required to take appropriate measures to identify, assess and mitigate their ML / FT risks.

Financial Intelligence, Money Laundering and Confiscation (Chapter 3 – IO.6-8 ; R.3, R.4, R.29-32)

On Financial Intelligence

17. SAMIFIN performs a good operational analysis; its reports include the necessary intelligence for initiating ML/FT investigations. It also conducts a wide variety of strategic analyses, namely the identification of money laundering trends and patterns. However, the delays for processing files are too long, which results in a large number of unprocessed cases and too long response time to requests for information.

18. Several factors also undermine the effectiveness of SAMIFIN, in particular the irregularity of its budget allocation, the absence of cross-border cash declarations, the absence of suspicion reporting requirements applicable to all non-financial sector players, and the practical difficulty of accessing additional information held by other administrations.

19. Finally, the involvement of the Council of Ministers in the SAMIFIN staffing process infringes on the autonomy of the FIU.

On Investigations and Forfeiture:

20. There are 132 money laundering and terrorist financing cases, most of which come from SAMIFIN. Since 2012 over two-thirds of the files provided have resulted from suspicious reports from banks, particularly regarding transactions or account profiles the amounts of which are inconsistent with the resources of the customers involved.

21. Nonetheless, there are only a limited number of investigations opened for underlying offenses such as trafficking of drug, rosewood, precious materials, endangered species. The investigations carried out on these traffics are only exceptionally supplemented by a component relating to the laundering of the proceeds of the offense. As a result, few cases of money laundering are prosecuted in the context of underlying offenses, which nevertheless represent a major risk for Madagascar (trafficking, kidnapping, even corruption). As a result, there are to date no dissuasive, effective and proportionate sanctions. A reform aimed at setting up an anti-corruption center is underway; it should allow for prosecuting and punishing ML.

22. The criminal prosecution authorities (police, *gendarmerie*, judges and public prosecutors) are not in a position to give priority to confiscation of proceeds of infractions.

Terrorism Financing and Proliferation Financing (Chapter 4 – IO.9-11; R.5-8)

23. The Malagasy legal CFT framework is deficient, both in the criminalization of terrorism financing (failure to incriminate the financing of a terrorist organization and an individual terrorist) and in the implementation of the related United Nations Resolutions. Moreover, the weak implementation by reporting entities of CFT preventive measures does not allow Madagascar to adequately protect itself against the misuse of its financial system in terrorist activity financing schemes.

24. TF risk is moderate. TF investigations are rare and have not yet led to the development of significant cases. No case resulted in a conviction.

25. No legislative or regulatory provision is planned to put in place (or implement) the targeted financial sanctions related to the financing of proliferation of weapons of mass destruction.

Preventive Measures (Chapter 5 – OI.4; R.9-23)

26. All private sector representatives met by the assessment team were aware of the most serious offenses (the most common or the ones generating the most important proceeds). Nonetheless, with the exception of commercial banks, particularly those supported by an international financial group, financial and non-financial sector actors have not shown knowledge of ML/TF risks to which they are exposed to. ML/TF offenses are also poorly understood and it seems that the private sector does not establish a connection between crime and the fact that it can be used, knowingly or unwittingly, and participate in realizing ML/ FT activity.

27. The AML Law has many shortcomings and, with the exception of commercial banks, is being implemented in only an embryonic way. In particular, legal and accounting professionals (lawyers, notaries and accountants) do not apply the law; the insurance sector applies only client identification obligations (and that of the contracts beneficiary); the beneficial owner is sought and identified only by commercial banks; politically exposed people, when identification mechanisms are implemented, are not subject to enhanced measures; asset freezing requirements are not implemented (financial institutions do not have lists and/or screening procedures and tools) ; etc.

28. With respect to STRs, as mentioned earlier, many private sector actors refer to the AML law as a legislation that limits cash payments. In practice, with the exception of banks belonging to a group, the 'suspicion' arises from crossing the threshold amount beyond which cash payments are prohibited, while the law stipulates that reporting entities shall file a STR when funds appear to come from the commission of a crime or offense;

29. Private sector actors have expressed to the assessment team their fears or doubts about the confidentiality of STRs, without specifying where the loophole would come from. Unanimously, the private sector (financial and non-financial) has a very good opinion of SAMIFIN and its work, and wishes to see their collaboration intensifying in the future. More generally, they raise doubts as to the effectiveness of the penal chain and wish to see convictions for ML. This would re-mobilize the actors, who today question the relevance of the national AML/CFT system.

Supervision (Chapter 6 – IO.3 ; R.26-28, R.34-35)

30. The competent supervisory authorities, including the self-regulatory bodies of DNFBPs, ensure the application of statutes governing market access, but the effectiveness of their efforts is limited by a general failure to verify the truthfulness of the documents submitted and by the absence, in the vast majority of cases, of an obligation to conduct character background checks.

31. Although they are aware of the thematic studies conducted by SAMIFIN and the ML/TF scenarios in which their supervisees might be involved, the supervisory authorities, including the self-regulatory bodies, did not carry out an assessment of ML/TF risks, whether at sectoral or institutional level. As a result, no supervisor performs risk-based supervision.

32. The CSBF, for credit institutions and manual changers, has already started AML/CFT supervision. It deals with prudential and ML/FT issues during the same on-site visits, therefore, the frequency of inspections is not based on the ML / FT risks that respectively each financial institution/ category of institution presents. Only very recently has the Ministry of Finance integrated AML/CFT issues into its insurance sector oversight program; to date, its efforts in this area remain embryonic and difficult to distinguish from its efforts in the prudential field.

33. The CSBF only cited one case in which it sanctioned a supervisee for non-compliance with an obligation under Law 2004-020 and / or Instruction 006-2007; it favors issuing recommendations without verifying that supervisees have adopted measures to implement them. As a result, the level of compliance of financial institutions - and DNFBBs, which are not yet subject to any AML/ CFT control - remains largely a function of their autonomous appraisal of their legal obligations and internal policies (rather than out of fear of sanctions that may be imposed by their designated supervisor).

34. On the date of the assessment by the Mutual Evaluation Team, only SAMIFIN conducted actions aimed at a proper understanding of AML/CFT risks and obligations. Both the supervisors and the financial institutions and the DNFBBs that are subject to control indicated that they normally refer to SAMIFIN any questions relating to illicit finance.

Transparency of legal entities and legal arrangements (Chapter 7 – 10.5; R.24-25)

35. Most Malagasy authorities met by the assessment team are not aware of the ML /FT risks associated with legal entities, or even do not understand these risks. This translates into practice (and confirms the finding) through very limited exchanges between the Trade and Companies Registry and other competent authorities. In fact, only SAMIFIN and BIANCO query the register on registered entities. SAMIFIN indicated in this regard that it is generally satisfied with the information provided by the Registry.

36. The Trade and Companies Registry, including the register available online, provides general information on company law and basic information on companies established in Madagascar. However, it appears from the consultation of the register that all the information required for the registration of companies is not always available, especially on the managers. No information on beneficial owners of companies is required and therefore available on the register.

37. The role of the Registry is limited to the formal verification of the information provided for registering companies, which does not preclude the creation of opaque structures, including chains of companies. There is no mechanism (other than the received declarations) to ensure that the register information is up-to-date.

38. Non-profit associations and organizations are subject to a declarative regime; the latter are also subject to an approval order. The information contained in the declarations is not centralized and only certain information on such entities is subject to publicity measures in the Gazette. In such conditions, access to information on non-profit associations and organizations is difficult and related research takes time.

International Cooperation (Chapter 8 – 10.2; R.36-40)

39. International cooperation in AML/CFT is extremely limited in Madagascar. SAMIFIN exchanges information with its foreign counterparts. However, the response times are much too long. The legal framework for mutual assistance and extradition is in any case insufficient since Madagascar has signed bilateral agreements with only a very limited number of foreign countries (France, Mauritius). Yet these conventions are too old to be adapted to the needs of international cooperation regarding the current financial crime. There is no case management system to track the execution of cases and to prioritize international cases of money laundering and terrorist financing. No AML/ CFT information exchange mechanism has been established between Malagasy supervisors and their foreign counterparts.

Priorities

40. Improving the Malagasy AML/CFT system is confronted with significant challenges (corruption, fragility and weaknesses of state institutions, low traceability of transactions and economic operators, etc.), and will require beforehand actions aimed at (1) strengthening public administration; (2) fighting against informality in the private sector, use of cash, and financial exclusion, and (3) implementing a global strategy based on the mobilization of actors involved in AML/ CFT. The implementation of the recommendations advocated will enable the authorities to better respond to the expectations of the international community and to further integrate the domestic financial market into the international financial markets. Absent the implementation of those recommendations, the current deficiencies of the system are likely to penalize more particularly Malagasy credit institutions, which could encounter significant difficulties accessing credit via the international financial system,.

- Develop a national AML/CFT national policy based on a national risk assessment, which involves all key players in AML/CFT (by sector) - such policy has to identify the sector that are most vulnerable to ML/FT and set actions related to prevention, supervision and repression, in the short, medium and long term, and establish mechanisms to track the success of these actions.
- Strengthen the legal, human and material resources of the Criminal Chain (or the new Anti-Corruption Pole) so as to meet the SAMIFIN needs in processing disseminated cases and with a view to developing parallel financial investigations in cases of trafficking (including narcotics, rosewood, precious stones, protected species, mining materials, etc.), as well as customs and tax fraud. Mechanisms to appoint magistrates to the anti-corruption pole should be established, including for investigating magistrates, to ensure their independence. It is also essential to ensure the integrity of such magistrates, including by investigating suspicions of corrupt practices.
- Implement awareness-raising actions directed at the most vulnerable financial and non-financial sector actors to ensure a gradual assimilation of the AML/CFT system.
- Implement measures to ensure a wider use of the banking system and improve financial inclusion. These actions must also aim at combating informality and include two components: an incentive component to lead the actors operating in the informal sector to enter the formal regulated sector, and a repressive component to fight against the operators who would continue to practice in the informal sector.
- Implement risk-based AML/CFT supervision for financial and non-financial sectors. . Establishing AML/CFT supervision programs based on ML/FT risks will require: (i)

separating prudential and AML/ CFT controls; (ii) increasing human resources; and (iii) continuous review of risks in each sector, as well as those applicable to each reporting entity.

- Revise the AML/CFT legal framework to ensure compliance with the new FATF Recommendations, including the requirements relating to identifying politically exposed people and beneficial owners. Include dealers in precious stones and metals within the scope of the AML/CFT law.

Ratings for Effectiveness and Technical Compliance

Effectiveness Ratings

| IO.1 | IO.2 | IO.3 | IO.4 | IO.5 | IO.6 | IO.7 | IO.8 | IO.9 | IO.10 | IO.11 |
|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|--------------|--------------|
| Low | Low | Low | Low | Low | moderate | Low | Low | Low | Low | Low |

Technical Compliance Ratings

| 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 |

MUTUAL EVALUATION REPORT

Preamble

41. This report presents the anti-money laundering and terrorist financing (AML/CFT) measures in force during the on-site visit. It analyzes the level of compliance with the 40 FATF Recommendations and the level of effectiveness of the AML/CFT system, and issues recommendations for strengthening this mechanism.

42. This evaluation is based on the 2012 FATF Recommendations and was prepared using the 2013 Methodology. It was conducted on the basis of information provided by the Malagasy authorities and obtained by the assessment team during its on-site visit to Madagascar from January 30 to February 7, 2017.

43. The evaluation was conducted by a team consisting of: Marilyne Pereira Goncalves (Mission Chief, World Bank), Jean Pierre Brun (World Bank), Alexandra Eckert and Marilyne Landry (Consultants, World Bank), Jason Purcell (US Treasury Department) and Marie Laura Shock Torap (Mauritius Financial Intelligence Unit and observer of the Eastern and Southern Africa, Eastern and Southern Africa Anti-Money Laundering group/ ESAAMLG). The report was reviewed by the FATF, as well as experts of the World Bank working governance and financial sector development.

44. Madagascar was subject to an evaluation by the World Bank in 2005 under the Financial Sector Assessment Program (FSAP) conducted by the International Monetary Fund and the World Bank. Since Madagascar was not part of a FATF-type regional group at the time and that the FSAP is a confidential exercise, the 2005 AML/CFT evaluation will not be referenced in this report. It is therefore the first mutual evaluation of Madagascar that was carried out in partnership with ESAAMLG.

CHAPTER 1. RISKS AND CONTEXT IN TERMS OF MONEY LAUNDERING AND TERRORIST FINANCING (ML/TF)

45. Madagascar is a Southern Africa island state, located in the Indian Ocean east of Mozambique; it is the fifth largest island in the world with an area of 587,000 km². Its capital is Antananarivo. The country is surrounded by other islands and archipelagos including Mauritius, Seychelles, Comoros and Reunion (France). The population is estimated at 24.24 million in 2016, of which 64 percent is under 25 years of age. It is a very culturally diverse country; there are 18 ethnic groups (foko) or indigenous nations speaking a common language, Malagasy, born from the mixture of Austronesian, Sanskrit and Arabic languages. The official languages are Malagasy and French. The country's currency is Ariary (as of March 25, 2017, 1 USD = 3,242 Ariary - MGA).

46. Madagascar is gifted with a unique worldwide biodiversity and a great potential: the country has vast expanses of agricultural land, forest areas and access to the sea that could make it the "food basket" of the Indian Ocean. However, Madagascar faces significant development challenges and belongs to the group of the least developed countries according to the UN, with a USD

9.739 billion gross domestic product in 2015, a per capita USD 440 dollars Gross National Income (2014), a 71.5% poverty rate and a 0.510 human development index (2014)².

47. The Malagasy economy is essentially based on agriculture, which employs four out of five inhabitants. Agricultural products, cloves, vanilla, cocoa, sugar, pepper and coffee, are among Madagascar twelve largest exports. Madagascar produces the second largest vanilla crop in the world. Malagasy vanilla accounts for a quarter of the world market. Industrial mining activities in Madagascar include chromium, cobalt, ilmenite and nickel³ production. Small-scale artisanal mining operations, employing over 500,000 people across the country, are mainly gold, precious stones and semi-precious stones. Most of these products are extracted and exported illegally⁴. Free trade zones play a major role in foreign trade: 27% of Malagasy exports (75% of which are textiles) and 16% of imports. Madagascar main trading partners are France, the United States, Germany and Japan, for exports; and China, France, Mauritius, South Africa and India for imports. The value for personal remittances⁵ received in Madagascar was \$250,466,300 US Dollars (2.5% of GDP) as of 2016, primarily from France.

48. At the political and institutional level, Madagascar has been independent since 1960 and is a multi-party republic with a semi-presidential system, in which the President is the Head of State and the Prime Minister is the Head of Government. The executive power is in the hands of the Government whereas the legislative power is shared between the Government and the two Chambers of Parliament: The National Assembly and the Senate. The judiciary power is independent from the former two.

49. The country has gone through major instability periods and political crises (1972, 1991-92, 2001-2002 and 2009-2013⁶). The recent socio-political and economic crisis from 2009 to 2013 disrupted the course of political, social, and economic life of the country. The establishment of democratic institutions, including the President of the Republic, the Government and the National Assembly resulting from free, peaceful and credible elections held in 2013 marks the return of

²Madagascar is ranked 154 th out of 188 countries, according to UNDP annual development indicator (2014 figure). <http://www.mg.undp.org/content/madagascar/fr/home/countryinfo/>

³ In 2015, Madagascar exportations accounted for€ 2.1 Billion. The main products are nickel at27%, textile at 23% and agricultural products (essentially vanilla and clove) at 20%. In 2014, nickel became the leading Malagasy export product. In total, mining products already account for more than a third of exports. In 2015, Malagasy exports went to the EU (41%), the APEC zone (36%), emerging and developing Asia (12%) and Africa (9%). Madagascar's main customers are France (15.2%), the United States (12.7%), China (7%), South Africa (5.9%) and Japan (5%) ; <http://www.diplomatie.gouv.fr/fr/dossiers-pays/madagascar/presentation-de-madagascar/>

⁴ <https://eiti.org/madagascar#overview>

⁵ Personal remittances comprise personal transfers and compensation of employees. Personal transfers consist of all current transfers in cash or in kind made or received by resident households to or from nonresident households. Personal transfers thus include all current transfers between resident and nonresident individuals. <https://www.indexmundi.com/facts/madagascar/indicator/BX.TRF.PWKR.CD.DT>

⁶ In 2009, under popular pressure and that of the army, President Marc Ravalomanana went into exile and Andry Rajoelina took power. The entire international community condemns this regime change and several regional organizations suspend Madagascar. Mediation is conducted by SADC and the AU. A road map was signed in September 2011 by the main Malagasy political parties. It reforms the institutions of the "Transition" and aims to hold credible elections. An independent National Electoral Commission is set up in March 2012 and an amnesty law is passed in April. Parallel to this process, SADC gets from the two main protagonists of the crisis a commitment not to run for presidential elections - the so-called "neither-nor" formula, which creates the conditions for credible elections <http://www.diplomatie.gouv.fr/fr/dossiers-pays/madagascar/presentation-de-madagascar/>

Madagascar to constitutional order. Positive changes at the political level were visible in 2015 with the democratic institutions set up in 2014 starting to function, the appointment of a new Prime Minister and of the second post-transition government. Important milestones of the year 2015 included, the organization of peaceful local and senatorial elections, the adoption of the decentralization policy, the holding of the conference on national reconciliation with the participation of the former Presidents and of nearly 2,000 delegates, and the organization of a national consultation for the development of Policy Letter on reforming the security sector.

50. The establishment of the Senate in February 2016 closed the establishment of all the democratic institutions of the Fourth Republic. The Upper Chamber has 63 senators, two thirds of whom are elected and one third appointed by the President of the Republic. The Constitution from now on provides for the Senate Speaker to act in the event of resignation, dismissal, or death of the President of the Republic.

ML/TF Risks and Preliminary Identification of Higher Risk Areas

Overview of ML /TF Risks

51. Madagascar has not yet initiated its national ML/ TF risk assessment. Only two sector studies on rosewood trafficking and mobile banking were conducted by SAMIFN. The evaluators' ML/FT risk analysis is therefore based on the exchanges and information provided by the competent authorities met during the on-site visit, as well as on the various public resources and documents. Despite the absence of a comprehensive and structured analysis of the country's ML/ FT risk situation, the risks identified by the evaluators are generally shared by AML/CFT actors on the field, in both public and private sector, and all agree and consider that Madagascar is facing significant ML risks: corruption, natural resources (fauna, flora, mines) trafficking, customs and tax offenses, and drug trafficking are considered underlying offenses that generate significant proceeds.

52. **Corruption:** Since 2003, Madagascar has committed in fighting corruption. Corruption is indeed described as a considerable phenomenon⁷ by the Malagasy authorities in charge of fighting corruption and is one of the main predicate offenses to money laundering. In that regard, several significant steps have been taken, such as the establishment in 2003⁸ of the Supreme Council for Fighting Corruption (CSLCC, which became the Committee for the Safeguarding Integrity-CSI in 2006) and the Independent Anti-Corruption Bureau (BIANCO) in 2004. Their work generated Law No. 2004-030 on fighting corruption, the 2004-2014 National Strategy and the new national anti-corruption strategy (2015-2025). BIANCO, which is an operational service, is tasked with implementing the national strategy. It ensures the application of Law No. 2004-030 and is in charge of preventing corruption, particularly through training and public awareness among the population. An "Anti-corruption Penal Chain" (CPAC), now "Economic and Anti-Corruption Criminal Chain, CPEAC," was also established through a circular of 2 July 2004 signed by the Minister of Justice, the Minister of National Defense and the Secretary of State for Public Service. In addition, more recently, a new law No. 2016-021 on the Anti-Corruption Poles (PAC) of 22 August 2016 established within the penal justice system specialized jurisdictions known as "Anti-Corruption Poles". These replace the anti-corruption penal chain, whose establishment through a simple inter-ministerial circular in 2004 was accused of lacking appropriate legal framework resulting in jurisdictional and administrative difficulties. The PACs were not operational at the time of the on-site visit.

⁷ Conseil Supérieur de Lutte contre la Corruption

⁸ Decree no. 2002-1128 of 30 September 2002.

53. Despite these measures, corruption remains a major source of illicit proceeds. Madagascar ranks 123rd out of 168 on *Transparency International's* 2015 Corruption Perceptions Index. The new strategy adopted for the 2015-2025 period aims at reframing anti-corruption efforts, including directing them to the mining and forestry sectors, which are particularly sensitive.

54. SAMIFIN's recent annual reports also show that corruption is one of the main predicate offense of the cases reported to it and the amounts related to corruption are particularly significant.

55. **Trafficking in rosewood and forest and mining resources:** Madagascar has exceptional natural resources, in particular mining and forest resources. Mining resources are very diverse; metals, such as gold, nickel and cobalt, and precious and semi-precious stones, including emeralds, sapphires and rubies. The rich Malagasy biodiversity, including forest, especially rosewood or palisander⁹, and wildlife resources (tortoises, corals, etc.) make the country particularly vulnerable to trafficking. These sectors are placed respectively under the responsibility of the Ministry of Mines and the Ministry of the Environment, Ecology and Forests, which regulate their exploitation. However, fraudulent mining exports seem to amount to 80% exports (companies specialized in mining are pointed at by SAMIFIN¹⁰) and SAMIFIN has received many suspicious transaction reports (STRs) in relation with rosewood operators¹¹.

56. **Tax Fraud:** Tax Fraud: Since 2010, tax fraud has been cited by SAMIFIN as one of the most common predicate offenses in Madagascar. In its report for 2014, tax fraud is designated as the underlying offense with the highest amounts (MGA 53 thousand million, i.e., USD 16.780 million and EUR 15.2 million). According to the press¹², 82% of companies located in Madagascar would evade paying taxes, which would put tax fraud at the top of the underlying offenses. The Directorate General of Taxes (DGI) also identifies, as a typology of tax frauds, turnover concealment, wrongly deducted VAT, non-payment of VAT collected, imports over-invoicing, and exports under-invoicing. Some fraudulent practices, such as the use of nominees, have also been identified.

57. **Customs Fraud:** customs fraud and smuggling¹³ are other offenses generating significant illicit financial flows identified by SAMIFIN and the customs services.

58. **Property offences:** SAMIFIN has disseminated several cases related to the infractions against property.

59. **Foreign exchange violations:** SAMIFIN has also disseminated cases regarding violations against the foreign exchange law.

60. **Drug Trafficking:** according to criminal prosecution authorities, Madagascar is considered a hub for trafficking in cocaine, heroin, and cannabis. Madagascar is at the same time a country of production, consumption and transit of cannabis, as well as of transit of heroin from Afghanistan or Pakistan and cocaine from South America.

61. **Terrorist Financing:** risks associated with the terrorist financing are not yet well apprehended by the Malagasy authorities. To date, while Madagascar has never been the scene of an act of terrorism of an international nature, yet terrorist groups appear to have conducted or sought to conduct certain activities in Madagascar in the past. For example, links between Malagasy

⁹ Illegal vanilla trafficking is also a concern mentioned by World Bank teams.

¹⁰ <http://www.lexpress.mu/article/madagascar-blanchiment-dargent-la-fraude-fiscale-en-t%C3%A0te-de-file>

¹¹ Report on illegal traffic of rosewood and fight against money laundering in Madagascar.

¹² <http://www.lexpress.mu/article/madagascar-blanchiment-dargent-la-fraude-fiscale-en-t%C3%A0te-de-file>

¹³ <http://www.state.gov/documents/organization/258726.pdf>

residents and terrorist groups such as al-Qaeda were highlighted in the past; a member of the bin Laden family was murdered in Madagascar, and traces of a possible Al Shabbab activity were found there.

62. At the internal level, attempts to use improvised explosives to destabilize the regime occurred, particularly during the transitional period, which was triggered by the events of 2009. Among the criminal prosecution authorities, it is presumed that the sector of non-profit organizations (NPOs), including worship associations, would be exploited for terrorist financing purposes. Indeed, in 2016, SAMIFIN was the recipient of suspicious reports from a bank following the transfer of funds from Kuwait, Saudi Arabia, Turkey or Qatar aimed to finance Islamic religious associations. The value of the transfers was disproportionate to their stated purpose, for zebus purchase. The file was then referred to the National Orientation Structure of Fight against Terrorism and Organized Crime (SNOLT), then to the gendarmerie¹⁴ - the investigation is underway. Even though bank accounts were frozen by SAMIFIN and that some surveillance is exercised with some NPOs in Tananarive by the gendarmerie, a concrete analysis of the risks of TF in Madagascar has not yet been conducted.

Country Risk Assessment and Scoping of Higher Risk Issues

63. Madagascar has not yet started its national risk assessment (NRA), but the country has approached the World Bank for assistance in this area¹⁵. Two sector studies on rosewood traffic (2010) and on mobile banking (2015) were conducted by SAMIFIN based on suspicious transaction reports received. The study on rosewood trafficking also benefited from information received by the penal prosecution authorities, including Customs and Port Services, the Public Treasury, the Directorate General of Forestry and Madagascar National Park. The "mobile banking" study was conducted in consultation with an intermediary in banking operations (IOB). Although the risk analysis carried out in these two sectors is of good quality, the scope of these studies remains limited and the main ML/TF risks to which the country is exposed are not yet sufficiently apprehended by the national authorities, particularly in terms of organization of means to mitigate these risks.

64. The evaluators identified prior to the on-site assessment the highest risks in Madagascar. These risks were subject to in-depth exchanges during the visit:

- a. The underlying offenses that generate significant illicit proceeds: corruption and misappropriation of public funds, mining, environmental (rosewood, biodiversity) and customs related offenses and tax evasion. Discussions with the authorities aimed to better understand the modes of operation involved in these phenomena, the impact of corruption in natural resources trafficking, and the degree of organization of this crime, as well as to identify the actions and the means deployed by national authorities to deal with these phenomena, including the coordination of actions between administrations that intervene in different phases of criminal operations and the results obtained;
- b. Circulation of cash and risks related to informal economy;

¹⁴ Note for the English MER: The National Gendarmerie is a law enforcement agency attached to the Ministry of Defense. Its agents are judicial police officers in charge of enforcing the law. Please refer to the institutional framework (h) of Chapter 1.

¹⁵ The first national Malagasy risk assessment workshop was conducted in June 2017 and brought together all AML / CFT actors, more than a hundred people

- c. Impact of the low banking penetration rate on the implementation of the AML/CFT system: only 8.5% of Malagasy adults have an account for basic operations (including, banking, microfinance, etc.) and how required policies to promote access to financial services for the poor and AML /CFT are tied together;
- d. Measures put in place by the national authorities to ensure that the recent expansion of access to financial services through mobile banking operators, which is a factor of financial inclusion that is important for Madagascar, would not be used for criminal purposes;
- e. The implementation of AML/CFT measures by financial institutions and DNFBPs - some DNFBPs, such as dealers in precious stones and metals are not subject to the AML/CFT Law. Even if the assessment team does not have specific elements to estimate the overall importance of the role of professions in money laundering operations, the functions performed by real estate agents, lawyers, accountants, or notaries in real estate or commercial transactions make it a vulnerable sector. In addition, the assessment team focused on identification conditions by banks of beneficial owners, particularly for off-shore companies and on controlling their operations;
- f. The implementation of AML/CFT measures by criminal prosecution authorities - BIANCO and SAMIFIN forward cases to the courts, but the number of convictions remains low compared to the threats to which the country is faced. AML/CFT tools remain inadequately used to face the most current threats;
- g. The implementation of international cooperation to fight against the trafficking of natural resources, rosewood, black coral, tortoises, stones and precious metals being destined to the international market.

Elements of Specific Importance (« Materiality »)

65. The implementation of the Malagasy AML/ CFT system is confronted to vulnerabilities relating to the nature of the country's economy, including the importance of the informal sector, the high use of cash and the low rate of banking penetration. These factors limit the transparency of economic actors and transactions and accentuate the inadequate traceability of operations. Indeed, activities outside the formal framework are predominant in all sectors of the economy, including in sectors relating to natural resources operations. Transactions in this segment are not necessarily criminal in nature; nevertheless, the informal sector favors the development of illegal or criminal operations for lack of transparency and monitoring. The country's weak banking system (8.5%), the strong preference of players for cash, mistrust of the tax administration also explain the shadow economy.

66. **Predominance of the Banking Sector:** The Malagasy financial sector is dominated by banks, the assets of which account for 25% of GDP. Commercial banks hold 84% of all financial assets, but they offer their savings and credit products only to a small portion of their client base. Only 8.5% of adults (15 years and older) have access to a transaction account (including electronic money), and 5.73% of them have an account in a financial institution, including microfinance institutions). All commercial banks are foreign owned. The subsidiaries of three major French banks operating internationally have a joint market share representing approximately 65% of the assets. In addition to the 11 banks, the Malagasy financial system includes 25 microfinance institutions (MFIs) and 5 insurance companies (three public and two private). While money laundering is mainly via the informal sector, the money laundering cases detected by SAMIFIN show that "launderers" in most

cases use the banking network as a conduit for their illicit transactions¹⁶. For example, in the 8 cases of tax fraud reviewed by SAMIFIN in 2014, even though the underlying economic activities are dominated by cash transactions and that the informal sector plays an important role, illegal funds flowed through the books of local banks. In one case in particular, most client transactions (reported as farmer/livestock breeder) were displaced cash payments, very large, and split amounts. The same remark can be made with regard to cases of favoritism in public procurement or where an official with multiple bank accounts was easily identified.

67. **The non-bank financial sector** accounts for about 15% of total financial assets. The insurance and pension sectors dominate the sector, with each controlling 8% of total assets for the entire financial sector. About 75% of the industry's revenue comes from non-life insurance products. Life insurance products remain marginal; non-life insurance products (property and casualty insurance and personal injury insurance) grew strongly due to an increase in automobile owners. For their part, MFIs have experienced a strong expansion since 2009¹⁷ but their size remains modest. The microfinance sector provides limited financial services, mainly to low-income households, especially in rural areas. There is no equity market in Madagascar.

68. The manual money changers sector raises special attention. Although the country has only 22 bureaux de change, SAMIFIN investigated on an important case of money laundering involving foreign nationals and a bureau de change in which colossal exchange transactions were detected (665,000 euros in a single day to the profit of 5 people). Moreover, the CSBF's monitoring of manual money changers under anti-money laundering standards is very limited.

69. **Mobile Banking:** Financial services offered by mobile telephony have grown significantly. Two years after launching their mobile money operations in mid-2010, the three major mobile operators in Madagascar, which represent 51% of the market - Telma, Orange and Airtel - registered 1.7 million subscribers, surpassing the number of clients of banks and MFIs (1.4 million). While less than 10% of the population has a bank account, most Malagasy families have mobile phones, both in rural and urban areas. The mobile operators provide their customers with an e-money service as an intermediary in banking operations. The principal bank is ultimately responsible for and the guarantor of the sums credited to the e-money accounts. In AML/CFT terms, banks are required to apply all AML/CFT requirements applicable to electronic money transactions. Telephony operators implement some of the banks' AML/CFT obligations, including the identification of e-money customers, but they are not as such subject to the provisions of the AML Act and the CFT Law. Law No. 2016-056 on electronic money and electronic money institutions, which was promulgated on February 2, 2017, reorganizes the mobile banking operations sector and subjects mobile banking providers to the Malagasy AML/ CFT system and CSBF supervision. It must be noted, however, that the requisite implementing legislation for the application of the law on electronic money institutions was not available at the time of the on-site visit.

70. These mobile payment services expose the financial sector to a major ML / FT risk as SAMIFIN points out in its recent activity report 2014 and even more in a detailed analysis of March 2015 entitled " Mobile Banking Risk Assessment Report ". While recognizing the usefulness of these new services for consumers in terms of ease and accessibility, SAMFIN also remarks that major risks have been identified in terms of AML/CFT: (i) lack of coordination on bringing to compliance and harmonization of the due diligence measures applied by Bank Operations Intermediaries (BOIs) and

¹⁶ It is also true that STRs are essentially produced by banks.

¹⁷ According to the statistics of the General Directorate of the Treasury / National Coordination of Microfinance, the number of clients of institutions increased from 530,000 in 2008 to 1,100,000 at the end of 2013. Deposits grew by 56% per year whereas loans reached annual growth of 35%.

the principal banks; and especially (ii) difficulty to control the large volume of transactions made through these new technologies¹⁸. On this last point, the volume of transactions carried out via mobile money services is colossal across Madagascar. Between 2011 and 2014, the total annual amount of over 10 million MGA funds received by the clients of an unsupported BOI ranges from MGA 95 billion (USD32 million) to MGA 193 billion (USD63 million). The SAMIFIN reports in particular that a customer ¹⁹ was able between 2011 and 2014 to benefit without proof from 17 billion MGA (US \$ 5.5 million) funds; these funds would account on average for 14% of the total amount of unsupported funds made each year.

71. SAMFIN also points out the absence of implementation of the legal framework organizing the sector, the opacity around the origin of funds involved in the sector, the absence of efficient monitoring framework for repeating transactions by the same client through different BOIs (data is not centralized) and the reluctance of certain BOIs (mobile banking operators) and principal banks to collaborate on AML/CFT.

72. **Development of Free Zones:** Madagascar is also becoming attractive for foreign companies thanks to its free zone policy which favors free trade. For a few years now, offshore company structures which allow their shareholders to make their investments profitable through tax optimization²⁰ have been developing in the country. While Madagascar is still a very young country on the international offshoring market, this new activity is not without ML/ FT risk due to the fact that practices regarding the identification of the ultimate beneficial owner are not developed, or do not exist.

73. **Non-financial Sector:** Several categories of FATF designated non-financial businesses and professions are not covered by the current AML law. These include trust and corporate service providers and dealers in precious metals and stones. A rapid search on the Internet shows that there are several professionals in Madagascar ²¹ that offer companies such services as company creation and domiciliation. In the specific context of the development of Madagascar's offshore sector, the existence of service providers for trusts and companies that are not subject to the preventive mechanism to combat money laundering and the financing of terrorism seems to pose a particular risk in terms of AML/CFT, especially with regard to the identification of beneficial owners.

74. Dealers in precious metals and stones are also subject to the preventive AML/ CFT regime. However, Madagascar has many natural resources, especially gold, nickel and cobalt, as well as sapphires, rubies, etc. Beyond the traders themselves, it appears that it is the mining sector as a whole that is exposed to a considerable number of money laundering predicate offenses²²; not being subject to AML/ CFT requirements significantly increases the level of ML / FT risks present in the mining sector. The real estate sector also appears as vulnerable in Madagascar, particularly with the proliferation of so-called luxury real estate constructions, which remain very little or not occupied, and the sharp increase in the price of land, in an economic context that seems not to justify such a

¹⁸ Processing data on suspicious transaction reports received by Samifin from a bank regarding unjustified transactions exceeding the established threshold revealed the importance of funds moving through mobile money services in Madagascar

¹⁹ This customer by the way was the subject to an STR for traffic of rosewood .

²⁰ Madagascar offers tax benefits for outsourcing project owners such as IT and communication companies,

²¹ <http://madagascarinvest.com/> ou <http://www.kentia-domiciliation.com/> (le 8 juillet 2016)

²² Transparency International – Initiative Madagascar, Paper on the artisanal mining sector in Madagascar, June 2016.

situation. Many of the investors in, or buyers of, large-scale developments in Madagascar – including office and apartment buildings, factories, refineries, mines, malls, villas, and stadiums – are foreign, such that the primary responsibility for due diligence lies with the large international banks that handle the relevant funds.

Structural Elements

75. The weakness of governance and institutions affects the capacity of the Malagasy Government to implement an effective AML/CFT policy and to improve the management of natural resources. The 2015 World Bank Policy and Institutional Assessment Report²³ places Madagascar on the Fragile Country List, with the country scoring low on the Public Sector and Institutional Management Indicator²⁴ (score of 2.7 on a scale from 1 to 6). The weakness of the Malagasy state institutions was also highlighted by the 2015 World Bank's Madagascar Systematic Diagnosis²⁵ which states «*that Madagascar's sustainable development is hampered by several governance challenges stemming from the concentration of political and economic powers within a few networks led by powerful leaders. This distribution of power creates a bias in the provision of public goods and services in favor of the center while the capital has the lowest incidence of extreme poverty. The struggle for resources among these networks generates recurring political crises that interrupt growth spurts and discourage investment.*» Some political elites controlling large parts of economic activity, and enjoying immunities, namely parliamentary ones, has also been highlighted by many of the assessment team's interlocutors, both in the public and private sectors.

76. Corruption is described by the assessment team's interlocutors as endemic and affecting all sectors, in particular the justice. While the quality of SAMIFIN's operational work is recognized, mistrust towards criminal prosecution authorities impacts the implementation of the reporting obligation within the private sector and limits their confidence and their participation in the national AML/CFT system.

77. To date, the establishment of BIANCO and the penal chain have not yet enabled Madagascar to obtain significant results in the fight against corruption. The BIANCO files have not led to the dismantling of grand corruption, few ML investigations result from the predicate offenses of corruption, rosewood, protected species or precious materials trafficking. The confiscation of criminal proceeds is not yet considered a priority by the judicial authorities. There is no strategic monitoring of the files. The resources needed for effective investigations are not provided to magistrates and investigators, especially on files referred by the SAMIFIN and BIANCO. The length of the procedures and the absence of a significant number of convictions undermine the effectiveness of the judicial system, including the Penal justice system and prosecution authorities.

²³http://documents.worldbank.org/curated/en/521801467040157230/683696272_2016061960900632/additional/106632-FRENCH-WP-PUBLIC.pdf

²⁴ This indicator takes into account the following elements: Property rights and rule-based governance (2.5); Quality of budgetary and financial management (2.5); Efficiency of revenue mobilization (3.5); Quality of public administration (2.5); Transparency, accountability and corruption in the public sector (2.5)

²⁴²⁵ <http://documents.worldbank.org/curated/en/130511468185962850/pdf/99197-REVISED-FRENCH-Box394822B-PUBLIC-SCD-Madagascar-final-definitif.pdf>

78. Furthermore, prosecutions are likely to be hampered by corruption, interferences or threats. In this context, the role of civil society organizations and their power to be a civil party in matters falling within their scope is not widely recognized by law. In practice, these civil party constitutions remain exceptional. Parliamentary immunities are likely to promote impunity in some cases. Magistrates or judicial police officers may be subject to external pressure, ministerial intervention and sometimes proposals for corruption.

79. Financial investigations (and confiscation orders) are held back by the impossibility or the difficulty to access information from land registries, financial transactions, or computer-based searches.

Other Context Elements

AML/ CFT Strategy

80. National authorities have not yet adopted a national AML/CFT policy. A number of measures have been put in place to address some of the major underlying crimes, including corruption and rosewood trafficking through the establishment of state structures to fight against these phenomena (CSLCC, BIANCO, CPEAC, PAC, the Special Chain for fighting rosewood traffic); the study on mobile banking has contributed to the adoption of a law regulating this activity.

81. Since 2013, and the return to political stability, SAMIFIN and the institutions in charge of fighting corruption have mobilized significant efforts to place AML/ CFT and illicit assets recovery at the center of government action in favor of good-governance and to comply with relevant international standards, as follows:

- a. adoption of Law No. 2014-005 of 19 June 2014 against terrorism and transnational organized crime (CFT law); laws no. 2016-020 on fight against corruption and no. 2016-021 August 22, 2016 on Anti-corruption Poles (PAC);
- b. accession of Madagascar to the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG);
- c. preparation of a legislation on illicit assets recovery and management, which includes the establishment of an agency tasked with recovering illicit assets – such legislation has not yet been adopted;
- d. preparation of a bill amending Law no. 2004-020 of 19 August 2004 on money laundering, tracing, confiscation and international co-operation on criminal proceeds (AML Law); and
- e. the launching of the National Risk Assessment (NRA) which will aim at implementing a AML/CFT strategy based on ML/FT risks as identified by all AML/CFT stakeholders.

The Institutional Framework

82. The institutions involved in AML/CFT in Madagascar are the following:

- a. the Prime Minister Office is responsible for the development of national AML/CFT policies, through the National Structure for the Orientation of the Fight against Terrorism and Organized Crime (SNOLT);
- b. SAMIFIN, which is the mainstay of the AML/CFT system, is responsible for receiving and analyzing suspicion transaction reports (STR) that it receives from reporting entities and through other denunciations, and for referring to the Public Prosecutor's

Office the results of its analyses; SAMIFIN may order the provisional freezing of the funds involved in the STR;

- c. Madagascar's criminal justice system has three levels of courts. Courts of first instance hear criminal cases carrying limited fines and sentences. The court of appeals includes a criminal court of first instance for cases carrying sentences greater than five years (which is the cases for AML-CFT offenses). The supreme court of appeals hears appeals of cases from the court of appeals. The judiciary also includes specialized courts designed to handle matters such as cattle theft. A military court has jurisdiction over all cases that involve national security. Investigations are carried out by Law enforcement authorities under supervision of prosecution offices. When the case is complex and carries out sentences greater than 5 years (which is the case for AML-CFT offenses) Law enforcement authorities act under the supervision of investigating judges.
- d. the Ministry of Justice prepares draft penal laws submitted to the Parliament; it is responsible for developing the AML/CFT penal policy;
- e. the Public Prosecutor of the CPEAC and his Deputies are in charge of prosecution and enforcement of sentences, and the execution of the requests for mutual legal assistance and extradition.; CPEAC centralizes corruption and economic and financial matters (CPEAC is to be replaced by PACs);
- f. the special Chain against rosewood and/or ebony wood trafficking is specialized in the investigation, prosecution and judgment of facts related to rosewood and ebony trafficking - this chain is not yet operational;
- g. The Independent Bureau Against Corruption (BIANCO), whose purpose is to fight corruption, at the preventive/educational and repressive levels, with the advantage that it is independent from the judiciary;
- h. the Malagasy Ministry of Public Security (National Police) is tasked with executing the mission as "judicial police, particularly in fight against corruption and serious financial crime" and participating "in the fight against international crime in all its forms ". The National Police investigates crimes and offenses. It includes a Directorate for Suppressing Economic and Financial Offenses and Securing Investment which deals with all forms of economic and financial crime;
- i.the Ministry of Defense and the National Gendarmerie is considered as a branch of the army acting in their quality as auxiliary of justice and as judicial police officer in charge of enforcing the law. The gendarmerie has an Office in charge of fighting against narcotics (OLCS) and an Office in charge of fighting against terrorism (OLCT), with direct functional reporting line to the Secretary of State in charge of the Gendarmerie.
- j.the General Directorate of Customs is under the Ministry of Finance and Budget and is in charge of border controls of cross-border movements of cash and all traffics. Its agents do not have the status of judicial police officers.
- k. the General Directorate of Taxes of the Ministry of Finance and Budget, is responsible, especially for actively fighting against tax frauds in all their forms. The fight against tax fraud is conducted by the Tax Audit Research and Programming Department;

- l. the Ministry of Foreign Affairs deals with communications relating to mutual legal assistance and extradition and the implementation of the United Nations lists in terrorist financing. With regard to the implementation of United Nations Security Council Resolution (UNSCR) 1267, the freezing of funds of persons and entities covered by the Resolution is carried out by inter-ministerial decree issued by the Ministry of Foreign Affairs and the Ministry of Finance.
- m. the Banking and Financial Supervision Commission (CSBF) is in charge of regulating and supervising credit institutions, microfinance institutions, manual money changers and, since the adoption in December 2016 of Law No. 2016-056, electronic money institutions;
- n. the Ministry of Finance and Budget is responsible for regulating and supervising insurance companies operating in Madagascar.

Financial Sector and Designated Non-Financial Businesses and Professions (DNFBPs)

83. The Malagasy financial sector consists of credit institutions, insurance companies, microfinance institutions and manual money changers. At the time of the on-site visit to Madagascar, the law on electronic money institutions was in force, but, in the absence of the implementing legislation required, no institution has received a license.

84. Among the credit institutions, there are eleven so-called territorial banks:

- Four retail banks: Bank of Africa Madagascar, Malagasy Bank of the Indian Ocean, BFV-Société Générale and BNI Madagascar;
- Three banks specializing in microfinance: Access Bank Madagascar, MICROCRED Bank Madagascar and the Investment Company for the Promotion of Enterprises in Madagascar (SIPEM BANK);
- Four investment banks: BGFIBANK Madagascar SA, BM Madagascar (Bank of Mascarene Madagascar), SBM-Madagascar and The Mauritius Commercial Bank SA (MCB Madagascar)

85. All deposit banks belong, or have until recently, belonged to international financial groups, namely French banking groups. Mauritian banks are present in two investment banks, the other two investment banks belong respectively to French and Gabonese banking groups. The microfinance sector is predominantly Malagasy. Only AccessBank Madagascar belongs to an international financial group.

86. In addition to the territorial banks, there are four financial institutions specializing in activities such as leasing or surety bond, and 25 microfinance institutions.

87. The insurance sector is very small; it has five insurance companies, among which four ones offer life insurance products.

88. Finally, there are 22 licensed manual money changers in Madagascar. The majority is located in Antananarivo.

89. The non-financial sector consists of:

- 377 lawyers. In addition to defending their clients, they undertake advisory activities and can also engage in transactions for their clients such as company creation and management, real estate purchase and sale, etc.

- 53 notaries, plus 20 trainees. In addition to deed authentication, notably for real estate purchase and sale, notaries can also be involved in the company creation and management;
- 124 accountants;
- There are 25 to 30 casinos in Madagascar (no specific account is available), of which eleven are based in Antananarivo;
- Real estate agents are not grouped under an organized and supervised profession, No data has been communicated to the assessment team regarding the number of real estate agents.

90. There are also many company service providers and precious metals and stones dealers. These two categories are not subject to the AML/CFT system and are not organized professions.

Preventive Measures

91. The Malagasy AML/CFT system is set up by the AML Law and supplemented by Law No. 2014-005 against terrorism and organized transnational crime. The legislative framework is complemented by the Instruction No. 006/2007-CSBF of 3 August 2007 on prevention and fight against money laundering and terrorism financing, which applies to entities subject to the supervision of the Banking and Financial Supervision Commission: credit institutions, including microfinance institutions, manual money changers and electronic money institutions. The Instruction is a *binding means* within the meaning of the FATF. The AML/CFT system does not provide for an approach based on ML/TF risks and exemption from the enforcement of the system.

92. In Madagascar, several types of natural or legal persons meet the definition of 'financial institutions' as defined by the FATF, and they must be subject to the AML/CFT system, see table below. It appears that some of them do not have complete obligations. In fact, under the provisions of Article 3 of the AML Law, credit institutions, microfinance institutions, money changers, postal financial services, insurance companies, mutuals, and stockbrokers (as well as certain non-financial businesses and professions, see below) are subject to the AML/CFT system. The legislative framework is supplemented by Instruction No. 006/2007-CSBF of 3 August 2007 on prevention and fight against money laundering and terrorism financing (hereinafter the Instruction); it applies to credit institutions, microfinance institutions, electronic money institutions and manual money changers, subject to the supervision of the Banking and Financial Supervision Commission (hereinafter CSBF), which excludes Paositra Malagasy (hereinafter postal financial services), the Caisse d'Epargne de Madagascar (hereinafter CEM) and the insurance sector.

| Activities or Transactions | Type of Institution or Person |
|--|--|
| Acceptance of deposits and other repayable funds from the public | Credit Institutions Microfinance Institutions Postal Financial Services Madagascar Savings Bank |
| Loans | Credit Institutions Microfinance Institutions Madagascar Savings Bank (restricted to staff) |

| | |
|---|--|
| Leasing | Credit Institutions Microfinance Institutions |
| Funds or Securities Transfer Service | Credit Institutions Microfinance Institutions Postal Financial Services Madagascar Savings Bank |
| Issuing and Administering Means of Payment | Credit Institutions |
| Granting guarantees and commitment subscriptions | |
| Negotiation on: (a) money market instruments (checks, notes, certificates of deposit, derivatives, etc.); (b) the foreign exchange market; (c) currency instruments, interest rates and indices; (d) securities; (e) commodity futures markets | Credit Institutions |
| Participation in securities issuing and related financial services provision | |
| Individual and collective wealth management | Credit Institutions |
| Safekeeping and administration of, in cash or liquid, securities on behalf of others | Credit Institutions |
| Other funds or money investment, administration or management operations on behalf of others | Credit Institutions |
| Subscription and placement of life insurance and other investment products in connection with insurance | Insurance Companies |
| Manual Change | Credit Institutions Manual money Changers |

93. With regard to designated non-financial businesses and professions, Article 3 paragraph 1 of the AML Law provides that the law applies to any natural or legal person who, by virtue of their profession, performs, controls or advises on transactions involving deposits, exchanges, investment, conversions or any other capital movements, and in particular to credit institutions and financial intermediaries'. The following paragraph adds to these reporting entities casinos and gaming establishments as well as those who undertake, control or advise on real estate transactions. The AML Law therefore applies to casinos and real estate agents, as well as lawyers, notaries and other independent and accounting legal professionals in the cases provided for in Article 3, which does not appear to cover all the situations envisaged by the FATF (eg, establishment, operation or administration of a legal person). Dealers in precious metals and stones and trust and company service providers are not covered.

Legal Persons and Arrangements

94. The following legal entities are regulated in Madagascar: companies, non-profit associations, and foundations. There are civil companies, namely real estate, and commercial ones:

general partnership (SNC), the limited partnership (SCS), the limited liability company (SàRL) and the limited company (SA). With the exception of undeclared partnerships, all companies are registered in the Trade and Companies Register kept in the Registry of the High Court. The register is also available on line for free. The assessment team was unable to obtain data on the number of companies registered at the time of the on-site visit. However, information was provided on the activity of the Antananarivo RCS in 2016:

- 2,608 new companies were registered, mainly sole proprietorships (1,478), limited liability companies (628) and single-member private limited companies (447);
- 2,655 changes in the information already recorded have been notified (minutes, statutes, balance sheets and other corporate acts);
- 48 dissolutions were registered and 17 companies were revoked.

95. There are several categories of non-profit organizations in Madagascar, namely associations, non-governmental organizations, economic or professional unions, foundations, cooperatives and cult or religious associations.

96. *The* associations declared at the office of the region have legal personality and legal capacity. An ordinance with legislative terms of 3 October 1960 - as amended by another ordinance of 13 August 1975 - lays down their legal system. It in particular determines the general conditions of constitution, operation and dissolution of associations. These rules do not apply to trade unions and professional associations, mutual societies, companies within the meaning of Article 1832 of the Civil Code, religious congregations or missions and cult or religious associations, the regime of which is subject to special legislative provisions or finally to the categories of associations for which the law sets a special system. Some associations may be recognized as being of public utility by decree adopted by the Council of Ministers.

97. To be registered as beneficial to the at large, the declared association shall provide the authorities *with*: (1) a copy of the Gazette containing the extract of the declaration; (2) a statement indicating the origin, development, and public interest purpose of the work; 3 ° the statutes of the association in duplicate; 4 ° a list of its establishments, indicating their office; 5 ° the list of the members of the association with the indication of their age, their nationality, their profession and their domicile or, if it is a union, the list of the associations which compose it with the indication of their title, purpose and office; (6) the financial account for the last fiscal year; 7 ° a statement of movable and immovable assets and liabilities; 8 ° an extract from the deliberation of the general assembly authorizing the request.

98. NGOs are governed by Law no. 96-030 of August 14, 1997. Their purpose is grouping autonomous natural or legal persons in a private and structured framework. They are legally declared and approved, perform for a non-profit purpose, activities on humanitarian grounds in a professional manner. There are four main categories of NGOs. Humanitarian NGOs have social and charitable activities (medico-social NGOs, NGOs fighting against poverty). Economic development NGOs are dedicated to activities of rural, artisanal development, economic promotion of a region or incentive to the emergence of undertakings or small self-sustaining businesses in rural or urban deprived areas. NGOs working for the promotion of human beings have socio-educational, vocational training or social reintegration concerns. Finally, NGOs with a cultural objective are concerned with cultural promotion (dissemination of culture, encouragement of reading, communication and cultural education) or else NGOs orienting their activities towards the protection of the national heritage.

99. Foundations are another type of non-profit organization governed by Law no. 2004-014 of 19 August 2004 on the overhaul of the foundations regime in Madagascar. Foundations are legal

persons under private law whose creation results, on the one hand, from a legal act whereby one or more natural or legal persons permanently assign property, rights and resources for the achievement of objectives of general interest and, on the other hand, grant recognition of public utility by the Government. Endowment funds, still called capital of the foundation comes from the resources, property or rights permanently assigned to the achievement of the objectives of the foundation. Only income from the endowment can be used to finance its activities.

100. The assessment team was unable to obtain accurate data on the number of reported associations. However, among the associations, there are, at the time of the on-site visit, 8 foundations, 359 foreign associations, 285 cultural associations and about 700 non-governmental organizations that are authorized in Madagascar

101. The Malagasy law does not provide for the creation of trust-type legal arrangements. However, nothing prohibits legal arrangements governed by foreign law from operating (i.e., owning property, having bank accounts, etc.) in Madagascar; or persons, whether foreign or Malagasy ones, (for example, lawyers or notaries acting as trustee), from acting as director (i.e., trustee) of these assets and from establishing business relations with Malagasy financial institutions or DNFBPs or from administering a property located in Madagascar.

Supervisory Arrangements

102. The financial sector is mainly supervised by CSBF, which is the licensing and supervisory authority of credit institutions, including microfinance institutions and manual money changers. It is also designated as the licensing and supervisory authority for electronic money institutions under the provisions of Law No. 2006-056 on electronic money and electronic money institutions. At the time of writing this report, no approval for an establishment of electronic money was granted. The insurance sector is supervised by the Ministry of Finance, which is also the licensing authority. The Caisse d'Epargne de Madagascar and the postal financial services have special statuses: the CEM is not subject to any supervision and the financial services of the Post Office are placed under the double financial and technical supervision of the Ministry of Finance. and that of Posts.

103. Designated non-financial businesses and professions subject to the AML/CFT regime are monitored by self-regulatory bodies, with the exception of casinos which are supervised by the Gaming Board, a Department of the Ministry of Interior.

| Type of Financial Institutions / Designated Non-financial Businesses and Professions | Accreditation/ Authorization Authority | Supervision Authority |
|--|--|--|
| Credit institutions, including microfinance institutions | CSBF | CSBF |
| CEM | NA | None |
| Postal Financial Services | NA | Ministry of Finance and Ministry of Posts |
| Insurance | Ministry of Finance | Ministère des Finances |
| Manual Money Changers | CSBF | CSBF |
| Electronic Money Establishments | CSBF | CSBF |
| Lawyers | NA | Council of the Bar Association |
| Notaries | NA | National Chamber of Notaries |
| Accountants | NA | Council of the Order of Chartered Accountants and Financial Advisers |
| Casinos | Ministry of Interior and Ministry of Tourism | Ministry of Interior – Gaming Board |

International Cooperation

104. Madagascar is not a financial center used to launder proceeds from criminal activities undertaken in other countries. Very little information was provided to the assessment team on placements abroad of proceeds of criminal activity committed in Madagascar. It should be noted, however, that the trafficking in Malagasy natural resources is destined for the international market, particularly in Asia for rosewood; meanwhile, no information was provided to the assessment team on financial arrangements related to such transnational criminal activities despite the fact that law enforcement authorities recognize that they have "organized crime" characteristics. The financial investigations and international cooperation tools provided by the AML /CFT system are not used to dismantle the networks of involved organized crime.

CHAPTER 2. NATIONAL AML/CFT POLICIES AND COORDINATION

Main Findings and Recommendations

Main Findings

Madagascar has not yet completed its national ML/FT Risk Assessment (NRA) - however, two studies on ML risks related to rosewood trafficking and mobile banking have been conducted. With the exception of SAMIFIN, the understanding of ML/TF risks in Madagascar - by both public and private sector actors - is limited to the underlying ML offenses.

Failing a NRA, Madagascar has not yet defined a risk-based AML/CFT strategy and has not yet adopted a ML/ TF risk management mechanism. Only the new anti-corruption strategy takes AML and illicit assets recovery into account.

SNOLT, the national coordinating body for fighting against terrorism and organized crime, is not mobilized on AML aspects.

Reporting entities are under no obligation to take appropriate measures to identify, assess and mitigate their ML/TF risks

Recommendations

Continue the efforts led by SAMIFIN in order to develop and adopt the NRA of Madagascar, involving all AML/CFT stakeholders (public and private sectors actors so as to ensure a holistic approach and building on the ML/FT risk knowledge and expertise of SAMIFIN. The leadership of the SAMIFIN in carrying out the NRA exercise should be confirmed and the SNOLT members should participate in this exercise. The international dimension of the trafficking of Madagascar's natural resources, as well as other criminal activity (i.e. drug trafficking) needs to be fully integrated into this assessment to draw relevant risk mitigating measures for international cooperation

Based on the results of the NRA a national AML/CFT strategy should be defined, as well as AML/CFT policies and guidelines. The national AML/CFT strategy should include all AML/CFT stakeholders, set clear priority actions and timelines per actors, tying together prevention, detection and suppression actions, and providing for training and sensitization program for AML/CFT actors so as to increase AML/CFT understanding and implementation.

Establish a body in charge of national AML/CFT coordination: ideally by confirming the SNOLT's role in AML and by appointing its members, or by appointing a specific structure. Based on the results of the NRA, if necessary broaden the makeup of the SNOLT to relevant stakeholders involved (1) in the fight against the crimes identified as the main ML/FT threats, (2) in the regulation and supervision of vulnerable sectors, including the precious stones and metals sector; as well as (3) the fight against proliferation.

The national AML/CFT strategy should be coordinated with actions aimed at promoting financial inclusion in line with appropriate AML/CFT safeguards, as well as actions aimed at combating informality and increased transparency of economic transactions.

Develop mechanisms for collecting and maintaining information and statistical data on ML/FT investigations, prosecutions, convictions and seized and confiscated property; for implementing the control measures on reporting entities; for international cooperation; and any other factors that would enable authorities to assess the effectiveness of AML/CFT measures.

Immediate Outcome 1 (Risk, Policy and Coordination)

Country's Understanding of its ML/TF risks

105. Efforts by the national authorities to understand the ML/FT risks to which the country is exposed was undertaken under the direction of SAMIFIN, who has built up ML/FT risk knowledge and expertise. At the time of the on-site visit, SAMIFIN requested the support of the World Bank for the NRA, but this work had not yet been initiated²⁶. Two sector studies on rosewood traffic (2010) and on mobile banking (2015) were conducted by SAMIFIN based on suspicious transaction reports received.

106. In general, SAMIFIN and the criminal prosecution authorities have a good understanding of the underlying money laundering offenses. Illegal exploitation of natural resources and corruption are cited by all the entities met by the assessment team as significant sources of illicit income, also impacting the ability of the tax administration to raise revenue. Political elites' hold on these resources is also a major concern.

107. All private sector stakeholders encountered, whether in the financial sector or the non-financial sector, are aware of the threats Madagascar is exposed to owing to the abundance and diversity of its natural resources. Rosewood, vanilla, spices, precious stones and metals, tortoises, and fish resources trafficking are cited as constituting a substantial part of the crime.

108. While the underlying crime is understood, the financial circuits linked to these traffics, except by SAMIFIN, are not understood by both public and private actors. SAMIFIN has a good understanding of the country's areas of vulnerability to money laundering. Cases identified based on STRs are published on its website. Among the sectors identified as vulnerable by SAMIFIN there are operations in the international trade, the banking sector, the public procurement, the real estate sector, the car and jewelry trade. Otherwise, the country's areas of vulnerability to money laundering remain poorly controlled by SAMIFIN's institutional partners, including the supervisory authorities - the notion of ML is itself poorly understood at the national level and often confused with the predicate offences. A large number of AML/CFT stakeholders believe that this is SAMIFIN's area of expertise, and are not yet fully mobilized in the fight against financial crime. The real estate sector is often cited as a sector in which the proceeds of crime are reinvested. Money laundering resulting from rosewood traffic through trade in vanilla, cloves and other spices and the use of nominees in

²⁶ A workshop bringing together all AML / CFT actors, about a hundred representatives from both public and private sectors was organized in June 2017 in partnership with the World Bank and SAMIFIN. The Malagasy NRA will be carried out using the World Bank's "National Risk Assessment" tool. Seven working groups were formed to initiate an analysis (1) of ML and TF threats; (2) national vulnerabilities; (3) vulnerabilities of the banking sector; (4) vulnerabilities of the insurance sector; (5) vulnerabilities of the exchange sectors, remittances, microfinance and other financial institutions; (6) vulnerabilities of DNFBBPs; and risks associated with financial inclusion products. Following the June 2017 workshop, each group will collect information and data based on the World Bank modules and prepare a report. This exercise should be closed by a second dissemination and action plan preparation workshop in February 2018 to mitigate the risks identified.

the creation of legal entities is also mentioned, without having been subject to an STR-based actual analysis or some surveys. Reporting entities, even banking ones, state that they do not understand how they can be used for money laundering purposes; and lawyers and notaries question their liability to AML/CFT legal documents.

109. Risks related to terrorism financing are not yet well understood. There is a presumption among the authorities that the non-profit organization (NPO) sector, including religious associations, would be exploited for terrorist financing purposes. STRs have been undertaken regarding FT, bank accounts have been frozen by SAMIFIN following such STRs and investigations are under way. The gendarmerie implements some surveillance through networking, with some officials of such associations in Antananarivo, and awareness-raising actions have been conducted with some NPOs. However, it is difficult for the authorities to have a good understanding of risks in this area as no risk analysis of the NPO sector has been conducted yet.

National Policies to address identified ML/FT Risks

110. The Malagasy authorities have not yet developed risk-based AML/CFT policies, as the NRA has not yet been implemented. Some of the vulnerable sectors identified by SAMIFIN, such as precious stones and metals, are not yet subject to the applicable AML/CFT legal documents.

111. It should be noted, however, that the government's anti-corruption criminal policy from now on incorporates AML and recovery of proceeds from corruption offenses. Indeed, the new national anti-corruption strategy 2015-2025 associates AML, strengthening of financial intelligence processing, detection, freezing, confiscation and seizures of illicit assets with the efforts for good governance. This strategy recognizes the pivotal role of SAMIFIN in this area. Concrete steps were taken in 2016 to strengthen the institutional and legislative framework of the entire system and improve the effectiveness of the fight against corruption, including:

- a. The establishment of a reform committee for the implementation of the national anti-corruption strategy by Decree No. 4618/2016;
- b. The adoption of a new anti-corruption law which incriminates under the Malagasy Law the acts provided for by the United Nations Convention against Corruption (known as the Merida Convention) and strengthens the national systems of heritage declaration, in particular by conferring to BIANCO the duty to verify these declarations;
- c. The creation of anti-corruption poles to address the shortcomings of CPEAC;
- d. The preparation of a draft law for the establishment of an asset recovery agency.

112. The implementation texts relating to such projects have not yet been adopted.

113. With regard to rosewood trafficking, the Malagasy authorities, in order to take into account, the governance issues in the management of files, have created a special penal chain for such particularly sensitive cases. The penal chain for rosewood was not yet operational at the time of the on-site visit.

114. The Government's policy, in terms of sustainable development, grants priority to increase in tax revenue, the ratio of which to GDP is among the lowest ones in the world²⁷. Tax fraud has

²⁷<http://documents.worldbank.org/curated/en/130511468185962850/pdf/99197-REVISED-FRENCH-Box394822B-PUBLIC-SCD-Madagascar-final-definitif.pdf>; p. 38 (11% en 2015, source World Bank)

furthermore been identified by SAMIFIN as an ML offense. In order to better coordinate the efforts by DGI and SAMIFIN, a partnership agreement between these two administrations is being signed with the aim of setting up a framework for information exchange.

Exemptions, Enhanced and Simplified Measures

115. The Malagasy authorities have not yet implemented exemption measures or enhanced or enforced simplified due diligence measures based on a risk analysis.

Objectives and Activities of Competent Authorities

116. In general, the objectives and activities of the Malagasy authorities are not yet informed by their understanding of ML/FT risks. Almost all the investigations conducted by the CPEAC result from cases referred by SAMIFIN since 2012, which mainly involve tax fraud and corruption, and abuse of office or of social goods. Such cases are not directed to grand corruption, which is yet criticized as a factor of instability for Madagascar. Few investigations result from the predicate offenses of drug, rosewood, protected species or precious materials trafficking. The financial aspect of such cases is not exploited. Crime proceeds confiscation is not yet considered a priority by the judicial authorities, while the Circular of 9 November 2012 on the implementation of the penal policy on money laundering by the Courts and Tribunals (AML Circular) recommends to the magistrates at the judgment stage to systematically request the confiscation of the crime proceeds identified during the proceedings, even though the trial court cannot issue a conviction, as long as it is proved that the assets are of criminal origin.

117. Furthermore, if the AML Circular indicates that at the stage of the proceedings, the reports coming from SAMIFIN should not be closed down, and that the ML establishment must be maintained and continued in the event of sufficient charges, notwithstanding the prosecution of the predicate offense. There is a lack of follow-up and feedback on the SAMIFIN files. Out of over 100 files sent by SAMIFIN, only four cases of money laundering were tried, two of which resulted in convictions. Therefore, it is determined that the AML criminal policy objectives are not yet being achieved.

118. The criminal prosecution authorities do not conduct any parallel financial investigations under their files on predicate offenses. The police and the gendarmerie are not yet mobilized on such issues.

119. With regard to supervisory and control authorities, only CSBF takes into account the AML/CFT system in its sector supervision program, but this institution has not yet adopted a risk-based approach.

National Cooperation and Coordination

120. SNOLT²⁸, established by the AML Law and Decree No. 2015-050, is the institutional framework for guiding and coordinating the actions for fighting against terrorism and organized

²⁸ SNOLT is a body attached to the Prime Minister's Office, made up of national authorities responsible for the fight against terrorism and transnational organized crime. These are representatives of the Prime Minister's Office, Ministry of National Defense, Ministry of Foreign Affairs, Ministry of Justice, Ministry of the Interior and Decentralization, Ministry of Finance and Budget, Ministry of Public Security, Ministry of Public Health, Ministry of Tourism, Transport and Meteorology, Ministry of Posts, Telecommunications and New Technologies, Secretariat of State at the Ministry of National Defense in charge of the Gendarmerie, Central Intelligence Service, of the Port, Maritime and River Authority, the Civil Aviation of Madagascar, the Independent Anti-Corruption Bureau

crime. It provides a liaison body with the international entities working in the field of fighting against terrorism and transnational organized crime. SNOLT representatives were appointed in 2015 for a 3-year term. Meetings were held by SNOLT in 2015 in order to coordinate actions regarding terrorism. However, following the change in government in 2016, the new appointments have not yet been made and so this structure is no longer in a position to coordinate the actions in this area. While SNOLT legislative and regulatory powers aim at covering at the same time terrorism, ML and organized crime, in practice only terrorism has been the focus of the group's work. Coordination in ML is not actually implemented outside of the anti-corruption framework.

121. At the operational level, cooperation in AML is organized by SAMIFIN through the application of Article 17 of the AML Act. SAMIFIN can obtain from any public authority and all professions subject to the law the communication of information and documents under the investigations undertaken following a declaration of suspicion. This same article provides for the exchange of intelligence with the authorities responsible for the application of disciplinary sanctions. The modalities for such cooperation among different services and institutions are defined through the development of memoranda of understanding for the exchange of information, respect for confidentiality, deadlines, etc. SAMIFIN has concluded information exchange agreements with the Independent Anti-Corruption Bureau (BIANCO), Alliance Voary Gasy (Federation of Associations Intervening in Protection and Natural Resources), the National Gendarmerie. A tripartite information exchange agreement among SAMIFIN, the General Directorate of Treasury and BIANCO is about to be signed.

Private Sector's Awareness of Risks

122. Madagascar has not yet conducted its NRA. However, efforts have been made to communicate the results of the two sector studies developed by SAMIFIN. The risk study involving rosewood was conducted in collaboration with the criminal prosecution authorities, including the Customs and Port Services, the Public Treasury, the Directorate General of Forests and Madagascar National Park. An anonymous extract of this report has been shared with these institutions and has also been disseminated with the media. Conversely, the full report, containing the identity of the people involved, was sent to the Ministry of Justice. The results of the study on mobile banking were not disseminated. SAMIFIN has also set up programs for training judges and reporting entities, under which it communicates the results of its strategic analyzes of STRs in order to sensitize the public and private sector stakeholders to the identified risks. However, in the absence of a comprehensive risk analysis, risk awareness by the private sector remains marginal.

Conclusion

123. ML/FT risks in Madagascar are understood at a very low level as they are perceived only up to the stage of predicate offences. Risk awareness by the private sector remains marginal. The methods used in recycling the proceeds of crime are mainly understood by SAMIFIN; the other AML/CFT actors are not yet sufficiently aware of these issues. Apart from the fight against corruption, the new national strategy of which integrates the risks of laundering the proceeds of such crime, the country does not have risk-based AML/CFT policies. While SAMIFIN has put in place an adequate framework for operational cooperation among competent authorities, the absence of a national AML/CFT strategy does not actually enable the authorities to combine their efforts in the area in order to effectively fight against ML/FT.

(BIANCO), the SAMIFIN, the National Institute of Nuclear Science and Techniques (INSTN), the National Bureau of Management of Risks and Catastrophes (BNGRC), and the Central Bank of Madagascar.

124. **The effectiveness level achieved by Madagascar regarding Immediate Outcome 1 is low.**

CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

Key findings and Recommendations

Key findings

On Financial Intelligence:

The Financial Intelligence Unit (SAMIFIN) produces a quality operational analysis. Its reports contain the information required for initiating ML / FT investigations. The vast majority of ML investigations initiated in Madagascar stems from financial intelligence provided by SAMIFIN.

The types of offenses identified as part of the FIU's disseminations correspond to the main threats in Madagascar including corruption, tax evasion and the illegal trafficking in forest resources.

Competent authorities responsible for investigations request information from the FIU when they undertake ML investigations. Both domestic competent authorities and Madagascar's main foreign counterpart have indicated that the information provided by the FIU is accurate and relevant and assists them to perform their duties.

SAMIFIN produces a wide variety of strategic analyses, including the identification of money laundering trends and patterns. The results of some of these analyses have influenced operational activities and the adoption of remedial policy measures.

Resource and capacity issues regarding investigative agencies limit the comprehensive use of financial intelligence.

Lack of cross-border declarations, lack of reporting requirements for dealers in precious metals and metals, trust and company service providers and the difficulty in accessing timely additional information limit SAMIFIN's access to comprehensive information.

Confidentiality concerns exist with respect to SAMIFIN sharing information in its possession in two separate instances.

Fluctuations in the allocation of SAMIFIN's budget undermine its ability to mobilize the resources required for performing its functions

File processing time is long, which results in a large number of unprocessed cases and a delayed response time to information requests.

The involvement of the Council of Ministers in the SAMIFIN staffing process raises effectiveness questions related to the timeliness of appointments and their competency in determining the skills required for technical directors.

On Investigations and Confiscation:

Money laundering and terrorist financing involve 132 files, most of which are referred by SAMIFIN. Since 2012, over two-thirds of the referrals have resulted from suspicious reports from banks, particularly regarding transactions or account profiles, the amounts of which are little consistent with the resources of the clients involved.

Conversely, few investigations are opened for underlying offenses such as trafficking in narcotics, rosewood, precious materials, protected species.

The investigations conducted on such traffics are only exceptionally supplemented by a component relating to the laundering of the proceeds of the offense. As a result, few cases of money laundering are prosecuted in the context of underlying offenses accounting for a major risk for Madagascar (trafficking, kidnapping, or even corruption).

Pending the implementation of the reforms related to the anti-corruption pole, it is obvious that the Malagasy system does not enable to come up with dissuasive, effective and proportionate sanctions.

The criminal prosecution authorities (police, gendarmerie, trial judges and the public prosecutor's office) are not in a position to give priority to the confiscation of the offense proceeds.

The establishment of a central census and management body for seized and confiscated property with regard to confiscation is necessary to prevent theft or loss of seized goods.

Such measure would enable the judicial services to obtain legal and practical assistance that are helpful for achieving envisaged seizures and confiscations and for managing the seized or confiscated goods until the final judgment.

Recommendations

With a view to improving the information available to SAMIFIN for its analyses:

Enhance awareness to the AML/ CFT standards among all the sectors that are the most vulnerable to ML / FT in order to enable better detection of illicit financial flows in the financial and non-financial sectors.

Ensure the dispatching to SAMIFIN of cross-border declarations of cash and negotiable instruments, significant cash declarations and international funds transfers that are above a threshold.

Allow SAMIFIN to directly access the databases of the competent authorities.

Establish cooperation agreements with the police as well as the general directorates of customs and taxes.

Enhance reporting entity awareness of terrorism financing typologies and indicators.

In order to reduce STRs processing time by SAMIFIN:

Increase resources allocated to operational and strategic analysis.

Revise the analytical process within SAMIFIN in order to consolidate the two teams in charge of analyzing STRs and updating SAMIFIN's IT infrastructure - provide this service with analysis software.

Establish a prioritization mechanism for STRs.

Strengthen and stabilize the budget allocated to SAMIFIN in order to ensure the increase in staff numbers and the capacity to renew the IT infrastructure.

In order to strengthen the protection of information held by SAMIFIN:

Make sure that presenting cases to the Advisory Committee does not enable identifying the individuals or institutions involved in order to protect information confidentiality - an anonymous version of the records could be forwarded.

With a view to strengthening SAMIFIN independence and autonomy:

Remove the Council of Ministers from the appointment process of SAMIFIN Technical Directors and transfer appointment responsibility to the SAMIFIN Director General.

In order to improve law enforcement actions against ML/TF offenses:

The Malagasy criminal prosecution authorities must define an overall strategy for law enforcement against AML/ FT offenses. A case management system should be established to ensure a minimum of monitoring of progress and results obtained under investigation procedures.

The Criminal Affairs Department must through a circular encourage Public Prosecutor Offices to initiate or order investigations and prosecutions for money laundering on the basis of the underlying offenses, in particular trafficking in rosewood, natural species and precious stones, in narcotics and minerals.

The legal, human and material means of the Penal Chain (or the new Anti-Corruption Pole) must be strengthened to meet the requirements for processing SAMIFIN suspicious transaction reports and referrals and in order to develop parallel financial investigations or financial investigations occurring after the traffic update (in particular narcotics, rosewood, precious stones, protected species, minerals ...).

The criminal prosecution authorities (police, gendarmerie, judges and public prosecutors) should be made aware of the importance and priority of confiscating all proceeds of crime, including those transferred to third parties, and educated in this regard.

A specific criminal policy circular should be issued by the Ministry of Justice to this effect, setting clear the short and medium-term objectives; establishing guidelines for the systematic initiation of financial investigations in large-scale cases, in particular for the most important underlying offenses; and reinforcing the training actions among the competent authorities on seizure and confiscation.

The competent authorities should put in place a system for the management of seized property and the enforcement of court orders providing for confiscation.

Centralized, relevant and clear statistics should be kept on assets seizures and confiscations in Madagascar, confiscations relating to the communication of false information or false declarations at the border, tax or customs transactions.

Immediate Outcome 6 (Financial Intelligence ML/TF)

Use of financial intelligence and other information / Reports received and requested by the competent authorities

Information available for analysis

125. SAMIFIN undertakes the receipt, analysis and dissemination functions required by the FATF standard and carries out operational and strategic analysis. It has a database for financial analysis that gives access to suspicious transaction reports and large cash declarations. Competent authorities may also provide suspicious transaction reports.

126. Dealers in precious stones and metals, as well as trust and corporate service providers, are not subject to the suspicious reporting obligation. This accounts for a major gap given the important vulnerabilities in the precious stones and metals sector. Cross-border reports of cash and negotiable instruments are not transmitted to SAMIFIN. SAMIFIN noted that the absence of cross-border reporting has impacted their ability to conduct comprehensive analysis.

127. SAMIFIN also has access to some databases of competent authorities:

- The Tax administration (basic information),
- The Customs administration (basic information, exports and imports),

- The Trade and Companies Register,
- The Public Procurement Regulation Authority.

128. The information obtained through these databases is incomplete and not always up-to-date. This is due to delays in keeping certain data up to date issues related to digitization in government. Some information comes from the regions and it takes time to provide this updated information to Tananarive (headquarters). The databases made available to SAMIFIN contain only basic information (for example, information on the identity of physical or legal entities, contracts obtained by physical or legal entities). If SAMIFIN wishes to obtain additional information, it must ask the competent authority. For the Customs Administration, Excel files containing imports and exports made by physical or legal entities on an annual basis are sent. This data is not always up-to-date owing to the weak integration of government information systems.

Received and Requested Reports Types

129. SAMIFIN receives suspicious transaction reports (STRs) from reporting entities and competent authorities. It also receives large cash transaction reports - for transactions above the 50 million Ariary threshold (+/- USD15.625USD). Such reports are made on a voluntary basis; they are not a legal or regulatory obligation. Such voluntary referrals appear to be a misinterpretation of Article 10 of the AML Law which requires heightened vigilance with regards to operations carried out in unusual and unjustified complex conditions of more than 50 million Ariary. It appears that the STRs received since SAMIFIN's creation in 2008, the vast majority (79%) come from the banking sector. Public, private partners and civil society organizations are the authors of 16% of the STRs received. These private partners are private sector professional organizations or legal or physical entities that are not subject to STR obligations.

130. The two STRs sent by foreign exchange bureaux between 2008 and 2016 do not reflect the vulnerability of the sector. SAMIFIN investigated an important case of money laundering involving foreign nationals and a foreign exchange bureau in which significant foreign exchange transactions were detected (665,000 euros in one day for the benefit of 5 people). The case raised here relates to cross-border currency transportation by two foreign nationals, who are at the same time family members of the owner of the foreign exchange. These people were intercepted by the National Gendarmerie at Ivato International Airport. The currencies were confiscated by the Malagasy authorities. SAMIFIN was seized of the case and conducted an analysis of the file related to violations of the exchange code and subsequently money laundering. SAMIFIN also contacted CSBF in the case of this foreign exchange and on that occasion requested the closure of this foreign exchange for non-compliance with the law.

Table 3.3.1: Origins of the Suspicious Transactions Reports (STRs) received by SAMIFIN (2008-2016)

| Type of declarant | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | Total |
|--------------------------------------|------|------|------|------|------|------|------|------|------|-------|
| Banks | 4 | 43 | 68 | 56 | 50 | 111 | 118 | 115 | 76 | 641 |
| Paositra (Postal Financial Services) | 1 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 4 |
| Insurance | | 0 | 1 | 0 | 0 | | 0 | 0 | 2 | 3 |
| Bureau de change | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 2 |
| Microfinance | 0 | | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 2 |

| | | | | | | | | | | |
|-----------------------------------|-----------|-----------|-----------|-----------|-----------|------------|------------|------------|------------|------------|
| Partners and others ²⁹ | 13 | 8 | 23 | 6 | 13 | 20 | 10 | 6 | 32* | 131 |
| FIU Counterpart | 1 | 0 | 1 | 5 | 6 | 6 | 3 | 4 | 3 | 29 |
| Total | 20 | 54 | 93 | 67 | 69 | 137 | 131 | 126 | 115 | 812 |

*Among the 32 STRs received from « partners and others », there is an STR on Terrorist Financing

Table 3.3.2 : Large Cash Transaction Reports (LCTRs) for 2015 and 2016

| Type of Reporting Entity | 2015 | 2016 | Total |
|--------------------------------|-----------|------------|------------|
| Insurance | 0 | 0 | 0 |
| Bank | 57 | 62 | 151 |
| Bureau de change | 0 | 38 | 39 |
| FIU | 0 | 0 | 6 |
| Microfinance | 0 | 9 | 9 |
| Private Individuals and others | 1 | 1 | 13 |
| Total | 58 | 110 | 218 |

131. Most STRs deal with suspicions related to money laundering. Nonetheless, SAMIFIN analyzed three STRs related to terrorist financing. The cases involved NGOs purported to support families from certain religious communities with wire transfers coming from the middle-east. The case was referred to the gendarmerie, the CPAC and the SNOLT.

Access to additional information

132. SAMIFIN can obtain additional information from reporting entities. SAMIFIN's requests relate to account opening documents, bank statements, accounting documents, declarations of funds origin, as well as import and export files. Requests are processed by financial institutions within a range of 2 days to a few weeks. The requests made by SAMIFIN are mainly addressed to the banking sector.

133. In addition, SAMIFIN may send requests for information to the various competent authorities which may hold information useful for the analysis. Memorandums of understanding were negotiated with the gendarmerie, the BIANCO and the Voary Gasy Alliance (Federation of Associations Involved in Protection and Natural Resources). Others are being negotiated with the Customs Administration, the Tax Administration, the Immigration Authorities and the Public Prosecutor's Office. In order to facilitate communication with SAMIFIN, focal points were established with the gendarmerie, police, tax administration and BIANCO. Despite these arrangements, SAMIFIN indicated that some requests may take up to three months before being answered. SAMIFIN's financial resources do not allow access to commercial databases such as World Check³⁰.

134. The time taken to obtain the information provided by reporting entities and public administrations is often long and slows down the analysis carried out by SAMIFIN.

Operational Analysis Process

135. The operational analysis focuses primarily on STR analysis. STRs are received in paper format and given to the SAMIFIN Managing Director. The information contained in an STR is entered manually in the SAMIFIN database. A decision is then made by SAMIFIN's college to determine

²⁹ 'Partners and others' refer to public, private partners, and civil society organizations.

³⁰ World Check is a commercial database of politically vulnerable people, individuals and organizations at high risk.

whether the STR must be subject to further analysis. The college is composed of the General Manager and the directors of each technical department of SAMIFIN (financial and legal research and analysis, studies and strategies, information systems)-

136. The Research and Financial Analysis Department and the Legal Department are both responsible for analyzing STRs. The mission of the Financial Research and Analysis Department is to analyze suspicious reports received from reporting entities and thus to identify serious indications that could turn suspicions into a presumption of money laundering or terrorist financing. Such analysis includes verifying the information contained in the suspicious transaction report, the information gathering phase, the collection of transaction accounting documents, the analysis of information, the development of a typology or method procedure and the synthesis of the analysis carried out.

137. The case is then sent to the legal department, the mission of which consists in:

- conducting research and investigations with the aim of collecting the constituent elements of the predicate offenses and the money laundering offense from the reporting of suspicious transactions;
- performing the legal and criminal analysis of STRs;
- establishing operational and strategic relationships with the administrative and judicial authorities;
- conducting legal studies aimed at improving the national AML/CFT framework.

138. The activities of both departments are governed by specific methodology and procedures. Previously, both units worked consecutively. Since the arrival of the new DG in 2016, the two departments are now working simultaneously (in a pair) to speed up the finalization of the analysis. Given the large number of cases awaiting analysis, the evaluation team wonders whether the intervention of two separate teams in the analysis of the operational cases has a negative impact on the timeliness and the ultimate relevance of the cases. Indeed, the presence of two teams creates a duplication of effort where two separate analysts must analyze facts separately. Consolidating teams and analysis steps could contribute to a more effective management of the analysis process in order to reduce the backlog of STRs awaiting analysis.

SAMIFIN Operational Analysis Outcomes

139. SAMIFIN's Financial Research and Analysis Department describes in the analysis report the modus operandi of the people and companies involved in money laundering, including the transactions carried out and their amounts. The report guides the work of the Prosecutor's Office to the extent that the elements justifying the referral, as well as the evidence to be sought are highlighted. The reports are supported by attachments, including the identity of the people involved, the extract of the Trade and Companies Register and the Articles of Association of the Company, the copies of credit transfer orders from the bank, bank statements, etc.

140. The report shared with the evaluation team was well structured and contained all the essential information needed to start a money laundering investigation. The identification of the suspected specific criminal offense (including the relevant reference of the Penal Code), supported by serious indicators of the offense and the evidence that should be obtained, demonstrates that the content of the report was adapted to the needs of the Public Prosecutor Office.

141. In some cases, the reports are also in parallel referred to other competent authorities, such as the Tax, Customs, Mines, and Treasury General Directorates; it is then an administrative referral. Decree 2015-1036 allows referring corruption-related files to BIANCO; however administrative referrals to other competent authorities are not provided for in the Law and related decrees.

SAMIFIN has nevertheless established cooperation agreements with BIANCO and also with the *Gendarmerie Nationale*. The agreement written between SAMIFIN and DGI (tax authority) is being negotiated.

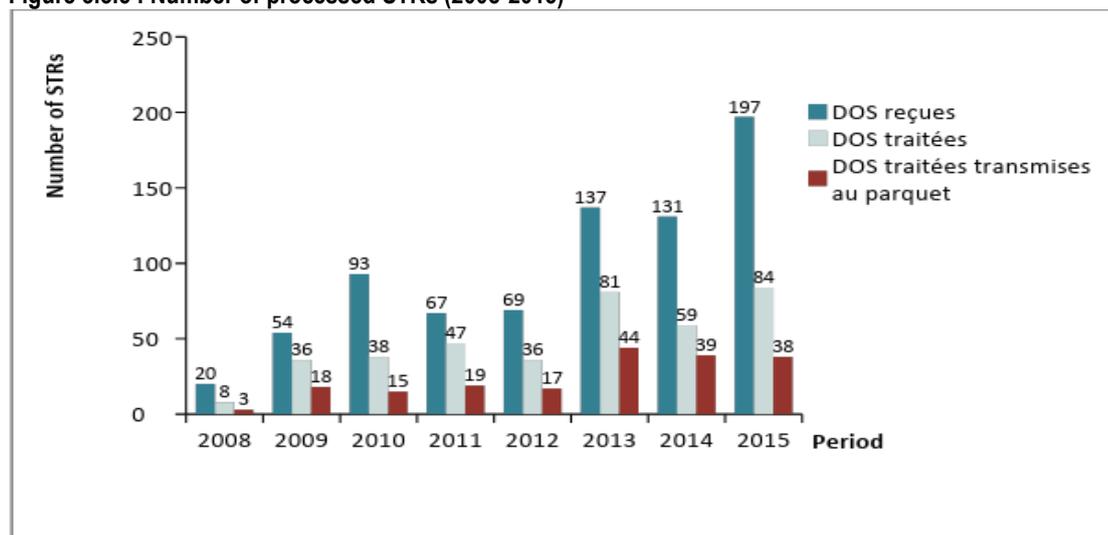
142. Some steps in STRs processing procedure include challenges and prove to be less effective. This has an impact on the effectiveness of the SAMIFIN analysis function. The recent systematization of the operational analysis process brings more rigor to the process. However, a significant number of STRs are still being processed. SAMIFIN indicated that part of the STRs backlog are reports that were held back by the previous Director General. If the processing of such STRs is a measure of good management, the relevance of analyzing these STRs should be studied to determine whether referring facts related to these STRs is still useful for competent authorities.

143. The number of unprocessed STRs raises concerns. The table below highlights the number of STRs that were not processed as of February 27, 2017. A total of 224 STRs are awaiting analysis, i.e., 27% of all STRs received since 2008. In 2016, 86% of STRs received have not yet been analyzed and some STRs dating back to 2008 are still being processed.

Table 3.3.4 : Number of unprocessed STRs distributed according to the year in which the STR was received (dated 27 February 2017)

| Year | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | TOTAL |
|----------------|------|------|------|------|------|------|------|------|------|-------|
| Number of STRs | 1 | 1 | 2 | 7 | 4 | 15 | 23 | 72 | 99 | 224 |

Figure 3.3.5 : Number of processed STRs (2008-2015)



[legend: STR received (dark blue); STR analyzed (light blue); STR analyzed and disseminated to public prosecutor (red)]

144. The existence of an Advisory Committee to endorse the non-dissemination of cases provides an additional level of transparency regarding case disseminations. This new administrative practice is justified by the desire to reduce unjustified and unsubstantiated shelving of cases. However, the participation of civil society representatives calls into question the confidentiality of information sent to SAMIFIN. Indeed, the files reviewed by the committee contain the information on the people involved, but the representatives of the civil society are not held to the conditions of confidentiality that are specific to the government agencies and to SAMIFIN. The files submitted to the Committee should therefore be anonymized and not contain such information.

145. The resources attributed to operational analysis would appear to be insufficient due to the accumulated backlog of STRs. Information technology resources appear to support operational

analysis efforts however limited digital access to national and commercial databases slow down analytical efforts.

Strategic Analysis

146. SAMIFIN conducts strategic analysis and uses available information to identify money laundering trends and patterns. Strategic analysis products are very diversified. SAMIFIN published money laundering typology cases. Such typologies identify indicators and present the profile of the people involved, the sector of activity and geographic area, the approximate amounts at stake, the location of operations and the offenses of alleged origins, as well as a schematization of the financial flows.

147. In 2012, a strategic study on rosewood traffic was conducted by SAMIFIN in collaboration with the Ministry of the Environment. The outcomes of the study were shared with non-governmental organizations, the Ministry of the Environment and reporting entities as a typology. Following the study, banks were asked to close the bank accounts of those involved in some of the cases studied.

148. SAMIFIN has also conducted a Mobile Banking Risk Assessment in 2015 where it identified vulnerabilities associated with mobile banking. This study resulted in the adoption of legislative measures to mitigate the identified vulnerabilities.

149. Several types of strategic analysis are included in several SAMIFIN annual reports, including the distribution by geographic area of the disseminations that were sent, the location of suspicious individuals, the total approximate amount of the financial stakes of the reports sent to the prosecutor's office, the amounts involved by activity sector, the assessment and distribution by geographic area of the approximate amount involved in the reports sent to the prosecution, the approximate amounts involved per type of predicate offenses, etc.

Table 3.3.6: Predicate Offence Types identified in SAMIFIN Referrals (2014-2015)

| Infraction Types | 2014 | 2015 | TOTAL |
|-------------------------------------|-------------|-------------|--------------|
| Corruption | 14 | 11 | 25 |
| Tax Fraud | 8 | 15 | 23 |
| Infractions against Property | 9 | 0 | 9 |
| Customs Infractions | 2 | 0 | 2 |
| Infraction to Foreign Exchange Law | 3 | 3 | 6 |
| Illicit Traffic in forest resources | 3 | 1 | 4 |
| Swindle | 0 | 1 | 1 |
| Misuse of Social Property | 0 | 4 | 4 |
| Forgery and use of forgery | 0 | 3 | 3 |
| Total | 39 | 38 | 77 |

150. SAMIFIN has also identified a number of trends and typologies related to tax fraud, corruption through the securities market, capital flight and theft of public funds where cases were analyzed, indicators identified and the profile of individuals involved are described.

151. The strategic analysis completed by SAMIFIN identify major trends and risks related to money laundering, in particular the main predicate offenses, the sectors involved, as well as the typologies used to launder illicit funds. Most strategic analysis are published in SAMIFIN's annual report. While all this information is likely to inform the risk-based approaches by the competent authorities, as well as those of the entities subject to requirements, the use of such information for

this purpose currently remains limited. There are no strategic analysis products related to terrorism financing.

152. Additional resources should be attributed to strategic analysis activities to enhance and diversify the types of strategic analysis conducted. The current IT infrastructure allows analysts to conduct trends and geographic analysis of data.

Operational needs supported by FIU Analysis and Dissemination

153. The intelligence provided by SAMIFIN is used to initiate investigations into money laundering. The anti-corruption chain, led by investigative prosecutors, is the first recipient of the SAMIFIN operational analysis reports. SAMIFIN referred 119 analysis files to the anti-corruption criminal chain (CPAC) between 2012 and beginning of 2017. The set of files referred are reviewed by the anti-corruption criminal chain. After their review by a prosecuting magistrate, they are forwarded to the gendarmerie, the national police and in some cases to BIANCO for investigation. A document is sent to the public prosecutor's office after the investigation, pending a decision of the Public Ministry. In some cases, the file is transferred to another competent authority. Some files are closed (12 out of 119 files) and the other ones are under examination. The files are then communicated to the public prosecutor for final decision. Some cases are referred to the trial court. At the time of the on-site visit, four files referred by SAMIFIN were prosecuted and two convictions were obtained.

154. These statistics show that the operational intelligence provided by SAMIFIN was consulted and used in a respectable number of investigations to establish the evidence and to locate the proceeds of crime related to ML and underlying offenses. SAMIFIN also used the information collected in its reports to block 114 accounts between 2009 and 2015. Given the low reporting rate in terrorist financing (only 3 reports received), the TF contribution is minimal.

155. The Anti-Corruption Criminal Chain (CPAC) indicated during the on-site visit that the information provided by SAMIFIN is useful, accurate and meets their operational needs. However, it is noted that the absence of proper case management systems does not allow the evaluators to fully determine how SAMIFIN's analysis is being used by the penal chain. In fact, from the two cases that resulted in conviction, only one contained measures for criminal proceeds forfeiture. SAMIFIN's efforts to respond to the specific needs and priorities of the penal chain judges focused on the organization of meetings and training on AML/CFT. Circular No. 010-MJ / SG / DGAJER / DAJ / CIR / 12 of 09 November 2012 on the implementation of the criminal law policy on ML in courts and tribunals is intended for Magistrates in charge of processing BC files referred by SAMIFIN. The circular covers, inter alia, the prosecution of money laundering, investigation techniques, precautionary measures, and cooperation with SAMIFIN.

156. The challenges for CPAC in analyzing SAMIFIN referrals are related to the shortage of magistrates (only 12 for the whole of Madagascar) as well as to the lack of financial, technical resources, and specialized expertise. The analysis of effectiveness in the anti-corruption criminal money laundering chain is reflected in Immediate Outcome 7. Challenges also arise in the follow-up of files and the keeping of statistics. The statistics shared by SAMIFIN and CPAC differ on the number of files referred. It is necessary to have better coordination regarding the files status.

157. The National Police is not directly involved in money laundering investigations except for agents who are integrated into CPAC. The National Police have indicated that they exchange information with SAMIFIN and that the collaboration between the two administrations is positive. The Gendarmerie reported that they received some referrals from SAMIFIN (4) and that these are useful in keeping with money laundering investigation.

Table 3.3.7: Referring Processed STRs from SAMIFIN to the Public Prosecutor Office 2008- 2016

| Year | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | Total |
|---|------|------|------|------|------|------|------|------|------|-------|
| Number of files referred by SAMIFIN to the Public Prosecutor's Office | 3 | 6 | 15 | 20 | 16 | 43 | 39 | 38 | 47 | 237 |

158. The number of referrals from SAMIFIN does not correspond with the number of files received by the anti-corruption criminal chain. This accounting difference is explained by the fact that SAMIFIN counts each STR received as a one STR. CPAC groups STRs per person concerned.

Table 3.3.8: Status of files referred by SAMIFIN to the Anti-Corruption Penal Chain (2012-2016)

| STATUS OF FILES | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | TOTAL |
|--|-----------|-----------|-----------|-----------|-----------|-----------|------------|
| STR Analysis Reports under examination with the Prosecution Judges | 0 | 0 | 2 | 0 | 2 | 1 | 5 |
| Ongoing Investigation with the gendarmerie/ CPAC | 1 | 1 | 6 | 4 | 8 | 1 | 21 |
| Ongoing Investigation with the National Police/ CPAC | 0 | 1 | 1 | 2 | 9 | 2 | 15 |
| Investigations with BIANCO | 0 | 0 | 1 | 0 | 2 | 0 | 3 |
| Minutes referred to the Public Prosecutor Office after investigations (pending decision by the Public Prosecutor Office) | 4 | 4 | 4 | 2 | 1 | 0 | 15 |
| Files referred to other jurisdictions competence | 1 | 0 | 0 | 0 | 0 | 0 | 1 |
| Shelved Files (CSS) | 4 | 3 | 1 | 3 | 1 | 0 | 12 |
| Files under examination | 4 | 3 | 6 | 8 | 8 | 0 | 29 |
| Files communicated to Public Prosecutor Office for final settlement | 1 | 2 | 0 | 3 | 1 | 0 | 7 |
| Files referred to a trial Court | 6 | 2 | 2 | 1 | 0 | 0 | 11 |
| TOTAL | 21 | 16 | 23 | 23 | 32 | 04 | 119 |

159. SAMIFIN also refers the outcomes of its operational analyses in parallel to other competent authorities such as the General Directorate of Taxes (DGI), the General Directorate of the Treasury (DGT), the General Directorate of Mining (DGM), the General Directorate of Customs (DGD) and the Independent Anti-Corruption Bureau (BIANCO). See table below.

Table 3.3.9 : Administrative Referral 2011- 2016

| | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | Total |
|--|------|------|------|------|------|------|-------|
| | | | | | | | |

| | | | | | | | |
|---|-----------|-----------|-----------|-----------|-----------|-----------|------------|
| General Directorate of Taxes (DGI) | 10 | 11 | 14 | 18 | 23 | 24 | 100 |
| General Directorate of the Treasury (DGT) | 1 | 1 | 3 | 4 | 2 | 11 | 22 |
| General Directorate of Mining (DGM) | 2 | 3 | 4 | 2 | 1 | 4 | 16 |
| General Directorate of Customs (DGD) | 0 | 0 | 2 | 1 | 1 | 3 | 7 |
| BIANCO | 3 | 2 | 4 | 14 | 12 | 12 | 47 |
| Others | 8 | 0 | 3 | 1 | 15 | 4 | 31 |
| Total | 24 | 17 | 30 | 40 | 54 | 58 | 223 |

160. The administrative referrals to the DGI resulted in the collection of additional taxes and fines (see table below). DGI indicated that relations with SAMIFIN have strengthened over the past year. Previously, certain referrals included offenses dating back to more than 3 years³¹, a limitation period in tax matters. Since 2016, the frequency of exchanges and meetings between the two administrations has increased and the timeline for responding to files has improved.

161. Table 3.3.10 highlights the status of STRs referred to the General Director of Tax. The investigations undertaken by the tax authorities resulted in 5,383,521,632 Ariary in additional taxes being collected and 3.421.552.024 Ariary of fines being imposed.

Table 3.3.10: Status of STRs referred by SAMIFIN to the General Directorate of Tax

| | Principal | Fines | Total |
|---|-------------------------|-------------------------|-------------------------|
| Final Notification | 1.202.540.366,91 | 805.181.340,85 | 2.007.730.883,76 |
| Final Notification, Minutes (PV) et Transaction Before Judgment (TAJ) is signed | 65.008.140,00 | 37.009.792,00 | 102.017.932,00 |
| Final Notification, Minutes (PV) et Transaction Before Trial (TAJ) is signed, recovered | 6.884.895,95 | 3.344.015,28 | 10.228.911,23 |
| Primary Notification | 1.214.291.095,18 | 839.138.596,36 | 2.053.429.691,54 |
| Notification of arbitrary tax estimation sent to Public Prosecutor | 2.894.797.133,99 | 1.736.878.280,40 | 4.631.675.414,39 |
| Total | 5.383.521.632,03 | 3.421.552.024,89 | 8.805.082.832,92 |

162. In conclusion, according to BIANCO comments, the National Police, the Gendarmerie and DGI, the operational files provided by SAMIFIN meet their needs. In addition, as noted above, these administrations use this information in their inquiries and investigations.

163. The type of offenses identified as part of SAMIFIN's referrals correspond to the main threats in Madagascar, including corruption, tax evasion and the illegal trafficking in forest resources. However, the number of cases analyzed does not reflect the extent of the problem as highlighted by the authorities.

³¹ Following the on-site visit, the authorities have adopted an amendment to the Tax Code (art. 20.04.01) that has extended the limitation period to investigate cases referred by SAMIFIN to 10 years.

Cooperation and Exchange of Financial Information and Intelligence

164. SAMIFIN receives very few requests for information from the competent authorities. According to statistics provided by SAMIFIN, only six requests for intelligence were received by SAMIFIN in 2015 and eleven in 2016. The authorities indicated that information exchange is not frequent and is done in an informal way.

165. According to the statistics shared with the evaluation team, very few cases are initiated through requests for information by the competent authorities. The table below shows that despite the low number of requests, SAMIFIN responds to all requests received.

Table 3.3.11 : Responses to requests for information from competent authorities 2015-2016

| | Requests received from competent authorities (2015) | Responses provided by SAMIFIN (2015) | Requests received from competent authorities (2016) | Responses provided by SAMIFIN (2016) |
|--------------------------------|---|--------------------------------------|---|--------------------------------------|
| Ministry of Foreign Affairs | 5 | 5 | 6 | 6 |
| Prime Minister's Office | 1 | 1 | 1 | 1 |
| Public Prosecutor's Office | 1 | 1 | 1 | 1 |
| Bianco | - | - | 2 | 2 |
| Central Bank of Madagascar | 1 | 1 | - | - |
| Ministry of Finance and Budget | - | - | 1 | 1 |
| TOTAL | 8 | 8 | 11 | 11 |

166. SAMIFIN also collaborates with foreign FIUs: twenty-one requests were sent to foreign FIUs in 2015 and 2016 respectively. The majority of exchanges with foreign FIU is conducted with Mauritius and France (see Table 8.1). This can likely be explained by the historical links to these two countries and the presence of French banks in Madagascar. A large number of these requests remain unanswered and when a response is received, response times are long. No MOUs were in place with France and Mauritius at the time of the onsite visit. Formal arrangements between these two countries may facilitate a higher response rate.

167. Conversely, SAMIFIN responds to all requests sent to it by foreign FIUs. However, the response times are not in line with the numbers set by the Egmont group. A more in-depth analysis of this cooperation is conducted under Immediate Outcome 2. Comments provided by FIU Mauritius highlighted the quality of financial intelligence provided by SAMIFIN as well as the key role SAMIFIN played in a specific drug case.

168. In absence of a national risk assessment it is difficult to ascertain whether SAMIFIN's international cooperation activities are aligned with the geographical threats that are faced by Madagascar.

Information Security

169. Policies and procedures for securing the computer system have been developed by SAMIFIN. The document covers a number of topics, including the practices needed to secure the network and the servers, the procedures that must be adopted by employees, and an electronic

activity monitoring system. The server is in a secure area with limited access to the information system director and his assistant. All SAMIFIN employees must read and sign the computer charter.

170. The mechanisms for securing the premises are adequate, although the location in a public building can present a security vulnerability. Security guards monitor access to the premises 24 hours a day. Access to all SAMIFIN offices is controlled through a code and access cards. Access to the analytical area is restricted to employees in this section. The IT security document also addresses the practices needed to secure the network and the servers, the procedures that must be adopted by employees, and a system for monitoring the electronic activities of employees.

171. SAMIFIN has established a data recovery mechanism which is implemented within the FIU by a backup server and externally through a 'cloud' solution. The information is encrypted before being uploaded to the cloud. SAMIFIN seems to have undertaken the necessary vigilance measures to ensure the security of the information made available to it.

172. One reporting entity pointed to a 2014 case in which the existence of an STR was communicated to the person subject of the STR. SAMIFIN senior management intervened on behalf of the client to prevent the closure of the account. This situation raises significant concerns about the security measures taken by SAMIFIN to protect the information it receives. Although the disclosure of information to the person involved in the STR does not necessarily come from SAMIFIN, the intervention of its senior management raises significant concerns about the role played by SAMIFIN in defending the interests of clients.

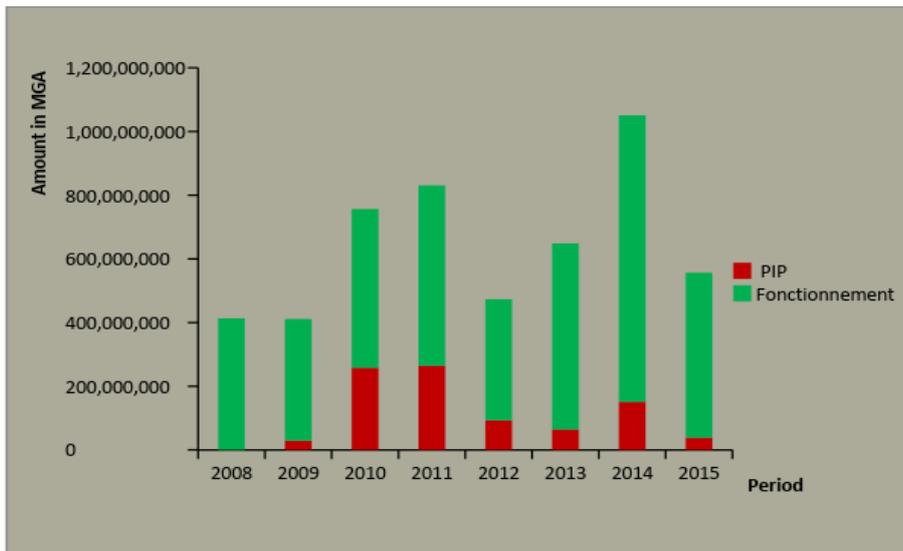
173. Furthermore, as mentioned above, sharing with the civil society members of the Consultative Committee confidential data such as the names of the people involved in STRs infringes the confidentiality that should be granted to operational files. Since the on-site visit by the evaluation team, SAMIFIN has implemented a new measure for keeping anonymous the details of cases presented to the Advisory Committee in order to address the identified gap.

Autonomy and Independence

174. SAMIFIN budget has fluctuated in the course of last years. The political crisis in Madagascar had an impact on the SAMIFIN budget. After a decrease in the budget in 2012, the amounts allocated to SAMIFIN considerably vary from the budget forecasts (see table below). Such fluctuation of the budgets allocated between 2012 and 2016, as well as the discrepancies between the budget forecasts and the amounts actually allocated, make it difficult for SAMIFIN to plan.

Table 3.3.12 : SAMIFIN Budget– Public Investment Program (PIP)³² and Operations

³² The Public Investment Program (PIP) is a means of implementing the economic and social policy of the State. It contributes to the implementation of the National Strategy (National Development Plan). The building blocks of the PIP are projects



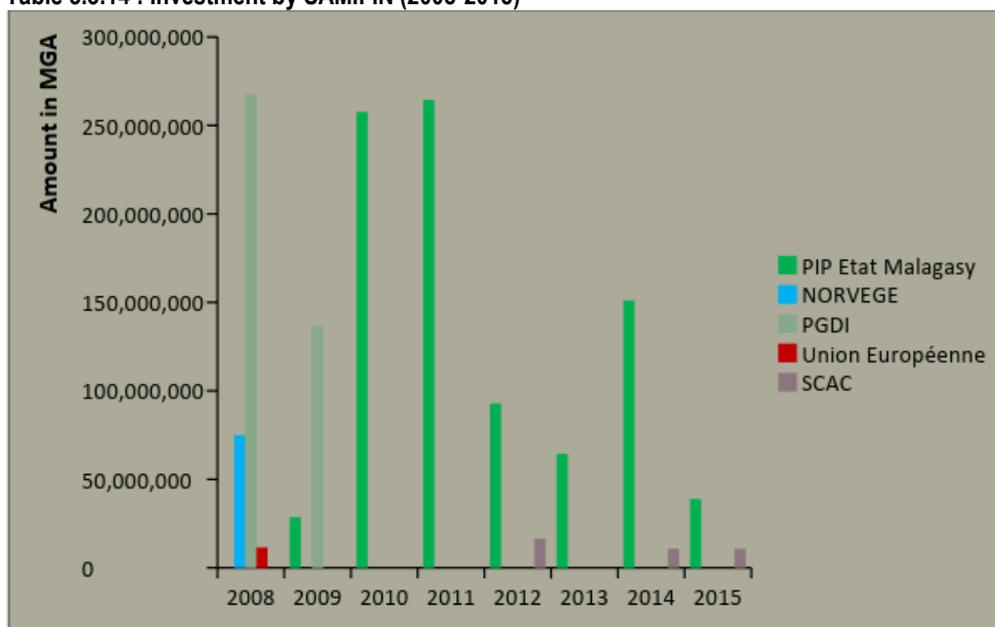
[legend: (red) public investment program/PIP; (green) operations]

Table 3.3.13 : SAMIFIN Budget– Budget Forecasts and Amounts Allocated 2014-2016 (in Ariary)

| Items | 2014 | | 2015 | | 2016 | |
|----------------------------|----------------------|--------------------|----------------------|--------------------|----------------------|----------------------|
| | Budget Forecasts | Amounts Allocated | Budget Forecasts | Amounts Allocated | Budget Forecasts | Amounts Allocated |
| Compensations | 544.000.000 | 425.225.000 | 581.000.000 | 405.171.000 | 696.000.000 | 536.500.000 |
| Goods, services, transfers | 456.100.000 | 275.205.000 | 494.600.000 | 112.405.000 | 531.000.000 | 563.500.000 |
| Investment | 322.000.000 | 182.000.000 | 436.000.000 | 38.932.000 | 424.000.000 | - |
| Total | 1.322.100.000 | 882.430.000 | 1.511.600.000 | 556.508.000 | 1.651.000.000 | 1.100.000.000 |

175. In addition, the investment budget has fallen since 2011 (see table below). According to SAMIFIN's 2015 Annual Report, the amount allocated to investment proves to be largely insufficient and has not allowed SAMIFIN to renew the IT equipment and materials as well as the technological tools required for complying with AML/CFT international norms and standards. It should also be noted that SAMIFIN relies on external budget support to finance its training and other activities outside of STR analysis functions. A budget increase would enable SAMIFIN to implement the priorities of its awareness-raising strategy.

Table 3.3.14 : Investment by SAMIFIN (2008-2015)



[legend: (dark green) PIP Malagasy Government; (blue) NORVEGE; (light green) PGDI/*Projet de Gouvernance et de Développement Institutionnel*/Governance and Institutional Development Project World Bank; (red) Union Européenne; (purple) SCAC/Cooperation and Action Service/France]

176. The significant drop in its budgetary resources from 2012 to 2015 raises questions as to the independence of SAMIFIN during this period, as well as the adequacy of the resources allocated to SAMIFIN. SAMIFIN's current budget allows it to pay salaries but makes investment in information technology for example very difficult. A stabilization of the budget would allow SAMIFIN to fully combine its functions by allowing the continuity of its operations and investment in its IT infrastructure.

177. The hiring process of technical directors is not efficient or effective. The technical directors are appointed by the Council of Ministers from a list of persons presented respectively by a recruitment committee appointed by the Integrity Committee and by the Director General. The Director General should have the ability to choose his technical directors directly to the extent that he has a better understanding of SAMIFIN operational requirements. The inability of SAMIFIN to directly select technical directors with the required expertise undermines its ability to obtain the necessary resources to conduct its functions.

178. Furthermore, the recruitment process is cumbersome and entails delays in the permanent recruitment of technical directors. Most technical directors serving at the time of the onsite visit have been acting for several years. This interim status creates a vulnerability among temporary position holders.

179. With respect to the withholding of certain STRs by the previous Director General, the assessment team could not determine the motivation behind these actions and whether undue political, government or industry influence or interference was imposed.

Conclusion

180. SAMIFIN and investigation and prosecution authorities receive financial information and other relevant intelligence to investigate in money laundering and predicate offenses. All competent authorities consulted indicated that the intelligence provided by SAMIFIN corresponds to their operational needs. The anti-corruption criminal chain initiated a respectable number of

investigations based on the intelligence provided by SAMIFIN. A total of 107 cases were in various stages of investigation or prosecution during the assessment period. Two of these cases have resulted in criminal convictions and one case resulted in criminal forfeiture. In addition, the General Tax Directorate collected additional tax amounts and imposed fines following SAMIFIN referrals.

181. Competent authorities request and receive reports that contain relevant and accurate information that assist them in performing their duties. It is standard practice for competent authorities to consult the SAMIFIN when undertaking ML and related predicate offense investigations. There are both formal and informal information exchange channels that support cooperation on the investigation of ML and related predicate offenses. This exchange is conducted using secure channels.

182. The information of which SAMIFIN is the recipient is not comprehensive. It does not receive cross-border cash or negotiable instruments reports, and the anti-money laundering legislative framework does not apply to dealers in precious metals and stones and to trust and corporate service providers. In addition, the low reporting rate by reporting entities limits SAMIFIN effectiveness.

183. Diversified strategic products are prepared by SAMIFIN. Such products are likely to enable competent authorities and reporting entities to better understand the risks and vulnerabilities related to money laundering in Madagascar. However, such products have not yet been used for this purpose.

184. Although FT risk is moderate, referring three STRs in relation to FT does not seem to reflect the risk present in Madagascar. These STRs were all about funding localized associations in the Gulf countries, or in countries like Germany and Turkey. The processing of these files was done in parallel with the National Gendarmerie.

185. STRs processing time is too long. This translates into a significant number of unprocessed STRs and providing information that may become irrelevant. The DGI (tax authority) pointed out that these referral delays (which exceed the limitation period in tax law) affected the timeliness of certain financial intelligence provided. It however noted that an improvement was noted in the timeliness of referrals.

186. The difficulty of accessing additional information also affects STR processing time. Access to government information sources is mainly through requests to the relevant authorities. Response time can be very long, which hampers SAMIFIN's analysis efforts.

187. STRs processing by the Financial Research and Analysis Department and the Legal Department appears to slow the analytical process. The intervention of two separate teams probably leads to the duplication of certain activities and requires two separate analysts to become familiar with the facts of the case.

188. The previous practice of disclosing the names of individuals and entities involved in money laundering cases to the Advisory Committee is a violation of SAMIFIN's confidentiality obligation. Moreover, the intervention in 2014 of SAMIFIN in defending the interests of a person object of an STR calls into question the impartiality of SAMIFIN.

189. The fluctuation of the SAMIFIN budget between 2012 and 2015 could also explain the accumulation of unprocessed STRs. Budgetary fluctuation also limits SAMIFIN's ability to obtain and mobilize the resources necessary to perform its functions in a timely manner.

190. Finally, the Council of Ministers involvement in the appointment of SAMIFIN Technical Directors is not efficient and limits the FIU's ability to obtain the technical talent that it needs to undertake its functions.

191. Despite the major shortcomings listed above the assessment team believes that SAMIFIN is nonetheless able to produce quality financial intelligence that is accurate and provides valuable information to competent authorities and foreign FIUs. This is evidenced by the number of cases in various stages of investigations and prosecution as well as the use of financial intelligence by the tax authorities and foreign FIUs.

192. With respect to concerns related to the limited investigative capacity of competent authorities, the assessment team believes that it has not prevented the initiation of ML laundering investigations based on the financial intelligence provided by SAMIFIN. In fact, FIU disseminations constitute the primary source of ML investigations for the CPAC as well as the primary source for the development of evidence for these cases.

193. Therefore, the assessment team believes that financial intelligence is used by competent authorities for money laundering investigations and immediate outcome 6 is achieved to some extent. However, major improvements are needed. The level of effectiveness achieved by Madagascar regarding Immediate Outcome 6 is moderate.

Immediate Outcome 7 (Money Laundering Investigations and Prosecutions)

Money Laundering Identification and Investigation

194. Money laundering investigations and prosecutions are conducted by magistrates (deputy public prosecutors and investigating judges) of the anti-corruption penal chain created by a circular of 2 July 2004 signed by the Minister of Justice, the Minister of National Defense and the Secretary of State for the Civil Service (now Economic Criminal and Anti-Corruption Chain C). This criminal chain also includes judicial police officers exercising their duties under the responsibility of the prosecutors and the judges. Magistrates and judicial police officers of the pole are appointed within the penal chain in consultation between the Superior Council of Fight against Corruption and their administration (Ministry of Justice and Ministry of the Interior).

195. The Penal Chain has jurisdiction over offenses relating to the fight against corruption, with reference to offenses under the United Nations Convention against Corruption. This area of expertise includes active and passive bribery, favoritism, abuse of office, misappropriation of public property, conflicts of interest, illicit enrichment, money laundering and terrorist financing. In practice, the magistrates of the public ministry (the public prosecutor's office) receive referrals of the cases conducted by the police services, the gendarmerie, the BIANCO or the SAMIFIN. The circular of the Ministry of Justice on the implementation of the penal policy on money laundering furthermore recalls that the magistrates of the chain can investigate ex officio any criminal case involving crime proceeds or act on the basis of complaint or denunciation. The complaints of victims of crime are also a source of referral to the services of police or gendarmerie, prosecutor's office or BIANCO. The latter service, in particular, is on an annual basis, a recipient of nearly 3,000 "grievances" relating to corruption (2,995 cases in 2015). The same year, it referred 157 files to the justice after investigations.

196. The prosecution magistrates of the penal chain decide on the follow-up to be given to the referrals, but if the case results from a referral from SAMIFIN, it is prohibited to shelve it. Public prosecutors are also encouraged to seize the investigating judge as rapidly as possible when the facts described by SAMIFIN are sufficiently substantiated. They can refuse to investigate the other files only if the examination of the file or the investigation leads to duly motivated inexistence of charges. When the public prosecutor office orders a preliminary investigation, it asks either the police, the gendarmerie, or BIANCO to investigate. Investigative acts are most often conducted by the Law

Enforcement authorities. The Public Prosecutor may, after the return of the investigation, dismiss the case (if there is not enough evidence to charge), or refer the case to the court (for judgement of the perpetrators of the offense), or entrust the case to a investigating judge (for further investigations).

197. The seized examining magistrate is then competent to perform all acts required to reveal the truth. He may delegate his powers to the judicial police officers of the police, gendarmerie or BIANCO by a letter rogatory³³. Following these investigations, the investigating judge refers the persons mentioned by them to the court if he/she considers that he/she has gathered sufficient charges. Conversely, it may decide that there is no need to continue. The circular also encourages magistrates and investigators to use specific investigative techniques, to resort to the assistance of experts from SAMIFIN, and to provide the latter with elements indicating suspicions of money laundering collected during investigations. The magistrates of the public prosecutor's office or the investigation judge, rule by requisitions or ordinances, on the continuation of the measures for blocking bank accounts previously decided by the SAMIFIN or on its request, by ordinance on request.

198. A separate criminal chain specializes in the investigation, prosecution and adjudication of facts related to trafficking in rosewood. Created by law no. 2015-056 of February 3, 2016, the chain is theoretically composed of twelve investigative brigades distributed over the territory and comprising each three police officers, three gendarmes and three agents of the Ministry of the Environment. Investigation files are referred to the designated magistrates of the prosecutor's office and the instruction, then judged by the Special Court for traffics in rosewood, which is composed of a president and assessors agents of the Ministry of the Environment. The specialized chain is not operational at this stage; only a few investigators and the President of the Court have been appointed. It should be noted that the makeup of this special Court may pose a legal problem because of the appointment of assessors from the Ministry of the Environment, while the agents of this Ministry are also in charge of establishing infractions.

199. As they stand, cases related to trafficking in rosewood are handled by magistrates of the anti-corruption criminal chain after investigation by the gendarmerie and the Ministry of the Environment by non-specialized examining judges (for three of them) and, with regard to bribery or money laundering detected by BIANCO or SAMIFIN.

200. In total, between the beginning of 2004 and 1 February 2017, the anti-corruption chain investigated 748 cases involving 1,058 offenses³⁴. Of these 1,058 cases, more than 60% involve passive bribery (mentioned 301 times) and abuse of office (327 cases). Other frequently mentioned offenses are favoritism (67 cases), misappropriation of public property (54 cases), concussion (54 cases), conflicts of interest and undue advantage taking (68 cases), and influence peddling (18 cases). In 2015, the files provided by BIANCO led to 296 arrests and then to issuance of 26 warrants for detention

201. Money laundering and terrorist financing involve 132 files, most of which were referred by SAMIFIN. Since 2012, more than two-thirds of referrals have resulted from suspicious reports from banks, including transactions or account profiles, the amounts of which are little consistent with the involved clients' resources. While suspicious transaction reports from the bureaux de change were non-existent until 2014, they accounted for over 10% of referrals in 2015 and 2016. Conversely, few

³³ Generic term to designate any delegation of authority to investigative services, and distinct from international letters rogatory, which designate requests for mutual legal assistance.

³⁴ A file that can obviously involve several people and multiple offenses.

money laundering investigations are opened based on underlying offense files such as bribery or abuse of office, trafficking in narcotics, rosewood, precious materials, protected species. The investigations conducted on these traffics are only exceptionally supplemented by a component relating to offense proceeds laundering.

202. 191. In the case of rosewood, magistrates investigate money laundering cases that were opened between 2009 and 2011. One of the files examined by a non-specialized judge of the Tananarive court includes thirteen indicted persons under arrest warrant since March 2013. The investigations resulted in one single conviction for corruption offenses with two years suspended sentence and confiscation of seized property (including timber and species found during the investigation).

Types of Money Laundering Cases Pursued

203. The 132 cases of money laundering processed by the anti-corruption chain come from 119 referrals³⁵ made by SAMIFIN since 2012 and from some own-initiative inquiries decided by the penal chain. As of January 12, 2017, only four money laundering cases were tried, two of which resulted in a conviction. Fourteen completed cases are in the process of final settlement or awaiting enrollment before the trial court. The other files are under preliminary investigation or examination or pending decision. Finally, twelve files were shelved for lack of charges.

204. From 2014 to 2016, the money laundering files referred to the anti-corruption penal justice system by SAMIFIN involved for 28 of them corruption proceeds laundering, and for 49 of them profits from tax evasion, these two categories accounting for between half and two-thirds of the underlying offenses, depending on the years. In 2016, tax evasion alone for itself accounted for half the predicate offenses, with corruption falling to around 5% of cases (versus around 50% in 2014). Trafficking in natural resources (including rosewood) accounts for less than 10% of the predicate offenses with regard to money laundering cases that were referred by SAMIFIN. Foreign exchange offenses and customs fraud account for about 15% of predicate offenses.

205. Investigations initiated for underlying offenses such as corruption or abuse of office, trafficking in narcotics, rosewood, precious materials, protected species are only exceptionally at the origin of a component relating to offense proceeds laundering. Such is the case, in particular, of BIANCO's investigation files, which most often appear to involve cases of daily corruption that generate little significant profit.

206. The money laundering operations covered by the investigations are most often simple transactions (bank deposits, withdrawals, and transfers). A number of more complex transactions are sometimes the subject of investigations (over or under-valuation of imports or exports, over or under-invoicing, etc.). In the latter areas, cooperation and synergies with statistical data and customs investigations could usefully contribute to developing detection and investigation in risk sectors.

207. In value, laundering cases relating to tax evasion in 2015 represent about 50% of laundered goods, those relating to the abuse of corporate assets approximately 40%. Profits from corruption account for less than 5% of laundered goods.

208. The heads of service of police or gendarmerie who were encountered indicated that banking investigations initiated in traffic cases are often little successful given the low banking rate

³⁵ Each file may involve several suspicious transaction reports, several persons and several offenses

(8.5%), the insufficiency of information kept and provided by the telephone companies, the impossibility of conducting individualized research on the real estate properties belonging to a person implicated given the unreliability of registers, and the difficulty of obtaining intelligence at the international level, even under Interpol. The Judicial Police believe that they also have a need for training in the exploitation of computer data and equipment regarding telephone interceptions.

209. Lack of resources also affects the criminal justice system, which was supposed to consist of 41 magistrates, including those distributed in the regions which have only 13 ones in 2017. The few magistrates met by the assessment team, who do not have much experience of financial records, for lack of means, must give up using the most effective special investigation techniques. Phone tapping, for example, is almost never ordered for lack of a platform and usable technical means.

210. Magistrates also confirm that financial investigations are made by way of requests to financial institutions. As bank response times are variable, this sometimes results in a significant increase in investigations duration. Even the most basic research poses problems that often prove to be insoluble: real estate research is hampered by the absence of land registries or reliable, centralized, and updated computerized files. In addition, the penal chain is sometimes deprived of any means to operate on a daily basis for lack of budget to buy basic products (ink for printers, modern computers, paper ...).

211. Finally, international investigations do not benefit from direct or expedited systems for referring requests for mutual legal assistance because of the absence of bilateral international conventions. This is why in a recent case of swindle, the authorities of Madagascar failed to obtain within a reasonable time the Australian death certificate of an indicted person. The only international cooperation agreements existing with France, Mauritius and Mayotte date back to the early 1960s and are outdated.

212. In the end, few money laundering cases with underlying offenses representing a major risk (trafficking, kidnapping, corruption) are conducted.

Consistency of ML investigations and prosecutions with threats and risk profile, and national AML policies

213. Of the 748 cases handled since 2004 by the anti-corruption penal chain, only two ones led to convictions for money laundering.

214. 325 cases relating to predicate offenses were tried. The convictions handed down thus fall under the predicate offenses for which 122 convictions to unconditional prison sentences, 295 convictions to conditional sentences of imprisonment and only 3 confiscation orders were pronounced. This figure shows little consideration for financial consequences of prosecuted offenses.

215. Statistics from the judicial police for the year 2016 thus indicate that 27,524 cases were received (of which 10,980 for theft offenses and more than 4,000 for assault and battery). Activity is also important in terms of drug trafficking (Madagascar being a country of production, consumption and transit of cannabis at the same time, as well as of transit of heroin from Afghanistan or Pakistan and of cocaine from South America), of criminal conspiracy, trafficking in natural resources (wood, precious stones, spices, vanilla, tortoises ...), of kidnapping with ransom. With the exception of a few files referred by SAMIFIN, very few financial investigations are opened in parallel with these files.

216. The same applies for the gendarmerie where, with the exception of SAMIFIN referrals, financial records are almost non-existent. Competent mainly in rural areas, or in cases involving the military, national defense, and terrorism, the gendarmerie yet has a service against financial crime. It investigates on many trafficking in the regions (tortoises, rosewood, protected species, precious

stones ...). For example, for the 2014-2016 period, the gendarmerie opened 87 cases of trafficking in precious wood that resulted in 121 arrests, and seized more than 38,646 logs of rosewood, as well as significant quantities of ebony (1689 logs) and palisander (1690 logs). During the same period, 10 trafficking cases in precious stones (120 kg of green kaolin, 80 kg of ruby, 5 tons of agate, 100 kg of tourmaline) resulted in 16 arrests. Finally, trafficking in protected species such as tortoises (nearly 10,096 tortoises, 103 chameleons and 05kg of seahorses seized from 2014 to 2016) are frequent. They lead to think that networks organize the illegal collection and secret export of animals to Asia.

217. However, beyond arrests and physical seizures, the financial aspects and the laundering of the illicit profits of these files are rarely apprehended. The gendarmerie is then currently investigating only about a dozen cases of money laundering resulting from referrals made by SAMIFIN, one of which concerns the alleged financing of terrorism from associations fed by transfers of funds from the Middle East.

218. With regard to bribery, the gendarmerie in 2014 reported the discovery at the roadblock of the Gendarmerie Nationale in Amboanjobe, a rural commune of Bongatsara, of the sum of 1,109,700,000 Ariary in a van occupied by five people. This large sum of money which would be intended to finance mining operators in Ilakaka in the Ihorombe region was seized and deposited at the Central Bank of Madagascar according to the instructions of the prosecutor. The latter also released the five people presented to the Public Prosecutor Office. The situation is similar for BIANCO, which investigates on corruption or probity cases of public officials. Such investigations often seem to restrict to the observation and demonstration of the basic offense, without extending to money laundering facts, and to grand corruption.

219. Such lack of coherence between money laundering prosecutions and the many underlying bribery or trafficking activities appears to be related partly to the weak capacity and training of prosecution authorities. The political will to give investigators and magistrates the means to conduct and carry through money laundering investigations relating to the most problematic underlying offenses (in particular trafficking in narcotics, precious stones, mining materials, natural resources, protected species ...) seems to be limited.

220. If it exists, this will results only, and still incompletely, in the drafting of legislative texts or general circulars which do not give sector guidance. The Specialized Criminal Justice Service of the Ministry of Justice, consisting of a Chief of Service, three magistrates, two clerks and three officers, plays an important role in legislative drafting and implementation circulars. Conversely, its role of supervising the implementation of penal policies does not result in a follow-up of the files progress and in the issuance of guidelines providing priority to prosecuting money laundering and to the opening of financial components from underlying offense cases, including in case of trafficking in narcotics, precious stones, natural or mining resources, rosewood, etc.

221. Thus, the circular of 9 November 2012 on criminal policy in terms of money laundering focuses exclusively on the legal aspects of the prosecution and financial investigation techniques, without granting priority to the laundering of underlying offenses, which are the most dangerous to the Malagasy economy. On these points, the creation of the specialized anti-corruption unit (Law No. 2016-021) could bring progress in that the competence of these poles is defined by reference to many underlying offenses that are explicitly mentioned in Article 20. These offenses include, subject to the seriousness and complexity related to the plurality of perpetrators, the transnational nature of the facts, or to the importance of financial flows, violations of the mining code, to the environmental law, trade in flora and fauna, trafficking in narcotics, etc. Above all, a restrictive appraisal of seriousness and complexity provided for by Article 19 must not prevent referral to the specialized court by the ordinary courts.

Effectiveness, Proportionality, and Dissuasiveness of Sanctions

222. Since 2012, only two convictions for money laundering have been pronounced. An example of these money laundering conviction sentences has been sent to the evaluation team. Rendered on June 2, 2016, this sentence by the criminal court of Antananarivo involved five defendants, and a sum of laundered property of 752 million Ariary. The case was detected in 2012 owing to movements in the bank account of a gold digger which were much higher than the tax declarations of the person involved. The investigation was then continued on gold trafficking and money laundering facts among Madagascar, Mayotte and Dubai.

223. The gold digger, whom detected financial transactions were at the origin of the file, was finally released for lack of evidence, as well as a second participant in the traffic, without any other discussion, motivation or explanation by the Court, which also ordered that the account seizures be released. Two of the defendants were sentenced to seven years of forced labor, and one to five years of forced labor. The Court has also decided to impose a fine of 1 million Ariary, and the confiscation of real estate and of 33 kg of gold. The very succinct ground provided by the Court does not allow to understand the reasons why the person who appeared as the main actor of the financial transactions was relaxed on this file whereas the people who seem to have played a role in the transport of the gold were convicted. The quantum of sanctions is furthermore not explained in the ruling.

224. A second conviction for money laundering dates back to 2014 and relates to a transfer of real estate made in 2011 based on false documents. The money laundering offense consisted for one of the defendants in having kept the amount of the proceeds of the sale, deposited it at the bank, and made withdrawals. This defendant was sentenced to three years 'imprisonment for forgery offenses and to five years' hard labor for money laundering.

225. With regard to the trafficking in redwood a two-year conditional imprisonment sentence for corruption facts with confiscation of seized property (including the timber and the species discovered during the investigation) was pronounced.

226. Money laundering offense is criminal in Madagascar. The criminal nature of the procedure is at the origin of an additional formalism which can only lengthen the processing time of the files, which is already excessively long. In addition, the case is therefore tried by the Criminal Court which includes a professional magistrate (President of Chamber or Counselor at the Court of Appeal) and four lay assessors (citizens drawn by lot). As a result, the work of the anti-corruption criminal justice chain is ultimately judged by a court composed of people who have no control over the technical aspects of money laundering and financial offenses or even the basic elements of the criminal law and criminal procedure. Moreover, such occasional judges may be, more than professional judges, subject to pressures or temptations of any kind that are likely to alter the integrity or effectiveness of the work of justice. Finally, by nature, decisions of jurisdictions with a jury of citizens render decisions that are often little grounded.

227. A specialization (which involves imposing a penalty on the offense) would be welcome to ensure speed at the examination stage and professionalism at the trial stage. There again, the creation of an anti-corruption pole, voted by the Parliament on 1 July 2016 (Law No. 2016-021) should ensure the implementation of a specialization of the entire judicial chain, starting from the investigation stage, and from the examination to the case trial stage. In particular, the court of first instance becomes the correctional chamber, composed of specially appointed magistrates. However, the new pole is not yet operational, and its effectiveness, the same as for the current penal chain, will depend on the allocation of the requisite human, material and technical resources to ensure speed and effectiveness in procedures.

228. Selecting the magistrates of the pole, namely, will have to be subject to a very particular care, as, in the opinion of most people met by the assessment team, political pressure or corruption risks are likely to prevent investigations and judicial proceedings from developing. In a context

where agents can earn only a salary of around 50 euros per month, corruption risks are significant and the integrity in all circumstances of investigators and magistrates cannot be taken for granted. The assessment team with regard to the hiring process notes a major innovation in involving magistrates of the pole, anti-corruption entities alongside the Superior Council of Magistracy. Furthermore, a specific morality survey and bonus-enhanced compensation may mitigate integrity remated risks. However, the judges of the Supreme Court, who will ultimately rule on the validity of the procedures in case of dispute, run the risk of being paid less than their fellow judges of the merits, a situation that has been identified as a risk by the Ministry of Justice.

229. In the end, pending the implementation of reforms related to the anti-corruption pole, the Malagasy system does not allow coming up with deterrent, effective and proportionate sanctions.

Implementation of Alternative Measures

230. As it stands, and pending the implementation of reforms related to the Asset Recovery Bill, the Malagasy law does not allow confiscation without conviction. Introducing such confiscation type is provided for by the draft law in preparation in order to allow, in case of discharge or acquittal of the person prosecuted, that the court of judgment confiscates property or assets that are manifestly of illicit origin (origin appraised based on factual and objective criteria). The draft also provides that, irrespective of a criminal prosecution, the public prosecutor may request the president of the court to confiscate any property which, directly or indirectly, arises from conducting unlawful activities, "without it being needed to show that the property comes from a constituted offense [...] 36».

231. Another alternative measure, the creation of an illicit enrichment offense by the Law of 16 August 2016, allows criminal courts to sentence (and to pronounce confiscations) when a person who is a public authority depository (remove), or tasked with a public service mission, or who has an elective mandate, or is any executive of a public enterprise, cannot reasonably justify a substantial increase in assets in relation to its legitimate revenues.

232. Finally, customs and tax laws allow customs and tax services to conclude transactions with people who have committed customs or tax offenses or who have organized an evasion of customs or tax duties. In such case, the establishment, investigation and transaction procedure escapes from the judicial authority while allowing the payment of a tax or customs fine and the recovery of defrauded rights. The table below, for example, provides the list of valuable goods seized at customs from 2014 to 2016. Most cases closed with a transaction, which generally involves payment of the equivalent value of the goods or abandonment of it by the offender.

Dual Customs and Foreign Exchange Offenses (trafficking in gold and precious stones, source: Customs)

| Year | Office where offense was established | Goods | Value in Ariary | Status |
|------|--------------------------------------|----------------------|-----------------|--|
| 2014 | Ivato Airport | Gold powder (565 gr) | - | Abandonment of the corpus delicti / withholding with the Customs Receiver of Ivato Airport |

³⁶ Drafting that legally could pose a problem of coherence, at least in the absence of additional details, because in this case, one wonders how to demonstrate that the asset "arises from illegal activities"

| | | | | |
|------|---------------|--|------------------|--|
| | | | | |
| 2014 | Ivato Airport | Non-punched solid gold bracelet (450 gr) | - | Unfounded infringement / Good returned according to the decision of the A.S |
| 2014 | Ivato Airport | Circle shaped piece of yellow metal (450 gr) | 27,000,000 | Closed by transaction (payment of the countervalue) |
| 2014 | Ivato Airport | Gold chains and coins | 102,300,000 | Closed by transaction (payment of the countervalue) |
| 2014 | Ivato Airport | Gold bracelets (1400 gr) | 84,000,000 | Closed by transaction (payment of the countervalue) |
| 2014 | Ivato Airport | Gold necklace (250 gr) | 15,000,000 | Closed by transaction (payment of the countervalue) |
| 2014 | Ivato Airport | Gold bar | - | Case referred to the Anti-fraud Service (No real seizure: the offender held a suspicious document (purchase invoice) |
| 2015 | Anti-fraud | Gold bars (18000 gr) | To be determined | Gold bars deposited to the Analamanga Gendarmerie Group (CIRGN ANKADILALANA) |
| 2015 | Ivato Airport | Gold bars (1410 gr) | To be determined | Waiting for sale / Parcel handed to BCM |
| 2015 | Ivato Airport | Gold powder (400 gr) | To be determined | Administration won the case at C.A level/ Good referred to Mining Service |
| 2015 | Anti-fraud | Cut & rough precious stones | To be determined | Judgement under way at C.A level |
| 2016 | Ivato Airport | Gold bracelets & rings (1000 gr) | To be determined | Waiting for sale / Parcel handed to BCM |
| 2016 | Ivato Airport | Gold bars (2525 gr) | To be determined | Waiting for sale / Parcel handed to BCM |
| 2016 | Ivato Airport | Gold necklaces & rings (355 gr) | To be determined | Abandonment of the corpus delicti / withholding with the Customs Receiver of Ivato Airport |
| 2016 | Ivato Airport | Gold bar (505 gr) | To be determined | Abandonment of the corpus delicti / withholding with the Customs Receiver of Ivato Airport |
| 2016 | Ivato Airport | Gold bracelet (240 gr) | 24,000,000 | Closed by transaction (payment of the countervalue) |
| 2016 | Ivato Airport | Gold bars (24577 gr) | To be determined | Inquiry under way / Case referred to Penal Chain / Gold bars handed to BCM |
| 2016 | Ivato Airport | Gold powder (630 gr) | To be determined | Abandonment of the corpus delicti / withholding with the Customs Receiver of Ivato Airport |
| 2016 | Ivato Airport | Gold bracelet (250 gr) | 25,000,000 | Closed by transaction (payment of the countervalue) |

233. Similarly, the tax administration finds out numerous operations of concealment of turnover by over-invoiced or under-invoiced (or not invoiced) sales, the use of ephemeral companies, or nominees ... Many money laundering underlying offenses can in that way be detected in the context of tax audits. Such is the case, for example, of financial transactions without traceability, purchases of currency or gold and their illegal export, investment in real estate. 26 cases relating to tax offenses are currently followed by SAMIFIN. They were subject to tax fines.

Conclusion

234. Beyond arrests and physical seizures, the financial aspects and the laundering of illicit profits are seldom apprehended by the prosecuting authorities. The police and the gendarmerie are currently investigating only a limited number of money laundering cases resulting from referrals made by SAMIFIN. Convictions are almost non-existent.

235. The level of effectiveness achieved by Madagascar regarding Immediate Outcome 7 is low.

Immediate Outcome 8 (Confiscation)

Confiscation of proceeds, instrumentalities and property of equivalent value as a policy objective

236. With regard to provisional measures of seizure (often referred to as pre-conviction confiscation) and criminal confiscation, the Malagasy legislative framework provides for the compulsory confiscation of proceeds generated by money laundering offense, and in case of inaccessibility of such property, confiscation of property of corresponding value. The provisions relating to special confiscation of the Penal Code also allow judges to order the confiscation of the instruments used to commit the offense and those intended to be used to commit it. The Ministry of Justice has encouraged, in its criminal policy circulars, the seizure and the confiscation of property related to offenses pursued by the anti-corruption penal chain. Thus, the circular of the Ministry of Justice on the implementation of the penal policy and the application of the law of August 19, 2004 relating to money laundering invites all magistrates involved, and in particular those of the public prosecutor office and the examining judges, to identify, assess and freeze or seize funds that are suspected to be proceeds of crime.

237. In cases where SAMIFIN blocked bank accounts, either by opposition valid for 48 hours, or possibly by order for a blocking request valid for a maximum of 8 days, it is the responsibility of the public prosecutor's office or the examining judge depending on evidence and data at its disposal, to continue blocking the funds by requisition or order. Release from precautionary measures can be done in the manner prescribed by law, but the Public Ministry is obliged to oppose such requests as long as there are serious charges as to the criminal origin of the funds seized.

238. The statistics and data provided regarding seizure and confiscation are not presented in a consolidated form, and are sometimes impossible to cross-check, making their interpretation difficult to meet effectiveness criteria.

239. In practice, from 2012 to 2015, SAMIFIN initiated 78 account freezes, of which 26 were released either after the expiry of 48 hours or by court order. In the context of preliminary inquiries or the investigation of cases, the police, gendarmerie, judicial police officers of Bianco, under the supervision of the public prosecutor's office or the investigating judge, proceed to the seizure of the object or instrument of crime or offense. Such is the case of amounts in cash, or deposited in bank accounts, of trafficked goods (wood, precious stones, gold, mining products, protected species such as tortoises, etc.). In 2016, for example, the judicial police seized 2,992.7 kg of cannabis, 28 kg of cannabis, 379 pieces of ammunition, and 46 weapons.

240. For the gendarmerie, the three tables below detail the seizures from 2014 to 2016:

For cases of trafficking in precious metals and stones

| Year | Number of cases | Arrests | Seizures |
|------|-----------------|---------|---|
| 2014 | 5 | 9 | - Seizure of 120 kg of green kaolin - Closure of a quarry with illegal gold mining in Manapatrana, region Vatovavy Fitovinany - Theft of 5 tonnes of industrial stone of agate type |
| 2015 | 1 | 1 | - Case processed by the Analamanga Gendarmerie Group |
| 2016 | 4 | 6 | - Trafficking in 80 kg of red ruby, seized - Trafficking in 100 kg of tourmaline, seized |

For cases of trafficking in tortoises, seahorses and chameleons

| Year | Number of cases | Arrests | Seizures |
|------|-----------------|---------|--|
| 2014 | 5 | 55 | - 5,975 tortoises seized |
| 2015 | 6 | 18 | - 1,726 tortoises seized - 5 kg seahorses seized - 103 chameleons seized |
| 2016 | 8 | 18 | - 2,395 tortoises seized |

For trafficking in rosewood and ebony wood

| Year | Number of cases | Arrests | Seizures |
|------|-----------------|---------|---|
| 2014 | 32 | 54 | - 26,553 rosewood logs seized - 1,689 ebony wood seized - 1,248 palissanders seized |
| 2015 | 38 | 2 | - 12,093 rosewood logs seized - 122 palissanders seized |
| 2016 | 17 | - | - rosewood logs seized: none - 02 bags of orchids seized, - 320 palissander square timbers seized |

241. Madagascar does not have any management mechanism for seized property and execution of judicial decisions providing for confiscation. Such mechanism should be created as part of the bill on Asset Recovery. Pending this reform, it should be pointed out that the system for recording, counting, keeping, and managing objects or properties seized is rudimentary or even non-existent. Some seized objects (decorative stones, sometimes precious woods) are stored in the open, in non-closed places. This clearly results in risks of loss, theft, misappropriation, and deterioration of such assets, which materialize regularly.

242. All in all, the assessment team was not in a position to obtain consolidated and usable information on these provisional measures implemented by the criminal prosecution authorities in the investigations and examinations for money laundering. The information provided by the authorities and the files consulted show that provisional measures have in fact been issued in certain cases of money laundering, and more regularly in cases of trafficking in mining materials, precious

stones, rosewood or protected species (especially tortoises). This partial information on seizures in the context of the underlying crime investigations does not, however, make it possible to prioritize such measures.

Confiscation of proceeds from foreign and domestic predicates, and proceeds located abroad

243. No comprehensive and consolidated statistics on confiscation measures pronounced in underlying crime cases were provided to the assessment team.

244. It is difficult to assess the effectiveness of the confiscation measures pronounced as a penal sanction in money laundering cases because only two cases were tried by Malagasy courts. The decisions provided to the team make it possible to verify that the Criminal Court seized in both cases ordered a confiscation measure on the blocked sums of money and on the seized real estate or goods.

245. In the cases opened with the penal chain, out of 325 cases judged since 2004, the additional penalty of property confiscation has however been pronounced only three times. In a money laundering case tried in June 2016, the Criminal Court also decided to impose penalties of hard labor, fines and, in addition, the confiscation of a real estate property, shares, 33 kg of gold, vehicles, and sums deposited in bank accounts. In a second money laundering case (sale of land with false documents, use of bank funds), no confiscation measure was pronounced.

246. Finally, the balance sheet in terms of confiscation of offense proceeds, whether money laundering or predicate offenses, appears as clearly insufficient. This is a reflection of the difficulties noted above in terms of financial investigations, the low number of convictions, and a low mobilization of prosecutors and judges to develop confiscation.

Confiscation of falsely or undeclared cross-border transaction of currency/BNI.

247. In the context of cross-border movements, cash seizures are made annually by the customs administration. In the case of imports of foreign currency without a declaration or misrepresentation, customs officers seize and confiscate unreported sums and may impose a fine. However, no specific investigation appears to be conducted on the basis of these customs findings and seizures and, in cases of suspicion of money laundering, SAMIFIN does not receive information about such convictions, and it seems very rare that the police or the gendarmerie are informed.

248. The table below summarizes the customs offenses found between 2014 and 2016. No statistical information was provided to the assessment team on violations of the cross-border cash movement reporting requirement. A significant number of offenses are related to fraud and securities rights (FDV). In sum, seizures related to movements of cash or marketable securities are therefore very limited.

Summary table of offenses found at national level (years 2014-2016)

| | 2014 | | 2015 | | 2016 | |
|-------------------------------|------------------------|----------------|------------------------|----------------|------------------------|----------------|
| Total number of offenses | 2044 | 100.00% | 1947 | 100.00% | 1853 | 100.00% |
| Number of FDV offenses | 968 | 47.36% | 720 | 36.98% | 1127 | 60.81% |
| Other offenses | 1076 | 52.64% | 1227 | 63.02% | 726 | 39.19% |
| Total value | 133,392,323,747 | 100.00% | 290,501,441,086 | 100.00% | 343,647,626,853 | 100.00% |
| FDV value | 68,768,242,873 | 51.55% | 72,898,595,109 | 25.09% | 76,625,002,059 | 22.29% |
| Value of other offenses | 64,624,080,874 | 48.45% | 217,602,845,977 | 74.91% | 267,022,624,794,, | 77.71% |
| Total DC / ED observed | 12,216,842,791 | 100.00% | 21,461,796,993 | 100.00% | 56,144,244,456 | 100.00% |
| DC/DE FDV | 6,491,938,042 | 53.14% | 5,208,711,535 | 24.27% | 5,935,028,982 | 10.57% |
| Other DC / DE offenses | 5,724,904,749 | 46.86% | 16,253,085,458 | 75.73% | 50,209,215,474 | 89.43% |

Consistency of confiscation results with ML/TF risks and national AML/CFT policies and priorities

249. Finally, criminal confiscations are very limited and do not correspond to national AML/CFT priorities. The absence of a criminal policy focusing on risky sectors prevents the implementation of guidelines that would allow the penal chain to result in confiscations proportionate to the extent of the illicit profits from corruption or the proceeds of many illicit trades of timber, precious materials, protected species, mining products, etc.

250. With regard to seizures or freezing, the investigative services take provisional measures, which are then relayed by the prosecutors or the investigating judges, and SAMIFIN proceeds to bank accounts blocking.

251. This being so, the lack of investigation means, or even of material means, to make seizures severely limits the possibility of pursuing a policy, or of promoting practices adapted to the criminal situation in the country. Seizures of ship cargoes, for example, can sometimes not be achieved in so far as the gendarmerie and other services involved in maritime traffic (including precious woods) do not have boats that are sufficiently powerful to pursue those of traffickers.

252. Last, physical seizures often lead to the loss of objects in the absence of a reliable system for recording, keeping, managing and selling the proceeds of seizures and confiscations. It is also important to note inconsistencies related to legal situations such as in rosewood. So far, seized and confiscated logs cannot be sold because of the trade ban on this product.

Conclusion

253. The mechanism established by the AML/CFT Law and the Penal Code remain insufficiently effective and do not allow to deprive criminals of proceeds and instruments of the offenses they commit. The absence of a management system for property seized in criminal cases constitutes a hindrance to the effective management of property subject to confiscation. It also deprives the competent authorities of tools to analyze the effectiveness of the system and to issue informed guidelines to improve its implementation.

254. **The level of effectiveness achieved by Madagascar regarding Immediate Outcome 8 is low.**

CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

Key Findings and Recommended Actions

Key Findings

The Malagasy CFT legal framework is deficient, both in criminalizing the financing of terrorism (failure to incriminate the financing of a terrorist organization and an individual terrorist) and in the implementation of the related United Nations Resolutions. Moreover, the poor implementation by the reporting entities of preventive measures in counter terrorist financing does not allow Madagascar to adequately protect itself against the misuse of its financial system in terrorist activities financing schemes.

In the absence of a file resulting in a conviction, the sanctions applied cannot be considered effective, disproportionate or dissuasive. Investigations into terrorism financing are rare and have not yet led

to the development of related significant cases, whereas the risk in this area, even if it is limited, is not negligible.

No legislation or regulation is planned in Madagascar to put in place (or implement) the targeted financial sanctions related to the financing of proliferation of weapons of mass destruction.

Recommended Actions

TF Risk Analysis

In keeping with NRA, the Malagasy authorities should conduct an FT risk analysis to which the country is exposed, including in the NPO sector, and involve the authorities in charge of the NPO sector in the work of SNOLT – in that respect, new appointments of SNOLT members should be made in a timely manner.

TF Criminalization

The CFT Law should be amended to criminalize the financing of a terrorist organization and an individual terrorist

Investigations and Penal Sanctions

The authorities of the Ministry of Justice, in conjunction with SAMIFIN, should issue circulars explaining to prosecution authorities and magistrates the main elements of terrorist financing offense and encourage prosecutors and investigators to consider these cases as a priority.

Adequate training, and sufficient resources should be provided to magistrates and investigators.

Targeted Financial Sanctions

The Malagasy authorities should have the necessary mechanisms for the implementation of Resolution 1373 – this could be established through regulations made on the basis of Article 36 of the Law No. 2014-005.

With regards to the implementation of Resolution 1267 and its successor resolutions, the Malagasy authorities should establish the legal framework, mechanisms, procedures for the identification of targets for designation, the criteria for designation decisions, the listing procedures to be followed, the relevant information which should be provided to the Committees 1267/1989 and 1988.

The Malagasy authorities should identify a competent authority responsible for proposing designations to the 1267/1989 and 1988 Committees. This responsibility could be attributed to the SNOLT, which should also be in charge for designations pursuant to Resolution 1373. In that respect, the Malagasy authorities should ensure that the SNOLT has the legal powers and procedures to carry out its new attributions.

The Malagasy authorities should define the term "fund" under Article 17 of Law no. 2014-005 against terrorism and transnational organized crime, to extend the obligation to freeze all funds or other assets that are owned or controlled by designated persons or entities.

The Malagasy authorities should simplify the mechanism for freezing funds, established under Article 17 of Law no. 2014-005 against terrorism and transnational organized crime, so that it can be done without delay.

The Malagasy authorities should establish the legal mechanisms for communicating designations pursuant to the 1267 lists without delay. Reporting entities should also be sensitized about their obligations regarding targeted financial sanctions.

The authorities should prohibit any persons or entities within Madagascar from making any funds or assets, economic resources or financial services and other services available for the benefit of designated persons or entities.

The Malagasy authorities should ensure that the unfreezing of funds and other assets extend to persons and entities that do not, or no longer, meet the criteria for designation.

The Malagasy authorities should establish a specific legal mechanism for the implementation of targeted financial sanctions related to the financing of proliferation of weapons of mass destruction, and then raise awareness among reporting entities.

The NPO Sector

The Malagasy authorities should review the adequacy of their laws on NPOs in relation to terrorist financing and carry an assessment of the sector to collect information on its size, its activities and its characteristics in order to identify the features and types of NPO which are likely to be at risk of money laundering and terrorist financing abuse.

On the basis of a risk analysis of the sector, the Malagasy authorities should sensitize NPOs on terrorist financing risks and provide them with measures that would protect them from abuse. The NPO regulators, in collaboration with SAMIFIN, should publish best practices that would address terrorist financing vulnerabilities and risks.

The Malagasy authorities should take measures that would strengthen financial transparency in the NPO sector, by establishing a legal mechanism to ensure that ordinary associations maintain and provide financial information and their program of activities.

The Malagasy authorities should establish monitoring mechanisms that would ensure that funds accounted for and used by NPOs are in accordance with their declared purpose and activities.

The Malagasy authorities should provide the NPO regulators with adequate resources for a better supervision and monitoring of the sector.

The Malagasy authorities should ensure that the unit that fights terrorism at the National Gendarmerie (a branch of the police under the Ministry of Defense) has sufficient resources (in terms of human resource and training) to carry out its functions properly.

Immediate Outcome 9 (Terrorist Financing Investigations and Prosecutions)

Prosecutions and Convictions of TF Activity Types Consistency with the Country Risk Profile

255. The authorities of Madagascar have not reported any prosecutions or convictions with respect to terrorist financing. To date, Madagascar has never been the scene of an act of terrorism of an international nature yet. However, it should be noted that a member of the Bin Laden family was murdered in Madagascar and that traces of a possible activity of Al Shabbab were found in Madagascar. Three suspicious transaction reports sent to the SAMIFIN in August 2016, following a suspicion of money laundering and terrorist financing involving three religious associations. The value of the transfers was disproportionate to their stated purpose, for zebus purchase. The SAMIFIN sent a dissemination report to the National Gendarmerie and the judicial inquiry which was initiated in April 2016 is still ongoing.

256. Internally, attempts to use improvised explosives with a view to destabilize the regime have occurred, particularly during the transitional period as a result of the 2009 events. Since 15 June 2009, a series of bomb attacks were noted. A group called "defenders of national sovereignty" has claimed responsibility for the attacks. No information is available about this group, of which the

authorities do not know whether it is an organization or a structured cell. Furthermore, a few individuals were apprehended in keeping with this case of homemade bombs, including foreigners. They were sentenced to forced labor. Finally, six people also died as a result of explosives: a bomb setter who made a false manipulation in his car in 2010; a man found dead by firefighters in a house with blast impacts on the walls; a child, victim with 37 others wounded by a grenade thrown by unidentified persons, on the evening of the inauguration of the active President; last, three people were victims of an explosion on the evening of the national holiday in 2016 at the municipal stadium of Mahamasina.

TF Identification and Investigations

257. At the level of the State Secretariat in charge of the National Gendarmerie, an office in charge of fighting against terrorism and transnational organized crime has been set up since 8 January 2013. It is a body coordinating counter-terrorism, which participates in the work of SNOLT (national framework for the fight against terrorism and organized crime). In theory the staff numbers of the National Gendarmerie involved in counter-terrorism and all related crimes is in the order of 198 officers and non-commissioned officers, without excluding the intelligence or other efforts of other entities.

258. SAMIFIN in 2016 received suspicious transaction reports from a bank following transfers of funds from Kuwait, Saudi Arabia, Turkey or Qatar to finance religious associations. SAMIFIN ordered measures for freezing bank accounts and the case was then referred to SNOLT, then to the gendarmerie. The investigation opened by the gendarmerie reveals that three different associations, established in Madagascar for charity works for the benefit of Malagasy, received funding from abroad in 2014 and 2015. The first one received a funding of 616,270,011 MGA from Islamic Istanbul. The value of the transfers was disproportionate to their declared purpose, the purchase of zebus from Turkey and Australia - the second, 255,228,954,36 MGA from Germany, Tanzania and Madagascar - and the third association received a sum of 1,314,390,786.15 MGA from Kuwait and Turkey. The ongoing investigation is subject to a procedure that will be sent to the Malagasy judicial authority as soon as it is closed.

TF investigations integrated with – and supportive of - National Strategies

259. The National Framework for fighting against Terrorism and Transnational Organized Crime (SNOLT-CTO) was created in 2015 by Decree No. 2015-050 in accordance with the spirit of Law no. 2014-005. It is an institutional framework for orienting and coordinating actions against terrorism and transnational organized crime and directly attached to the Prime Minister's Office. It receives the documents from the organizations involved, then prepares summary sheets for each person mentioned. These reports are intended for the analysis by operational agents. SAMIFIN is represented in these meetings. In particular, SAMIFIN intervened in the context of terrorism threats on the South-East coast which were identified as a result of intelligence received from a foreign financial intelligence unit. These were funds from Turkey that would have transited through an NPO in Madagascar. These suspicions, which were also based on comings and goings and movements of foreigners, could not be referred to the prosecutor's office for lack of sufficient information. These facts led to a SAMIFIN investigation followed by a referral to the gendarmerie, where it is currently being investigated. It should be noted that since the end of the first quarter of 2016, no meeting has been organized by SNOLT following the departure of its Executive Secretary.

Effectiveness, Proportionality and Dissuasiveness of Sanctions

260. Only one investigation was initiated following a suspicious transaction report that SAMIFIN received in 2016 from a bank on remittances from Kuwait, Saudi Arabia, Turkey or Qatar to finance cultural associations. The investigation is still ongoing. In the absence of finalization of a significant number of cases that have resulted in conviction, it cannot be concluded that the sanctions applied are effective, disproportionate and dissuasive. Even so, the same difficulties were encountered in the area of financial investigations for money laundering cases (lack of training, specialization, experience difficult access to sources and relevant financial documents) are also obstacles to the effective prosecution, which condition the possibility of obtaining effective, proportionate and dissuasive sanctions.

Alternative Measures used where TF Conviction is not possible

261. No alternative measure seems to be implemented.

Conclusion

262. In the absence of a conviction file, no criminal sanction for terrorist financing has been pronounced. Some investigations have begun. While the risk of terrorist financing, though limited, is clearly far from being non-existent, the measures taken to implement financial investigations and impose criminal sanctions in this area are insufficient.

263. **Effectiveness for Immediate Outcome 9 is low**

Immediate Outcome 10 (TF preventive measures and financial sanctions)

Implementation of targeted financial sanctions for TF without delay

264. According to Article 17 of the Law N° 2014-005, the mechanism for the implementation of freezing measures under Resolution 1267 is triggered once reporting entities are notified by an inter-ministerial order from the Ministry of Finance and the Ministry of Foreign Affairs. At the time of the on-site visit, no order had been issued and the implementation of the freezing obligation had not been triggered by the Ministry of Finance and the Ministry of Foreign Affairs. Reporting entities did not consequently receive any notification and had therefore no obligation to effect freezing as the obligation is created only when the notification of the order is received.

265. Moreover, the Malagasy authorities did not communicate the designations pursuant to the 1267 lists to reporting entities. The responsibilities regarding the dissemination of designations are not clear. According to the Ministry of Foreign Affairs, a copy of the 1267 list was disseminated to competent authorities in 2015. However, this measure was not confirmed by the supervisory authorities of reporting entities. On the contrary, it was reported that requests for the designation lists made to the Ministry of Foreign Affairs by supervisory authorities were not met. The CSBF indicated that it consulted the website of the United Nations at the end of 2016 and forwarded the link to the consolidated list to institutions under its supervision namely credit institutions including microfinance institutions and bureaux de change. However, this initiative was confirmed by only some of the reporting entities met during the onsite visit. In the absence of the implementation of Resolution 1267, there is a possibility that the services offered by financial institutions and designated non-financial businesses and professions could be abused by designated persons or entities.

266. While Article 36 of the Law N° 2014-005 could be used as a legal basis for the implementation of UNSCR 1373, this provision is connected to criminal proceedings. This is not in conformity with the application of the measures under UNSCR 1373, which should serve as a

preventive tool when criminal proceedings are not possible or practical. Madagascar does not presently have the legal framework, nor the proper mechanism or procedures for the implementation of this resolution.

Targeted approach, outreach and oversight of at-risk non-profit organizations

267. The NPO sector in Madagascar consists of ordinary associations (simple³⁷ and foreign³⁸), particular associations (for example religious associations), non-governmental organizations (NGOs) and foundations. Ordinary associations, religious associations and foundations are under the administrative supervision of the Ministry of the Interior while NGOs are supervised by the Ministry of the Population. There are 359 foreign ordinary associations, 285 religious associations and 8 foundations in Madagascar. The number of simple associations in the country could not be provided as information on associations are not centralized. The Ministry of the Population estimates that there are around 700 NGOs in Madagascar, among which 250 are foreign. This is an estimate because, unlike the database on foreign NGOs, that of local NGOs is not updated regularly. The NPO regulators do not have therefore a global overview of the NPOs under their responsibility.

268. Supervision and monitoring in the NPO sector are very limited in Madagascar. The role of the Ministry of the Interior is mainly administrative and relates only to amendments to articles of associations, cancellations and changes in board members. The Ministry of the Population is responsible for examining the request for headquarters agreements submitted by foreign NGOs and for providing its views³⁹ to the Ministry of Foreign Affairs regarding the approval of headquarter agreements.

269. According to authorities met during the on-site visit, there is no legal mechanism for monitoring the financial management systems of ordinary associations. While such mechanism exists for religious associations and foundations, there is no compliance with such obligations. With regards to NGOs, the obligation to submit a financial report annually is mostly met by foreign NGOs as it is a requirement for the biennial renewal of their headquarters agreement. According to their regulator, only 25% of local NGOs comply with this obligation. It is to be noted that no follow-up is made with NPOs on their non-compliance with this obligation. Moreover, the financial accounts which have been submitted are not subject to any substantive analysis; there is only a formal verification that the financial accounts have been submitted. There is no mechanism to verify the source of the funds obtained and that funds accounted for and used by NPOs are in conformity with the purpose and activities declared by NPOs. No onsite inspection is carried out by NPO regulators, the follow-up of activities is done through offsite monitoring only. The main reasons provided by the authorities to explain this situation is the lack of staff, financial resources and equipment.

270. Since there is no sectoral analysis, the NPO regulators are not aware of the risk of NPO abuse in the financing of terrorism. However, the AML/CFT operational and law enforcement authorities acknowledge that the sector is a potential conduit for terrorist financing. In that respect, there are historical indications that the country is vulnerable to TF schemes through its NPO sector, in particular through its associations and NGOs. This presumption is supported by three suspicious transaction reports sent to the SAMIFIN in August 2016, following a suspicion of money laundering and terrorist financing involving three Muslim religious associations. The SAMIFIN sent a

³⁷ Associations whose boards are exclusively composed of Malagasy citizens.

³⁸ Associations whose boards are exclusively composed of foreigners.

³⁹ The views of the Ministry of Finance and that of the Ministry of the Interior are also taken into account

dissemination report to the National Gendarmerie and the judicial inquiry which was initiated in April 2016 is still ongoing. The case was also referred to the SNOLT which sent a correspondence to the Prime Minister after analysis. A good level of cooperation was noted among the different operational authorities on this case. However, there is almost no collaboration between the operational authorities and the NPO regulators as the SNOLT is not operational and because of the non-representation of the Ministry of the Population on the Structure. This explains why the NPO regulators are not aware of the risk of abuse of the NPO sector for terrorist financing purposes. However, even though the National Gendarmerie indicated some kind of collaboration with the Ministry of the Interior, this was not corroborated by the latter.

271. Following the submission of the three STRs and in an attempt to prevent terrorist acts, the unit fighting terrorism at the National Gendarmerie conducted a survey of Muslim associations through mosques and koranic schools in Madagascar. The regions involved are Melaky, Sofia, Boeny, Betsiboka, Analanjorofo, Sava, Diana and the South-West. A certain level of surveillance is performed and the unit has engaged in networking with some of the leaders of these associations in Antananarivo. However, a lack of staff prevents this kind of initiative in regions where the risks are thought to be higher according to the authorities.

Deprivation of TF assets and instrumentalities

272. 261. SAMIFIN statistics on STRs related to terrorist financing indicate that the bank accounts of the Muslim associations have been blocked; the investigation is still ongoing.

273.

274. 262. In the absence of successful investigations and TF specific convictions, there is no criminal confiscation. Civil confiscation has not yet been put in place and there has neither been any administrative measure of deprivation of property.

Consistency of measures with overall TF risk profile

275. 263. Madagascar has not yet conducted a national risk assessment of terrorist financing and does not have therefore a good understanding of TF risks. However, the different stakeholders met during the on-site visit acknowledge that there is a risk of TF abuse of the NPO sector, particularly of Muslim associations, by terrorists. However, this perception did not translate into the mobilization of NPO regulators and into an in-depth analysis to determine the extent to which the sector is vulnerable. The absence of new nominations on the SNOLT further restricts the coordinated actions that should have been carried out accordingly. With regards to the NPO sector, the Ministry of the Population, the regulator for NGOs, is not represented on the Structure. Moreover, the targeted financial sanctions under the United Nations Resolutions (1267 and 1373) have not been implemented in Madagascar.

Conclusion

276. There is no implementation of targeted financial sanctions for persons and entities on the 1267 list and no implementation of Resolution 1373 in Madagascar. Regarding the risk of NPO abuse for terrorist financing and terrorism, the Malagasy authorities have not carried out an assessment of the sector to identify which subset was at risk. Moreover, the supervision and monitoring mechanism in the sector is insufficient.

277. **The level of effectiveness achieved by Madagascar for immediate outcome 10 is low.**

Immediate Outcome 11 (Financial Sanctions Proliferation financing)

278. There are no legislative or regulatory provisions in Madagascar to put in place (or implement) targeted financial sanctions related to the financing of proliferation of weapons of mass destruction, and during the on-site visit of the Mutual Evaluation Team, the Malagasy authorities did not mention any existing mechanism that could be used to address this deficiency.

279. However, some of the banks belonging to international financial groups maintain screening software to identify clients, both regular and occasional that are designated by the United Nations in the counter proliferation finance context and so block any transaction in which such clients might be involved. But it must be acknowledged that such efforts respond only to the internal policies of the relevant financial groups rather than to any legal obligation or recommendation issued by the competent authorities. Moreover, the effectiveness of these independent efforts is limited by the fact that the Trade and Companies Register does not include any information on beneficial owners, such that individuals and entities designated by the United Nations could conceal (or attempt to conceal) their activities in Madagascar by establishing local companies.

264. The level of effectiveness achieved by Madagascar for immediate outcome 11 is low.

CHAPTER 5. PREVENTIVE MEASURES

Key findings and Recommendations

Key findings

ML/TF Risks – all the players met are aware of the most important offenses (the most common ones or those generating the most significant profits). Conversely, with the exception of commercial banks, especially those benefiting from the support of a group, financial and non-financial sector actors did not demonstrate an understanding of ML/ TF risks to which they are exposed. ML/ TF offenses are also poorly understood and it appears that the private sector does not establish a link between crime and the fact that it can be used, knowingly or unwittingly, and participate in the realization of ML/ TF risks;

Law no. 2004-020 on money laundering has many deficiencies and, with the exception of commercial banks, is being implemented only at an embryonic stage. In particular, legal and statistical professionals (lawyers, notaries and accountants) do not apply the law; the insurance sector applies only the client (and the contract beneficiary) identification obligations; the beneficial owner is sought and identified only by commercial banks; politically exposed persons, when identification mechanisms are implemented, are not subject to enhanced measures; asset freezing requirements are not implemented (financial institutions do not have lists and/or filtering procedures and tools); etc. ;

With regard to STRs, many private sector actors refer to Law 2004-020 as the law that limits cash payments. In practice, with the exception of banks belonging to a group, credit institutions file STR when they deal with transactions of more than 10 million Ariary, above which cash transactions are prohibited. The 'suspicion' therefore arises from stepping the 10 million Ariary threshold, whereas the law stipulates that reporting entities must make an STR when funds appear to result from a crime or an offense;

Private sector actors expressed concerns or doubts to the assessment team about the confidentiality of STRs, without specifying flaw origins. Unanimously, the private sector (financial and non-

financial) has a very good opinion of SAMIFIN and its work, and wishes to see their collaboration intensify in the future. More generally, they raise doubts as to the effectiveness of the penal chain and wish to see convictions for ML. This would remobilize the actors, who currently question the relevance of the national AML/CFT system.

Recommendations

In order to understand the ML/TF risks, conduct a national ML/TF risk assessment and disseminate the results to all reporting entities and their monitoring or supervisory authorities;

Conduct the risk analysis at the sector level to understand the ML/TF (financial and non-financial) risks of each sector;

Bring the legislation into line with international standards, in particular allowing the implementation of risk-proportionate measures (risk-based approach); adopt the necessary implementing measures (decree or instruments issued by the supervisory authorities); and sensitize all reporting entities to their AML/ CFT obligations and assist them in the effective implementation of their obligations; the latter actions must be coordinated between SAMIFIN and the supervisory and control authorities in order to send a clear and coherent message to the private sector;

As regards suspicious transaction reports, SAMIFIN must continue its efforts to clarify the obligations and its expectations among reporting entities; provide feedback to reporting entities; and take all necessary measures to ensure the confidentiality of STRs, whether at the level of the FIU or the authorities with which SAMIFIN analyses are disseminated

With respect to designated non-financial businesses and professions, in addition to clarifying the scope of the law and the need to subject to the AML/CFT obligations all categories of non-financial designated businesses and professions, in particular dealers in precious metals and stones, the awareness-raising actions already undertaken by SAMIFIN must continue and intensify, particularly with lawyers, notaries and accountants.

The Immediate Outcome relevant to this chapter is RI.4. The relevant recommendations for the evaluation of effectiveness under this section are R.9-23.

Immediate Result 4 (Preventive Measures)

Understanding ML/TF risks and AML/CFT obligations

280. **Understanding of Risks** – all stakeholders encountered, whether in the financial or non-financial sector, are aware of the threats Madagascar faces owing to the abundance and diversity of its natural resources. They all cited the traffics in rosewood, vanilla, spices, stones and precious metals, turtles and fish resources, etc. as a substantial part of crime. Conversely, with the exception of credit institutions, and more specifically those belonging to international financial groups, they were not able to describe how the proceeds of these offenses are laundered. But they said that to launder the proceeds of the offenses they committed, criminals use banks. This can be explained by the fact that the operations offered by certain categories of financial institutions would not allow the laundering of large sums (for example, the small loans granted by microfinance institutions). Most reporting entities, either the financial sector or the designated non-financial businesses and professions, made this comment without being able to justify it. No studies on ML/TF risks in the financial and non-financial sectors have been conducted. On the whole, the private sector considers that the risk of money laundering to which it is exposed is low or non-existent.

281. Banks belonging to international financial groups have a better understanding of the ML/TF risks to which they are exposed. In terms of risks, they apply the policies and procedures of the

group and translate them locally by taking into account the specificities of Madagascar, especially those relating to crime. In addition to trafficking, they cited other risk factors: the predominance of cash, non-profit organizations, mobile banking, cultural associations, the real estate sector, etc. In addition to the predominance of cash, many of these banks also indicated that they doubt that the ML generally or systematically passes through the banks. Some mentioned the real estate sector, including notaries, as well as major investments and industrial projects, as well as luxury car dealers as particularly likely to be used for ML purposes.

282. Understanding and appraising **terrorist financing** risks vary greatly among the reporting entities met by the assessment team. Credit institutions and insurers consider that the risk is low, even marginal, in Madagascar, whereas institutions involved in remittances have indicated that the level of risk is significant. Such appraisal of FT risk is questionable in several respects. It is purely subjective because it is based on elements such as the establishment in Madagascar of Muslim communities, the activity of religious associations and the construction of mosques. In addition, like the ML risk, most private sector stakeholders interviewed do not appear to link the elements on which they base their risk assessment (or for ML risk, crime) and in the course of their activities, the fact that they may be used, knowingly or unintentionally, and participate in realizing those risks.

283. **Understanding AML/CFT Obligations** – The way AML/CFT obligations is understood by different categories of reporting entities varies widely among **financial institutions**. It appears that it is better among credit institutions, including microfinance institutions, than in other categories of financial institutions. As already mentioned above, banks belonging to a group, particularly a large international financial one, apply the Group's policies and procedures, including those relating to AML/CFT, and receive related training. They all indicated that the group mechanism is more stringent than the Malagasy law, which, according to these actors, is perceived as not being applied or, at least, not being sufficiently implemented. For the other credit institutions, including microfinance institutions, CEM and postal financial services, it appears that while everyone knows the law, practices vary greatly from one institution to another (for example, identification thresholds, the amount of transactions from which information on the origin of funds is sought). Above all, it appeared that the AML law is designated as the law on the limitation of the use of cash. While there is a provision in the law that limits cash payments (Article 4), this designation creates confusion in practice for many AML/CFT actors, which has significant implications especially in the implementation of their obligation to report suspicion. The assessment team found that, with the exception of commercial banks, reports are motivated by the exceeding of the 10 million Ariary threshold, beyond which cash payments are prohibited, and by the suspicion that "the funds appear to come from a crime or an offense" as provided for in Article 19 of Law dealing with the Suspicious Transactions Reporting obligation.

284. The insurance company met by the assessment team knows of the ML Law only that the provisions relating to customer identification thresholds, which are the only ones available in the institution's procedures. This observation seems to be generalized to the sector as a whole; indeed, the supervisory authority indicated that it discovered the existence of the AML law only in 2015, at the occasion of a first contact with SAMIFIN. The AML Act is now taken into account in the course of the on-site inspections and an instruction on the insurance sector's the AML /CFT obligations is planned for 2017.

285. In the **non-financial sector**, the interviews with lawyers, notaries and accountants revealed that these professionals do not apply the AML Law. Some of the lawyers met were not aware of the law; the accountants met consider that it does not apply or, as noted below, cannot be applied to their profession or their activities. This is partly due to the drafting of Article 3 of the AML Act, which defines the scope of the law not by listing the professions covered, but by listing the activities of individuals and entities subject to it, including consulting activities, in which certain legal

and accounting professionals do not recognize themselves. accountants also stated that the AML/CFT obligations are in contradiction with their professional obligations, including professional secrecy. The national chamber of notaries is preparing the implementation of the AML law; however, it is not clear that all notaries will implement it. Casinos are explicitly subject to the AML Act, but interviews show that they have limited knowledge of the law and apply only the provisions relating to identification.

286. The representatives from the **mobile banking** sector met by the assessment team are aware of the risks, in terms of ML and TF, including the SAMIFIN report. At the time of the assessment, they acted as an intermediary in bank transactions (i.e., under a mandate from a licensed credit institution) and were not subject to the AML/ CFT system. Their status is changed by Law no. 2016-056 of 16 December 2016 on electronic money and electronic money institutions, which subjects authorized electronic money institutions to the AML/CFT system (Article 49).

Application of risk mitigating measures

287. The AML Law does not provide that reporting entities apply risk-based measures. The level of implementation varies according to the type of financial institution considered. **Credit institutions** implement different types of measures to mitigate their ML/TF risks and have a variety of indicators. Among these measures, the authorization of the group before the opening of an account for clients originating from or residing in a country identified as being at risk by the establishment; reinforced monitoring of politically exposed persons by a dedicated agency; the periodic review of all CDD files and the more regular review of clients identified as being at risk; etc. These risk mitigation measures are not provided for by the AML Law or by the instruction, but by the group procedures. Conversely, **microfinance institutions** do not implement proportionate measures to mitigate their ML/TF risks; they have extremely strict customer acceptance policies that do not provide for risk-based measures, but purely and simply the refusal to contact customers.

288. **Insurers** apply only the customer identification requirements (i.e. identification by presentation of an identity document). The only risk identified in the sector is the repurchase of the contracts prior to maturity; no action has been taken to mitigate this risk.

289. No risk mitigation measures were communicated to the assessment team by the bureau de change, the CEM and the Post Office financial services.

290. **Fund transfer providers** and **mobile banking operators** have established thresholds and ceilings for operations. For cash transfers, customers are identified at each transaction. The maximum amount of funds received daily cannot exceed 10 million Ariary. For any operation over 3 million Ariary, the origin and the destination of the funds must be sought. For electronic money, the balance of the account may not exceed 10 million Ariary and the maximum amount of a transaction is 5 million Ariary. Monthly flows are also limited and justification of transactions is requested when monthly flows are exceeded.

291. Some **designated non-financial businesses and professions** identify their clients, but this is not under the AML Law. Indeed, while the customer identity is verified by the presentation of an identity document, it is not kept in accordance with the provisions of the AML Law; the beneficial owners are neither sought nor identified; the origin of funds is not sought, etc.

Application of enhanced or specific CDD and record keeping requirements

292. As mentioned above, only financial institutions apply the AML law. Although the **retention obligation** does not pose a problem: all the institutions met keep for a period of at least 5 years from the end of the business relationship or the execution of the transaction, the documents relating to identifying the client and the operations, it appears that the **customer due diligence measures**

implemented differ from one institution to another. It should be noted that if the information is kept, it is in most cases a paper filing, which makes it difficult to search for the oldest information. Nevertheless, several institutions have indicated that they are in the process of moving to or starting an electronic archiving of information.

293. Among **credit institutions**, commercial banks, and more particularly those belonging to or having belonged to large international financial groups, have the most elaborate arrangements. They identify the clients and, where applicable, the beneficial owner, and then establish for each client a profile based on the customer knowledge information received during the establishment of the business relationship. This profile is updated during the relationship to take into account new information provided by the customer and the result of the follow-up performed by the establishment of the operations performed by the customer. Banks have tools for filtering and monitoring customer transactions. The position of banks varies when the required information to establish the business relationship is not all gathered: for some, the application should be rejected and a suspicious transaction report should be considered; others consider that this is not a reason for refusing to enter into relationship. Article 24 of the Instruction provides for the closure of the account and a suspicious transaction report. In practice, some files may be incomplete; several banks indicated that they were reviewing and remediating the files when new IT tools were put in place.

294. The **CEM and the Postal Financial Services** limit their customer due diligence measures to (i) the identification of customers at the time of the establishment of the business relationship or, for occasional customers, during a transaction an amount exceeding 3 million Ariary, and (ii) the search for the origin of funds for operations of an amount exceeding 10 million Ariary. The bureau de change also, while they have a regular clientele, only proceed to the identification of the customers.

295. Regarding **Microfinance Institutions**, apart from its formal identification, customer knowledge is particularly important and conditions customer acceptance. The domiciles of future customers are systematically checked and much information on wealth and income is collected to guarantee the loans granted. The identification of beneficial owners is not systematic. The CSBF indicated that incomplete client files are regularly identified by its inspectors during onsite inspections, whereas, according to the microfinance institutions met, such accounts should not have been opened because of the incomplete nature of the request of contact. Microfinance institutions do not all have tools for monitoring the operations performed by clients.

296. **Mobile Banking** operators identify their customers as part of the e-money offer and establish profiles, which are updated as transactions progress. The accounts are open and operate from the moment of subscription, but only credit transactions are possible pending the verification of the customer information. When the file of a customer is incomplete, the account is suspended pending its regularization. Otherwise, the account is closed.

297. **Money Transfer Services** identify clients for each transaction and look for information about the purpose of the transaction when the amount exceeds 3 million Ariary. IT tools for monitoring operations are in place, in order to highlight the cases of splitting.

298. The **Insurance Companies** did not mention any customer due diligence other than the verification of clients' identity; which is corroborated by the internal procedures of the institutions communicated to the assessment team. Representatives of the sector met also indicated that they identify the beneficiaries at the time of payment of benefits, but this does not appear in the procedures communicated. Customers are identified at the first subscription or, for occasional customers, when they carry out an operation of an amount exceeding 3 million Ariary. Information search on the origin of funds and the purpose of the transaction requires reaching a 50 million Ariary threshold.

299. While **Legal and Accounting Professionals** verify the identity of their clients, they do not exercise all required due diligence measures with regard to clients; the retention of customer identification data does not comply with the provisions of the AML Law. Casinos identify all customers at the entrance of the establishment, regardless of the amounts played. The identity is registered in a register, the pages of which are numbered, and which is signed by the customers. The registers are maintained and kept at the disposal of the tax authorities, the municipality (control of public order) and the game police of the Ministry of the Interior. In the real estate sector, professionals rely on customer due diligence performed by banks.

Application of EDD measures

300. **Politically Exposed Persons** - the issue is known to most private sector stakeholders met (financial sector and non-financial sector), with the exception of representatives of the insurance sector. Conversely, the implementation of the related obligations varies and raises many difficulties on the part of the reporting entities. This observation is shared by the CSBF, which recognizes that at the time of the on-site visit, only credit institutions actually implement the obligations relating to PEPs. It also says that microfinance institutions would not have PEPs among their customers. In fact, the institutions met confirmed that their procedures prohibit them from entering into a relationship with PEPs. Regarding identification of foreign PEPs, only banks belonging to a group identify them by using software. In this case, the authorization of the general management is required in order to open an account or to continue the business relationship. Then, they exercise enhanced customer due diligence client operations. They however mentioned difficulties in identifying family members and the circle of influence of PEPs. The other banks, the CEM and the postal financial services seem to only deal with people who, at the national level, are well known for performing the duties of PEPs. However, after the detection of an PPE, no specific measure is implemented. In addition to the audits performed by the principal banks, the mobile banking operators identify the PEPs at the time of subscription of the electronic money account. The follow-up given to the identification of PEPs is not clear or common to operators as a whole. Designated non-financial businesses and professions do not implement any specific measures to identify PEPs.

301. **Risk Countries Identified by the FATF** - Banks belonging to a group apply enhanced diligence with regard to clients and transactions related to a country considered at risk. Country risk is determined at the group level. In this context, it is not established that the countries identified by the FATF are all considered ML/TF risk and many countries, other than those listed by the FATF, are considered at high ML/TF risk.

302. **Freezing terrorist assets** - Among financial institutions, the measures implemented vary. Like in PEP identification, banks belonging to a group implement group procedures and have filtering tools as well as updated lists. Other banks, microfinance institutions, the CEM and postal financial services do not have lists and do not know where to find them or filtering tools. Designated non-financial businesses and professions are unaware of this problem. Bureau de change know the problem but do not implement any measure to identify among their clients the persons and entities whose assets should be frozen. The representatives of the insurance sector are unaware of this problem.

303. The assessment team did not receive any information concerning **banking correspondence** and **electronic transfers**. Credit institutions belonging to an international group apply group procedures.

Reporting Obligations and Tipping-off

304. Many reporting entities interviewed question the relevance of the AML Law and their participation in the national AML/CFT system, and more particularly, on the usefulness of suspicious transaction reports to the extent that they are subsequently analyzed by SAMIFIN, and referred to judicial authorities, but only 2 convictions were ultimately handed down. Beyond these questions, reporting entities are discouraged.

305. In addition to this preliminary observation, some difficulties are frequently mentioned by reporting entities, mainly credit institutions, which, with a few exceptions, are the only ones subject to submitting STRs to SAMIFIN. Some reporting entities do not make STRs if the transaction is not carried out; others raised the lack of definition of what is doubtful; still others do not make suspicion reports, but only when they are certain of the facts reported. With the exception of the banks belonging to groups, it appears that in most cases, what gives rise to doubt is the high amount of a transaction and more particularly the 10 million Ariary threshold overrun. This threshold is also the one beyond which cash payments are prohibited under Article 4 of the AML Law. This article also provides that a decree in Council of Government may derogate from such prohibition and in which case, a report specifying the terms of the operation must be made to SAMIFIN. At the time of the on-site visit, it seems that such a decree was not made. Many reporting entities appear to be confused between the suspicious transaction report and the Article 4 statement so that many of the STRs submitted are not suspicious but are transaction threshold reports. Reporting entities have finally indicated that they do not know what to do with clients in relation to who an STR was filed : whether to terminate or to continue the business relationship, as recommended by SAMIFIN.

306. Several industry representatives met, including designated non-financial businesses and professions, expressed doubts as to the confidentiality of STRs, without being able to say where the leaks would come from, as well as fear of retaliation. These elements significantly affect the proper implementation of the suspicious transaction reporting requirement. The representatives of the accountants meanwhile indicated that the obligation to report suspicion (as the obligation to report criminal acts of which they become aware in the course of their activity) is in contradiction with their obligation of confidentiality towards clients.

Internal controls and legal/ regulatory impeding implementation

307. Financial institutions have **internal control** mechanisms; the most advanced ones have set up an AML/CFT dedicated service. Some institutions mentioned a sensitive positioning of the compliance and internal control functions, but they indicated that these functions are adequately supported by the hierarchy for the accomplishment of their missions.

308. Financial institutions generally have AML/CFT procedures. Representatives from the insurance industry provided the assessment team with a short internal memo recalling certain provisions of the AML Law, but they do not have internal AML/CFT procedures. The representatives of the bureau de change indicated that they had oral procedures. As mentioned above, credit institutions belonging to groups apply the procedures and use the tools of the group; without ever having encountered any legal or regulatory obstacle.

309. Most financial institutions, in particular credit institutions belonging to an international group, use IT tools for operations monitoring and clients profiling, and train their staff in AML/CFT.

310. **The effectiveness level reached by Madagascar regarding Immediate Result 4 is low.**

CHAPTER 6. SUPERVISION

Key findings and Recommendations

Key findings

The competent supervisory authorities, including the self-regulatory bodies for the Designated Non-Financial Businesses and Professions (DNFBPs), all accept their responsibility for governing market access and to this end, ensure the faithful application of the relevant statutes but the effectiveness of their efforts is limited by a widespread failure to verify the truthfulness of the documents submitted and the absence, in the vast majority of cases, of an obligation to conduct background checks (3.1)

Even though financial institution and DNFBP supervisors are aware of the two *studies* thus far conducted by SAMIFIN and can, to some extent, identify scenarios in which the individuals or entities they regulate could be used to launder money or finance terrorism, none of them has yet conducted a study of ML/TF risks, whether at the sectoral or institutional levels (3.2)

Given the observations above, none of these supervisors is currently in a position to conduct risk-based AML/CFT supervision. Only the CSBF (for credit institutions and bureaux de change) and the Ministry of Finance (MoF, for insurance companies) have already begun AML/CFT supervision. They deal with prudential and ML/TF issues during the same on-site visits; therefore, the frequency of inspections is not based on the ML/TF risks posed respectively by each financial institution / category of financial institution (3.3).

The Banking and Financial Supervision Commission (CSBF) cited only one case in which it sanctioned an obligated entity for non-compliance with an obligation under Law 2004-020 and / or Instruction 006- 2007; it prefers to issue recommendations but does not verify the measures taken by the relevant obligated entities to implement those recommendations (3.4). As a result, the level of compliance of financial institutions - and of DNFBPs, which are not yet subject to AML/CFT supervision - remains largely a function of their internal policies and of their own understanding of their legal obligations (rather than of a fear of the sanctions that may be imposed by their designated supervisor) (3.5).

As of the date of the on-site visit by the Mutual Evaluation Team, only SAMIFIN had taken actions aimed at generating a proper understanding of AML/CFT risks and obligations. Both the supervisors and the institutions, firms, and professions they are required to regulate have indicated that they normally consult SAMIFIN to answer any questions about illicit finance (3.6).

Recommendations

Regarding AML/CFT supervisory authority

Amend laws 2004-020 and 2014-005 to provide an explicit list of the DNFBPs subject to those laws, thereby eliminating any doubt or ambiguity as to the responsibility of supervisory and self-regulatory bodies for AML/CFT supervision.

Organize and assure the AML/CFT supervision of real estate agents and agencies, since there is a strong perception of ML/TF risk in this sector.

Concerning the identification, understanding, and management of ML/TF risks

All AML/CFT supervisors should identify and analyze - whether independently or in cooperation with SAMIFIN - the ML/TF risks at the sectoral and institutional levels and conduct sensitization based on the results.

The CSBF in particular should increase its human resources and separate its prudential and AML/CFT inspections in order to be able to carry out dedicated AML/CFT inspections and base their frequency and scope on the corresponding risks; on the basis of the studies carried out in accordance with the above Recommendation, ensure that its AML/CFT supervision is risk-based going forward.

Concerning the strengthening of AML/CFT supervision in practice

The CSBF should extend its AML/CFT supervision to the financial services of the Post Office and Caisse d'Épargne and consideration should be given to extending the CSBF's supervision to the insurance sector, as currently envisaged.

The CSBF should verify: (i) the responses to the annual questionnaire; (ii) all compliance structures/systems while onsite; and (iii) the proper implementation of any recommendations it may make to obligated entities

The supervisory and self-regulatory bodies of the DNFBPs should sensitize individuals and entities to their obligations in relation to AML/CFT, prepare AML/CFT supervisory guidelines or manuals and initiate AML/CFT supervision.

311. The Immediate Outcome relevant for this chapter is RI.3. The relevant recommendations for the evaluation of effectiveness under this section are R.26-28 and R.34-35.

Immediate Outcome 3 (supervision)

licensing, registration and controls preventing criminals and associates from entering the market

312. *For Credit Institutions* - The exercise of credit institution activity - a category that includes banks, mutual financial institutions, and microfinance institutions (MFIs) - requires a license from the CSBF. The accreditation files on which the CSBF is asked to make a decision are prepared by a team / directorate of the General Secretariat (the DRE); every file must include a certain number of data points provided by the applicants and include "all elements necessary to evaluate the propriety and experience" of the executives and auditors, as well as a list of the shareholders (see the technical compliance analysis of Madagascar, criterion 26.2 in Annex II). Theoretically, the accreditation process for credit institutions includes the basic elements required to prevent criminals and their accomplices from either controlling such institutions or taking advantage of meaningful positions in their shareholdings. There is no indication of the non- or weak enforcement of the relevant laws, instructions, and procedures.

313. Yet, in practice, the effectiveness of the authorization process for credit institutions is hampered by: (i) a failure to verify the truthfulness of the documents submitted (only the physical presence of the required documents seems to be verified); (ii) a lack of substantive analysis; (iii) a failure to interview the promoters (including executives, shareholders, and auditors); and (iv) a lack of information regarding the beneficial owners of legal entities. On this last point, it should be emphasized that no information on the beneficial ownership of legal entities - whether existing or potential - is required when a company is set up in Madagascar (see the analysis of the effectiveness of Madagascar's efforts with regard to Immediate Outcome 5). In addition, the origin of the funds does not appear to be verified; the CSBF effectively relies on the due diligence of the bank that received the funds for the constitution of the capital.

314. For Bureaus de change, Insurance Companies, and DNFBPs - The risk of criminals owning, controlling, or being the beneficiaries of these institutions, businesses, and professions is exacerbated by the inconsistent verification of the truthfulness of documents and other information submitted to the relevant supervisory authorities⁴⁰, as well as an absence, in most cases, of a

⁴⁰ The CSBF for bureaux de change, the Ministry of Finance for insurance companies, the Council of the Bar Association for lawyers, the Ministry of the Interior for casinos, the Council of the association for accountants, the

background check(i.e., of any requirement to conduct a background check or apply a “fit and proper” test).⁴¹ However, as is the case for the CSBF, there is no indication of the non- or weak enforcement of the relevant laws, instructions, and procedures, which generally require a clean criminal record as well as no history of bankruptcy, etc. Moreover, this risk is partially mitigated by the close relations among council / chamber / profession members and the nature of vocational training programs.

The on-site visit revealed that the insurance industry in Madagascar, as well as the DNFBBs, are all modest in scale, such that the active and aspiring professionals in those industries/fields are all well known to one another. This results in a dynamic in which bad (or potentially bad) actors are avoided by reputable firms and professionals, which have an incentive to safeguard the integrity of their professions via a certain degree of exclusivity and of “self-supervision” in their associations and, where applicable, of rigidity in their vocational training programs.

Verifying an ongoing understanding of ML/TF risks in the financial and other sectors

315. For Credit Institutions and Bureaus de change – The CSBF enjoys a good reputation as a prudential supervisor. The CSBF accepts its responsibility for AML/CFT supervision, but has not yet identified the risks specific to the sectors it supervises, to categories of financial institution, or to financial institutions taken individually. This means that its understanding of ML/TF risks in the Malagasy financial sector remains nascent and imprecise; it seems to be strongly linked to transaction amounts, even if the CSBF takes note of the studies conducted by SAMIFIN, especially with regard to rosewood trafficking.

316. The lack of identification of ML/TF risks in the Malagasy banking and financial sector is a significant obstacle to the implementation of the risk-based approach.

317. In addition, as of February 2017, the CSBF was still in the process of completing a first round of bank supervision combining prudential regulation and AML/CFT obligations. As a result, the frequency of its AML/CFT inspections is not based on the corresponding risks, and the current system of inspections that are not dedicated to AML/CFT does not allow for such an approach⁴².

318. The implementation of AML/CFT supervisory programs based on ML/TF risks (anticipated by the end of 2017) would require: (i) the specialization of on-site inspections; (ii) an increase in human resources, which would allow the creation of a team of inspectors dedicated to handling AML/CFT issues; and (iii) the ongoing assessment of risks in the sector, as well as those that apply to each category of financial institution and individual financial institution.

Ministry of Mining for dealers in precious stones and metals, and the Chamber of Notaries for notaries. The real estate profession is not subject to supervision.

⁴¹ This means that an individual known to be, or suspected of being, associated with criminal elements or activities may have access to the majority of these professions provided that he or she has not been convicted of acts against honor, etc., and has not been the object of a disciplinary or administrative sanction. Here, we must point out an important exception: individuals applying to be the shareholders or executives of casinos are subject to a background check conducted by the Ministry of the Interior.

⁴² It should be noted that the CSBF seems to conduct annual on-site inspections of MFIs. The Mutual Evaluation Team is not aware of a study indicating that MFIs are exposed to more ML / TF risk than banks. On the contrary, it is likely that the ML/TF risk in the Malagasy microfinance sector is relatively low, such that if the different frequencies of the on-site inspections are linked to a risk assessment by the CSBF, it would appear not to be an ML/TF risk assessment.

319. Insurance Companies - The MoF assures the AML/CFT supervision of insurance companies⁴³. The MoF is aware of the main risk of money laundering through these companies - namely the surrender of a retirement policy a few months after purchase - but it has not yet conducted a comprehensive study of the nature and level of risk in the sector. During the on-site visit by the Mutual Evaluation Team, the MoF indicated its intention to publish a document ("guidelines") on money laundering by the end of 2017. It is on the basis of this document that the MoF plans to train its inspectors and conduct sensitization sessions for insurance companies.

320. For DNFBPs - On the whole, the DNFBPs' AML/CFT supervisors are aware of certain risks in their sectors in so far as, in response to the assessors' questions, most are able to identify a scenario in which the individuals or entities they regulate could themselves become aware - or become victims - of a financial crime (without necessarily making a link between these offenses and ML/TF). None has yet conducted a comprehensive study of the nature and level of ML/TF risk in its sector.

321. Most DNFBP AML/CFT supervisors consider the ML/TF risks to be low - albeit without citing studies or statistics in support of this appraisal - and the responsibility for reporting suspicions to lie primarily with banks, owing to the role they play in carrying out significant transactions.

Risk-based supervision and compliance with AML/CFT requirements

322. *For Credit Institutions and Bureaus de change* - The CSBF assures the AML/CFT supervision of credit institutions (with the exception of the financial services of the Post Office and the Caisse d'Epargne) and bureaus de change, both on- and off-site (i.e., desk-based supervision).

323. Desk-based supervision is conducted by analyzing the responses to an annual questionnaire that must be completed by all financial institutions subject to the CSBF's regulatory authority. The questionnaire focuses on the structures and systems that should be in place to combat ML/TF, in accordance with Law 2004-020 and Instruction 006-2007. Based on an analysis of the responses of a given obligated entity, the CSBF has the power to request additional information or request that the on-site inspection team follow-up on any issues and/or concerns that may arise, but it does so very rarely in practice. During the on-site visit of the Mutual Evaluation Team, the CSBF indicated that it had never received a negative answer to any question contained in the questionnaire. At the time of the on-site visit, the CSBF was not verifying the accuracy of the answers provided in response to the questionnaire.

324. On-site inspections are limited to a discussion of any issues and/or concerns that may be raised by the desk-based supervision team and a verification of the completeness of a sample of client files. There is no systematic verification of the set of provisions in place to combat ML/TF or of their implementation (including with respect to suspicious transaction reporting, record-keeping, or terrorist asset freezing). The CSBF has issued recommendations upon the discovery, for example, of incomplete client files, but does not request feedback from obligated entities as to the handling of those recommendations. During the on-site visit by the Mutual Evaluation Team, the CSBF indicated that it had imposed only one penalty on an obligated entity for non-compliance with its AML/CFT obligations (the revocation of the license of a bureau de change), but that the "threat of sanction" is nevertheless "credible" because of the measures taken by the CSBF in the area of prudential supervision.

⁴³ In the coming years, the supervision of insurance companies is slated to pass to the CSBF.

325. In sum, the CSBF's AML/CFT supervision seems to be based on its strong trust in obligated entities, to the extent that the CSBF does not systematically verify answers to the annual questionnaire or on-site compliance procedures and, for the most part, is contented to issue recommendations when deficiencies are revealed, without asking for feedback regarding their handling.

326. This means that the compliance level of credit institutions and bureaux de change remains largely a function of their internal policies and independent understandings of their legal obligations (rather than a fear of the sanctions that could be imposed by the CSBF).

327. As and when the CSBF obtains additional human resources, it should verify the provisions and procedures in place in credit institutions, as well as remedial actions taken in response to its recommendations (or to sanctions it has imposed, where applicable). During the on-site visit by the Mutual Evaluation Team, the CSBF reported that there were nine inspectors in training and that additional recruiting was to come.

328. For Insurance Companies - The supervisory authority for insurance companies was unaware of the existence of Law no. 2004-020 until 2015, as the result of a sensitization meeting organized by SAMIFIN. The MoF's AML/CFT supervision is therefore fairly new and nascent; the MoF recently benefited from trainings provided by the Banque de France and Malagasy consultants with relevant international experience.

329. The Ministry of Finance has only very recently integrated AML/CFT issues into its insurance supervision program. To date, its efforts in this area remain nascent and are therefore difficult to distinguish from its efforts in the area of prudential supervision. In practice, according to the MoF, this translates into an interview with the management of the company on the classification of ML/TF risks and an analysis of the files containing the largest accounts/policies during on-site inspections. Nevertheless, the private sector representatives met by the assessment team did not confirm the widening of the scope of supervision; in the absence of irregularities, two on-site inspections are conducted per company per year. The MoF indicated to the assessment team that measures for the application of the AML/CFT regulations were being prepared and expected for 2017.

330. The MoF's assessment of the level of ML/TF risk in the insurance sector largely reflects information derived from its inspections, but the inspectors have not yet developed a supervisory program based on that assessment.

331. For DNFBPs - To date, there has been no AML/CFT supervision of Malagasy DNFBPs.

332. Most DNFBP supervisors do not consider themselves obliged to conduct AML/CFT supervision and had made no effort in this regard as of the time of the on-site visit by the Mutual Evaluation Team. For example, the Council of the Association of Chartered Accountants does not accept its AML/CFT supervisory role, as it is convinced of a contradiction between law no. 2004-020 and the other laws and ordinances governing the profession (with respect to reporting suspicious transactions and ensuring professional secrecy).⁴⁴ As such, the Council of the Association has not advised its members to implement the obligations arising from the AML Law, which means that it is up to each chartered accountant to decide whether or not to apply it.

333. The Games Police, under the Ministry of Interior, has the power to supervise casinos for compliance with their AML/CFT-related obligations, but does not do so in practice. In Antananarivo,

⁴⁴ See Article 23 of Law 2004-020, which states that laws on professional secrecy must not hinder the submission of *bona fide* suspicious transaction reports.

the Games Police focus instead on verifying the identity of players and the background of jobseekers in order to reduce as much as possible the risks of fraud and theft - but only for casinos in the capital that agree to pay for their services. To a certain extent, these efforts could reduce the risk of money laundering through casinos, except that the Games Police make no connection between their activities and AML/CFT and that the efforts of the Games Police are concentrated in the capital.

334. Only the Chamber of Notaries seems to accept full responsibility for AML/CFT supervision - the Chamber of Notaries is the most organized self-regulatory body in this area, having taken some positive actions, including training of apprentices - but it lacks resources and its AML/CFT supervisory plans remain in their infancy, or even at the concept stage.

Promoting a clear understanding of AML/CFT obligations and ML/TF risks

335. *For Credit Institutions and Bureaus de change* - Three years after the adoption of the AML Law, the CSBF issued Instruction 006-2007 and conducted sensitization meetings to inform credit institutions and bureaus de change of their AML/CFT-related obligations. However, the CSBF did not issue an instruction or conduct a sensitization campaign following the adoption of Law 2014-005, which addresses, among other things, the freezing of terrorist assets.

336. By the end of 2018, the CSBF plans to complete an analysis of the ML/TF risks in the financial sector and begin risk-based supervision.

337. *For Insurance Companies and DNFBPs* - Neither the MoF nor the DNFBP supervisors have made independent efforts to promote the understanding of AML/CFT risks and obligations on the part of those individuals and entities subject to their regulatory authority; rather they are content to take part in whatever sensitization or training meetings SAMIFIN may conduct. The Chamber of Notaries invited SAMIFIN to train its first class of apprentices (in 2013).

Conclusion

338. *The CSBF assures the basic AML/CFT supervision of credit institutions (except for the financial services of the Post Office and the Caisse d'Epargne) and of bureaus de change, but this is not at a sufficient level and is still not risk-based. The majority of DNFBP supervisors do not consider themselves obliged to conduct AML/CFT supervision and had made no effort in this regard as of the time of the on-site visit by the Mutual Evaluation Team. In general, Malagasy supervisors have only a weak and anecdotal understanding of the ML/TF risks in their respective sectors.*

339. ***The effectiveness level reached by Madagascar regarding Immediate Result 3 is low.***

CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS

Key findings and Recommendations

Key findings

Most Malagasy authorities met by the assessment team are not aware of the ML/TF risks associated with legal entities, or even do not understand them. This translates into practice (and confirms the finding) in particular by very limited exchanges between the register and the other competent authorities. In fact, only SAMIFIN and BIANCO query the register on registered entities (5.2).

The Trade and Companies Register, including the register available on line, provides general information on company law and basic information on companies created in Madagascar. It nevertheless appears from the consultation of the register that all the information yet required for

the registration of companies is not always available, especially on managers (5.1). No information on beneficial owners of companies is required and therefore available on the register (5.4).

The role of the registry is limited to the formal verification of the information provided for the registration of companies, which does not prevent the creation of opaque structures, including chains of companies. There is no mechanism (other than the reports received) to ensure that the registry information is up-to-date (5.3).

Non-profit associations and organizations are subject to a written declaration regime; the latter are also subject to an authorization order. The information contained in the declarations is not centralized and only some information on these entities is subject to publicity measures in the gazette. In such conditions, access to information on non-profit associations and organizations is difficult and research takes time (5.4).

Recommendations

Madagascar should include in its national risk assessment a component dealing with the ML/TF risks associated with all types of legal entities, including trust-type legal arrangements, which can operate in the country.

SAMIFIN, possibly with the support of BIANCO, should inform and train the other competent authorities of the country, in particular the Trade and Companies Register and the judicial authority, regarding the ML/TF risks associated with legal entities.

The Trade and Companies Register should implement the sanctions provided for in Article 5-13 of the Law 99-025 applicable in case of false or incomplete declaration. A mechanism for updating the register information should be put in place (e.g., a regular review of the register information) and dissuasive sanctions should be available and applied for failure to maintain updated information. The latter measure would avoid the fact that the updating of the register information relies solely on company declarations. The resources of the Trade and Companies Register should be increased. This set of measures would improve the quality of the registry information.

Legal texts should be strengthened to require, for the purposes of company registration, information on beneficial ownership (as defined by the FATF) and currently registered companies should be required to provide the Trade and Companies Register with updated information on their beneficial owners.

The use of nominees (shareholders or directors) should be regulated.

A register of non-profit associations and organizations, which would centralize all the information on these two types of entities, could usefully be set up on the model of the Trade and Companies Register, and in particular its electronic version.

340. The Immediate Outcome relevant for this chapter is RI.5. The relevant recommendations for the evaluation of effectiveness under this section are R.24-25.

Immediate Result 5 (Legal Entities and Arrangements)

Companies

341. The law no. 2003-036 of January 30, 2004 describes the different types of commercial companies existing in Madagascar: the general partnership (SNC), the limited partnership (SCS), the limited liability company (SàRL) and the public limited company (SA). In addition to these commercial companies, there are also civil companies, including real estate companies, non-profit

organizations and associations, economic interest groups (GIE) and public industrial and commercial establishments (EPIC). With the exception of '*sociétés en participation*', all these entities have legal personality following their registration (Article 5-1 of Law No. 99-025 of 19 August 1999 on corporate transparency). '*Sociétés en participation*' are corporations, either civil or commercial, whose partners decide that they will not be registered. In the absence of registration, these companies do not have legal personality and therefore remain unknown to third parties. Consequently, the Malagasy authorities have not been able to provide the assessment team with any quantitative information on the use of this type of company or on their number. It is neither established that the *sociétés en participation* are known to the Malagasy tax authorities. The use of this form of company, while legitimate, should nevertheless be framed to ensure that such a company is not created for ML/TF purposes. Sole proprietorships are also registered.

342. In 2016, the 2,608 new companies registered in Antananarivo mainly involved individual companies and LLCs.

| Company Establishments in 2016 | |
|--|------|
| Sole proprietorships | 1478 |
| Limited Liability Companies (SàRL) | 628 |
| One man limited liability companies(SàRLU) | 447 |
| Public Limited Companies (SA) (including one man SA) | 32 |
| Companies under foreign law | 13 |
| General partnership (SNC) | 1 |
| Limited partnership (SCS) | 0 |
| Public Industrial and Commercial Establishments (EPIC) | 2 |
| Economic Interest Groups (GIE) | 2 |
| Civil Societies | 5 |

343. The Register of Commerce and Companies does not have national figures on the number of registered companies. The data available in the Trade and Companies relate to the number of creations, modifications, dissolutions and write-offs of companies registered by the Antananarivo Trade and Companies Register. The Tax authorities have reported 15,617 companies operating in Madagascar as of January 31, 2017.

Non-profit organizations and organizations (NPOs)

344. Associations are governed by Ordinance no. 60-133 of 3 October 1960. In accordance with the provisions of the Ordinance, associations are subject to a declaratory regime. The assessment team is not aware of the presence in Madagascar of undeclared non-profit organizations or organization. They are legally created and acquire legal personality when filing their declaration at the office of the province of their head office. The declaration includes the name and purpose of the association, its address, as well as the names, forenames, professions and addresses of the persons in charge of its administration or management. Within two months of its filing, the declaration shall be made public by inserting in the gazette an extract showing the name, address and purpose and the declaration date. Any change of any of this information in the original declaration must be notified to the provincial authorities and is subject to publication. All information on associations is recorded in a special register.

345. Non-profit organizations are governed by Law no. 96-030 of 14 August 1997. Like associations, NGOs are guided by principles such as volunteering, impartiality, non-discrimination, and perform non-governmental activities for non-profit purposes. On the other hand, their activities, either humanitarian or charitable, socio-economic, educational and cultural, target the public and

not only their members, and are performed permanently and professionally. NGOs have a more structured organization and operating rules than those applicable to associations; funding methods and use of NGO funds are also regulated. Finally, NGOs benefit from tax and social benefits. A declaration containing the name and the purpose of the NGO, its address, as well as the names, forenames, professions and addresses of the persons in charge of its administration or its management is deposited at the head offices. Within one month, an authorization decree is issued by the bipartite regional committee and is then published in the gazette. In addition, in accordance with the provisions of Article 11 of the law, information on NGOs, in particular its name and address, its purpose, names, names, professions and addresses of its managers and directors, the date of filing of the declaration and the order of authorization, are recorded in a special register kept by the provincial offices. Changes to this information are notified to the authorities and written into the register.

346. The tax authorities, as of 31 January 2017, counted 3,224 associations and 671 non-profit organizations registered in Madagascar. But the assessment team could not receive any data from the registration authorities (Ministry of Interior and Decentralization)

Legal Constructions

347. The Malagasy law does not provide for the creation of trust type legal constructions. Conversely, nothing prevents legal arrangements established under a foreign law from operating (i.e., owning a property, having bank accounts, etc.) in Madagascar or with persons, either foreign or Malagasy (for example, lawyers or notaries acting as trustee), to act as director (i.e., trustee) of these assets and to establish business relations with Malagasy financial institutions or DNFBPs or to administer property situated in Madagascar. Faced with these situations, no specific measures are provided for by Malagasy law, in particular the AML/CFT Law does not allow to identify the beneficial owners of such constructions, and trustees are not required to declare their status to financial institutions (or DNFBP) when establishing a business relationship.

Public availability of information on the creation and types of legal persons and arrangements

348. The law applicable to different types of companies, either civil or commercial, as well as information on the establishment arrangements of these legal entities are available and easily accessible on various Internet sites, in particular those of the *Economic Development Board of Madagascar*⁴⁵ and of the Trade and Companies Register⁴⁶. Information about associations and NGOs is also available on the internet; they do not appear on the websites of Malagasy institutions and authorities, but on foreign sites or Malagasy sites of private organizations. Conversely, the texts applicable to non-profit associations and organizations are available on the website of the Central Bank (it is still needed to know the exact references of the texts sought).

Identification, assessment and understanding of ML/TF risks and vulnerabilities of legal entities

349. No studies have been conducted in Madagascar on the ML/TF risks associated with legal entities (i.e., companies, non-profit associations and organizations), whether they are legal entities

⁴⁵ <http://www.edbm.gov.mg/fr/Textes-reglementaires/Droits-des-societes>, accédé le 6 mars 2017.

⁴⁶

<http://www.rcsmada.mg/index.php?pgdown=textes&pgmenu=Informations%20G%C3%A9n%C3%A9rales>, accédé le 6 mars 2017.

created specifically for ML/TF purpose or misappropriation of existing legal entities for the same purposes. The Malagasy authorities met during the on-site visit indicated that they were not aware of the risks that legal entities were created or diverted for ML/TF purposes in Madagascar. Beyond risk awareness, it appears from the interviews that most Malagasy authorities are not aware of the ML/ TF vulnerabilities that legal entities represent and ignore the simplest typologies of ML/TF using legal entities. For example, the problem of chains of companies, which can be used in order to keep away the beneficial owner or make its identification more difficult, is not known or understood. The authorities indicated that chains of companies may exist in Madagascar, and certainly exist, but that they are, considering the powers and resources allocated to the Trade and Companies Register, incapable of identifying them. Conversely, the private sector perceives corporations and the use of nominees as ML vectors, especially regarding money laundering from corruption.

350. With regard to terrorist financing, during the interviews, in particular with the private sector, abuse risks have been mentioned on several occasions regarding associative structures, in particular of Muslim cult associations, for TF purposes. Without basing on any study or research, this finding is widespread and widely shared among the private sector representatives encountered. Moreover, SAMIFIN has also identified, without formalizing the study, the sector of non-profit organizations as representing a risk of ML/TF.

351. With respect to corporations, the use of nominees for the exercise of rights associated with shares or for the exercise of the executive functions of an enterprise is not regulated, but the authorities have indicated that, although such practices seem to be unusual, they exist in Madagascar. As noted above, private sector representatives indicated that nominees are used, or appear to be used, for laundering the proceeds of corruption.

352. Company creation does not require the intervention of an intermediary. But in practice, all company registration formalities regarding companies are performed by lawyers, corporate service providers, and currently to a lesser extent, by notaries. Such intermediaries perform on behalf of their clients all the formalities relating to company creation, and during the existence of the company, including the application for registration in the Trade and Companies Register and all subsequent modifications. It should be noted that among such intermediaries, service providers to companies, which are numerous in Madagascar according to the authorities, are not subject to the AML / CFT system. Other types of intermediaries, such as lawyers, notaries and accountants, if they are subject to the AML / CFT system, consider that it is not their responsibility to seek the source of their clients' funds.

Mitigating measures to prevent the misuse of legal persons and arrangements

353. To date, no specific measure to prevent the use of legal entities for ML / TF purposes has been implemented in Madagascar. As mentioned above, no risk assessment was conducted at the time of the on-site visit and the authorities are not aware of ML / TF risks associated with legal entities, or even do not understand such risks. Moreover, bearer shares are only prohibited above a 10 million MGA threshold and there is no mechanism to mitigate the risk of bearer shares under this threshold.

Timely access to adequate, accurate and current basic and beneficial ownership information on legal persons

Companies

354. Law no. 99-025 establishes the Trade and Companies Register. The local registers are kept in the registry of the court of first instance and the central register, which centralizes data from local registers, is maintained by the Ministry of Justice. Article 5-2 provides that the Register shall contain the following information on companies: the legal form, the reason or the name of the company, the

nature of the activity, the address of the registered office and, if this office is not located within the jurisdiction of the court, that of the principal establishment in the jurisdiction, the capital, the name of the partners or social managers. Decree no. 2008-440 on the Trade and Companies and Personal Property complements the list of documents required for the registration of legal entities (Article 13).

Complete Information

355. The information provided for registration application is included in the Trade and Companies Register, which is available free of charge on the internet. The tool has many entries and enables search from information on the different entries. The consultation of the website of the Register of Commerce and Companies shows that basic information on companies, such as name, form, address of the head office, dates of beginning of activity and registration, are generally recorded; the same for capital and activity of the company, as well as its registration number. The information on its directors: name and surname, address and date of birth - are available for most companies, but it appears that in some cases they are missing. No information is available regarding partners and shareholders, whereas these are required for the registration of companies. No information involving beneficial owners of companies is required for the registration of companies and therefore available.

356. The information contained in the register does not make it possible to identify company groups and to establish the (shareholders, managers, capital, etc.) links existing among their different components.

Accurate Information

357. The Malagasy authorities indicated that the role of the register is limited to the purely formal verification that all the documents to accompany the application for registration are present and that they comply with the request. No verification is conducted as to the truthfulness of the documents supplied or to the topicality of the information provided. The authorities indicated that if a crude forgery was presented to them, they would postpone registration and refer the case to the prosecution authorities. However, such a situation has never occurred to date. During the interviews, it appeared that the Register is conducting a search on the possible antecedents of the directors by applying for a criminal record extract. This practice is provided for by legal documents (Article 35 of the decree), but contrarily to what is stated in the legal documents, it is limited to the managers, while the antecedents of the partners or shareholders should also be verified. For associates, the Register only ensures that the company has the required number of associates.

Updated Information

358. Entities registered in the Trade and Companies Register must notify changes in the information previously provided to the Register within one month. The Register has no mechanism to make sure that the information it contains is up to date.

359. The Trade and Companies Register indicated that it regularly receives requests from other Malagasy authorities, mainly SAMIFIN and BIANCO, to whom it provides all the information it has. To date, no request from a foreign authority has been received.

Non-profit Associations and Organizations

360. Non-profit associations and organizations make a declaration to the office of the department or region of the head office of the association or organization. In both cases, the declaration includes information on the name and the object, the address and the surnames, forenames, professions and residences of the people in charge of the administration or the management of the association or the organization. With regard to associations, advertising only

relates to the name, address, purpose and date of the declaration, with the exception of any information on natural persons intervening under the association. Authorization orders for non-profit-making bodies are also subject to publication in the Gazette, and at the level of departments and regions there are registers that take over the information contained in the declaration of non-profit organizations (as well as subsequent modifications as appropriate).

361. Beyond this information, the assessment team was not able to obtain any information during the on-site visit. It is however clear from the arrangements described above that only basic information on associations is subject to a publication measure; information on natural persons involved in associations remains at the level of departments or regions. More information is available about non-profit organizations in local registries. In both cases, it is not established that the information is accurate and up-to-date, and that access to the information is subject to awareness of the location of head office of the non-profit association or organization.

Timely access to adequate, accurate and current basic and beneficial ownership information on legal arrangements

362. As indicated above, nothing prevents legal arrangements established under a foreign law from operating (i.e., owning a property, having bank accounts, etc.) in Madagascar or with persons, either foreign or Malagasy (for example, lawyers or notaries acting as trustee), to act as director (i.e., trustee) of these assets and to establish business relations with Malagasy financial institutions or DNFBPs or to administer property situated in Madagascar. However, no indication was provided as to access to beneficial owners' information of such arrangements.

Effectiveness, proportionality and dissuasiveness of sanctions

363. Contrarily to what is provided by the Law (Article 5-13 of Law 99-025), the Malagasy authorities indicated to the assessment team that no sanction is applicable in case of false statement to the Register or incomplete declaration. They nonetheless indicated that they had a means of restraint: the refusal to make subsequent modifications. While such power does not stand as a sanction, it is important since only the information published in the RCS is enforceable against third parties.

The level of effectiveness reached by Madagascar regarding immediate outcome 5 is low

CHAPTER 8. INTERNATIONAL COOPERATION

Key findings and Recommendations

Key findings

International cooperation in fight against ML / TF is extremely limited in Madagascar.

SAMIFIN exchanges information with its foreign counterparts. However, the response times are much too long.

The legal framework for mutual assistance and extradition is in any case insufficient since Madagascar has signed bilateral agreements with only a very limited number of foreign countries (France, Mauritius). Furthermore, these conventions are too old to be adapted to the needs of international co-operation involving current financial crime.

There is no case management system to track the execution of cases and to prioritize international cases of money laundering and terrorist financing.

No AML / CFT information exchange mechanism has been established between Malagasy supervisors and their foreign counterparts.

Recommendations

- Madagascar should provide training and awareness raising to competent authorities on AML / CFT and international cooperation.

- Madagascar should expand the types or the number of cooperation agreements (e.g., bilateral agreements) with other countries following priorities based on the NRA and geographical threats, including Kenya, Tanzania, Somalia, Mozambique, Mauritius, Seychelles, China, India, Indonesia, USA, France, South Africa.

- The authorities of Madagascar must update the domestic (law on extradition and mutual legal assistance) and international (negotiate international conventions necessary for mutual assistance) legal instruments.

- SAMIFIN should be enabled to respond to requests for information from foreign FIUs within an average one-month period by receiving adequate human and other resources.

- The judicial authorities of Madagascar must establish a system of monitoring and management of requests for mutual assistance of requesting countries to ensure that mutual legal assistance is provided within reasonable periods

- AML / CFT supervisors should establish mechanisms for collaborating with their foreign counterparts including establishing a Memorandum of Understanding to coordinate information exchange

- All competent authorities should establish mechanisms for the management of statistics involving trade with international counterparts.

364. The Immediate Outcome relevant for this chapter is RI.2. The relevant recommendations for evaluating effectiveness under this section are R.36-40.

Immediate Outcome 2 (International Cooperation)

Providing Constructive and Opportune Mutual Legal Assistance and Extradition

365. Mutual legal assistance and extradition may be provided by Madagascar, but no statistics or information provided to the assessment team shows the effectiveness, relevance or speed of responses to requests from foreign countries. The lists of requests for mutual assistance seem to contain no file relating to money laundering or financing of terrorism, and the files involve for the most part ordinary law offenses that are little related to the financial matter. Turnaround times are variable, but some records have stagnated for several months, even years.

366. The legal framework for mutual assistance and extradition is in any case insufficient since Madagascar has signed bilateral agreements with only a very limited number of foreign countries (France, Mauritius). Yet these conventions are too old to be adapted to the needs of international co-operation concerning current financial crime. The convention with France dates from 1960. No

treaty is in force with the Asian countries. It is worth pointing out that the Asian countries are, a priori, the main destinations of traffics. The domestic legal framework also needs to be rehabilitated, with the extradition law dating back to 1927 and having been not reformed ever since.

367. There is no case management system to monitor the execution of cases and to give priority to international cooperation cases relating to money laundering and terrorist financing.

Seeking timely legal assistance to pursue domestic ML, associated predicate offenses, and TF cases with translational elements

368. The Malagasy authorities have reported very few mutual legal assistance requests related to financial crimes, money laundering or terrorist financing. In the case of predicate offenses, requests for mutual assistance have been made. The lack of an appropriate legal framework (in particular, very few mutual assistance agreements have been entered into) leads to limited effectiveness.

Seeking other Forms of International Cooperation for AML/CFT purposes

369. SAMIFIN maintains certain relations with foreign FIUs. SAMIFIN has established memoranda of understanding with 9 counterpart FIUs:

1. the United Arab Emirates, signed on 13/06/2012
2. Belgium, signed on 02/10/2012
3. Thailand, signed on 23/10/2012
4. Seychelles, signed on 02/11/2012
5. China, signed on 28/04/2015
6. South Africa, signed on 27/08/2015
7. Malawi, signed on 27/12/2016
8. Zambia, signed on 08/12/2016
9. Mauritius (under approval)

370. Requests for intelligence have been sent to foreign FIUs including ones where memoranda of understanding have not been established. In 2016, 46% of such sent requests went unanswered. For those that were answered, requests for intelligence were answered on average within 2 to 3 months with a response taking up to 8 months. Such long response times can have an impact on the timeliness and relevance of SAMIFIN referrals to the competent authorities.

Table 8.1 : Requests for Information sent to foreign FIUs in 2015 and 2016

| Foreign FIU | Number of requests sent | |
|----------------------|-------------------------|------|
| | 2015 | 2016 |
| Mauritius | 6 | 3 |
| France | 3 | 9 |
| United Arab Emirates | 2 | 0 |
| China | 1 | 6 |
| Belgium | 1 | 2 |
| Hong Kong | 1 | 0 |
| Luxembourg | 1 | 0 |
| Macao | 1 | 0 |

| | | |
|--------------|-----------|-----------|
| Switzerland | 1 | 0 |
| Seychelles | 1 | 0 |
| Italy | 1 | 0 |
| Monaco | 1 | 0 |
| South Africa | 0 | 1 |
| TOTAL | 20 | 21 |

371. Madagascar has an Interpol office, which makes it possible to request information from the network, to access the notices or to issue them if necessary. Little activity has been reported on money laundering, terrorist financing or predicate offenses.

372. BIANCO, which has investigative powers, has signed cooperation agreements with Mauritius and France, and is developing relations with China, Hong Kong, Thailand, and Malaysia. However, no information exchanges on money laundering was sent to the evaluation team.

373. CSBF participates in the regional groups of the Southern African Development Community (SADC) and the Francophone supervisors. It maintains contacts with these supervisors even without a Memorandum of Understanding. Agreements were negotiated with the Central Banks in Mauritius, Morocco and the Banking Commission of Central Africa. The Ministry of Finance has attended training courses organized by the Banque de France. However, no AML/CFT mechanism for collaboration has been established.

374. There is no clear international cooperation strategy on the basis of these elements. Each agency works in its own area so that cooperation is scattered, which results in a loss of effectiveness of the action internationally in a largely globalized area.

Providing other forms of international cooperation for AML/CFT purposes

375. The table below presents the requests received by SAMIFIN from foreign FIUs, including the date of the request and the date of the answers that were sent. Response times are not in line with Egmont imposed standards (one-month deadlines, where possible). In one case the response time was 8 months and 29 days.

Table 8.2 : Requests received by Foreign FIUs in 2016

| | Foreign FIU | Date of Requests | Date of Answers | Response Time (as of 27 February 2017) |
|----|--------------------|------------------|------------------------------------|--|
| 1. | FIU Maurice | 04/01/2016 | 20/06/2016 | 5 months and 16 days (168 days) |
| 2. | TRACFIN-France | 28/04/2016 | 26/01/2017 | 8 months and 29 days (273 days) |
| 3. | CTIF CFI- Belgique | 21/09/2016 | Under way | Under way (5 months 6 days) |
| 4. | TRACFIN- France | 04/11/2016 | En phase de collecte d'information | Under way (3 months 23 days) |
| 5. | FIU Maurice | 28/11/2016 | En cours | Under way (2 months 30 days) |

376. No information on providing international cooperation in AML/CFT supervision has been provided to the evaluation team.

International exchange of basic information and information on beneficial ownership of legal persons and arrangements

377. No information on international cooperation in the identification and exchange of basic and beneficial ownership information relating to legal entities and legal arrangements was shared with the evaluation team.

378. **The level of effectiveness reached by Madagascar regarding immediate outcome 2 is low.**

ANNEX ON TECHNICAL COMPLIANCE

2. Madagascar was the object of an assessment by the World Bank in 2005 under the Financial Sector Assessment Program (FSAP) conducted by the International Monetary Fund and the World Bank. Since Madagascar was not part of a FATF-type regional group at the time and that the FSAP is a confidential exercise, the 2005 AML/CFT assessment will not be referenced in this report. It is therefore the first mutual evaluation of Madagascar, undertaken in partnership with ESAAMLG.

3. This annex provides a detailed analysis of Madagascar's level of compliance with the 40 FATF Recommendations. It does not describe the country's situation or risks, but focuses on the analysis of the technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report (MER).

Recommendation 1 – Risk Assessment and Risk-based Approach Implementation

4. Criterion 1.1 - [partly met] Two industry studies on rosewood traffic (2010) and on "mobile banking" (2015) were conducted by SAMIFIN on the basis of suspicious transaction reports received. The study on rosewood trafficking also benefited from information received by the criminal prosecution authorities, including the customs and port services, the public treasury, the Directorate General of Forestry and Madagascar National Park. The "mobile banking" study was conducted in consultation with an intermediary in banking operations (IOB). While the risk analysis conducted in these two sectors is of good quality, the scope of these studies remains limited and the main ML/TF risks to which the country is exposed are not yet sufficiently apprehended by the national authorities. Discussions are under way with the World Bank to launch a national ML/TF risk assessment (NRA).

5. Criterion 1.2 - [met]. SAMIFIN is the national coordinator of risk analysis work, particularly to lead the implementation of the ML/FT National Risk Assessment tool under the support of the World Bank. This technical assistance has not yet been launched.

6. Criterion 1.3 - [not met] The national risk analysis has not yet been completed and no update of industry studies have been completed.

7. Criterion 1.4 - [not met] The two industry studies undertaken have not been widely disseminated. The distribution was done but for restricted target audiences, not including reporting entities.

8. Criteria 1.5 - [not met] Madagascar has not yet applied a risk-based approach to AML/ CFT as the national risk analysis has not yet been completed.

9. Criteria 1.6 - [N/A] Madagascar has not yet established an exemption to certain FATF Recommendations.

10. Criterion 1.7 - [not met] Madagascar does not have an AML/CFT mechanism to deal with ML/TF high-risk situations.

11. Criterion 1.8 - [N/A] Madagascar does not have a mechanism to implement a simplified measure for ML/TF low risk situations.

12. Criterion 1.9 - [not met] Madagascar has not yet put in place a risk-based approach to AML/CFT supervision.

13. Criterion 1.10 - [not met] There is no requirement for financial institutions and DNFBPs to take appropriate measures to identify and assess their ML/TF risks.

14. Criterion 1.11 - [not met] The applicable AML/CFT laws do not contain any obligation to (1) have policies, controls and procedures in place to manage and mitigate ML/TF risks or (2) to monitor the implementation of these controls and (3) to take enhanced measures when risks are identified.

15. Criterion 1.12 - [N/A] Madagascar does not have a mechanism to implement simplified measures for ML/TF low risk situations.

Weighting and Conclusion

16. SAMIFIN conducted two industry studies on ML/TF risks, and sought support from development partners to launch an overall NRA study. However, the Malagasy NRA has not yet been initiated and the country has not yet adopted an AML/CFT risk management system. Reporting entities are under no obligation to take appropriate measures to identify, assess and mitigate their ML/TF risks. **Recommendation 1 is rated as non-compliant.**

Recommendation 2 – National Cooperation and Coordination

17. Criterion 2.1 – (not met) The Malagasy authorities have not yet conducted a comprehensive analysis of the country's ML/TF risks. As a result, the country does not have a national AML/CFT policy that takes into account identified risks and that is regularly reviewed.

18. Criterion 2.2 – (met) The National Orientation Structure for the Fight Against Terrorism and Organized Crime (SNOLT) created by Articles 40 to 43 of Law no. 2014-005 on Terrorism and Transnational Organized Crime (hereinafter TF Law) and Decree no. 2015-050 of 03 February 2015, is the Malagasy authority mandated to develop and improve the national policy and strategy on the prevention and suppression of terrorism and transnational organized crime. SNOLT is a body attached to the Prime Minister's Office, consisting of national authorities responsible for fighting against terrorism and transnational organized crime. They are representatives of the Prime Minister's Office, Ministry of National Defense, Ministry of Foreign Affairs, Ministry of Justice, Ministry of the Interior and Decentralization, Ministry of Finance and Budget, Ministry of Public Security, Ministry of Public Health, Ministry of Tourism, Transport and Meteorology, Ministry of Posts, Telecommunications and New Technologies, Secretariat of State at the Ministry of National Defense in charge of the Gendarmerie, Central Intelligence Service, of the Port, Maritime and Fluvial Agency, the Civil Aviation of Madagascar, the Independent Anti-Corruption Bureau (BIANCO), the SAMIFIN, the National Institute of Nuclear Science and Techniques (INSTN), the National Bureau of Management Risks and Catastrophes (BNGRC), and the Central Bank of Madagascar. Representatives of SNOLT were appointed in 2015 for a 3-year term; nevertheless, following the change of government in 2016, the new appointments have not yet been made.

19. With regard to SNOLT's field of competence, although this structure for the moment has focused its actions on terrorism and its financing, Decree no. 2015-050 includes fighting against money laundering, as well as the fighting TF component in the scope of its remit. Indeed, SNOLT is in charge of what follows:

- « - ***Developing a national policy against terrorism, transnational organized crime, money laundering and terrorist financing;***
- *Serve as the National Liaison Center with the Executive Directorate of Fight against Terrorism with the United Nations in New York (DECT) and with the intervention agencies in the fight against terrorism and terrorist financing;*

- Provide the monitoring of the application of International Conventions on the fight against terrorism;
- Advise the Prime Minister on matters relating to terrorism, to communicate any information that may be requested by the Prime Minister or any other competent authority; and
- Propose requisite regulatory measures for the implementation of the international conventions against terrorism»

20. Criterion 2.3 - (met) Article 41 of the TF Law provides that the SNOLT has a steering body and an executive body for coordinating and monitoring the implementation of the measures taken by the competent authorities. This structure ensures the coherence of the actions of the competent authorities with regard to law enforcement and prevention. It has national competence and is a liaison body with international entities working in the field of fighting against terrorism and organized crime.

21. With regard to operational cooperation, Article 17 of the AML Law gives SAMIFIN the possibility of obtaining from any public authority and all professions subject to the law the communication of information and documents as part of investigations undertaken following a statement of suspicion. This same article provides for the exchange of information with the authorities responsible for the application of disciplinary sanctions.

22. Decree no. 2015-1036 states in its Article 3 that SAMIFIN receives all other complementary and useful information to establish the origin of the sums or the nature of the operations that are subject to declarations, in particular what is communicated by the judicial authorities and the various services of the public administration, including the customs administration in regard to the transport and import of funds to the frontier. Such This Article also stipulates that SAMIFIN also receives any other information conducive to establishing the origin of the sums or the nature of the transactions subject to ML/TF suspicion.

23. Thus, the Malagasy legal documents put in place a system within which exchange of information exists between the different entities intervening in fighting against ML/TF. In addition, the modalities of such cooperation among different services and institutions are defined through the development of memoranda of understanding for information exchange, respect of confidentiality, deadlines (etc.). SAMIFIN has concluded information exchange agreements with the Independent Anti-Corruption Bureau (BIANCO), Alliance Voary Gasy (Federation of Associations Intervening in Protection and Natural Resources), the National Gendarmerie. An update of the tripartite information exchange agreement among SAMIFIN, the Treasury and the BIANCO is about to be signed (This agreement was already signed on April 24,).

24. Criterion 2.4- [not met] 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

Weighting and Conclusion

25. The absence of an overall ML/TF risk assessment does not allow developing national AML/CFT policies that take into account the identified risks. Madagascar has, however, established structures and mechanisms for national AML / CFT coordination and cooperation. These mechanisms are not aimed at combating the financing of the financing of proliferation of weapons of mass destruction, as the country has not adopted a mechanism in this area. **Recommendation 2 is rated as partially compliant.**

Recommendation 3 – Money Laundering Offense

26. Criterion 3.1 - [met] Madagascar has established a preventive and repressive framework for ML. The AML Law Supplements Articles 102, 103 and 104 of Law 97-039 of 4 November 1997, which establish the crime of laundering drug trafficking proceeds. Article 102 defines money laundering by targeting those who assist in the conversion or transfer of resources or property of illicit origin, with the aim of concealing or disguising the unlawful origin of such property or resources, and those who assist in the concealment or disguise of the property or products in question. This section considers as main offenses only the production and trafficking of so-called controlled substances (high-risk, at-risk and precursor drugs) and trafficking in the equipment and materials necessary for production and trafficking. Articles 1 and 2 of the AML Law provide a definition of money laundering that extends the scope of predicate offenses to all crimes [and offenses]. These definitions, and the material elements of the offense, are in line with the Vienna and Palermo Conventions.

27. Criteria 3.2 and 3.3 - [partly met] the predicate offenses to ML cover any criminal offense, even committed abroad, that has allowed the perpetrator to obtain proceeds. Madagascar has a tripartite distribution of offenses (contraventions, offenses, crimes), based on the seriousness of the penalties provided for, with contraventions covering the least serious violations. The table below lists the FATF's 21 designated categories of offenses, providing for each the article that criminalizes it.

| FATF Serious Offenses | Penal Code Articles and Special Laws Criminalizing Offenses |
|---|--|
| Participation in an organized criminal group and racketeering | Article 23 of Law no. 2014-005 of 28 May 2014 against terrorism and transnational organized crime |
| Terrorism, including terrorist financing | Articles 1 and 11 of Law no. 2014-005 of 28 May 2014 against terrorism and transnational organized crime - with the deficiencies identified in Recommendation 5 |
| Trafficking in human beings and migrant smuggling | Articles 24 and 25 of Law no. 2014-040 on combating trafficking in human beings |
| Sexual exploitation | Law no. 2007-038 of 14 January 2008 amending and supplementing certain provisions of the Penal Code on combating trafficking in persons and sex tourism |
| [Illicit] trafficking in narcotic drugs | Article 102 of Law no. 97-039 of 4 November 1997 on the control of narcotics, psychotropic substances, and precursors |
| [Illicit] arms trafficking (except export) | Article 29 et seq of Law no. 2014-005 of 28 May 2014 Articles 91-106 of Law no. 69-011 of 22 July 1969 and its implementing decree (no. 70-041 of 13 January 1970) Articles 29 and 30 of Law no. 2014-005 of 28 May 2014 against terrorism and transnational organized crime |
| Illicit trafficking in stolen and other goods | Article 58 of the Malagasy Penal Code (concealment) |
| Corruption | Article 177 of the Malagasy Penal Code Law no. 2004-030 of 9 September 2004 |
| Fraud | Article 405 of the Malagasy Penal Code |
| Counterfeiting and piracy of products | Not criminalized |
| Murder | Article 295 of the Malagasy Penal Code |
| Kidnapping, illegal restraint, and hostage-taking | Article 6 of Law no. 2014-005 of 28 May 2014 |

| | |
|---|---|
| Theft /extortion | Articles 379 et seq of the Malagasy Penal Code |
| Smuggling | Article 363 of the Customs Code |
| Tax crimes (related to direct and indirect taxes) | General Tax Code |
| Forgery (except false passports) and the counterfeiting of currency | Article 132 of the Malagasy Penal Code |
| Piracy | Article 1.5 01 et seq of Law n ° 99-028 of 3 February 2000 revising the Maritime Code |
| Environmental Crime | Articles 55 (paragraphs 1, 2, 3, 4, 9, and 10), 57, and 58 of Law no. 2015-005 of 22 January 2015 revising the Protected Areas Management Code (New) articles 165 and 166 of Law no. 2005-021 of 17 October 2005 modifying the Mining Code |
| Stock market offenses | Not criminalized |

28. Counterfeiting and piracy of products and stock market offenses are not predicate offenses to money laundering. The lack of criminalization of stock market offenses represents a minor deficiency, as the country has only a nascent stock market. Conversely, the lack of criminalization of counterfeiting and piracy of products is a more significant weakness in the national AML/CFT regime, as customs fraud has been highlighted as an important predicate offense in Madagascar (Chapter 1). Moreover, as analyzed in Recommendation 5 (below) the criminalization of terrorism and of the financing of terrorism is not in line with the International Standards.

29. Criteria 3.4 - [met] Article 2 of the AML Law defines property in accordance with the International Standards.

30. Criterion 3.5 - [met] the AML Law does not require a person to be convicted of a predicate offense to prove that property is the proceeds of crime. According to the Malagasy criminal prosecution authorities, the illicit origin of property can be established by factual circumstances and does not require a conviction for the underlying offense; however, there is no case law on this point.

31. Criterion 3.6 - [met] Violations constituting predicate offenses to money laundering extend to acts committed in another country; however, when committed abroad, they must be established as criminal offenses in the country where they were committed and in Madagascar.

32. Criterion 3.7 - [met] There is nothing to prevent the perpetrator of a predicate or underlying offense from also being convicted of money laundering. The ML cases adjudicated in Madagascar confirm this interpretation in that all money laundering convictions involve individuals also convicted of predicate offenses.

33. Criterion 3.8 - [met] According to the general principles of Malagasy criminal law, intent (*mens rea*) is required for the crime to have been committed. In accordance with the FATF standard and the Vienna and Palermo Conventions, it may be inferred from objective factual circumstances. As such, whoever engages or participates in operations concealing the origin of funds or property must be aware of their fraudulent origin and have the intention to conceal it.

34. Criterion 3.9 - [met] Article 30 of the AML Law establishes the penalty for money laundering as a period of forced labor and a fine of 100,000 to 1 million Ariary⁴⁷ so long as the fine is not less than five times the amount involved in the commission of the offense. Additional penalties (forced labor in perpetuity) are provided for in cases involving aggravating circumstances, i.e., when

⁴⁷ Ariary is the national currency

the offense is committed in the exercise of a professional activity or in the context of a criminal organization. A criminal organization is defined in Article 2 as any group structured for the purpose of committing crimes or offenses.

35. Criterion 3.10 - [met] The AML Law does not explicitly state that legal persons may be found guilty of money laundering; however, this can be inferred from the penalties applicable to legal persons as provided for in law. With the exception of the State, legal persons may be punished with a fine equal to five times the fine specified for natural persons, without prejudice to the conviction of the natural persons in question. They may also be banned permanently or for up to five years from conducting, directly or indirectly, certain professional activities; see the establishments used in the commission of the criminal act closed permanently or for up to five years; be dissolved if they were created to commit the criminal act; or have their penalty disseminated in the print media or by any other means of audiovisual communication. The responsibility of the legal person can therefore be combined with that of natural persons.

36. Criterion 3.11 - [met] The offenses related to the ML offense are covered by Articles 59 and 60 of the Criminal Code.

Weighting and Conclusion

37. The definitions of ML and its constituent elements are in line with the International Standards. Only two ML predicate offenses are not criminalized in Madagascar. **Recommendation 3 is rated as largely compliant.**

Recommendation 4 – Confiscation and Provisional Measures

38. Criterion 4.1 - [met] The AML Law provides in Articles 28 and 29 that "judicial authorities and competent officials responsible for criminalizing and enforcing law in terms of money laundering offenses may seize property in relation to the offense, object of investigation, as well as all elements likely to identify them, in accordance with the rules of ordinary law ' and that "the judicial authority competent to pronounce protective measures may, ex officio or at the request of the Public Prosecutor's Office or a competent authority, order, at the expense of the State, such measures, including the freezing of capital and financial transactions involving property of any kind that may be seized or confiscated. The release of these measures may be ordered at any time upon the request of the Public Ministry or, after the latter's advice, upon the request of the competent administration or the owner. "

39. The confiscation of property can be pronounced regardless of the place where it is, whether or not they appear directly in the patrimony of the perpetrator. When property or products cannot be confiscated, the confiscation relates to their estimated value (Article 36). It is also important to note the possibility of confiscating property over which a criminal organization has disposing power, where such property is related to the offense (Article 38) .

40. Criteria 4.2 - [met] The rules in the ordinary law provided for in the Code of Criminal Procedure (CCP) give the public prosecutor, investigating judge, judicial police officers and, in some cases, the criminal court (Article 452 of the CCP), the power to undertake all requisite acts for establishing infringements, establishing proof, searching the perpetrators (Articles 123, 162, 251 and 452 of the CCP). In this context, all useful seizures allowing to reveal the truth and thus the preservation of the proofs and indices are possible subject to the respect of the procedural formalism (in particular Articles 133, 135, 162, 251, 257, 260, 261 of the CCP) . Therefore, the seizure of property or sums, products, objects or means of the offense is possible. THus, as an example, blocking sums, transactions or accounts is possible.

41. The measures described intervene as a precautionary measure during the judicial investigation. At the judgment stage, the court, in the event of a conviction, has the opportunity to confirm the confiscation of the seized property that was used in the commission of the offense, as well as the property produced from the offense.

42. Beyond the rules of ordinary law, the ML Law (Articles 36 to 40) organizes confiscation, in case of conviction for money laundering or attempt. It must be emphasized that when a conviction cannot be pronounced against the offender, the court may nevertheless order the confiscation of the fraudulent property.

43. Criterion 4.3 - [met] With regard to the protection of bona fide third parties, the AML Law does not contain any related provision, since the ordinary law already allows for the recognition of the rights of these ones. by means of requests for detailed restitutions submitted to the trial court or to the public prosecutor.

44. Criterion 4.4 - [not met] Madagascar does not have a specific mechanism to manage and dispose of frozen assets. Prosecutor and judges have the power to freeze, unfreeze or confiscate assets based on their general powers pursuant to the code of criminal procedure. A draft law on the collection and disposition of illicit assets has been prepared and must be voted on. This draft law provides for the establishment of an agency for the recovery of illicit assets, which should be placed under the joint technical and financial supervision of the Ministry of Justice and the Ministry of Finance and Budget.

Weighting and Conclusion

45. Madagascar has put in place a legal framework that is broadly in line with the expectations of international standards with regard to confiscation and provisional measures. However, the country does not have mechanisms in place to manage and dispose of frozen assets, as the draft law on the collection and disposition of illicit assets has not yet been adopted. **Recommendation 4 is rated as largely compliant.**

Recommendation 5 – Terrorist Financing Offense

46. Criterion 5.1 - [met] The terrorist financing offense is provided for and punishable under Articles 11 and 12 of the CFT Law on the basis of the Terrorist Financing Convention. The relevant section refers to the terrorist acts defined in Articles 2 and 10, as well as to the general definition of terrorism provided for in Article 11 (1) of the Law No. 2014-005 of 28 May 2014.

47. Pursuant to Article 11, the terrorist financing offense applies to "any person who, by any means, directly or indirectly, provides or collects funds, whatever their origin, with the intention of seeing them used, or knowing that they will be used, in whole or in part, to commit:

- i. an act constituting an offense under Articles 2 to 10 of this Law;
- ii. any other terrorist act, intended to kill or seriously injure a civilian, or any other person who does not participate directly in hostilities in a situation of armed conflict, where, by its nature or context, such act is intended to intimidate a population or to compel a Government or an international organization to do or to abstain from doing any act".

48. The penalty of five to twenty years of forced labor is criminal in nature. The offense is committed even if the funds collected were not actually used to commit one of the relevant offenses. The same penalty applies to anyone who orders other people to commit an offense or who deliberately contributes to the commission of one or more of the offenses on the part of a group of persons acting together. Such cooperation must: (i) aim to facilitate the criminal activity of the group

of people or serve its goals, when the activity or goal involves the commission of an offense as defined in paragraph 1; or (ii) be provided with the knowledge that the group intends to commit an offense under paragraph 1.

49. The following are also punishable by the same penalties:

- i. whoever recruits one or more persons, knowing that the purpose of such recruitment is to commit or to participate in the commission of any of the offenses provided for in Articles 2 to 11, shall be punished by five to twenty years of forced labor (Article 12);
- ii. whoever supplies weapons knowing that such weapons may be used for the commission of any of the offenses set forth in Articles 2 to 12 is punishable by the same penalty that applies to the commission of the predicate offense (Article 13 - Supply of weapons);
- iii. whoever distributes or makes available to the public a message, knowing that this message may directly or indirectly incite the commission of one or more offenses provided for in this Title and where such an act creates a risk that one or more of these offenses may be committed, is punishable by five to twenty years of forced labor (Article 14 - Incitement) ;
- iv. whoever conspires with one or more persons to commit any of the offenses provided for in Articles 2 to 12 or who encourages, promotes, organizes or prepares the commission of any of those offenses (Article 15 - Incitement) ;
- v. whoever participates in the organization, preparation or commission of one or more offenses under this Title by providing any form of support or service whatsoever and knowing that such support or service will be used to commit one of the offenses provided for in Articles 2 to 12 is punishable by the same penalty that applies to the commission of the predicate offense (Article 16 - Provision of support).

50. Criterion 5.2 - [not met] Terrorist financing is essentially defined on the basis of [/tied to the commission of] terrorist acts.

51. Articles 2 to 10 of the Law cover the specific offenses provided for in the international and United Nations conventions, namely:

- i. hijacking of an aircraft, ship or fixed platform (Article 2)
- ii. offenses or threats against the security of civil aviation (Article 3)
- iii. airport security offenses (Article 4)
- iv. offenses against the security of a ship or fixed platform (Article 5)
- v. hostage-taking (Article 6)
- vi. offenses against persons enjoying international protection (Article 7)
- vii. offenses committed with explosives or other lethal devices (Article 8)
- viii. offenses involving a ship or a fixed platform (Article 9)
- ix. offenses using nuclear material and[/or] against a nuclear facility (Article 10).

52. The law does not mention, either directly or indirectly, the financing of individual terrorists or of terrorist organizations in the absence of a link to terrorist acts.

53. Criterion 5.2.bis: (partly met). The law does not specifically address the funding of travel to participate in terrorist activities abroad. However, these acts are punishable under Articles 11 (providing or collecting funds knowing that they will be used for terrorist acts) and 16 (providing support to terrorist activities), which are referenced above.

54. Criterion 5.3 - [met] The funds covered by the offense may originate from any source, whether legal or illegal.

55. Criterion 5.4 - [partly met] The definition does not require that the funds are actually used to commit a specific terrorist act, but does require that the author intended to contribute to a terrorist act, or knew that the funds would be used to commit any of these acts. Prosecutions for participation in a terrorist agreement [/arrangement] could conceivably be pursued in certain cases if the prosecuted individual knowingly financed a group activity or project, but this possibility does not fully cover the requirement to address the financing of terrorist organizations and individuals more broadly.

56. Criterion 5.5 - [met] Madagascar's criminal law allows the judge to infer intent, and/or awareness of a planned or committed terrorist offense, from objective factual circumstances.

57. Criterion 5.6 - [met] The criminal penalties provided for (five to twenty years of forced labor) are proportionate and dissuasive for individuals.

58. Criterion 5.7 - [met] The relevant article establishes the criminal liability of legal persons for offenses covered by the law. The penalties provided for (fines of 100 to 500 million Ariary, prohibition, closure, dissolution, publication of the decision) are proportionate and dissuasive for legal persons. The liability of legal persons does not exclude that of natural persons. It does not preclude other procedures, including administrative ones.

59. Criterion 5.8 - [met] The relevant articles make clear that attempt, complicity, provision of instructions, organization of acts of terrorism or their financing, membership in a criminal organization, and the incitement to commit a terrorist financing offense are punishable by the same penalties as the predicate offense. The same applies to contribution to the commission of the offense.

60. Criterion 5.9 - [met] Terrorist financing is a predicate offense to money laundering, since the definition of this offense refers to all crimes and offenses.

61. Criterion 5.10 - [partly met] The offense of terrorist financing is applicable if it was committed on the territory of Madagascar, or abroad by a person of Malagasy nationality, or to the detriment of a Malagasy national. Malagasy law does not provide for prosecution in the case of a terrorist organization located abroad or a terrorist act committed or planned in another country.

Weighting and Conclusion

62. The terrorist financing offense covers only the financing of acts or intended acts; it does not specifically penalize the financing terrorist individuals or organizations. Prosecutions involving an organization located abroad or acts committed or planned abroad are not provided for.

Recommendation 5 is rated as partially compliant.

Recommendation 6 – Targeted Financial Sanctions related to Terrorism and to Terrorist Financing

Identification and Designation

63. Criterion 6.1 - [not met] Madagascar does not have a mechanism (or even procedure) for implementing the recommendation with respect to proposing designations of persons or entities to the 1988 or 1267 committees, identifying relevant persons, the criteria applicable to designation proposals, the procedures to follow and the information to provide to the committees.

64. Criterion 6.2 - [not met] Article 36 of Law 2014-005 stipulates that the President of the competent court, at the request of the Public Ministry, shall order without delay the freezing of funds and other property of persons against whom there are reasonable grounds to think that they commit or attempt to commit or participate in or facilitate the commission of terrorist acts as defined in Articles 2 to 16 or the offenses provided for in Articles 23, 24, 25 and 29 of the TF Law. The decision is enforceable without prior notice to the persons. This provision may be used in cases of suspicion with regard to persons or entities who/that may be subject to criminal prosecution. However, it is not an adequate mechanism for implementing the requirements of Resolution 1373 to the following extent:

1. It is closely linked to possible criminal proceedings - the Malagasy authorities are silent on the possibility of mobilizing this article as part of administrative freezing measures;
2. No regulatory measure clarifies its implementation in the context of an administrative freeze, including at the request of a foreign country;
3. Madagascar does not have the mechanism or additional procedures required for the implementation of the recommendation as regards the authority in charge of proposing the domestic designations of persons or entities pursuant to Resolution 1373; identification of the relevant persons, the procedures to follow, and the information to provide.

65. Criterion 6.3 - [not met] Madagascar does not have a specific mechanism designating the competent authorities and governing their powers related to the identification of the relevant persons and entities, as well as the procedures applicable to those persons or entities.

Freezing

66. Criterion 6.4 - [partly met] The CFT Law provides that the funds of individuals, groups, companies or entities referred to in the Consolidated List of the Committee established by Security Council Resolution 1267 involving al-Qaeda, the Taliban and individuals and entities associated with them, are frozen through an inter-ministerial order issued by the Minister of Foreign Affairs and the Minister of Finance. Those financial institutions and designated non-financial businesses and professions that hold such funds must immediately freeze them upon receipt of notification of the order and must inform SAMIFIN of the existence of such funds without delay. However, there is no legal provision requiring the Ministers to issue an inter-ministerial order without delay (or, indeed, within any prescribed timeframe), and it appears as though no such order had even been issued as of the time of the on-site visit.

67. Criterion 6.5 - [not met] The Minister of Finance and the Minister of Foreign Affairs are responsible for the legal implementation of sanctions. Only financial institutions and designated non-financial businesses and professions have the obligation to immediately freeze funds in accordance with the joint order of the two Ministers. The freezing obligation refers to "funds" without specifying that they extend to amounts controlled (and not just owned), to assets jointly held or owned, [to those held] directly or indirectly, to the assets generated by those funds, or to assets held in the name of the sanctioned persons. There is no general prohibition on all persons making funds, other economic resources, or financial services available to the relevant persons. Mechanisms of communication with financial institutions and designated non-financial businesses and professions are not provided for by law, except through the publication of the Joint Ministerial Order. Currently,

financial institutions and designated non-financial businesses and professions execute the freeze upon receipt of notification of the order and not upon its publication. The law requires that these entities and professions inform SAMIFIN of the existence of frozen funds without delay. The law does not contain any general provision on the rights of *bona fide* third parties.

De-listing, freeze lifting, access to frozen funds.

68. Criterion 6.6 - [partly met] The law provides that any individual or entity claiming that the sanctions imposed on it are based on mistaken identity [i.e., a false positive] may apply to the Minister of Foreign Affairs and the Minister of Finance for a lifting of the freeze in accordance with Resolutions 1904, 1989 and 2083. In addition, any individual or entity whose name has been included in the 1267 list may address a request directly to the focal point established within the United Nations Secretariat for the purpose of requesting the removal of his/her/its name from that list. By contrast, there are no procedures governing applications to the relevant United Nations Committee when a person does not meet or no longer meets the criteria for designation, no procedures for designations or de-listings from any domestic list that could be established in compliance with Resolution 1373, and no procedures for reporting de-listings to the private sector.

69. Criterion 6.7 - [met] There is a "humanitarian exemption" (in fact an exemption for living expenses and lawyer's fees that does not create a gap in the implementation of the freeze) whereby listed individuals, whether nationals or residents of Madagascar, may apply to the Minister of Foreign Affairs and the Minister of Finance to exclude from the freeze funds that are:

- a) necessary for basic expenses, including food payments, rents or mortgages, medicines and medical expenses, taxes and insurance,
- b) necessary for the payment of reasonable professional fees,
- c) necessary for the payment of expenses incurred for the management and administration of frozen funds or other frozen financial resources.

70. Upon receipt of the request and supporting documents, the competent authorities shall notify the Sanctions Committee through the diplomatic channel. In the absence of a decision by the Sanctions Committee within three days of the notification, the Minister of Foreign Affairs and the Minister of Finance must order the unfreezing of the amounts covered by the humanitarian exemption.

71. On the other hand, there is no procedure for obtaining "humanitarian exemptions" for natural or legal persons that could (eventually) be designated at the domestic level.

Weighting and Conclusion

72. Malagasy law has serious shortcomings in the provisions related to the implementation of targeted sanctions. Specific legal mechanisms for identification and designation are incomplete (6.1 to 6.3). The freezing procedures do not specify the scope of the funds to be frozen and there is no general prohibition on any person or entity making funds or assets available to sanctioned persons. There are no measures to implement Resolution 1373. The procedures for delisting at the request of the country are insufficient. **Recommendation 6 is rated as non-compliant.**

Recommendation 7 – Targeted Financial Sanctions related to Proliferation

73. Criterion 7.1 [not met]. No legislative or regulatory provisions to ensure compliance with United Nations proliferation resolutions.

74. Criterion 7.2 [not met]. No legislative or regulatory provisions are in place to establish and identify the competent authorities for the implementation of financial sanctions in the area of proliferation.

75. Criterion 7.3 [not met]. No legislative or regulatory provisions to monitor and ensure the compliance of financial institutions and designated professions with respect to the implementation of financial sanctions for proliferation. No sanction is provided for.

76. Criterion 7.4 [not met]. No provision in law or regulation to request the removal from the lists the names of persons who do not meet or no longer meet the criteria for designation with respect to proliferation.

77. Criterion 7.5 [not met]. There is no provision in law or regulation for contracts, agreements or obligations established prior to a targeted financial penalty measure.

78. **Recommendation 7 is rated as non-compliant.**

Recommendation 8 – Non-Profit Organizations

79. *Description of the Sector.* There are several categories of non-profit organizations in Madagascar, namely associations, non-governmental organizations, economic or professional unions, foundations, cooperatives and cult or religious associations.

80. *The associations declared at the office of the region have legal personality and legal capacity. An ordinance with legislative terms of 3 October 1960 - as amended by another ordinance of 13 August 1975 - lays down their legal system. It in particular determines the general conditions of constitution, operation and dissolution of associations. These rules do not apply to trade unions and professional associations, mutual societies, companies within the meaning of Article 1832 of the Civil Code, religious congregations or missions and cult or religious associations, the regime of which is subject to special legislative provisions or finally to the categories of associations for which the law sets a special system. Some associations may be recognized as being of public utility by decree adopted by the Council of Ministers.*

Registered Public Associations

81. To be registered as beneficial to the at large, the declared association shall provide the authorities *with*: (1) a copy of the Gazette containing the extract of the declaration; (2) a statement indicating the origin, development, and public interest purpose of the work; 3 ° the statutes of the association in duplicate; 4 ° a list of its establishments, indicating their office; 5 ° the list of the members of the association with the indication of their age, their nationality, their profession and their domicile or, if it is a union, the list of the associations which compose it with the indication of their title, purpose and office; (6) the financial account for the last fiscal year; 7 ° a statement of movable and immovable assets and liabilities; 8 ° an extract from the deliberation of the general assembly authorizing the request.

Non-Government Organizations (NGOs)

82. NGOs are governed by Law no. 96-030 of August 14, 1997. Their purpose is grouping autonomous natural or legal persons in a private and structured framework. They are legally declared and approved, perform for a non-profit purpose, activities on humanitarian grounds in a professional manner. There are four main categories of NGOs. Humanitarian NGOs have social and charitable activities (medico-social NGOs, NGOs fighting against poverty). Economic development NGOs are dedicated to activities of rural, artisanal development, economic promotion of a region or

incentive to the emergence of undertakings or small self-sustaining businesses in rural or urban deprived areas. NGOs working for the promotion of human beings have socio-educational, vocational training or social reintegration concerns. Finally, NGOs with a cultural objective are concerned with cultural promotion (dissemination of culture, encouragement of reading, communication and cultural education) or else NGOs orienting their activities towards the protection of the national heritage.

Foundations

83. Foundations are another type of non-profit organization governed by Law no. 2004-014 of 19 August 2004 on the overhaul of the foundations regime in Madagascar. Foundations are legal persons under private law whose creation results, on the one hand, from a legal act whereby one or more natural or legal persons permanently assign property, rights and resources for the achievement of objectives of general interest and, on the other hand, grant recognition of public utility by the Government. Endowment funds, still called capital of the foundation comes from the resources, property or rights permanently assigned to the achievement of the objectives of the foundation. Only income from the endowment can be used to finance its activities.

84. Criterion 8.1 – [not met] Risk-based Approach

85. a) Madagascar has not developed a risk-based approach to establish which type (s) or category/ categories of organization meets the FATF definition and presents specific risks, taking into account their activities or characteristics of abuse for terrorist purposes. Madagascar has not undertaken a review or study of the non-profit sector to collect information on the size, activities, etc. and the risks posed by this sector in terms of ML/TF. No periodic assessment of the sector's risks and vulnerabilities is made.

86. b) There is no analysis to identify the nature of specific threats and the methodologies used. At most, the authorities mentioned that, from their viewpoint, there was a risk of abuse with regard to some religious organizations of mutual aid. But this assertion does not result from a systematic and consistent analysis of the risks of the sector of not-for-profit organizations.

87. c) There has been no review of legislation or measures to address the threat identified in an effective and proportionate manner. No study of the effectiveness and adaptation of NGO and association laws to ML/TF issues has been conducted. There has been no periodic review (or system for periodic review) of associations or non-governmental organizations with regard to specific risks with a view to ensuring an effective implementation of proportionate measures.

88. Criterion 8.2: [not met] Sustainable Awareness raising of the Sector

89. No specific measures have been implemented in relation to information, training or awareness raising programs for the sector.

90. No specific measures have been taken to help the sector to define and implement good practices for controlling the risk of abuse for terrorist purposes.

91. No specific measures have been taken to encourage associations and NGOs to use regulated and controlled financial circuits.

92. Criterion 8.3: [met] Transparency, Integrity and Public Trust

93. The authorities have developed and implemented legislation to promote the transparency and integrity of the sector.

For Registered Associations

94. Any association wishing to obtain legal capacity must be declared to the office of the Province / Region by its founders or managers or directors and made public. The preliminary declaration must indicate the name and the purpose of the association, the office of its establishments and the surnames, forenames, professions and domiciles of those who, for some reason, are responsible for its administration or management. Within two months of their deposit, the declarations of associations are made public, by the administration, by means of the insertion in the Gazette of the Republic of an extract specifying the name of the association, its head office, its purpose and the date of issue of the receipt.

95. Copies of the declarations and statutes, as well as documents indicating changes in statutes and changes in the administration or management, deposited at the offices of the provinces by the associations subject to the provisions of Ordinance no. 60-133 of 3 October 1960 referred to above, are distributed as follows: one is kept at the offices of the region, another is addressed to the Minister of the Interior; the third is addressed to the head of the constituency in which the head office of the association is located. Anyone has the right to take communication, without moving them, from the Ministry of the Interior or the offices of the region or district, of the declarations, statutes and documents filed by the associations.

96. Associations are required to make known, under the same conditions, within a period of three months, any changes in their administration or direction as well as any changes made to their statutes. These amendments or changes are in addition recorded in a special register which is presented to the administrative or judicial authorities whenever they request it. The documents indicating changes in the administration or management of the associations shall mention: (1) the changes in the persons in charge of administration or management; 2 ° the new establishments founded; (3) the change of address in the locality where the head office is located; 4 ° the acquisitions or disposals of premises and buildings specified in Article 7 of ordinance no. 60-133 of 3 October 1960. A descriptive statement in case of acquisition and the indication of the purchase price or disposal shall be provided.

97. What is more, Article 4 of the above-mentioned Ordinance states that any association based on a cause or for the purpose of an illicit or unlawful object is null and void. Similarly, any association whose activities constitute a threat to public order and security, good morals or national unity is null and void.

For Public Utility Associations

98. The statutes of these associations shall contain:

1. the name of the association, its purpose, duration and registered office;
2. the conditions of admission and removal of its members;
3. the rules of organization and operation of the association and its establishments, as well as the determination of the powers conferred on the members in charge of administration or management, the conditions for amending the statutes and dissolving the association;
4. the commitment to make known within the three months to the offices of the province all the changes which occurred in the administration or the direction and to present without moving the registers and accounting pieces upon any requisition by the administrative authorities;
5. The rules according to which the property will be vested in case of voluntary, statutory or judicial dissolution;

6. the maximum prices of the fees that will be collected in any capacity in the establishments of the association where free admission is not complete.

99. Any declared association and any recognized public utility association that receives a subsidy from the State, provinces, regions or communes, is obliged to provide its budgets and accounts to the administrative authority which grants the subsidy to the financial control agents. It, in addition, may be invited to submit supporting documents and any other documents the production of which would be considered useful. Any refusal of communication is considered an obstacle to control exercise.

100. Public utility associations may not own or acquire buildings other than those necessary for their purpose. All securities of an association recognized public utility shall be placed in registered securities. They may receive donations and legacies after having been authorized by decree in the Council of Ministers. The immovable included in a deed of gift or in a testamentary disposition which would not be necessary in operation of the association are alienated in the deadlines and forms prescribed by the decree which authorizes the acceptance of the liberality; the price is paid to the association's fund. They cannot accept a movable or real estate donation with usufruct reserve for the benefit of the donor.

NGOs

101. In the first place, the declaration of existence shall be filed, in triplicate, with the Registry Office of the region in which the NGO has its Head Office. It mentions the name of the NGO, the headquarters, the names, profession and domicile of the persons in charge. Three typed copies of the statute of the NGO are attached to this declaration accompanied by the minutes of the constituent General Assembly and an information sheet. The Registration Office issues to the NGO a receipt for the declaration of existence. This receipt is part of the documents which shall compose the authorization file. Its issuance does not mean the recognition of the NGO or the granting of any capacity.

102. Secondly, the founders have their NGO authorized by submitting an application for authorization to the Registration Office of the region where its head office is located. A receipt is then issued. The authorization application file includes: a written request to the State Representative with the region, a typed copy of the NGO's Statutes, an information sheet indicating the names of the founding members and the main leaders of the NGO, documentation on the program of activities as well as the means available to the NGO, the receipt of declaration of existence.

103. The registration office sends the file to the regional bipartite committee. The State representative in the region shall establish by decree the bipartite committee decision which is published in the Gazette of the Republic of Madagascar.

104. After the notification of the NGO authorization decree by the State representative of the regional district, its founders are required to register the NGO, which requires a written request addressed to the head of the office of registration. The registration office registers the NGO in the special registration register and has a maximum period of one month from the filing date of the application to issue a registration certificate to the NGO.

For Foundations

105. Recognized Public Foundations are created by authentic act. The statutes of the foundation are submitted for approval and authorization for public utility recognition which is granted by decree taken in the Council of Ministers on presentation of an authorization file. The application for public utility recognition is presented by at least two of the founders and filed with the Ministry of

the Interior, with a copy for the Ministry of Finance and the Ministry in charge of the involved activity sector. The application is accompanied by the authentic act recording the commitment of the founders to transfer the financial resources intended to constitute the initial capital of the foundation, three copies of the statutes, a file indicating the complete identity and the nationality of the founders. The decree of public utility recognition is published in the Gazette of the Republic.

106. As noted above, any association that has legal capacity must be declared by its founders or directors or managers, and made public. The declaration shall indicate the name and the object of the association, the registered office of its establishments and the surnames, forenames, professions and domiciles of those who, in any capacity, are responsible for its administration or management. Associations under the same conditions, within three months are required to make known all changes in their administration or management as well as any changes to their statutes.

107. Specific measures are taken for all foreign associations. At the end of Article 14, and unless otherwise provided by international conventions, no foreign association may be formed in Madagascar, without the prior authorization of the Minister of the Interior. It may have establishments in Madagascar only under a separate authorization for each of these establishments. The authorization may be granted on a temporary basis or subject to periodic renewal. It may also be subject to compliance with certain conditions and may be withdrawn at any time.

108. Foundations are created by authentic act and approved by the Council of Ministers. They undertake to exercise their activities in a disinterested manner and in observance of the laws and regulations of the Republic. They must respect the universal principles of human rights and refrain from any interference in any form whatsoever in the political affairs of the Republic. The Government, through the Ministry of the Interior, the Ministry of Finance and / or the Ministry in charge of the relevant activity sector of the Foundation, is notified of any amendment to the statutes.

109. Criterion 8.4- [partly met] Targeted and Risk-based Supervision and Monitoring

110. The Malagasy authorities have not implemented a risk-based supervision and monitoring system specific to the non-profit organization sector and categories. The legislation allows authorities to collect information on the financial activities of non-profit organizations.

111. With regard to financial elements, the collection of information is provided for under Law no. 96-030 of 17 August 1997 (NGO regime), of Ordinance no. 60-133 of 3 October 1960 (regime of the associations) and the decree no. 11 088/98 on the presentation form of activity report and program of activities of NGOs. NGOs in particular are required to draw up an annual oral and financial report and at the end of each financial year no later than 31 January of the current year, send it to the regional bipartite committee, to the representative of the State of the district involved, and to the Ministry of Population, with the following documents:

1. the summary of the annual moral and financial report according to the model annexed to this Order.
2. the detailed plan of operations for the current financial year, in accordance with the model annexed to this Order.

112. For foundations, the accounts are established according to the chart of accounts in force in Madagascar and audited and certified annually by the statutory auditor or his deputy, who is chosen and appointed by the board of directors from among the members of the order of accounting and financial experts of Madagascar. The board of directors of the foundation may limit the term of office of the statutory auditors in its rules of procedure. The auditor, at any time during the year, may perform the verifications he deems appropriate and, in case of urgency, request the convening of a meeting of the board of directors. He shall report the performance of his mandate to the board of directors at the end of each fiscal year and submit, as the case may be, the special report provided for

in section 19. The foundation's corporate documents, including the audited financial statements, the annual report of the board of directors, and the reports of the auditor are sent to the Ministry of Finance, the Ministry in charge of the activity sector of the foundation, the founders and the donors / sponsors.

113. Criterion 8.5: [partly met] Powers of Competent Authorities. Monitoring or supervision authorities may not apply risk-based approach measures in the absence of a coherent analysis of the threats and vulnerabilities of the sector and the different categories of organizations. *Effective, proportionate and dissuasive sanctions*. The Malagasy authorities have a sanctioning power based on legislation relating to associations, foundations and NGOs.

114. For associations, in case of nullity of one of them if it is contrary to the law and morality, the dissolution is pronounced by the civil court, either at the request of any interested party, or at the diligence of the Public Ministry. Founders, managers or administrators of the association are fined MGF 20,000 to 1,500,000 and imprisonment from ten days to a year, should the association have maintained or reconstituted illegally after the judgment of dissolution. The same penalties apply to persons who have favored the meeting of the members of the dissolved association by consenting to the use of premises at their disposal.

115. With regard to foreign associations, those which are refused or withdrawn from authorization shall immediately cease their activity and proceed with the liquidation of their property within one month of notification of the decision. Article 20 also provides that foreign associations, regardless of the form in which they may possibly be concealed, which do not apply for authorization under the conditions set out above, are automatically null and void. This nullity is established by order of the Minister of the Interior.

116. What is more, those which, in any capacity, provide or continue to administer foreign associations or unauthorized institutions are punished by imprisonment of one to five years and a fine of MGF 6,000 to 50,000 (Ariary 1,200 to 10,000). Other persons involved in the operation of these associations or their establishments are punishable by imprisonment from six months to three years and a fine of MGF 5,000 to 250,000 (Ariary 1,000 to 50,000). The same penalties are applicable to leading managers and participants in the activity of associations or establishments that operate without complying with the conditions imposed by the authorization decree or beyond the duration fixed by the latter.

117. For NGOs, Articles 2 and 3 of Law no. 96-030 set the ethical rules to which an NGO shall submit. NGOs are required to draw up an annual moral and financial report. At the end of each year; NGOs by 31 January of the current year shall send the following documents to the Regional Bipartite Committee, to the State representative of the constituency involved, and to the Ministry of Population:

1. The summary of the annual moral and financial report following the model annexed to this order.
2. The detailed plan of operations for the current financial year, according to the model annexed to this order.

118. Violating these rules exposes NGOs to sanctions provided for by law: nullity, authorization withdrawal, dissolution to which are added the criminal proceedings of which the leaders can be the object (Articles 3, 4, 9 and 35).

119. For foundations, recognition of public utility may be withdrawn, by decree taken in Council of Government, in case of infringements of the present law or violations of the statutes or modifications of statutes when such violations or modifications carry seriously prejudice to the foundation or the public interest. Authorization withdrawal shall be motivated; it is subject to appeal

before the administrative court. In case of recognition of public utility is withdrawn, and if the act is not canceled or if no appeal is filed, the procedure of dissolution of the foundation is triggered.

120. In addition, the civil liability of directors may be incurred by reason of prejudice caused by them to the foundation as a result of infringements of laws and regulations, violations of the statutes and personal misconduct according to the rules of ordinary law. Lastly, the Foundation may not grant loans, current account overdrafts, grants or gifts directly or by proxy to members of the Board of Directors, Executive Management, Statutory Auditors or Fund Managers. Similarly, the foundation may not guarantee or endorse commitments made by them to third parties and this prohibition extends to spouses, parents and allies up to the fourth degree included. Acts taken in violation of the prohibitions enacted in the preceding paragraphs are null and void. Beneficiaries and perpetrators of such acts are liable to damages against the foundation without prejudice to disciplinary sanctions.

121. Criterion 8.6: [partly met] Information Collection and Investigations

122. a) Information coordination and exchange among competent authorities results essentially from the fact that the investigating and prosecuting authorities (police, gendarmerie, prosecution services, investigating judges, etc.) can obtain from the administrations to which declarations and statutes of the associations are sent, and NGOs, all the information that was communicated to them on the occasion of the creation, the modifications of the statutes or governing bodies, changes in activity, etc. The same applies to all administrative files or approval decisions relating to foreign associations or public utility associations.

123. b) Investigating authorities have access to the registers of associations or can issue a request to the administrations (Province, Office, Ministry in charge of NGOs ...) involved. Investigative and prosecutorial authorities also have the possibility to obtain information directly from associations or NGOs under their general powers and in particular from Articles of the Code of Criminal Procedure authorizing them to search, seize, or consult any document useful to the inquiry, or to perform the searches requisite reveal the truth.

124. c) There is no specific mechanism to ensure the prompt dissemination of information on suspicious activities or situations involving terrorist activities or abuse by NGOs. However, an administration enforcing criminal offenses is obliged to inform the prosecution authorities. But this mechanism of ordinary law does not ensure a prompt denunciation of the facts, no deadline being specified.

125. Criterion 8.7 [partly met] - The contact points for information exchange on associations are the Ministry of Foreign Affairs, the Ministry of Population and the Ministry of the Interior. The central authorities in charge of international co-operation (notably the Ministry of Justice and to a certain extent, foreign affairs, Interpol office, etc.) will also have jurisdiction in criminal investigations. There is no text to coordinate the response to a foreign authority outside of requests for mutual legal assistance.

Weighting and Conclusion

126. The Malagasy authorities have not conducted an analysis of the structure, risks, and vulnerabilities of the sector, the adaptation of legislation, and no awareness raising of the sector has been conducted. The current legislation does not allow for a policy of awareness, supervision, sanction and investigation adapted to the risk. **Recommendation 8 is rated partially compliant.**

Recommendation 9 – Laws on Professional Secrecy of Financial Institutions

127. Criterion 9.1 – [met] Law no. 95-030 relating to the activity and control of credit institutions (herein after banking law) sets out the general principles involving banking secrecy. Article 81 specifies that professional secrecy may not be opposed either to the Banking and Financial Supervision Commission, the Central Bank or the judicial authority acting under criminal proceedings. The Insurance Code does not contain any provisions relating to professional secrecy.

128. With regard to AML/CFT, the exceptions relating to banking and professional secrecy of financial institutions are found in Chapter IV of the AML Law. Article 27 stipulates that banking or professional secrecy may not be invoked to refuse to provide the information provided for by Art. 12 of the law (which refers to the information provided for in Articles 7 to 11, namely those relating to the identification of the client, the beneficial owner as well as the transactions made by the said client) or required in the context of an investigation of money laundering ordered by or performed under the control of a judicial authority. Article 23 of the AML Law provides that no proceedings for breach of banking or professional secrecy may be instituted where the information and declarations provided by the AML Law, including STRs, are transmitted in good faith.

Weighting and Conclusion

129. **Recommendation 9 is rated compliant.**

Recommendation 10 – Customer Due Diligence

130. Criterion 10.1 [met] –Article 25 of CSBF Instruction no. 006-2007 (3 August 2007) prohibits financial institutions subject to CSBF supervision from keeping anonymous accounts or accounts opened under fictitious names. According to the provisions of Article 48 of the Instruction, the violation of this prohibition is punishable by the sanctions provided for in the Banking Law.

131. Criterion 10.2 [partially met] –Articles 7 and 8 of the AML Law require credit and financial institutions to identify their clients prior to the opening of an account and in conjunction with any transaction in excess of MGA 3 million (approximately EUR 815 and USD 921), including in the case of repeated smaller transactions carried out over a limited period. The instruction reiterates, specifies and completes these obligations. It states that the identification is prior to the establishment of the contractual relationship and extends the obligation to the identification of the beneficial owner (Article 17) see C.10.5 below. It requires the identification of: (i) the originator of transfers (Article 34), (ii) the client, when there is doubt as to the truthfulness or relevance of previously obtained identification data (Article 17), and (iii) the occasional client, in case of suspicion of ML/TF (Article 26). It thus appears that due diligence measures are limited to client identification and, for those institutions subject to the instruction, to beneficial owner identification, and that they only apply in case of ML/TF suspicion for transactions performed by occasional clients.

132. Criterion 10.3 [met] –Article 7 of the AML Law obliges credit and financial institutions to ascertain the 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. Article 19 of the Instruction states that 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. Article 8 of the AML 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 law (Article 7) and the Instruction (Article 18) require that the address be verified.

133. Criterion 10.4 [partially met] –The last paragraph of Article 7 of the AML Law requires ‘managers, employees and agents given the authority to act on behalf of others to produce the documents necessary to identify them as natural persons, along with documents attesting to their authority. This obligation is also reflected in Article 19 of the Instruction. However, no indication is given by law or in the instruction as to the nature of these documents. Moreover, it seems that only the case of a natural person acting on behalf of a legal person or arrangement is envisaged.

134. Criterion 10.5 [partially met] –The AML Law does not require the identification of the beneficial owner. Article 9 of the AML Law is entitled ‘identification of the beneficial owner’ and states that when it is not certain that the client acts on his/her own behalf, credit and financial institutions must identify the true client and / or the person for whom he or she is acting. There seems to be confusion between the concept of ‘person ordering a transaction’ and that of ‘beneficial owner’ as defined by the FATF. Even if, in some cases, the true client and the beneficial owner can be the same person, the two concepts are not equivalent. Article 19 of the Instruction requires obligated entities to determine the natural persons who ultimately own or control their legal person or arrangement clients.

135. Criterion 10.6 [not met]–There is no provision requiring financial institutions to understand and, where appropriate, obtain information about, the purpose and intended nature of the business relationship. Nevertheless, it appears that where an obligated entity uses a third party to implement customer due diligence measures, the third party is required to obtain information about the purpose and nature of the relationship, see Recommendation 17, *infra*.

136. Criterion 10.7 [not met]–The requirement to exercise constant vigilance is limited to the transactions conducted by clients. This requirement may be inferred from the provisions of Article 31 of the Instruction which requires obligated entities to have “at all times a good understanding of the normal and reasonable activities expected with regard to the accounts of their different types of customers, so as to identify unusual transactions’. It is also specified that the monitoring mechanism must be adapted to the level of risk. No details are given as to the practicalities of the monitoring of operations and the relevant articles are silent with regard to knowledge of the client, see in particular criterion 10.6, *supra*. Finally, the obligation to exercise constant vigilance does not relate to the identification of clients.

137. Criterion 10.8 [partially met]–Article 19 of the Instruction requires obligated entities to have the requisite information to understand the ownership and control structure of their legal entity and arrangement clients. There is no mention of the nature of their activities.

138. Criterion 10.9 [partially met]–Regarding the name, form and certificate of existence, as well as the headquarters address of clients that are legal persons or arrangements, see criterion 10.3, *supra*. Financial institutions are not required to have the corporate bylaws of their legal person and arrangement clients or the names of persons occupying management positions within them.

139. Criteria 10.10 and 10.11[not met] – The AML Law does not address beneficial owners as defined by the FATF (see also C.10.5 above). Article 19 of the Instruction requires obligated entities to determine the natural persons who ultimately own or control their legal person and arrangement clients. It is not explicit in the instruction that the ‘determination’ of natural persons involves their identification or the verification of their identity. Moreover, the gradation in the determination of the beneficial owner (s) provided for in the FATF Recommendations does not appear in the instruction. Lastly, there is no clarification as to the criteria that must be applied by obligated entities in determining the ownership or control of a legal person or arrangement.

140. Criteria 10.12 and 10.13 [not met] – No provision requires specific measures applicable to the beneficiaries of life insurance contracts.

141. Criteria 10.14 and 10.15 [met and N/A]–The Malagasy regulations require that the identification of the customer take place before the opening of an account or the completion of an occasional transaction (articles 7 and 8 of the AML Law) or before the establishment of the business relationship (Article 17 of the Instruction). They do not explicitly allow financial institutions to complete their verification of the identity of customers and beneficial owners after the establishment of the business relationship.

142. Criterion 10.16 [partially met] –The AML Law does not provide for the modalities of its application by obligated entities with respect to their existing customers. Article 17 of the Instruction requires obligated entities to identify and verify the identity of existing customers and their beneficial owners as soon as practicable and at least in the following four situations: (i) when performing a significant transaction; (ii) in the event of a material change in the operation of the account; (iii) if the obligated entity does not have identification documents; or (iv) when the standards for customer identification documents change substantially. These situations do not take into account the ML/TF risk posed by the customer or, with the exception of the third case, due diligence measures already implemented, which go beyond the identification of the client alone.

143. Criterion 10.17 [not met] – Article 22 (2) of the Instruction requires obligated entities, without further specification, to apply enhanced due diligence measures with respect to PEPs, see Recommendation 12, *infra*. With the exception of what is in this provision, the Malagasy regulations do not require financial institutions to implement a risk-based approach in the implementation of their customer due diligence obligations.

144. Criterion 10.18 (N/A) – Madagascar has not implemented a risk-based approach.

145. Criterion 10.19 [largely met] – Article 9 of the AML Law specifies that, as a result of verification measures, where there is doubt as to the identity of the beneficial owner, the credit or financial institution must terminate the business relationship and, if appropriate, submit a suspicious transaction report. The AML Law does not specify the actions to be taken in other situations. The instruction states that in the event of 'identification problems' that are not resolved within 20 days, the client's account must be closed and a suspicious transaction report must be sent to SAMIFIN.

146. Criterion 10.20 [not met]– Malagasy regulations do not authorize financial institutions to fail to fulfill their obligations to their clients when this could alert the client to the financial institution's ML/TF suspicions.

Weighting and Conclusion

147. Despite improvements brought by the instruction, many deficiencies remain in the area of customer due diligence. The most important ones are as follows 1) the absence of a requirement that financial institutions implement due diligence measures in all the cases provided for in R.10; 2) the due diligence measures imposed by law and in the instruction do not extend to the identification of the beneficial owner, as defined by the FATF, or to constant vigilance with regard to the business relationship; 3) lack of specific due diligence measures applicable to legal persons, legal arrangements and life insurance contracts; 4) lack of a risk-based approach; and 5) the requirements of the instruction do not apply to the insurance sector, CEM and postal financial services
Recommendation 10 is rated non-compliant.

Recommendation 11 – Record Keeping

148. Criterion 11.1 [met]– Article 11 of the AML Law requires credit and financial institutions to keep records of transactions for at least five years after their execution. Article 46 of the Instruction

completes this requirement and states that it covers the following: domestic and international transactions, incomplete transactions and those conducted by occasional customers. Manual money changers are additionally required to record in chronological order all transactions, their nature and amount, as well as the client's first and last names and the reference [number] of the identity document presented, in a register. This register must be kept for at least five years after the last transaction (Article 14).

149. Criterion 11.2[partially met] – Article 11 of the AML Law also covers the retention of documents relating to the identity of customers (Article 14 for manual money changers) and of the reports on unusual transactions referred to in Article 10 of the AML Law. Neither the law nor the instruction mentions the ledgers, commercial correspondence or any analyses carried out (with the exception of those carried out with respect to unusual transactions).

150. Criterion 11.3 [largely met]– It is not explicitly stated that transaction records must be sufficient to allow the reconstruction of transactions, but this can be inferred from the wording of section 46 of the instruction, which requires that 'all the documents relating to transactions [...] must be retained'.

151. Criterion 11.4 – Pursuant to Article 11 of the AML Act, only the FIU can access the relevant records. Article 12 of the AML Law on the Disclosure of Documents determines the access of other competent authorities, in particular the CSBF, to such records, which requires the authorization of the FIU. On the other hand, Article 47 of the Instruction states that all documents and information relating to customers and transactions must be made available to the competent national authorities for the performance of their duties. The relationship between these two provisions is uncertain. In addition, it is not required that information and documents be made available swiftly to the competent national authorities.

Weighting and Conclusion

152. The recordkeeping requirement does not cover ledgers, business correspondence, or any analysis of customer transactions. The arrangements for national competent authorities other than the FIU to swiftly access information and documents are not clear. **Recommendation 11 is rated partially compliant.**

Recommendation 12 – Politically Exposed Persons

153. A politically exposed person (hereinafter PEP), is defined by the instruction as 'a person who is exercising or has exercised important public office'. Examples of these important public functions are given; these are heads of state and government, high-ranking politicians and military officials, public enterprise leaders and political party leaders. It should be noted that all judges of the judiciary, administrative and financial are also involved, regardless of their rank. The notion therefore applies to Malagasy and foreign PEPs. The quality of PEP is lost five years after termination of duties.

154. Criterion 12.1 [partially met] – Articles 21 and 22 of the instruction require reporting institutions to the following:

1. have risk management systems in place to determine whether a potential client or its beneficial owner is a PEP;
2. seek the authorization of the executive body before entering into a business relationship with a PEP;

3. take all reasonable steps to identify the origin of the assets and funds of the clients and beneficial owners of the clients identified as PEPs; and
4. apply enhanced due diligence measures to PEPs, especially those with leading national functions.

155. The system does not require financial institutions during a business relationship to search whether a customer has become a PEP. Therefore, the authorization of the executive body is not required for the continuation of the business relationship. As regards the beneficial owner, the deficiencies of the notion of beneficial owner under Recommendation 10 are also relevant. In addition, the search for wealth information and source of funds does not extend to PEPs who are the beneficial owners of customers of reporting institutions. Finally, as described in criterion 10.7, *supra*, the obligation to exercise constant vigilance is limited to the detection of atypical transactions.

156. Criteria 12.2 et 3 [partially met]–The measures described above also apply to national PEPs; the definition given in the instruction does not distinguish between domestic and foreign PEPs. On the other hand, the instruction does not deal with persons exercising or having held important positions within or on behalf of an international organization. The measures also apply to a few close family members: the spouse and children, and any natural or legal person clearly linked to PEP.

157. Criteria 12.4 [not met]– No provision imposes specific measures applicable to beneficiaries of life insurance contracts.

Weighting and Conclusion

158. The obligations relating to PEPs include some shortcomings. They only apply to credit institutions and financial institutions subject to the supervision of the CSBF. In addition, they only target new customers. Other shortcomings with respect to the beneficial owner and enhanced monitoring of the business relationship with PEP arise from the shortcomings in the law described in Recommendation 10. **Recommendation 12 is rated partially compliant.**

Recommendation 13 –Correspondent Banking

159. Criterion 13.1 [largely met] –Article 37 of the Instruction requires that reporting institutions, before any transaction with a correspondent bank, take adequate measures to gather sufficient information about the correspondent in order to understand the nature of its activities and on the basis of available public information, to evaluate the reputation of the correspondent, which implies whether the correspondent has been the subject of an investigation or intervention by the AML / CFT supervisory authority. Reporting institutions must also assess the AML /CFT controls put in place by the correspondent. Finally, the authorization of the executive body is required before the establishment of any new correspondent banking relationship. On the other hand, financial institutions are not obliged to understand the respective responsibilities of each institution with regard to AML / CFT.

160. Criterion 13.2 [not met] – The regulations do not deal with passing accounts.

161. Criterion 13.3 [partially met] –The establishment and continuation of correspondent banking relationships with shell banks are prohibited by Article 39 of the Instruction. Fictitious banks are defined as banks incorporated or licensed in countries and territories where they have no physical presence and which do not belong to a financial group subject to effective consolidated AML / CFT supervision. The definition used by the instruction goes beyond the definition of the FATF. In addition, Article 40 of the instruction requires regulated institutions to ensure that financial

institutions that are their clients abroad do not permit shell banks to use accounts. This obligation applies to customers of reporting institutions, but does not cover correspondent banks.

Weighting and Conclusion

162. Financial institutions are not obliged to understand their AML/ CFT responsibilities, as well as those of their correspondent banks. Transit accounts should be subject to AML / CFT regulation. Finally, financial institutions should be required to ensure that their correspondent banks do not allow shell banks to use their accounts. **Recommendation 13 is rated partially compliant.**

Recommendation 14 – Money or Value Transfer Services

163. Criterion 14.1 [met] – Funds or value transfer in the Malagasy law constitutes a banking operation, reserved to credit institutions - Article 10 of the Banking Law. In addition to credit institutions, the CEM and the Post Office Financial Services provide money or value transfer services.

164. Criterion 14.2 [partially met] - The Banking Law defines the powers of the CSBF as providing compliance with the banking monopoly provisions. Under Article 10, it is prohibited for any natural or legal person, other than a credit institution, to conduct banking operations on a regular basis. The sanction of this prohibition is three months to two years imprisonment, and an MGA 4 to 100 million fine, or one of these two penalties. The court may also order the closure of the institution where the offense was committed. In the event of a repeat offense, the maximum penalty is increased to five years imprisonment and a MGA 200 million maximum fine. There is no mechanism to enforce and, where appropriate, punish persons who exercise funds or value transfer activities without being authorized.

165. Criterion 14.3 [partially met] - Authorized credit institutions that provide their clients with funds or value transfer services are subject to the supervision of the CSBF under the conditions defined by the banking law. CEM is not supervised and the postal financial services are under the supervision of the Ministry of Finance. Remittance or transfer of funds services are subject to the control of the Ministry of Finance. The standards applicable to them, including those relating to AML, are the same as those applicable to credit institutions. Subcontracting contracts linking a fund transfer service to a Malagasy establishment are previously sent to CSBF for information. No information was provided to the assessment team about on-the-spot checks by the Ministry of Finance.

166. Criterion 14.4 [met]- Funds and value transfer services operating in Madagascar enter into a partnership with one or more of the credit institutions, the CEM or the postal financial services, the networks of which they use. Credit institutions are authorized by the CSBF.

167. Criterion 14.5 [partially met] – It has not been established that money or value transfer services involve their agents in their AML/CFT program and monitor compliance, but it must be noted that the agents are credit institutions, the CEM or postal financial services, which are themselves subject to the AML Law.

Weighting and Conclusion:

168. Madagascar does not have a mechanism for enforcing and punishing persons engaged in funds or value transfer without being authorized. No information is available regarding the supervision of money and value transfer services by the Ministry of Finance. Relationships between services and their partners are not fully regulated. Money and value transfer services rely on credit institutions, CEM or postal financial services, which are subject to AML/CFT obligations and, for

credit institutions, whose compliance with these obligations is supervised. **Recommendation 14 is rated partially compliant.**

Recommendation 15 – New Technologies

169. Criterion 15.1[not met] –The AML Law does not provide for any specific measures regarding the identification and assessment of ML/TF risks that may result from the development of new products and new business practices, including new distribution mechanisms and use of new or developing technologies related to new products or pre-existing products. However, SAMIFIN conducted an ML/TF risk analysis related to mobile banking, and the law no. 2016-056 on electronic money and electronic money institutions was voted on 16 December 2016 and promulgated on 2 February 2017. While several institutions and involved were consulted during the drafting process of the draft law, there is no requirement for financial institutions to adopt policies or take the requisite steps to identify and assess the ML/ TF risks which may result from the development of new products and new business practices.

170. Criterion 15.2 [not met] - The AML Law is silent with respect to the obligation of financial institutions to assess risks before launching or using these products, practices and technologies and to take appropriate measures to manage or mitigate such risks. The instruction, however, specifies in its Article 33 that reporting institutions must have an automated system for monitoring unusual transactions supported by electronic money (which also includes mobile financial services). In this case, the anomalies noted which are related to the circulation of the electronic money must be communicated to the issuing institution, SAMIFIN as well as the CSBF.

Weighting and Conclusion:

171. Financial services by mobile telephony are booming in recent years in Madagascar. SAMFIN noted in its report the opacity surrounding the origin of funds circulating through mobile banking, the disguise of the malicious people involved, and the absence of effective mechanisms to control repetitive operations. To this is added the reluctance of some IOBs and principal banks to collaborate. All these factors make electronic money particularly vulnerable to ML / TF risks. **Recommendation 15 is rated non-compliant.**

Recommendation 16 – Electronic Transfers

172. Criterion 16.1 [partially met] –Article 34 of the Instruction requires reporting institutions to obtain, verify and retain the name, bank account and address of the payer of any transfer. It must also be noted that this obligation applies only to customers in business relationship and excludes occasional customers, who do not have a bank account. In accordance with the provisions of Article 35, all the information on the payer must appear on the message or form accompanying the transfer. There is no obligation to specify which information relating to the beneficiary must accompany the transfers.

173. Criterion 16.2 - [not met] No specific obligation applies to batch transfers.

174. Criteria 16.3 et 16.4 - [N/A] There is no threshold applicable to transfers.

175. Criteria 16.5 et 16.6 - [not met] Article 36 of the Instruction provides that domestic transfers include either the complete originator information required by Article 34 or only the account number. In this case, the originator's institution must provide the full details of the payer to the beneficiary's financial institution, upon request, within three working days. The instruction does not mention the communication of this information to the competent authorities or specify that the

account number must allow to reconstruct the route of the transaction. Powers of criminal prosecution authorities, see Recommendation 31, *infra*.

176. Criterion 16.7 -[not met] In the absence of specific provisions applicable to electronic transfers, the general provisions relating to the retention of documents and information relating to transactions are relevant. See Recommendation 11, *supra*.

177. Criterion 16.8 - [not met] There is no provision prohibiting institutions to carry out a transfer if they are unable to comply with the above requirements.

178. Criteria 16.9 à 12 - [not met] No obligation is imposed on intermediate financial institutions.

179. Criteria 16.13 à 15 [not met]- No obligation on the beneficiary's financial institutions.

180. Criteria 16.16 à 17 [not met]- There is no obligation on the operators of money or securities transfer services.

181. Criterion 16.18 [not met] - Financial institutions holding the funds of individuals, groups, enterprises or entities referred to in the summary list of the Committee created by the Security Council Resolution 1267 shall immediately freeze them upon receipt of the notification of the order and warn SAMIFIN. There is no mechanism taken to apply Resolution 1373.

Weighting and Conclusion

182. There are many deficiencies in the electronic transfers system, in particular as regards the following: the information required on the payer when it does not have an account; the required information on the beneficiary of a transfer; batch transfers; the obligations of the intermediary financial institutions and the beneficiary and the funds or values transfer services. **Recommendation 16 is rated non-compliant.**

Recommendation 17 - Use of Third Parties

183. Criterion 17.1 [partially met]- Article 11 of the instruction authorizes reporting institutions to use third parties for the "identification of certain clients". No details are given as to the clients or categories of clients targeted. Article 12 continues and requires reporting institutions to ask third parties for information relating to the identification of each client and their actual beneficiary, as well as information on the purpose and nature of the established business relationship, and to ensure that third parties are subject to AML / CFT regulation and supervision at least equivalent to their own, and that they actually apply it. It must be noted that Article 11 seems to limit the vigilance measures entrusted to third parties in the identification of clients, while Article 12 also mentions the purpose and nature of the business relationship. Writing the obligation to ask third parties for information about each client is strange. The article does not provide for the communication of client information upon request and without delay. Reporting institutions are not required to ensure that the third party has taken measures to comply with the duty of diligence and preservation of documents and information.

184. Criterion 17.2 [not met] - The Malagasy authorities do not determine the countries in which third parties that comply with the above conditions may be established.

185. Criterion 17.3 [not met] - The case of using a third party belonging to the same financial group is not provided for by the regulations in force.

Weighting and Conclusion

186. The regulations do not make it possible to ensure that an establishment that uses a third party to implement its due diligence obligations, whose scope is otherwise confused, will receive upon request and without delay a copy of identification and other documents relating to the duty of care to customers. The Malagasy authorities do not determine the countries in which third parties who fulfill the requisite conditions can be established. **Recommendation 17 is rated partially compliant.**

Recommendation 18 – Internal Controls and Foreign Branches and Subsidiaries

187. Criterion 18.1 [partially met]- With regard to internal control, the AML Law requires credit institutions and financial institutions to establish internal anti-money laundering programs, including the centralization of information on the identity of customers and payers, the ongoing training of employees and the establishment of a system of internal control of the application and effectiveness of the measures adopted. Article 39 of the FLT extends these measures to terrorism financing. The instruction specifies the roles and responsibilities of the credit institutions and financial institutions subject to the control of the CSBF. In particular, it provides that subject institutions must exercise constant vigilance and have internal organization and procedures to ensure compliance with the requirements of the AML Act. In particular:

1. Each reporting institution shall adopt written rules describing the AML /CFT requirements to be complied with and giving information on the types of clients and the sums and nature of the transactions which must be subject to special vigilance;
2. the internal rules relating to the due diligence to be carried out may be adapted to the nature of the clients of the reporting institution, in particular when the said customers themselves are governed by the instruction;
3. a monitoring system for verifying compliance with the internal procedures provided for above must be put in place in each reporting establishment;
4. the duties of the corresponding person (s) of SAMIFIN and CSBF must be clearly formalized;
5. Reporting institutions must ensure the information and training of all relevant members of their staff.

188. In addition, under Article 9 of the Instruction, each reporting institution must designate an AML/CFT officer to ensure the consistency and effectiveness of its preventive mechanism and to report directly on its mission to the management. To this end, it is particularly responsible for advising the management and, where appropriate, the employees of the institution in the development and implementation of the policies and procedures put in place in application of the AML/CFT texts, in staff training in the assessment of suspected cases as well as, in general, on all AML/CFT issues.

189. The instruction further specifies that the AML/CFT officer shall have the requisite resources and independence to undertake these missions. For this purpose, its duties and those of its employees shall be specifically formalized and prevent any conflict of interest with the missions defined in the first paragraph of Article 9 of the Instruction. The manager and his staff must have access to the customer identification data and all the information they deem requisite for the performance of their missions.

190. Where the size of the reporting institution does not warrant the assignment of responsibility for the AML / CFT preventive mechanism to a specially designated person, the

executive body, under the supervision of the Board shall provide the coordination of all the systems that contribute to the exercise of this mission.

191. Article 10 of the Instruction provides that each establishment must have a training program for its employees assigned to AML/CFT. The content and frequency of these training courses must be adapted to the nature of the risks incurred by the institution as well as to the sensitivity of the functions held by the different employees. Special attention must be paid to newly hired employees and those in contact with customers. Conversely, there is no obligation to have policies and procedures that promote a high degree of ethics and professionalism among the employees involved.

192. In the insurance sector, only the AML Law applies; no instructions were issued by the Ministry of Finance, supervision and monitoring authorities of the sector.

193. Law no. 2016-056 on electronic money institutions provides that these institutions acquire a structure of internal and external controls adapted to the specific nature of the activity (Article 29) and provide training for their agents (Article 31). The instructions of the CSBF specifying the obligations of the electronic money institutions were not adopted during the drafting of this report, the law having been adopted in December 2016.

194. Criterion 18.2 [largely meet]-The instruction contains certain provisions applicable to financial groups. Art. 7 provides that reporting institutions shall have policies and procedures in place at the level of the parent company or, where applicable, at the level of the central body ensuring that their subsidiaries, branches and affiliated institutions are effectively protecting themselves against the ML/TF risks. These policies and procedures must be adapted to take account of the specificities of each subsidiary, branch and affiliated establishment: country of establishment, nature of the activities conducted, etc. They must also include provisions for communicating to the headquarters or central body the information requisite for AML/CFT throughout the group. Conversely, the confidentiality of data exchanged in the field of AML / CFT is not provided for. In addition, when a reporting institution has subsidiaries, branches or affiliated institutions, it designates an AML/CFT officer responsible for the entire group and specifically responsible for the proper application of the provisions of the above-mentioned instruction.

195. Criterion 18.3 [largely met] - The instruction is not explicit about the obligation for financial groups to ensure that their foreign branches and majority foreign subsidiaries apply the standards of the country of origin when those of the host country are less restrictive. This text is limited to the requirement for foreign branches and subsidiaries to communicate to their head office the provisions of the host country that oppose the implementation of some or all of these policies and procedures. The headquarters must then inform SAMIFIN and CSBF. It is also stipulated that reporting institutions must be particularly attentive to all transactions with bodies whose standards are not adequate, and take account of the list of countries and bodies whose legal and administrative framework is deemed not to comply with the FATF recommendations.

Weighting and Conclusion

196. The instruction and the CFT law have made it possible to extend the AML law prevention mechanism, including the internal control standards, to TF aspects. However, there are still gaps, in particular the texts in force do not explicitly provide for an audit of the LBC/FT set-up, mention the obligation to ensure the confidentiality of AML / CFT data exchanged, or to have policies and procedures that promote a high degree of ethics and professionalism of the employees involved.

Recommendation 18 is rated largely compliant.

Recommendation 19 – Countries with a Higher Risk

197. Criterion 19.1 - (partly met) Art. 10 of the AML Law states, without further precision, that "particular vigilance shall be exercised in respect of transactions originating from financial institutions or institutions that are not subject to sufficient customer identification obligations or control of transactions ". Article 7 of the Instruction requires reporting institutions to be particularly attentive to all transactions with agencies with inadequate standards and to take into account the list of countries and bodies whose legal and administrative framework is considered non-compliant or inadequately compliant with FATF Recommendations.

198. Criterion 19.2 - (partly met) Article 7 of the Instruction requires institutions subject to CSBF control to pay particular attention to any transactions with agencies with inadequate standards and to take into account the list of countries and organizations whose legal and administrative framework is deemed to be inconsistent with the FATF Recommendations. Article 32 provides that special care to establish the origin of the sums in question must be exercised in respect of all transactions from or to financial institutions located in countries which do not apply or insufficiently apply the FATF Recommendations.

199. Criterion 19.3 - (not met) There are no measures in Madagascar to inform financial institutions about the concerns raised by AML/CFT systems of risk countries

Weighting and Conclusion

200. Faced with countries with a high risk of ML/TF, the Malagasy system allows only a limited margin of maneuver: the AML Law does not seem to allow the implementation of the countermeasures decided by the FATF and the provisions of the instruction are not applicable to the entire financial sector. **Recommendation 19 is rated partially compliant.**

Recommendation 20 – Reporting of Suspicion Transactions

201. Criterion 20.1 - (met) Pursuant to Article 3 of the AML Law, persons who, in practicing their profession, conduct, control or advise transactions involving the movement of capital; public banking and financial institutions; postal services; insurance companies; mutuals; stockbrokers; and manual money changers are required to notify SAMIFIN when it appears to them that monies, or transactions related to those monies, could be derived from offenses provided for in Articles 95 to 97, 100 and 101 of Law 97-039 of 4 November 1997 on the control of narcotic drugs, psychotropic substances and precursors in Madagascar or organized transnational crime (the latter is defined by Article 22 et seq. of the CFT Law). Article 19, on the obligation to report suspicious transactions, requires any natural or legal person referred to in Article 3 to report to SAMIFIN on funds that appear to be derived from the commission of an offense or a crime, including the financing of terrorism (Article 39 of the CFT Law). The requirement applies to completed transactions, even if it was impossible to postpone their carrying out or if it only appeared after the transaction was carried out that it was related to suspicious funds. Any information tending to reinforce the suspicion or to cast doubt upon it must be declared without delay.

202. Criterion 20.2 - (largely met) the AML Law does not establish a threshold for STRs. It does not expressly state that attempted transactions could give rise to an STR.

Weighting and Conclusion:

203. The relevant articles cover a large part of the requirements of R.20, except for attempted transactions. **Recommendation 20 is rated largely compliant.**

Recommendation 21 – Disclosure and Confidentiality

204. Criterion 21.1 - (met) Article 23 of the AML Law provides for a system of immunity as a result of statements made in good faith. It is stipulated that no proceedings for breach of bank or professional secrecy may be instituted against persons or officers and employees of reporting entities who, in good faith, have transmitted information or made the declarations provided for in the provisions of the AML law. This exemption applies even if investigations or judicial decisions have not given rise to any conviction and damage, whether material or immaterial, that may result from the blocking of an operation made under the conditions of Art. 21 of the law. In this case, the State shall be liable for the damage suffered under the conditions and within the limits provided for by national legislation.

205. Criterion 21.2 - (met) The AML Law punishes with a 1 to 5 year prison sentence and a fine ranging from MGA 20,000 to 1 million or only one of these two penalties those persons and managers or agents of the reporting entities who knowingly provide information on the reports that they are required to make or on possible follow-on actions to the owner of the monies or to the person who initiated the suspicious transaction.

Weighting and Conclusion:

206. **Recommendation 21 is rated compliant.**

Designated Non-Financial Businesses and Professions

Recommendation 22 – Designated Non-Financial Businesses and Professions: Customer Due Diligence

207. Criterion 22.1 - [not met] **Casinos:** The provisions of Article 15 of the AML Law require casinos to ensure the identity of players carrying out transactions in excess of MGA 3 million (approximately EUR 815 and USD 921) by the presentation of a valid official photograph bearing document, of which a copy is taken. See also R.10, criterion 3, *supra*.

208. **Other categories referred to in Article 3 of the Law:** unlike to casinos, no specific provision relating to the identification of customers applies to the other categories referred to in Article 3 of the Law (it must be noted that the provisions Articles 7 and 8 described under Recommendation 10 specifically apply to credit institutions and financial institutions).

209. Criterion 22.2 - [not met] **Casinos:** Article 15 of the AML Law also requires casinos to record in a register in chronological order all transactions in excess of MGA 3 million (approximately EUR 815 and USD 921), as well as their nature, amount, names and surnames of customers and references of the identity document presented, and they must be kept for at least five years after the last transaction.

210. **Other categories referred to in Article 3 of the Law:** There is no obligation regarding the retention of data.

211. Criterion 22.3 - [not met] No requirement for politically exposed persons applies to designated non-financial businesses and professions (the instruction, namely the provisions of Articles 21 and 22 as described in Recommendation 12, *supra*, applies exclusively to credit institutions and any financial institution subject to CSBF control).

212. Criterion 22.4 - [not met] No requirement for the risks posed by new products and technologies applies to designated non-financial businesses and professions.

213. Criterion 22.5 - [not met] No requirement relating to use of third parties applies to designated non-financial businesses and professions.

Weighting and Conclusion

214. Only casinos have diligence obligations; these are limited to the obligation of customer identification and data retention. **Recommendation 22 is rated non-compliant.**

Recommendation 23 – Designated Non-Financial Businesses and Professions: Other Measures

215. Criterion 23.1 - [partly met] The obligation to report suspicion of Article 19 of the AML Law applies to any natural or legal person referred to in Article 3. It therefore applies to the categories of reporting designated non-financial businesses and professions (this does not cover trust and corporate service providers or dealers in precious stones and precious metals). These categories are: casinos, real estate agents, lawyers, notaries and other independent and accounting legal professionals when they are in the cases covered by the AML Act (i.e., when they conduct, control or advise in operations involving deposits, exchanges, investment, conversions or any other capital movements), which does not cover all the situations envisaged by the FATF (see R.22, *supra*).

216. Criterion 23.2 - [not met] No obligation relating to internal control applies to designated non-financial businesses and professions.

217. Criterion 23.3 - [not met] No obligation to apply enhanced due diligence measures applies to designated non-financial businesses and professions.

218. Criterion 23.4 - [met] The rules relating to the protection of registrants and the prohibition of disclosure applicable to covered non-financial businesses and professions are the same as those applicable to the financial sector. See Recommendation 21, *supra*.

Weighting and Conclusion

219. The scope of the suspicious transaction reporting obligation does not cover all designated non-financial businesses and professions, or all situations in which they should be subject to the AML / CFT regime. In addition, the covered non-financial businesses and professions have no obligations relating to internal control and to enhanced due diligence. **Recommendation 23 is rated non-compliant.**

Recommendation 24 – Transparency and Beneficial Owners of Legal Entities

Basic Information

220. Decree implementing Law no. 99-025 of 19 August 1999 on corporate transparency was adopted and entered into force.

221. Criterion 24.1 (partly met) - Madagascar does not have a mechanism that identifies and describes (a) the different types, forms and basic features of legal entities and (b) the procedures for creating such legal persons. Conversely, the texts governing the law of Malagasy companies and associations are readily available on line⁴⁸.

⁴⁸ <http://www.edbm.gov.mg/fr/Textes-reglementaires/Droits-des-societes>, accédé le 27 juin 2016.

222. Criterion 24.2 (not met) - Madagascar has conducted no ML/TF risk assessment for the different categories of legal persons established in the country. The prosecution authorities and SAMFIN have expressed concerns about the use of legal persons in money laundering schemes, especially through the use of nominees. Such concerns, however, did not lead to an analysis of specific risk.

223. Criterion 24.3 (largely met) - Article 5-1 of Law no. 99-025 provides for the registration, amongst others, of commercial companies and economic interest groups having their headquarters on the Malagasy territory; commercial companies the head office of which is located abroad and which have an establishment in Madagascar, and public industrial and commercial establishments. It follows from the provisions of Law no. 2001-026 of 3 September 2004 on the partnership agreement and civil society that civil societies must also be registered. Conversely, Article 892 of Law no. 2003-036 on commercial companies and Article 67 of Law no. 2001-026 authorize the partners of a corporation to decide that it will not be registered or the subject of any publicity measure (nor will it have legal personality). Such a company is called an undeclared partnership (*société en participation*); it obeys the rules applicable to civil partnerships or those applicable to partnerships (*Société en nom collectif*), depending on whether it is civil or commercial in nature.

224. Pursuant to the provisions of Article 5-2 of Law no. 99-025, the Trade and Companies Register is kept by the registry of each court of first instance. There is also a national register with the Ministry of Justice, which contains the information contained in the local registers. The register is computerized. For companies, it includes the following information: legal form and, if applicable, the specific legal status, trade name or corporate name, the nature of the activity performed, the address of the registered office and, if such office is not located within the jurisdiction of the court, that of the principal institution in the jurisdiction, the capital, the name of the partners of the partnerships and that of the social officers. For economic interest groups and other legal entities, the following information is recorded: the name, purpose and address of the head office. Article 5-3 state that registrations are made in the register for the public to know. In addition, any registration within one month gives rise to a publication in a newspaper by the declarant. The national register is available on the internet: <http://www.rcsmada.mg/>; access to some information is paid for.

225. Criterion 24.4 – (not met) Companies are not obliged to keep information such as the corporate name; proof of incorporation, legal form and status, address of their registered office, operating rules and list of members of the board of directors. Regarding their shareholders or members, Article 562 of the law no. 2003-036 refers to a register of nominal shares of a public limited company, but no record keeping obligation is imposed.

226. Criterion 24.5 – (partly met) Article 5-5 paragraph 5 of Law no. 99-025 requires legal persons, within one month of their occurrence, to request the registration of any act or act modifying a prior registration. The following paragraph provides that legal persons must provide the necessary supporting documents in support of its application. Under the provisions of Article 5-7, the registry in charge of the commercial and companies register verifies that applications are complete and verifies the compliance of the requests with the supporting documents produced. In addition, the Registry, pursuant to the provisions of Article 41 of Decree no. 2008-440 on the trade register of companies and the advertising of the credit movable, may verify at all times the permanence of the exactitude of the information. Any false declaration, inaccurate or incomplete information with a view to the registration, deletion or modification of an entry is sanctioned with a FMG 500,000 to 5 million fine. The amounts are doubled in case of recidivism. There is no obligation on the register to respect deadlines.

Information on Beneficial Owners

227. Criteria 24.5 to 24.9 – (not met) There is no mechanism to ensure that information on beneficial owners of a company is obtained by that company and available, or that beneficial owners can be identified in a timely manner by the competent authorities. See also R10 above.

228. Criterion 24.10 - [met] Criminal prosecution authorities have power of access to all information in the course of an investigation. See also Recommendation 31, *infra*.

229. Criterion 24.11 - [not met] Article 35 of the Commercial Code authorizes bearer shares. However, Article 4 of the AML Law prohibits bearer securities in excess of MGA 10 million (approximately EUR 2,793 or USD 3,086). Paragraph 2 however provides that, by decree of the Council of Government, derogations from this prohibition may be allowed.

230. Criterion 24.12 - [not met] No information has been communicated to the Assessment team regarding the shares registered in the name of nominees or directors acting on behalf of another person (*'nominee shareholders'* and *'nominee directors'*), whereas this practice exists in Madagascar.

231. Criterion 24.13 – [partly met] Article 5-13 of Law 99-025 provides for the sanctions applicable in case of false or incomplete declaration. A fine of 500.000 to 5 million MGA (or the double in case of repeated offence) is applicable to false or incomplete declaration made with a view to register, update or radiate a company.

232. Criteria 24.14 and 15 - [partly met] International cooperation and information exchange mechanisms (administrative and judicial) are applicable to information relating to commercial companies. However, no information was communicated to the assessment team on the implementation of this international cooperation and its quality.

Weighting and Conclusion

233. All companies under the Malagasy law are not registered in the Trade and Companies Register (i.e., undeclared partnerships). Madagascar has not conducted an assessment of the risks associated with different types of legal persons, in particular undeclared partnerships. The Trade and Companies Register does not include any information on beneficial owners. Companies are not required to keep a record of basic information and beneficial owners of the company. Sanctions applicable in case of false or incomplete declaration are not dissuasive. **Recommendation 24 is rated non-compliant.**

Recommendation 25 – Transparency and Beneficial Owners of Legal Constructions

234. Criteria 25.1 and 2 - [not met] The Malagasy law does not authorize trusts. However, it is possible that a foreign trust or similar arrangement owns property in Madagascar or that a Malagasy lawyer, or any other person, acts as a "trustee" (or manager) of property located abroad or in the country or else for a trust established under a foreign law. Faced with such situations, no specific measure is provided by law to identify the beneficial owner and ensure the transparency of transactions with regard to money laundering prevention measures.

235. Criteria 25.3 and 7 – (met) There is no requirement for trustees (foreign law governed trusts) to declare their status to financial institutions and non-financial businesses and professions when establishing a relationship or carrying out an occasional transaction in an amount greater than MGA 3 million.

236. Criterion 25.4 - [met] There appears to be no law preventing trustees (foreign law governed trusts) from providing competent authorities or financial institutions and non-financial businesses and professions with information about the beneficial owners and assets of the trust.

237. Criterion 25.5 - [partly met] In the absence of a specific obligation for trustees to declare their status to financial institutions and DNFBPs, information on beneficial owners, residence of the trustee and any assets held or managed by the financial institution or the designated non-financial business or enterprise can be obtained under an investigation, if the prosecution authorities discover the existence of the trust, and by using their usual investigative powers. See also Recommendation 31, supra.

238. Criterion 25.6 - [not met] As Madagascar is not cognizant of trusts in its internal law, the requests for providing information formulated by foreign authorities will by hypothesis involve only foreign trusts that are active in Madagascar. In this context, the Malagasy authorities will be able to provide the information they hold, but this may be limited or even non-existent given the absence of a specific obligation to declare the existence of a foreign trust.

239. Criterion 25.7 - [not met] There appears to be no provision for the legal liability of trustees (trusts under foreign law). In the absence of obligations, no sanction is applicable to trustees.

240. Criterion 25.8 - [not met] There appears to be no sanction applicable to trustees (foreign trusts) in the event of non-compliance with the obligation to make information on trusts available to the competent authorities.

Weighting and Conclusion

241. Madagascar does not have a legal framework applicable to trusts because these legal constructions are not familiar. Now, in the absence of an express prohibition, foreign trusts may nevertheless operate in Madagascar. These situations are not subject to any regulation, in order to, among other things, identify beneficial owners and ensure the transparency of transactions. **Recommendation 25 is rated non-compliant.**

242.

Recommendation 26 – Regulation and Control of Financial Institutions

243. Criterion 26.1 – (largely met) The Banking and Financial Supervision Commission (hereinafter CSBF) is the body responsible for supervising and monitoring credit institutions (Banking Law No. 95-030 of 22 February 1996), microfinance institutions (Law No. 2005-016 of 29 September 2005) and money changers (Ministerial Order No. 5651/96). CSBF is also in charge of the supervision of e-money institutions (Law No. 2016-056 on Electronic Money and Electronic Money Institutions); however, in the absence of the required implementation measures, supervision had not started at the time of the mission. The General Secretariat of the CSBF on behalf of the Commission provides the document based and on-the-spot supervision of credit institutions (Article 44 of the Banking Act) and microfinance institutions (Article 67 of Law 2005- 016). The General Secretariat has three operational divisions: the On-site Control Department, the Institutional Inspection Department and the Regulation and Studies Department; and a support department, the Methods, Procedures, and Databases Department. The Central Bank of Madagascar provides the general secretariat of the CSBF with its budget and its staff. The CSBF has the widest possible right of communication since it can ask the reporting institutions any information, clarification or justification necessary for the exercise of its mission (Article 42, paragraph 2 of the Banking Act). The on-the-spot checks may be extended to the subsidiaries of a credit institution and, where appropriate, to all other entities of the group to which the institution belongs (Article 46 (2)). For the purposes of exercising its controls, the General Secretariat may call on outside specialists to provide an opinion on one-off matters (Article 46).

244. The Ministry of Finance also provides the financial supervision of the insurance sector (Article 2 of Decree No. 2001-1120 on state supervision and the institutional framework of the insurance sector). It ensures that transactions carried out by insurance companies comply with the provisions of Law no. 99-013 of 2 August 1999 relating to the Insurance Code and the regulations applicable to them. This supervision is done on documents and on site.

245. The Ministry of Finance also provides the financial supervision for postal financial services (the Ministry of Posts provides the technical supervision). CEM is not supervised at all.

Market Entry

246. Criterion 26.2 - (met) In Madagascar, financial institutions subject to the Fundamental Principles shall be authorized.

247. **Credit Institutions** - The Banking Law designates the CSBF as the authority in charge of issuing and withdrawing authorizations from credit institutions (territorial or extra-territorial bank, financial institution, mutual financial institution). Pursuant to Art. 16 of the Banking Law, the exercise of the activity of a credit institution is subject to the authorization of the CSBF.

248. The authorization application file contains, namely, the draft articles of association, the list of shareholders and managers, the plan of actions, of establishment and organization, and the details of the technical, human and financial resources, the implementation of which is provided for, as well as any other element likely to inform the decision of the authorities, in particular the experience and the qualification of the future leaders. Approvals may be accompanied by suspensive conditions (e.g., the provision of missing documents). After one year, the authorization expires if the activity has not started. The instruction of CSBF 02/97 of 2 June 1997 specifies the practical arrangements.

249. **Microfinance Institutions** - For MFIs, Article 19 of Law no. 2005-016 provides that in accordance with the provisions of Article 16 of the Banking Act, the exercise of any microfinance activity is subject to one of the prior authorizations of the authority supervising the herein after credit institutions:

1. « License » issued for MFIs 1⁴⁹
2. «Authorization» issued for MFIs 2⁵⁰ and for MFIs 3⁵¹.

250. Applications for authorization to carry out microfinance activities are submitted directly to CSBF. The content of the application file for authorization to practice and the procedures to be followed are specified by the instruction of CSBF 002/2007 and 003/2007 of 11 May 2007. MFIs are required to register at the Trade and Companies Register as specified by decree.

⁴⁹ MFIs 1, whether mutual or non-mutual, grant short-term and medium-term microcredits up to the cap set by the supervisory authority of credit institutions. They may not collect a deposit from the public. They can however provide consulting and training services to their clients. They operate according to a simplified operating and control structure with a control device (Article 14)

⁵⁰ MFIs 2, whether mutual or non-mutual, grant short- and medium-term credits within the cap limits set by the supervisory authority of credit institutions. Mutual MFIs 2 may not collect deposits from the public. Non-mutualist MFIs 2 may receive funds from the public when they are formed as a limited liability company with a fixed capital and several shareholders (Article 15).

⁵¹ MFIs 3, whether mutual or non-mutual, grant short- and medium-term credits within the cap limits set by the supervisory authority of credit institutions Mutual MFIs 3 2 may not collect deposits from the public. Non-mutualist MFIs 3 may receive funds from the public when they are formed as a limited liability company with a fixed capital and several shareholders. MFI 3 operate with a developed operating and control structure and are required to comply with management rules and prudential standards (Art. 16).

251. **Insurance Companies** - Decree no. 2001-1120 requires that insurance companies have prior authorization. According to its Art.6, any application for authorization by a Malagasy company must include namely: (i) the list of branches and categories that the company proposes to practice; (ii) where applicable, an indication of the foreign countries where the company proposes to operate; (iii) a copy of the authentic deed constituting the business; (iv) the minutes of the constituent general meeting; (v) a certificate of the full payment of the capital or the establishment fund to a banking institution; (vi) the list of directors and managers, as well as of any person who is called upon to perform equivalent duties with the surnames, forenames, domicile, nationality, date and place of birth of each of them; and, (vii) an extract from their criminal record of less than three months issued by a competent judicial authority for the persons mentioned above.

252. Authorization is granted by the Minister of Finance after consulting the Insurance Board (Article 10). To issue its opinion, the Board takes into account, in particular, the good repute and qualification of directors and managers, as well as their qualifications and professional experience. It also seeks to know if these people have been the subject of either disciplinary sanctions taken by a supervisory authority or a competent professional organization, or a refusal of registration on a professional list.

253. **Manual Money Changers** - Order no. 5951/96 of 16 November 1996 relating to the opening of the bureaux de change sets the conditions of access to the profession of manual changer. The exercise of the activity of manual changer is subordinated to obtaining a license, issued by the CSBF. Applicants for a license must provide, in support of their application, several documents and information, in particular: (i) name, precise address of the administrative headquarters and the counters where the office plans to practice; (ii) regarding shareholders: a criminal record of less than 3 months and information on the distribution of capital; (iii) regarding executives: identity and criminal records that are less than 3 months old. If the application is made in the name of a natural person, the applicant must provide the promoter's address and curriculum vitae, as well as an extract from a criminal record. A description of the planned activities, the means implemented, the procedures for monitoring and controlling operations, and the planned banking relationships are also required.

254. **Paositra Malagasy** is a legal entity under public law created by Law no. 93-001 of 28 January 1994 (Articles 25 and 26). The Caisse d'Epargne de Madagascar is under Law no. 95 019 of 18 September 1995 a public limited company of which the Malagasy State is the sole shareholder.

255. **Financial Markets** - Not applicable.

256. **Electronic Money Establishments** - e-money activities require authorization as an electronic money institution granted by the CSBF (Articles 23 and 33 of Law No. 2016-056 on Electronic Money and Electronic Money Institutions). The procedures for granting the authorization for electronic money establishments are determined by the CSBF (Article 33 paragraph 3); it is not in force at the time of writing this report, the law no. 2016-056 having been voted in December 2016 and promulgated on 2 February 2017.

257. **Fictitious Banks** - Article 82 of the Banking Act punishes with a three month to two years prison sentence and/or an MGA 4 to 10 million (ie EUR 1,243 to 3,110 or USD 1,310 to 3,270) fine any person who contravenes the obligation to have an authorization to conduct the activities of credit institutions. The court may also close the institution where the offense is committed. This prohibition is supplemented by the instruction (articles 39 and 40) which provides that reporting institutions: (i) must not build or continue correspondent banking relations with so-called fictitious banks which are constituted and authorized in countries and territories where they have no physical presence, or belong to a financial group that is subject to effective consolidated supervision for ML /

TF prevention; and (ii) ensure that financial institutions that are part of their overseas clientele do not allow shell banks to use their accounts.

258. Criterion 26.3 – (partly met) Article 14 of the Banking Law, applicable to credit institutions, including microfinance institutions, stipulates that no one may be a member of the board of directors of a credit institution, either directly or by any intermediary, administer, lead or manage in any capacity, a credit institution, or have the power to sign on behalf of such an institution if, for example, it has been the subject of a conviction for crime, theft, fraud, breach of trust, forgery or forgery and falsification of private business and banking documents, for trade or bank, for misappropriation of public funds, extortion of funds and securities, bankruptcy, as well as for offenses against the narcotics legislation and money laundering of criminal origin. Shareholding changes in credit institutions are not monitored. Regulations do not provide for the examination of beneficial owners when applying for authorization and significant transfers of ownership. Existing diligences measures are limited. Although the risk of criminals taking control of banks is limited at the initial authorization stage (owing to the a priori controls provided for by the banking law, Article 14 above), it is conversely higher when changes in shareholding occur.

259. In the insurance sector, Decree 2001-1120 and the Insurance Code (Book IV, Chapter 2, Article 257) impose on managers the conditions of good repute, integrity and professionalism. The same applies to manual money changers, who must also provide evidence of no criminal history of shareholders and managers. In these two sectors, like for credit institutions, no control over the shareholders and managers is completed during the existence of the financial institution to ensure that it is not owned, controlled or led by criminals or their accomplices.

260. Measures to implement law no. 2016-056 on electronic money institutions provided for by law had not been adopted at the time of writing this report.

Risk-based Approach to Control and Monitoring

261. Criterion. 26.4 (a) – (largely met) Credit institutions are subject to AML / CFT regulation and supervision, but it has not been established that AML/CFT applies to the Core Principles, especially in case of transfer of ownership or acquisition, or of cooperation of CSBF with its foreign counterparts. Moreover, no approach taking account of ML/TF risks, whether in regulation or in supervision, is provided for in the texts. These remarks also apply to the insurance sector, for which it must be added that AML / CFT supervision is recent and embryonic. Neither the law nor the Instruction provide for the group supervision for AML/CFT purposes.

262. Criterion.26.4 (b) - (largely met) Other types of financial institutions: money changers, postal financial services, CEM and electronic money institutions are subject to AML / CFT regulation (the AML Law). The intensity of supervision varies: the CSBF supervises manual money changers and is designated as a supervisory authority for electronic money institutions, but had not started in the absence of implementing legislation. By contrast, the CEM is not subject to AML / CFT supervision.

263. Criterion 26.5 (a, b and c) – (not met) CSBF does not exercise risk-based AML / CFT supervision over institutions subject to its control.

264. The Ministry of Finance has only recently started AML / CFT supervision of insurance. It is not risk-based, even if it focuses on client files with the most significant amounts during its on-the-spot checks, believing that these could pose high risks.

265. Criterion 26.6 - [not met] There is no provision relating to ML / TF risk profiling of financial institutions or groups, and therefore no possibility to revise the ML / TF risk profile assessment of these same institutions and groups.

Weighting and Conclusion

266. The provisions on market access are insufficient because they do not ensure throughout the activity of financial institutions that they are not owned, controlled or managed by criminals or their accomplices. AML / CFT supervision does not take account of ML / TF risks. CEM is not subject to AML / CFT supervision. **Recommendation 26 is rated partially -compliant.**

Recommendation 27 – Powers of Controlling Authorities

267. Criterion 27.1 – (largely met) Financial institutions are subject to controls by independent and empowered authorities to control their activity. Credit institutions (including MFIs), e-money institutions and bureaux de change are under the supervision of CSBF (Articles 17 and 35 of the Banking Law, article 12 of the decree 5951/96 and articles 106 and 107 of Law 2016-056) and insurance is under the supervision of the Ministry of Finance (Article 222 of the Insurance Code). These provisions are general and provide that the CSBF and the Ministry of Finance are responsible for the supervision of the compliance of the relevant entities with all applicable legal requirements, which include AML/CFT requirements per the AML and CFT laws. Postal financial services are also under the supervision of the Ministry of Finance; however, it is unclear in the law that its authority extends to AML/CFT. Nevertheless, the Postal financial services accept the Ministry's authority in this area. The CEM is not subject to AML / CFT supervision.

268. Criterion 27.2 - (largely met) The Banking Law established the CSBF and entrusted it with the responsibility of ensuring the proper functioning of credit institutions and verifying the credit institutions compliance with the provisions applicable and of sanctioning the breaches found (Article 35). The CSBF is also the supervisory authority of the bureaux de change (article 12 of the decree 5951/96) and the electronic money institutions (Articles 106 and 107 of the law 2016-056). The insurance is subject to document-based and on-site inspection by the Ministry of Finance (Insurance Code, Book III). Decree no. 2001-1120 specifies the powers devolved to the Ministry of Finance in the control of insurance companies and intermediaries and their operations. AML / CFT does not appear explicitly among the topics subject to control by the CSBF or the Ministry of Finance, but it can be deduced from this: Article 35 of the Banking Act generally mentions "the provisions applicable" to credit institutions, and Article 223 covers "the provisions of this Code and other legal and regulatory provisions applicable to the [activity]" of insurance companies. On the other hand, Decree no. 5951/96 specifies in the case of manual money changers that the CSBF's audit covers "compliance with the provisions of this decree". The Ministry of Finance provides financial oversight for the postal financial services. As mentioned above, the Ministry's authority to conduct AML/CFT supervision is unclear in the law but accepted in practice (note, however, at the time of the onsite visit had not yet conduct any AML/CFT supervision of the Postal financial services).

269. Criterion 27.3 - (partly met)

270. **Credit Institutions** - According to Article 42 of the Banking Act, the CSBF may ask credit institutions, including MFIs (Article 17), for any information, clarification or justification requisite for the exercise of its mission. In particular, it may request the submission of the reports of the statutory auditors and, in general, all documents it may, as of need, request certification, together with any relevant information and documentation. Article 44 provides for CSBF to carry out document-based and on-site inspections of credit institutions.

271. **Manual Changers** – In accordance with the provisions of Article 12 of decree 5951/96, the CSBF "is entitled to require foreign exchange bureaux to provide all information and information

useful for its mission and to carry out on-the-spot checks. The bureaux de change are required to comply with its requests and to communicate all required documents. "

272. **Insurance** - Article 224 of the Insurance Code stipulates that the Minister of Finance organizes document-based and on-site inspections of insurance companies operating in Madagascar. However, to this end, it may only request the companies to submit the reports of the statutory auditors and, in general, all accounting documents of which he may, as of need, request certification. Companies must make available all these mentioned documents, as well as qualified personnel to provide the MoF with the information deemed necessary. When it is necessary for the exercise of its control mission and under the conditions determined by the Insurance Code, on-the-spot control may be extended to parent companies and subsidiaries of controlled companies and to any intermediary or expert involved in the insurance sector. Apart from these accounting documents, there is no other provision authorizing the Minister of Finance to compel production of AML/CFT information.

273. **Electronic Money Institutions** - In accordance with the provisions of Article 106, the CSBF may, as of need, request from electronic money institutions any information, clarification or justification requisite for the performance of its mission.

274. Criterion 27.4 - (met) Supervisors have the power to impose sanctions and have at their disposal a range of options in this regard (see details under Rec 35).

Weighting and Conclusion:

275. The above-mentioned supervisory authorities generally have a broad set of powers adapted to the control of financial sector actors, including the power to impose sanctions and compel the production of information. However, the CEM is not subject to ML/TF supervision. **Recommendation 27 is rated largely compliant.**

Recommendation 28 – Regulation and Control of Designated Non-Financial Businesses and Professions

276. Criterion 28.1 - [partly met] Article 15 of the AML Law requires that casinos be granted authorization prior to their exploitation. This provision is consistent with that of Article 1 of Law no. 71-011 of 30 June 1971 regulating gambling houses and fixing the tax regime of such houses, which provides that the authorization is granted by joint order of the Minister of the Interior and Ministers in charge of Finance and Tourism. It should be noted that the standard requires a license. Article 6 of the law also requires that the manager and members of the board of directors of the gaming establishment be authorized. These persons must be of age, enjoy their civil and political rights, have not been convicted of any crime or offense, and have never been declared bankrupt. What is more, the shareholders and executives of the casinos are subject to a background check conducted by the Ministry of the Interior. In addition to what involves managers and members of the executive committee, there is no provision (Law 71-011 or AML Law) for those who own or control gaming establishments. Supervision of the respect by the casinos is exerted by the Ministry of the Interior (Article 11 of the law n ° 71-011). It is not explicit in the law that surveillance extends to compliance by gaming institutions with their AML / CFT obligations.

277. Criterion 28.2 - [not met] Lawyers, notaries and accountants are respectively regulated by the Board of the Order, the General Prosecutor of the Court of Appeal and the National Chamber of Notaries, and the Board of the Order of Accountants and Financial Experts. All of them meet the criteria for SRB. Yet none of these authorities and agencies ensures that the companies and professions in their charge comply with their AML / CFT obligations. Only the National Chamber of

Notaries recognizes its responsibility in this regard. No self-regulatory authority or body ensures the monitoring and compliance by real estate agents with their AML / CFT obligations.

278. Criteria 28.3 à 28.4 - [partly met] **Lawyers:** The Board of the Bar Association performs many functions, including discipline of members of the profession, but no provision of law no. 2001-006 of 9 April 2003 organizing the legal profession describes the powers that can be implemented in this context. Article 31 of the Law deals with offenses and misconduct by trainee lawyers and Article 39 applies to breaches of the oath and breach of the secrecy of the investigation. The applicable sanctions are warning, reprimand, temporary ban and cancellation. However, it is not explicit that the disciplinary power of the Board of the Order extends to the respect by the lawyers of their obligations of the AML law. Measures to prevent criminals and their accomplices from entering the profession are limited to a morality inquiry (Article 23).

279. **Notaries:** Under the provisions of Article 113 of Law no. 2007-026 of 12 December 2007 on the status of notaries, the National Chamber of Notaries has a permanent power of control over the offices of notaries. Article 120 provides that notaries are placed under the supervision of the Public Prosecutor at the Court of Appeal of the jurisdiction. No provision describes the powers that can be used in the implementation of these articles. Disciplinary power is exercised by the Public Prosecutor and the National Chamber of Notaries (Articles 120 and 128); the applicable sanctions (Article 122) are call to order, prohibited re-offend, reprimand, temporary prohibition to exercise for a maximum 12 months and dismissal (the last two sanctions are pronounced by the Minister of Justice). The link between the powers of the Public Prosecutor and the National Chamber of Notaries is unclear and it is not explicit that breaches of obligations under the AML Law are covered. Access to the profession is restricted to persons enjoying their civil and political rights, who have not been convicted of acts contrary to honor, probity or morality, who have not been the subject of a disciplinary or administrative sanction, destitution, de-listing, dismissal or not having been sentenced to a penalty incompatible with the notarial function, and not declared in a state of bankruptcy, liquidation or receivership.

280. **Accountants:** Pursuant to the provisions of Section IV of Title I of Ordinance no. 92-047 of 5 November 1992 relating to the organization of the accounting and financial professions, the Board of the order of the accountants and financial experts supervises the exercise of the profession and exercises the disciplinary power on the accountants who commit misconduct (Article 48) and faults and offenses (Article 59). The powers that may be exercised in the supervision of the practice of the profession are not described and it is not explicit that violations of AML / CFT obligations fall within the scope of Articles 48 or 59. Access to the profession is reserved to persons enjoying their civil rights and who have not been convicted for acts contrary to honor, probity and good morals and because of illegal practice of the profession. In addition, persons wishing to practice the profession must declare that they have not been declared bankrupt or in a court of law and have not exercised the functions of manager, administrator or CEO of a company declared in bankruptcy or judicial settlement.

281. **Real Estate Agents:** The profession of real estate agent is not subject to any supervision.

282. Criterion 28.5 - [not met] Non-financial businesses and professions are not subject to ML / TF risk-based supervision.

Weighting and Conclusion

283. With the exception of real estate agents, all non-financial businesses and professions subject to the AML / CFT regime are subject to supervision by a competent authority (casinos) or a self-regulatory body (lawyers, notaries and accountants). However, it has not been established that the supervision exercised extends to compliance with AML / CFT obligations. Some measures are in

place regarding access to professions exercised by non-financial businesses and professions. Self-regulatory accounting and law bodies exercise disciplinary functions, but their powers are not clearly described and it is not established that the sanctions they may impose apply to AML/CFT obligations breach. **Recommendation 28 is rated non-compliant.**

Recommendation 29 – Financial Intelligence Units

284. Criterion 29.1– [met] The Financial Intelligence Unit (or SAMIFIN), was created by Articles 15 to 24 of the AML Law. Article 16 stipulates that SAMIFIN’s mission “is to receive, analyze and disseminate the reports to which are obliged the persons and bodies referred to in section 3 of the Act” (banks, other financial institutions and designated professions). Decree 2007-510 of 4 June 2007 on the creation, organization and operation of the Financial Intelligence Service made the SAMIFIN fully operational from July 2008. This decree was repealed and replaced by Decree 2015-1036 of 30 June 2015. Competent initially in money laundering and underlying offenses, the service is also responsible now, under the TF law, for terrorist financing.

285. Criterion 29.2 (a) – [met] As noted in criteria 29.1 SAMIFIN receives, analyzes and disseminates from obligated persons and bodies. These are suspicious transaction reports on money laundering and, since 2014, on terrorist financing. However, dealers in precious stones and metals and trust and corporate service providers are not subject to suspicious reporting requirements.

286. Criterion 29.2 (b)- [not met] SAMIFIN is entitled to receive information on import or export as well as cash declarations from the customs authority. However, SAMIFIN indicated to the evaluation team that it has not received any declarations of import and export, or cash declarations from customs.

287. Criterion 29.3 (a) –[met] The law grants SAMIFIN a right of communication that can be exercised with professionals subject to the reporting obligation (Article 17 of the law).

288. Criterion 29.3 (b) [met] SAMIFIN can also, on request and without the banking or professional secrecy being opposed to it, have access to the databases of the public authorities. SAMIFIN signed five memoranda of understanding with other government agencies to exchange information (Anti-Corruption Service, Tax Administration, Customs, Immigration, and Public Ministry). SAMIFIN has also signed several arrangements to exchange information with some of its foreign counterparts. It also has the opportunity to exchange information with the authorities responsible for the enforcement of disciplinary decisions and it is expressly provided in the decree that the service provides to CSBF and BIANCO all information of interest.

289. Criterion 29.4 (a) – [met] SAMIFIN conducts operational and strategic analysis. The operational analysis conducted following the receipt of the declarations to which are obliged the persons and bodies referred to in Article 3 of the Law (banks, other financial institutions and designated professions) is based on the additional analysis and information obtained from reporting entities, public administrations and public databases. At the end of this analysis, SAMIFIN submits to the Public Ministry facts that could constitute money laundering offenses.

290. Criterion 29.4 (b) – [met] SAMIFIN conducts strategic analysis and uses the available information by identifying trends and patterns in ML. This is stipulated in Article 3 of Decree No. 2015-1036 which confers to SAMIFIN the mandate to conduct research and gather additional information. The Decree also creates at Article 15 a strategic analysis unit responsible for, *inter alia*, “leveraging available information to identify risks and trends in money laundering and terrorism financing (...) and elaborate typologies of money laundering cases based on suspicious transaction reports that have been processed”. This includes the analysis of the geographical origin and the profile of the people implicated through STRs sent to the Public Prosecutor's Office, thematic studies

(on rosewood for example), typologies related to specific predicate crimes, as well as the amount at stake per sector of activity and per type of predicate offense.

291. Criteria 29.5 - [met] The college of senior managers determines whether a case is disseminated. The disseminated reports are sent to the attention of the Public Ministry (prosecution) in order to decide on the appropriateness of criminal prosecution. They may also be sent by the Director General to the tax or customs authorities, the anti-corruption or immigration services, or to the police authorities in charge of mining offenses or illegal deforestation. SAMIFIN also transmits to CSBF any information useful for the implementation of Article 33 of the AML law. Transmission is usually made physically to the competent authority by a SAMIFIN intelligence officer.

292. Criterion 29.6(a) [met]. To ensure the physical security of information, SAMIFIN has security agents and cameras inside and outside its premises. A security policy has been developed and addresses the physical and IT security of the organization and its information.

293. Criterion 29.6 (b) - [met] With respect to confidentiality, the law and the decree specify that SAMIFIN agents are bound to secrecy as to the information processed and that the information may not be used for purposes other than those provided for by law. Article 18 of Decree 2015-1036 of 30 June 2015 requires staff to take an oath to respect the confidentiality of information held by SAMIFIN. The personnel are also subject to control by the national police before and during the period of their duties. The obligation of confidentiality extends to former employees.

294. Criteria 29.6 (c) - [met] With regard to computer security, the Decree provides (Article 12) that the service shall set up a database on all relevant information regarding suspicious transaction reports, transactions carried out, persons carrying out said transactions, directly or through intermediaries. It states that this implementation is carried out in compliance with laws and regulations on the protection of privacy and on computer databases.

295. Only specialists in the IT department are allowed to enter the server room. Compliance with this rule is verified by the existence of specific keys, biometric codes and a logbook. They are also the only employees with access to the entire network, with other employees having only access to the spaces corresponding to their specific function or expertise. No machine connected to the SAMIFIN database can accept access from a USB key. The IT department organizes a four-hour training for employees to train them on how to use the network. At the end of this training, they sign an IT charter.

296. The information is backed up by an in-house replication server and an external cloud service. SAMIFIN has taken steps to ensure that the agreement with the service providers ensures the confidentiality of the information. However, some additional steps should be taken to better understand the existing risk.

297. Criterion 29.7 (a) - [met] Article 16 of the AML Law and Article 1 of Decree 2015-1036 provide that SAMIFIN is independent. It performs its operational functions and its administration independently. Article 2 of the decree gives it the power to receive, analyze and disseminate reports (including suspicious transactions) made by reporting entities.

298. The director general and the technical directors form the college of SAMIFIN. This college decides on the admissibility of suspicious transaction reports before forwarding them to the research and analysis department. It then decides, after the analysis and the additional investigations, of the referral to the competent authorities (in particular to the prosecution for the purposes of possible prosecution) or its closure. It may also order further investigations. The college may deliberate if two-thirds of its members are present and takes decisions by a simple majority, the

general director having the right to vote. In the event of a case, such as a TF case, three members of the college (including the director general) can decide how to proceed with a case.

299. Criterion 29.7 (b) [met] Article 18 of the Law stipulates that SAMIFIN may, subject to reciprocity, exchange information with foreign counterparts, when they are subject to similar obligations of secrecy and whatever the status of these services. SAMIFIN is also entitled to conclude cooperation agreements with these FIUs. When it receives a request for cooperation, it shall do so within the powers conferred upon it. SAMIFIN signed memoranda with six of its foreign counterparts and was able to exchange information without a memorandum with two of its counterparts. SAMIFIN maintains certain relations with foreign FIUs. SAMIFIN has established memoranda of understanding with 9 counterpart FIUs:

- the United Arab Emirates, signed on 13/06/2012,
 - Belgium, signed on 02/10/2012,
 - Thailand, signed on 23/10/2012,
 - Seychelles, signed on 02/11/2012,
 - China, signed on 28/04/2015,
 - South Africa, signed on 27/08/2015,
 - Malawi, signed on 27/12/2016,
 - Zambia, signed on 08/12/2016,
 - Mauritius (under approval)
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300. Criterion 29.7 (c) - [met] SAMIFIN is an independent agency and is not located within the structure of an existing authority.

301. Criterion 29.7 (d) [not met] SAMIFIN each year prepares its budget for the following year, which is included in the budget bill voted by Parliament. It has its own funds and bank accounts to carry out its missions without political interference. SAMIFIN has seen its budget fluctuate significantly between 2012 and 2016 (see effectiveness analysis). This lack of fiscal stability impinges on the autonomy of SAMIFIN and its ability to mobilize the resources requisite to perform its functions.

302. Criterion 29.8 – [met] SAMIFIN has reactivated its candidacy to the Egmont group with the help of two sponsors, France and Mauritius.

Weighting and Conclusion

303. The missions and legal means entrusted to SAMIFIN are generally in line with the requirements of Recommendation 29, but minor deficiencies persist. It carries out operational and strategic analyses. Functional independence is ensured by the composition and conditions of appointment (or dismissal) of the Chief Executive Officer and the Technical Directors comprising its operational decision-making body, the College as well as by the incompatibility system of these functions with other public or private employments. SAMIFIN also has a budget and a staff of its own, although fluctuations in the allocation of the budget undermine its capacity to mobilize the resources requisite to perform its functions. The sharing of information related to closed files with the advisory committee poses a risk to confidentiality and the protection of information. **Recommendation 29 is rated largely compliant.**

Recommendation 30 –Responsibilities of Criminal Prosecution Authorities and of Investigating Authorities

304. Regarding the fight against corruption, Madagascar has an autonomous structure attached to the Presidency, consisting of a body of study, definition of strategies, control, the Superior Council of Fight against Corruption (CSLC), an operational service, BIANCO, and a specific structure within the judicial institution, the anti-corruption criminal chain. Madagascar's criminal justice system has three levels of courts. Courts of first instance hear criminal cases carrying limited fines and sentences. The court of appeals includes a criminal court of first instance for cases carrying sentences greater than five years (which is the cases for AML-CFT offenses). The supreme court of appeals hears appeals of cases from the court of appeals. The judiciary also includes specialized courts designed to handle matters such as cattle theft. A military court has jurisdiction over all cases that involve national security. Investigations are carried out by Law enforcement authorities under supervision of prosecution offices. When the case is complex and carries out sentences greater than 5 years (which is the case for AML-CFT offenses) Law enforcement authorities act under the supervision of investigating judges. Regarding fight against corruption, Madagascar has an autonomous structure attached to the Presidency, consisting of a body of study, definition of strategies, control, the Superior Council of Fight against Corruption (CSLC), an operational service, BIANCO, and a specific structure within the judicial institution, the anti-corruption criminal chain.

305. Criteria 30. 1- [met] Anti-corruption criminal chain: Anti-corruption criminal chain: Investigation and prosecution of money laundering are conducted by magistrates (deputies of the Public Prosecutor and investigating judges) of the anticorruption criminal chain, which has become "Economic and Anti-Corruption Criminal Chain, CPEAC," created by circular of 2 July 2004 signed by the Minister of Justice, the Minister of National Defense and the Secretary of State for Public Service. CPEACs were installed in the 6 main towns of provinces. CPEAC includes judicial police officers exercising their duties under the responsibility of magistrates of the prosecution and the investigation. Judges and judicial police officers of CPEAC are appointed within the penal chain in consultation between the Superior Council of Fight against corruption and their administration.

306. CPEAC has jurisdiction over offenses relating to fight against corruption, with reference to the offenses covered by the United Nations Convention against Corruption: active and passive bribery, favoritism, abuse of office, misappropriation of public property, conflicts of interest, illicit enrichment. CPEAC also deals with all economic and financial matters, even those unrelated to corruption, including money laundering and terrorist financing.

307. CPEAC magistrates are seized of the cases dealt with by the police services, the gendarmerie, the BIANCO (independent anti-corruption office) or the SAMIFIN. The circular of the Ministry of Justice on the implementation of the criminal policy on money laundering also recalls that the magistrates of the chain can be seized ex officio of any criminal case involving proceeds of crime or act based on complaint or denunciation.

308. The magistrates of the CPEAC Prosecutor's Office decide on the follow-up to referrals, but if the case results from a referral by SAMIFIN, they are prohibited from closing it without further action. Public prosecutors are also encouraged to contact the investigating judge as soon as possible when the facts described by SAMIFIN are sufficiently substantiated. They may close other files only if the examination of the file or the investigation leads to the conclusion that the charges are not duly grounded. When the prosecution orders a preliminary investigation, it seizes either the police, the gendarmerie, or the BIANCO. Investigative acts are most often carried out by the investigation services. The Public Prosecutor may, after returning from the investigation, dismiss the case (if there are no charges), refer the case to the court (for prosecution of the perpetrators of the offense), or entrust the case to an examining judge (for additional investigations).

309. It should be noted that a new law no. 2016-021 on Anti-Corruption Poles (PAC) of 22 August 2016 set up, within the criminal justice system, specialized jurisdictions called "Anti-Corruption Poles", so that they replace the criminal anti-corruption chains, of which the lack of a

legal framework, the fact of being simply governed by an interministerial circular since 2004, posed jurisdictional and administrative difficulties. PASs were not implemented at the time of the assessment.

310. The Independent Anti-Corruption Bureau: BIANCO was created by Decree no. 2004-937 to lead the implementation of the National Strategy to Fight Corruption, namely. The BIANCO aims to fight against corruption, in terms of prevention/ education but also of repression with the advantages that its independence provides it with vis-à-vis the judicial system. BIANCO has a section in charge of investigations comprising 60 people. Half the staff is assigned to Antananarivo, the other half to the other five provinces. No BIANCO member is a judicial police officer. Only the Director General holds the powers attached to this quality (custody, searches, arrests, etc.), once an oath is taken. It can delegate them to the personnel of the structure who exercise them outside the direction of the Public Prosecutor. BIANCO may take initiative or upon receipt of complaints and denunciations, after an advisory committee composed of members of the prosecution, the police, the gendarmerie and the bar has given its opinion on the advisability of closing or 'investigating. Much of the investigation is based on "grievances" from citizens relating to their daily lives. The most numerous ones involve the Gendarmerie, local authorities, education, the land sector and justice.

311. The National Police: According to Decree no. 295 of 13 May 2014, the Minister of Public Security has the task of carrying out the mission of "judicial police, particularly in the fight against corruption and against serious financial crime" and of participating "in fight against crime in all its forms ". To fulfill this mission, the Minister of Public Security has the Directorate General of the National Police (DGPN) to which the National Central Bureau (NCB) of the International Criminal Police Organization (ICPO) -INTERPOL is directly attached. The DGPN has four central "operational" directorates - the Directorate of Judicial Police (DPJ), the Directorate for the Suppression of Economic and Financial Offenses and Investment Security (DRIEFSI), the Directorate of Intelligence and Control of the Immigration and Emigration (DRCIE), the Directorate of Intervention Forces (DFIP), and the Directorate of Public Security (DSP) - and has provincial **detachments**: Provincial Directorates of Public Security installed in the main towns of province (Antananarivo, Toamasina, Antsiranana, Mahajanga, Fianarantsoa, Toliary) each having together about 60 people distributed among the operational departments corresponding to the aforementioned central directorates as well as the staff of the Central Commissionership of the city, the Public Security Commissionerships and the Commissionership Specials (in port, airport, rail and fluvial matters).

312. *The Directorate of Judicial Police (DPJ)*, which aims to fight against "acts of banditry and organized crime", as well as against "trafficking of all kinds and transnational crime, particularly in relation with the International Organization Criminal Police ", has 5 central services with national jurisdiction: the central service called "criminal brigade ", the central service for the fight against the abuse of narcotic drugs and psychotropic substances, the police of mores and minors, the central Antigung service, the central Terrorism service (created in 2014,), the central service of the Scientific and Technical Police.

313. *The Directorate for the Suppression of Economic and Financial Offenses and Investment Security* deals with all forms of economic and financial crime. It is composed of three units: the central economic and financial investigation unit, the central service against fraud, forgery and counterfeiting, and the central service against corruption. These three units have national competence. Each province also has its own economic police whose jurisdiction is limited to the jurisdiction of the province.

314. National Gendarmerie: The Malagasy gendarmerie, created by decree no. 60-102 of 14 May 1960, is attached to the Ministry of Defense and is considered a branch of the army having the capacity of auxiliary of justice and the quality of judicial police officer in charge of implementing the law. The area of intervention of the Gendarmerie is mainly rural. The gendarmerie has an Office in

charge of fight against narcotics (OLCS) and an Office in charge of Fight against Terrorism (OLCT), attached directly to the Secretary of State for the Gendarmerie.

315. The Command of the National Gendarmerie is home to two operational directorates: the Directorate of Security and Intelligence (DSR) and the Directorate of Judicial Police (DPJ), responsible for guiding and coordinating the activities of the Gendarmerie in the field of judicial police and supporting territorial units through the assistance of the central file and criminal analysis. A specialized economic unit was recently set up in 2016.

316. The Customs of Madagascar: The General Directorate of Customs (DGD) reports to the Ministry of Finance and Budget. There is a customs code grouping the applicable texts. The action of the customs service is exercised throughout the national territory. The general total of the customs staff is only 1970 persons. Without land borders, Malagasy customs services focus in ports and airports, mandatory entry points for goods coming from abroad subject to customs duties: the port of Toamasina brings together 80% of the 1,200 active agents of the Malagasy Customs. Oriented to the collection of customs taxes, which represents a large part of the state's revenue, the customs participate in the fight against traffic ; however, the customs officers do not have the general quality of OPJ but can "proceed to visiting goods, means of transport and persons "and" visiting any ship ". Customs includes a Directorate of Legal Affairs and fight against fraud lies with a Department of Legal Affairs and Litigation. In case of seizure of illegal goods, the customs establishes a procedure referred to the prosecutor's office, which can seize the competent judicial police service. In practice, the procedure of establishment, investigation and transaction escapes the judicial authority, the payment of a customs fine and the recovery of the defrauded rights being privileged.

317. The General Directorate of Taxes: In accordance with the provisions of decree no. 2016-551 of 20 May 2016 amending and supplementing the provisions of Decree no. 2014-1102 of 22 July 2014 setting the powers of the Minister of Finance and Budget and the general organization of its Ministry, The Directorate General of Taxes is responsible, in particular, for actively fighting against tax fraud in all its forms. The fight against tax fraud is conducted by inspectors (numbering 7) of the Research and Programming and Tax Audit Department, the Research and Tax Control Department. This service processes files transmitted by SAMIFIN. The financial part of the surveys is led by SAMIFIN. The tax legislation allows the tax authorities to conclude transactions with persons who have committed fiscal offenses or who have organized a tax evasion. In this case, the procedure of establishment, investigation and transaction escapes the judicial authority.

318. The Special Chain Fighting Against the Traffic in Rosewood and / or Ebony Wood and Suppressing Infringements Relating to Rosewood and / or Ebony Wood ": A separate criminal chain is specialized in the field of investigation, prosecution and adjudication of the facts relating to the trafficking in rosewood and ebony. Created by law no. 2015-056 of February 3, 2016, the chain is composed of:

- a. twelve investigative brigades spread over the territory and each comprising three police officers, three gendarmes and three agents of the Ministry of the Environment.
- b. a special court with national jurisdiction sitting in Antananarivo;
- c. a committee for the management of precious wood stocks

319. The investigation files are transmitted to the magistrates of the prosecutor's office and of the instruction appointed, then judged by the Special Court for the traffics of rosewood, which is composed of a president and assessors from the Ministry of the Environment. The specialized chain is not operational as it stands, only a few investigators and the President of the Court having been appointed.

320. Criterion 30.2 - [met] According to the principles of the CCP, investigating magistrates are able to extend any investigation into offenses underlying money laundering or terrorist financing.

321. Criterion 30.3 - [met] The CCP gives the public prosecutor, the examining magistrate, the judicial police officers and, in some cases, the criminal court (Article 452 of the CCP) the power to perform all the acts requisite to the establishment of evidence, the search for the perpetrators (Articles 123, 162, 251, 452 of the CCP, in particular). In this context, all useful entries allowing to reveal the truth and thus the preservation of the proofs and indices is possible subject to the respect of the procedural formalism (in particular Articles 133, 135, 162, 251, 257, 260, 261 of the same code). Therefore, the seizure of property or sums, products, objects or means of the offense is possible. In addition, Articles 28 and 29 of the AML Law provide that "judicial authorities and competent officials responsible for enforcing money laundering offenses may seize property in relation to the offense under investigation, as well as all elements likely to identify them, in accordance with the rules of ordinary law ". The judicial authority competent to pronounce provisional measures may, ex officio or at the request of the Public Prosecutor's Office or a competent authority, order such measures, including the freezing of funds and operations, at the expense of the State, order such measures, including freezing assets, and financial operations on property, of whatever nature, that may be seized or confiscated.

322. Criterion 30.4 - [met] Regardless of the underlying offense, financial investigations are the sole responsibility of CPEAC.

323. Criterion 30.5 - [met] Under Art. 23 of Law No. 2004-030 of 9 September 2004 on fight against corruption, as part of the provisions of the Code of Criminal Procedure and without prejudice to the powers vested in judicial police officers, the Director General of BIANCO is invested with powers granted to judicial police officers. By way of derogation from Articles 123 to 128 of the CCP and in the exercise of its fact-finding mission, it is however not subject to the hierarchical control of the general prosecutors and senior judicial police officers. He can keep the confidentiality of the results of his investigations until the closure of the file and its referral to the prosecutor. As such, he is authorized to record corruption offenses and related offenses, to gather evidence, to search for the perpetrators and, if necessary, to make an arrest. For this purpose, he may issue written orders to officers and agents of the Independent Anti-Corruption Bureau. In case of need, the Director General may directly request the assistance of the public force.

Weighting and Conclusion

324. **Recommendation 30 is rated compliant.**

Recommendation 31 -Powers of Criminal Prosecution Authorities and of Investigating Authorities

325. Criterion 31.1 - [met] The Malagasy criminal prosecution authorities have extensive powers to conduct investigations and are able to carry out all acts that are necessary to reveal the truth, subject to compliance with the measures provided for by the CCP. The CCP allows judicial police officers (police, gendarmerie or public prosecutor's office) to seize objects that are subject to confiscation or capable of constituting evidence, to collect testimonies, and to carry out home visits or searches and body and premise searches. (These include Articles 123, 129, 133 et seq., 206 et seq., 251 et seq. of the CCP). When these magistrates designate judicial police officers to carry out all or part of the investigation, they have powers of observation, seizure and detailed hearings in the Code of Criminal Procedure. The prosecuting authority and the investigating magistrate have all powers of seizure of the evidence and clues useful to reveal the truth but also the power to seize the proceeds of the commission of the offense. They have search powers that they can delegate to judicial police

officers. Custody can be used and is strictly defined by the Code of Procedure, as are witness hearings.

326. Professional secrecy is not enforceable against the prosecutor, the investigating magistrate and the judicial police officers in charge of a criminal investigation. Therefore, during an investigation, and through judicial requisitions, judicial police officers may requisition financial institutions to obtain the documents necessary for the investigation such as bank statements, bank account opening documents or transfer documents. Financial institutions are compelled through judicial requisitions to provide the applicant with all these documents. Article 27 of the AML Law stipulates that banking or professional secrecy may not be evoked to refuse to provide the information required in the course of an investigation into money laundering ordered by or carried out under the control of a judicial authority.

327. Criterion 31.2 – [met] The PPC provides for technical interceptions such as listening, and other hearings of all witnesses. In addition, Article 25 of the AML Law allows the judicial authorities to order:

- i. the placing under supervision of bank accounts and similar accounts to bank accounts;
- ii. access to IT systems, networks and servers;
- iii. the placing under surveillance or tapping of telephone lines, fax machines or electronic means of transmission or communication;
- iv. audio and video recording of actions and conversations;
- v. the communication of authentic and private documents, financial and commercial banking documents.

328. Article 26 of the AML Law provides investigators with the possibility of undercover investigation or controlled delivery. The authorization of the public prosecutor must, however, be obtained in advance and precisely circumscribe the operation. Detailed reports must be made to this magistrate. This provision is adapted to the requirements of the standards and at the same time ensures the protection of the rights of individuals by the requirement of strict supervision by the public prosecutor.

329. Magistrates of the public prosecutor's office or of the investigation decide, by requisitions or ordinances, on the continuation of the measures of blocking the bank accounts previously decided by the SAMIFIN or at its request, by ordinance on request.

330. Criterion 31.3 – [met] Financial institutions in Madagascar may be requisitioned to inform the authorities of account numbers belonging to natural or legal persons under investigation as well as the relative movement of funds. Art. 17 of the AML Law allows SAMIFIN to obtain, upon request, information from all public authorities and reporting entities in the context of investigations undertaken following a suspicious transaction report, in order to identify accounts, as well as property without prior notice to the owner. The judicial authorities may also have access to any information in order to identify property, without prior notification, by requisitions to the authorities involved (trade and companies register, land registry officials, etc.).

331. Criterion 31.4 – [met] access by the criminal prosecution authorities to the information held by SAMIFIN in the conduct of money laundering investigations, the underlying predicate offenses and terrorist financing is not expressly provided for. However, according to the information obtained by the assessment team during on-site mission, this type of cooperation is very frequent in practice and is carried out smoothly in a timely manner.

Weighting and Conclusion

332. Recommendation 31 is rated compliant.

Recommendation 32 – Cash Couriers

333. Criteria 32.1 [met] Law no. 2006-008 of 06 August 2006 on the Exchange Code and its implementing decree 2009-048 of 12 January 2009, prohibit foreign exchange transactions outside authorized intermediaries (banks and bureaux de change) and capital transactions and financial transactions without prior authorization from the Ministry of Finance. Only authorized intermediaries (banks and bureaux de change) are authorized, under their responsibility, to perform all authorized exchange transactions that are set by the application texts, as is the case with transfers for import operation, current transactions and capital transactions or financial transactions that have been declared or obtained from prior authorizations with the Ministry of Finance. They are also applicable to Circular no. 017-118-FIN / DT of 8 July 1960, relating to the execution of transfers abroad and the Customs Code.

334. Criteria 32.2 [partly met] Article 3 of Law no. 2006-008, for the defense of national interests and by decree taken in Council of Government, on proposal of the Minister of Finance, allows the Government to submit to declaration, preliminary authorization or control any material movement of securities between Madagascar and abroad. According to the exchange regulations, the importation by resident and non-resident travelers of all means of payment denominated in foreign currency is permitted without limitation.

335. However, any traveler entering Madagascar must declare to the customs office of their landing the currency (in cash or traveler's checks) of which it is the holder, when their sum is equal to or greater than the equivalent of 7,500 euros or Approximately 8,396 USD (26,885,278 Ariary). A copy of the declaration is sent to the foreign exchange authorities, and according to Decree no. 2015-1036, customs declarations are referred to SAMIFIN. On leaving the territory, non-resident travelers are allowed to re-export means of payment denominated in foreign currency that they have not used, with proof. In practice, these provisions are not implemented and travelers do not receive a document to fill out the cash declarations.

336. Criterion 32.3 – [met] Where a declaration (or importation) of foreign currency is above the reporting threshold, the individual involved must justify the origin of the funds and the purpose of the shipment to the customs officers. If it does not, the sum can be seized by these agents.

337. Criterion 32.4 [met] Article 7 of Law 2006-008 provides that offenses or attempts to violate the regulations regarding the financial relations between persons residing in the Republic of Madagascar and those abroad shall be recorded by the Governor of the Central Bank of Madagascar or its qualified representatives, the agents of the Treasury Administration, the agents of the Customs Administration. The latter, in particular, may find non-compliance with the reporting or repatriation obligations, including misrepresentation, and use all the powers of recording, investigating, seizing and interrogating persons provided for by the customs code. This power to ask for explanations or additional information therefore derives from Law no. 2006-008 and the Customs Code (Article 54 et seq.). These texts also provide that the person in possession of undeclared or falsely declared objects may be placed in police custody in the event of a flagrant offense.

338. By virtue of Article 110 et seq. of the CCP, officials authorized to establish foreign exchange offenses (including customs officers) may also conduct domiciliary visits wherever they deem

necessary in order to investigate on the financial relations of Madagascar with overseas countries. Checks at any authorized intermediary are carried out on presentation of a mission order or judicial requisition subject to compliance with the schedules indicated for this purpose. In addition, with a view to applying the exchange regulations, customs officers have the right to control all postal items, except for correspondence and diplomatic shipments.

339. Criterion 32.5 – [met] According to Law no. 2006-008, anyone who violates or attempts to violate reporting obligations is punishable by imprisonment from one month to five years and a fine of between one-half and three times the body of the offense. In the event of a repeat offense, the penalties are doubled and the prison sentence is compulsorily imposed.

340. Independently from these penalties, the court is required to order the confiscation of the body or proceeds of crime for all the offenses set forth in Article 7 above. Where the criminal transaction involves the participation of several natural or legal persons, the body of the offense, whether represented or not, is constituted by all the services provided by each of the persons involved, if their complicity is proved, including the remuneration of services. Each natural or legal person is jointly and severally liable for the pecuniary sentences pronounced. It should be noted, however, that under Law no. 2006-008, the prosecution can be initiated on the basis of the Exchange Code only on the complaint of the Minister of Finance. The Customs Code (Title X Litigation - Chapter VII repressive provisions) for its part contains provisions relating to the smuggling of goods or objects. Finally, the decree no. 11,826 / of 17 July 2007 governs the reduction of penalties and fines relating to customs offenses.

341. Criterion 32.6 – [met] SAMIFIN is the recipient of currency import declarations in customs in accordance with Decree no. 2015- 1036 (Article 3).

342. Criterion 32.7 – [partly met] No specific text establishes coordination among competent authorities, including immigration services. This coordination results from the declarations made to customs and sent to SAMIFIN and the authorities in charge of the exchange. SAMIFIN can then communicate the information, possibly after research or analysis to the interested investigation services. In addition, customs officials authorized to note breaches of the declaration obligations may request from all public services the information they need to perform their duties without observing professional secrecy being able to be opposed. Any obstruction to these verification rights is recorded in minutes and is pursued as an opposition to the regular exercise of control functions.

343. Criterion 32.8 - [met] The officials entitled to note failures to the declarations (including the agents of the customs administration) are authorized to seize and seal the body or proceeds of the crime regarding exchange under Law no. 2006-008 of 06 August 2006 (articles 7 and 8). Customs officers who note a breach of the reporting obligations may also refer the matter to the President of the Court of First Instance for provisional measures, including the freezing of funds or the freezing of financial transactions in property liable to be seized or confiscated, whatever its nature. The release of these measures may be ordered at the request of the competent authority. Where a declaration (or import) of foreign currency is above the reporting threshold, the entity involved must justify the origin of the funds and the purpose of the shipment with the customs officers, the amount to be seized if they do not do it.

344. Criterion 32.9 - (partly met] International co-operation is permitted under cash reporting system (Law no. 2006-008 of 06 August 2006). It is normally provided as all cash declarations are provided to SAMIFIN. Questioned by its foreign counterparts SAMIFIN will be able to provide any declaration of which it is the recipient, including in case of false declaration, non-declaration or suspicion of money laundering.

345. Criterion 32.10 – [met] Measures providing a proper use of the reporting system information. The authorities in charge of managing the reporting system are bound by professional

secrecy and are liable to the penalties provided for by Article 378 of the Penal Code. However, when legal proceedings have been instituted, these same persons cannot oppose professional secrecy except in the cases provided for by specific laws.

346. Criterion 32.11 – [met] Persons violating reporting obligations are punishable by imprisonment from one month to five years and a fine of between one-half and three times the body of the offense (Law no. 2006-008 of 06 August 2006, article 20 and 21). In the event of a repeat offense, the penalties are doubled and the prison sentence is compulsorily imposed. Regardless of these penalties, the court is required to order the confiscation of the body or proceeds of crime for all currency offenses, including breaches of the obligation to report the transport of cash. In addition, in a flagrant preliminary investigation, or open ML / TF investigation, police authorities may block money in the possession of a suspected person. Under these conditions, cross-border transport linked to a money laundering operation, terrorist financing or an underlying offense may result in seizures or freezing, and confiscation of cash when facts are proved in a competent court.

Weighting and Conclusion

347. The authorities' system of coordinating in terms of reporting foreign currency import or export transactions, misrepresentation or failure to report is not sufficient to ensure adequate control complying with the criteria of the recommendation. **Recommendation 32 is rated partially compliant.**

Recommendation 33 – Statistics

348. Criterion 33.1 – (not met) SAMIFIN for its annual report produces information on the number of suspicious transaction reports received and disseminated. Annual reports also include information on STRs such as the author of STRs, transaction amounts involved, underlying offenses, geographical origin, and so on. One section of the annual report discusses cooperation between SAMIFIN and its foreign counterparts. Conversely, Madagascar does not have reliable and complete information on AML / CFT investigations and convictions, frozen, seized or confiscated property, as well as mutual legal assistance and other requests for cooperation formulated and received. (With the exception of SAMIFIN data).).

Weighting and Conclusion

349. With the exception of the information on suspicious transaction reports maintained by SAMIFIN, Madagascar does not have any data with figures on its AML/CFT system. **Recommendation 33 is rated partially compliant.**

Recommendation 34 – Guidelines and Feedback

350. Criterion 34.1 [not met] - The CSBF issued Instruction 006/2007 to banks, microfinance institutions and bureaux de change. This text requires institutions to take a series of measures to improve compliance with the AML Law, particularly with respect to enforcement and reporting of suspicious transactions. On the other hand, there is no explanatory guide intended to clarify the measures to be taken to contribute to AML / CFT, in accordance with the legislative and regulatory provisions governing the matter.

351. SAMIFIN has not issued guidelines for reporting entities but its annual report contains detailed analyses of money laundering cases. Types of laundering circuits spotted by SAMIFIN during

the processing of STRs are also available on the website of the service (http://www.samifin.gov.mg/?q=typologie_blanchiment).

352. In the insurance sector, the Ministry of Finance, which is the regulatory and supervisory authority for the sector, has issued guidelines neither. The same applies to the non-financial business and non-financial professions sector.

Weighting and Conclusion:

353. Madagascar has not implemented guidelines for reporting entities to apply national AML / CFT measures. With the exception of the SAMIFIN annual reports, which provide some typological information, the exchange between the authorities and the reporting persons, through the dissemination of good practices and adequate feedback, remains very limited. The 2014 reform on terrorist financing has not led to the drafting of concrete guidelines for its implementation. There is neither established feedback system that would assist designated non-financial businesses and professions in the implementation of national AML / CFT measures, and in particular to enforce and report suspicious transactions. **Recommendation 34 is rated non-compliant.**

Recommendation 35 – Sanctions

354. Criterion 35.1 – (partly met) Article 33 of the AML Law provides that "where, as a result of either a serious lack of vigilance, or a deficiency in the organization of internal procedures to prevent money laundering, a credit institution, a financial institution or any other natural or legal person referred to in Article 3 has failed to comply with one of the obligations assigned to it by this Law, the disciplinary or supervisory authority may act ex officio under the conditions provided by the professional and administrative regulations. Pursuant to Art. 18 of the CFT Law, failure to freeze assets based on the UNSCR 1267 is sanctioned by 5 years of imprisonment. A wide range of sanctions is available for NPOs who violate their obligations (from a fine to the dissolution of the legal entity and the imprisonment of the founders and managers). See detailed description under criterion 8.5.

355. **Credit institutions, including MFIs:** Article 48 of the Instruction specifies that pursuant to Article 33 of the AML Law, and without prejudice to the sanctions that may be imposed by the judicial authority, in the event of serious lack of vigilance or a deficiency in the organization of the internal procedures of prevention of the ML/ TF, reporting institutions will be liable to the sanctions provided by the banking legislation. In accordance with the provisions of the Banking Law, the CSBF may, in the event of failure by an institution under its supervision, to comply with its legal obligations relating to AML/ CFT to impose one of the disciplinary sanctions provided for in Article 49 in the banking law. Disciplinary sanctions range from withdrawal, prohibition to carry out certain operations or appointment of a provisional administrator for 6 months, renewable once. The Commission may impose, either instead or in addition to the sanctions referred to above, a pecuniary sanction at most equal to the minimum capital to which the institution is subject.

356. Sanctions applicable to **electronic money institutions** cover a wide range of disgraceful sanctions, in particular warning, prohibition from conducting certain operations, authorization withdrawal, as well as measures against managers and auditors. Conversely, no financial penalty is provided for by the law 2016-056.

357. Regarding **the foreign exchange sector:** the CSBF can pronounce (article 13 of order n ° 5951/96) warning, temporary closing of the bureau de change, or license withdrawal from a manual changer in case of non-compliance with its obligations. No financial penalty is provided for.

358. For **the insurance sector:** the following sanctions are pronounced by the Minister of Finance, after consulting the Insurance Board, in the event of a breach of its obligations by an

enterprise: warning; blame; limitation or prohibition of all or part of the operations; any other limitations in the practice of the profession; fines; suspension or resignation of the responsible officers; automatic transfer of the contract portfolio; or, authorization withdrawal.

359. **DNFBPs:** with regard to the professions of law and number, regulation, supervision and disciplinary control are the responsibility of the self-regulatory authorities, namely the Bar Association, the National Chamber of Notaries and the Institute of Chartered Accountants. These bodies enact the rules of professional ethics and have the power to take disciplinary measures against their supervised entities in the event of non-compliance with these rules. It has not been established that the sanctions are applicable to the breach by lawyers, notaries and accountants of their AML/CFT obligations. The law no. 71-011 applicable to casinos does not provide for penalties for breach of AML / CFT obligations. The profession of real estate agent is not regulated or organized; no penalty is provided for breach by real estate agents of their AML / FT obligations.

360. **Criterion 35.2 – (not met)** For the financial sector, the supervisory authorities (the CSBF and the Ministry of Finance) impose sanctions on legal persons, but neither the banking law nor the insurance code provide that sanctions. also extend to management, the board of directors and the people who compose them. The same goes for the DNFBPs.

Weighting and Conclusion:

361. A range of proportionate and dissuasive sanctions is applicable to credit institutions and insurance companies subject to the AML Law. These sanctions do not extend to members of the board of directors or senior management of financial institutions. No financial penalty is provided for regarding electronic money institutions. Penalties for manual money changers are not sufficient, proportionate and dissuasive. No penalties apply to casinos and real estate agents. It is not certain that the existing sanctions apply to violations by lawyers, notaries and accountants regarding their AML obligations. Sanctions for violation of the freezing obligation are not proportionate nor dissuasive **Recommendation 35 is rated non-compliant.**

Recommendation 36 – International Instruments

362. Criterion 36.1 – [met] Madagascar has ratified or acceded to the three main United Nations conventions on money laundering and terrorist financing. Madagascar acceded on 12 March 1991 to the Vienna Convention and ratified the Palermo Convention with its three additional protocols, the Convention against Corruption and the Convention on the Suppression of Terrorist Financing respectively on 15 September 2005, 22 December 2004 and 24 September 2003.

363. With regard to United Nations Security Council treaties and resolutions on terrorism and its financing, Madagascar has signed and ratified, or acceded to, all relevant international instruments.

364. Criterion 36.2 – [not met] According to Article 137 of the Constitution of Madagascar, legally ratified conventions have legal value and direct effect in domestic law. They are therefore part of the legal system applicable in positive law and fit into the hierarchy of norms. However, some international standards require specific internal measures. This is the case, in particular of the United Nations resolutions. Madagascar has thus adopted the resolutions relevant to the United Nations Counter-Terrorism, including resolution S / RES / 1267 (1999) and resolution S / RES / 1373 (2001). No specific measures have been taken by the Malagasy authorities to implement Resolution S / RES / 1373 (2001). As a result, Madagascar does not have an administrative freezing arrangement that fully complies with the provisions of resolutions 1267 and 1373 (see Rec. 6).

Weighting and Conclusion

365. No specific measures have been taken by the Malagasy authorities regarding unrestricted implementation of Resolution S / RES / 1373 (2001). This resolution is not the subject of an internal legal text of application; **Recommendation 36 is rated partially compliant.**

Recommendation 37: International Mutual Legal Assistance

366. Criterion 37.1 – [met] The AML Law (Articles 41-47) organizes international judicial cooperation. Article 39 of the CFT Law covers international offenses related to terrorism and its financing as well as organized crime. The competent authorities of Madagascar must, in accordance with Article 41 of the AML Law, provide the widest measure of mutual legal assistance to the authorities of requesting States, including exchange of information, investigations and proceedings, and for the implementation of extradition or provisional measures, and confiscation of property related to ML/TF offenses. The other basis of mutual legal assistance is Article 253 (3) of the CCP. Bilateral, regional or multilateral treaties, signed and ratified by Madagascar, are also a legal basis for mutual legal assistance. A circular from the Ministry of Justice in 2013 asked prosecutors to deal with requests for mutual assistance quickly and as a matter of priority. Finally, it is worth mentioning the law no. 2015-027 authorizing the ratification by Madagascar of the Convention on Mutual Legal Assistance and Extradition against Terrorism of Francophone Countries of Africa of 16 May 2008⁵².

367. Criterion 37.2 – [met] The Ministry of Justice is the central authority under Article 57 of the AML Law and Article 39 of the CFT Law. It issued on the subject a circular of 005-MJ / DGAJER / DAJ / Circ. 26 August 2013. Applications are received in French or Malagasy and go through the diplomatic services, unless a treaty provides otherwise. Some treaties signed and ratified by Madagascar also provide that a party may directly transmit the request for assistance to the prosecution authorities (prosecution) or judicial authorities (investigating judge) of the other party. In case of urgency, the request can be received in Madagascar through Interpol, by fax or email. A circular from the Ministry of Justice in 2013 asked prosecutors to deal with requests for mutual assistance quickly and as a matter of priority. In practice, the authorities execute the requests within the time limit requested by the requesting country or, in case of delay, give it information on the status of execution of the request.

368. If an application is rejected, the authorities of Madagascar are obliged to inform promptly the requesting authorities about the reasons for rejection. When the Ministry of Justice receives a request, it verifies the main elements conditioning its acceptance (information on the requesting authority, object of the request, summary of the facts, identification of the persons or goods involved, texts of penal law on the qualification of applicable offenses and penalties, copies of court decisions to be applied where appropriate ...). It then refers it to the competent prosecutor's office geographically, with the latter's responsibility to seize the police authorities, the investigating judge, or the court competent for execution.

369. Criterion 37.3 – [met] The grounds for refusal of execution are not unreasonable or unduly restrictive (subject to point 37.4, below). These include the following:

- vi. incompetence of the requesting authority or irregular referral of the request;
- vii. violation of public order, sovereignty, security or the fundamental principles of Malagasy law;

⁵²
027 of January 29, 2018.

with Law N 2017-

- viii. when the request relates to facts that are the subject of criminal proceedings or for which a final decision has already been rendered;
- ix. the double criminality rule;
- x. when the measures requested are prohibited by Malagasy legislation;
- xi. prescription of the offense of money laundering;
- xii. when the decision, the execution of which is requested is unenforceable, failure to respect the rights of the defense;
- xiii. where the request for assistance involves a person on the basis of race, religion, nationality, ethnic origin, political opinion, sex or status, if the request relates to a political offense or is motivated by political considerations;
- xiv. when the importance of the case does not justify the measures requested or the enforcement of the decision rendered abroad.

370. Criterion 37.4 [met] Bank secrecy may not be invoked to refuse a request for mutual assistance. Nothing appears to preclude Madagascar from providing international legal assistance in criminal offenses of a fiscal nature, which may be predicate offenses to money laundering.

371. Criterion 37.5 [met] The principles of confidentiality and specialty are governed by Articles 59 and 62 of the AML Law and applied as general principles.

372. Criterion 37.6 [not met] Dual criminality is required for international mutual legal assistance (Article 43 of the AML Law). No provision of the Malagasy law provides for an exception for requests for mutual assistance relating to non-coercive measures.

373. Criterion 37.7 [met] The requirement of dual criminality is considered to be satisfied if the offense referred to in a request for assistance has "common characteristics with an offense under the law of the country". When the underlying offense has been committed in a foreign country, mutual legal assistance will be granted if it is an offense in both countries, unless there is a convention against it. To date, no convention provides for this exception. The definition of the offense of money laundering covering all crimes and offenses, including whether they have been committed abroad, the prosecution of money laundering proceeds of most predicate offenses may give rise to the provision of mutual legal assistance by the Malagasy authorities. Mutual assistance is also granted in cases where the perpetrator of the underlying offense committed abroad is prosecuted for laundering the proceeds of the offense (self-laundering).

374. Criterion 37.8 [met]

375. a) Articles 44, 45, 46 of the AML Law on the modalities of requests for investigative and initial inquiry measures, as well as provisional and confiscation measures, provide that the authorities seized of a request for mutual legal assistance shall execute the measures requested in accordance with the ordinary law of Madagascar. In particular, the authorities may provide the following:

- i. collection of testimonies or depositions;
- ii. provision of assistance for putting detained persons or other persons to the disposal of the authorities of the requesting State for the purpose of giving evidence or assisting in the conduct of the investigation;
- iii. delivery of court documents;
- iv. searches and seizures;

- v. Examination of objects and places and;
- vi. supply of originals or certified copies of relevant records and documents, including bank statements, accounting records, records showing the operation of a business or its business activities.

376. b) The Malagasy provisions relating to the powers of the authorities responsible for the execution of requests for assistance (in particular Article 39 of the CFT Law and Article 42 of the AML law) for ML / TF are complete and cover the powers conferred to the prosecution and investigation authorities in ordinary law.

Weighting and Conclusion

377. The Malagasy legislation is comprehensive and in line with international requirements. The Malagasy law does not provide for an exception to the double criminality requirement for non-coercive measures. **Recommendation 37 is rated largely compliant.**

Recommendation 38. International Mutual Legal Assistance for Seizure and Forfeiture

378. Criterion 38.1 [met] Articles 45 to 47 of the AML Law and Article 39 of the CFT Law allow the judicial authorities of Madagascar to promptly provide international legal assistance in the identification, seizure, freezing or confiscation of property or proceeds of crime, or instrumentalities used, or instruments intended for use in money laundering, predicate offenses or terrorism financing. In terms of identification, the Malagasy authorities seized with a request for assistance may use all the investigative powers provided for by the CCP for domestic investigations. With regard to freezing and seizure, according to Article 45 of the AML Law, the court seized by a competent foreign authority for the purpose of issuing provisional measures orders such measures requested "in accordance with its own law". It can also take a measure "the effects of which correspond most to the measures requested". There is no specific exception to the dual criminality rule.

379. Prosecution authorities seized with a request for assistance may identify and seize laundered assets or assets involved in financing terrorism. If the request is drafted in general terms, the court shall pronounce the most appropriate measures provided for by law. In the event that it objects to the execution of measures not provided for by its legislation, the court seized of an application pronounced abroad may substitute for them the measures provided for by such legislation, the effects of which correspond best to those of which execution is solicited. In other words, the seizure of property at the request of foreign authorities may result from the general provisions of the CCP relating to the seizure of the proceeds or instruments of the offenses.

380. Regarding confiscation, when Madagascar receives a request for assistance, the court decides on referral to the prosecuting authority. The confiscation order must be for property constituting the proceeds or the instrument of an offense, and located on the territory of Madagascar, or consist in the obligation to pay a sum of money corresponding to the value of the property of which the confiscation is required.

381. The court hearing an application for execution of a confiscation order pronounced abroad is bound by the establishment of the facts on which the decision is based and may not refuse to grant the request unless for one of the reasons listed in Article 43 of the CCP.

382. Criterion 38.2 - [met] The Malagasy law permits confiscation without conviction. Thus, Article 37 of the AML Law provides that where the facts cannot be prosecuted, the Public Prosecutor

may request a judge to order the confiscation of the property seized. The judge hearing the application may make a confiscation order:

- i. if the evidence is adduced that such property constitutes the proceeds of a crime or offense within the meaning of the AML Law;
- ii. if the authors of the facts that generated the proceeds cannot be prosecuted either because they are unknown or because there is a legal impossibility to prosecute the facts, except in the case of prescription.

383. Moreover, Article 36 of the law provides that, in the event of an offense found by the court, where a conviction cannot be pronounced against the perpetrator(s), this court may nevertheless order the confiscation of property to which the offense relates. The confiscation of property may also be pronounced if the latter, directly or indirectly, is included in the property of the convicted person, its spouse, its concubine and its children, since the date of the oldest of the facts justifying its conviction, unless that the interested parties do not establish the lawful origin. When the goods or proceeds cannot be confiscated, the confiscation relates to their estimated value. In these circumstances, the Malagasy authorities seized with a request for mutual assistance involving confiscation proceedings without a conviction have the same powers as in the case of criminal confiscation linked to a conviction.

384. Criteria 38.3 and 38.4 [not met] Criteria 38.3 and 38.4 [not completed] There is no coordination structure for seizure or confiscation with foreign authorities, or for the management or sharing of seized funds in Madagascar. Article 47 of the AML Law simply provides that the Malagasy State has the power to dispose of property confiscated on its territory at the request of foreign authorities, unless an agreement entered into with the requesting agreement otherwise stipulates. No information has been provided in order to determine what will happen to the seized property.

Weighting and Conclusion

385. In the absence of a coordination structure for seizures or confiscation with foreign authorities, or for managing or sharing of funds seized, Recommendation **38 is rated largely compliant**.

Recommendation 39. Extradition

386. Criterion 39.1 – [met]

387. a) Money laundering and terrorist financing are extraditable offenses: ML/TF extradition is possible under bilateral, regional or multilateral treaties to which Madagascar is a party. Where a convention is not applicable, extradition is governed by a general law of 1927 and by the AML Law, which organizes extradition in matters of money laundering (Articles 48 to 52). Extradition is also possible with regard to terrorism financing under the CFT Law. When an extradition request is not governed by a treaty or by a legislative provision, extradition may be granted in accordance with the procedures and principles of the model treaty adopted by the United Nations General Assembly in its resolution 45 / 116. Moreover, Madagascar considers that extradition is possible on the basis of reciprocity. In general, extradition proceedings last two months and the law provides for time limits. Arrest can be carried out on the basis of an Interpol Red Notice or an international arrest warrant, and the requesting country must then provide a formal request.

388. b) The AML Law (Articles 48 to 52) organizes extradition; the applicable rules are comparable to the usual rules of extradition in countries cooperating in judicial matters. The Ministry of Justice is the central authority under Article 57 of the AML Law and Article 39 of the CFT

Law. As in the case of mutual legal assistance, the Ministry of Justice, after verifying the elements that condition the acceptance of the latter, will submit to the Public Prosecutor the location of the investigations, the situation of the property in question or the residence of the person involved. The Ministry is able to set priorities and monitor compliance. The public prosecutor's office appeals to the judicial authorities or the competent court, including the provisional measures, confiscation or extraditions requested by the requesting party. The courts and tribunals that are seized only pronounce on the legality of extraditions, and not on the evidence of the commission of the offenses motivating the request. No appeal is possible in this area. After the judicial phase, an administrative phase is led by the executive power.

389. c) Conditions of refusal: There is no legal reason for refusing extradition that is too restrictive in the Malagasy law. As regards mutual legal assistance, the conditions for accepting or refusing requests are provided for by law (Articles 50 and 51 of the AML Law and Article 39 of the CFT Law).

390. The mandatory grounds for refusal concern the following cases:

- a) if the offense for which extradition is requested is considered by Madagascar a political offense, or if the request is motivated by political considerations;
- b) if there are substantial grounds for believing that the extradition request was made for the purpose of prosecuting or punishing a person on the basis of race, religion, nationality, ethnic origin, political opinion, gender or status, or that the situation of that person may be affected for any of these reasons;
- c) if a final judgment has been pronounced in Madagascar in respect of the offense for which extradition is requested;
- d) if the person whose extradition is requested, under the legislation of either country, can no longer be prosecuted or punished, because of the time that has elapsed or amnesty or any other reason;
- e) if the person whose extradition is requested has been or would be subjected in the requesting State to torture and other cruel, inhuman or degrading treatment or punishment or if it has not benefited or would not benefit from guarantees provided for in criminal proceedings by Article 14 of the International Covenant on Civil and Political Rights;
- f) if the judgment of the requesting State was rendered in the absence of the person involved and the latter was not notified sufficiently early of the judgment and was not given the opportunity to take steps to ensure his defense, and could not or will not be able to try the case again in its presence.

391. The optional grounds for refusal relate to the following situations:

- a) the competent authorities of Madagascar have decided not to institute proceedings against the person concerned for the offense for which extradition is requested, or to discontinue the proceedings against that person;
- b) prosecution for the offense for which extradition is requested is pending in Madagascar against the person whose extradition is requested;
- c) the offense for which extradition is requested. was committed outside the territory of either country and that, according to the law, Madagascar has no jurisdiction over offenses committed outside its territory in comparable circumstances;
- d) the person whose extradition is requested was judged or may be tried or sentenced in the requesting State by an emergency or special court;

e) Madagascar, while also taking into consideration the nature of the offense and the interests of the requesting State, considers that, in the circumstances of the case, the extradition of the person in question would be incompatible with humanitarian considerations, taking into account the age, state of health or other personal circumstances of the said person;

f) the offense for which extradition is requested is considered by the law of Madagascar having been committed in whole or in part within its territory;

g) the person whose extradition is requested incurs death penalty for the offenses charged in the requesting country, unless the latter provides sufficient guarantees that the sentence will not be executed;

h) the person whose extradition is requested is a national of Madagascar.

392. Criterion 39.2 – [not met] Article 5 of the General Extradition Law provides that Madagascar does not extradite its nationals. However, Article 51 of the AML Law provides that Malagasy nationality is a case of "optional" refusal of money laundering, as opposed to the case of "mandatory" refusal of Article 50 (for example, a claim based on political considerations). In other words, the Malagasy authorities can refuse the extradition of Malagasy nationals in ML / TF matters, but they also have a discretionary power to grant it. When they do not, the AML Law does not impose the principle of "extradite or prosecute": the obligation to submit the case to the Malagasy courts and to prosecute is provided for only when the refusal of extradition results from the commission of the offense in the territory of Madagascar or from the death penalty incurred in the requesting country. Conversely, the refusal on grounds that the person involved is of Malagasy nationality does not imply an obligation to prosecute the person involved in Madagascar. A number of treaties (such as Article 2 of the Treaty with France) introduce this obligation into their scope.

393. Criterion 39.3 – [met] Article 49 of the AML Law provides that extradition shall only be granted if the offense referred to or a "similar offense" exists in the law of the requesting State and in that of Madagascar. Thus, the drafting of the Malagasy law requiring double criminality is drafted in a sufficiently flexible manner for technical differences between the laws of the requesting and requested States not to prevent the granting of extradition.

394. Criterion 39.4 – [met] A simplified procedure is applicable under Article 15 of the 1927 Law and Article 61 of the AML Law if the person involved agrees to be extradited. In addition, two bilateral treaties provide for direct referral measures between Ministers of Justice.

Weighting and Conclusion

395. The Malagasy legislation fulfills most of the requirements of the recommendation, but refusing extradition on the basis of Malagasy nationality of the person involved does not imply the obligation to prosecute the person involved in Madagascar. **Recommendation 39 is rated largely compliant.**

Recommendation 40 – Other Forms of International Cooperation

General Principles

396. Criterion 40.1 - [partly met] There is no general text governing the power to exchange information with foreign counterparts, but different competent authorities in Madagascar have a legal basis for exchanging information with some of their counterparts. The competent authorities of Madagascar, pursuant to Article 41 of the AML Act, must provide the widest measure of mutual legal assistance to the authorities of the requesting States, including the exchange of information,

investigations and proceedings and for the implementation of extradition or provisional measures, and confiscation of property related to ML / TF offenses. In general, the various competent authorities of Madagascar can therefore, spontaneously or on request, provide administrative assistance and the information available to them in relation to money laundering, predicate offenses or terrorism financing.

397. Criterion 40.2 [partly met] The National Police is a member of Interpol. SAMIFIN is authorized by Article 18 of the AML Exchange Law to exchange information with its counterparts, subject to reciprocity and when they are subject to similar secrecy obligations. Madagascar is also connected, through the Indian Ocean Regional Platform, to Eurojust and joined the ARINSA⁵³ network of asset recovery agencies in the Southern part of Africa.

398. In addition, an intelligence service has been created for sensitive information, especially in terrorism. This unit, under the direct authority of the Head of State, is called the Central Intelligence Service -CIS-. The CIS was created on 3 July 2003 by decree 2003-728. Its mission is to seek, collect and exploit all the information likely to inform the President of the Republic in order for him to base his decisions for safeguarding the higher interests of the Nation. In order to fulfill its mission, the CIS has the power to carry out any criminal investigations into criminal conspiracy in relation to terrorist activities and similar crimes and to ensure operational and technical relations with foreign services and organizations.

399. The CIS includes a central unit in Antananarivo and an antenna in each province of the country.

400. None of the competent authorities have clear and secure channels for referral and execution of requests, nor clear procedures for priority setting, timely execution or protection of information.

401. Criterion 40.3 - [partly met] The authorities of Madagascar have signed several treaties or memoranda with certain foreign counterparts or joined organizations or networks permitting the exchange of information outside mutual legal assistance. This is particularly the case of the national police (member of Interpol), SAMIFIN and BIANCO. Madagascar is also represented in the ARINSA network. However, no agreement has been signed by the supervisory agencies.

402. Criterion 40.4. - [not met] No provision of the Malagasy law requires the authorities of Madagascar to provide feedback on the usefulness and use of the information obtained from their foreign counterparts.

403. Criterion 40.5. - [met] There are no unduly restrictive or unreasonable restrictions to the provision of exchange of information. Bank secrecy may not be invoked to refuse the requested assistance.

404. Criterion 40.6 [met] The authorities of Madagascar make sure that the information provided to their foreign counterparts is used solely to satisfy the initial request.

405. Criterion 40.7 [met] The confidentiality of requests for information is ensured on the basis of general principles relating to professional secrecy and the secrecy of investigations.

406. Criterion 40.8- [met] The authorities of Madagascar may conduct investigations to satisfy requests for information from their counterparts under the AML Law.

Information Exchange among Financial Intelligence Units

⁵³ ARINSA means *Asset Recovery Inter Agency Network of Southern Africa*.

407. Criterion 40.9 – [met] Article 18 of the AML Law provides that SAMIFIN, subject to reciprocity, may exchange information with foreign counterparts when they are subject to similar secrecy obligations and regardless of the status of these services. SAMIFIN is also authorized to conclude cooperation agreements with these services. It has signed memoranda with several foreign counterparts (six ones to date), and has exchanged information, without a memorandum, with other counterparts. See Recommendation 29 for the list of memoranda of understanding that have been signed by SAMIFIN with foreign countries.

408. SAMIFIN in the past applied for accession to the Egmont group, but without success because of the absence of a law covering the financing of terrorism. As this law has now been adopted, the application for membership has been reactivated with the support of two sponsors, France and Mauritius.

409. Criterion 40.10 – [partly met] The AML Law permits, but does not require, SAMIFIN to provide its foreign counterparts with feedback on the usefulness and use it has made of the information that were referred to it.

410. Criterion 40.11 – [met] When a request for cooperation is received, SAMIFIN responds "within the powers conferred on it", which cover not only the receipt of reports from the private sector, but also the provision of information by other entities and through access to public databases. At the national level, SAMIFIN has signed memoranda of exchange of information with the Ministry of Justice, in particular the Public Prosecutor's Office, BIANCO, the tax services and the immigration services, which give it access to information likely to be shared with its foreign counterparts.

Information Exchange among Financial Sector supervisors.

411. Criteria 40.12 to 40.16 [not met]

412. Article 41 of the AML Law stipulates that the authorities of Madagascar undertake to cooperate to the widest extent possible with those of other States for the purpose of exchanging information. However, these aspects involve provisional measures and confiscation of instruments and proceeds related to money laundering, extradition and mutual technical assistance. There is no clear provision for cooperation between Malagasy and foreign authorities for the purpose of prudential supervision of ML / TF. In this respect, apart from the exchange of information and cooperation agreements signed with Mauritius and Morocco, there is no exchange, even on an informal basis, with other foreign authorities. There is no clear and precise framework for the exchange of confidential information with counterparts in third countries in the absence of a cooperation and information exchange agreement.

Information Exchange among Investigation Services

413. Criteria 40.17– [met] The main investigative services (police, gendarmerie, independent anti-corruption office) may exchange information with their foreign counterparts on the ML / TF information available in Madagascar and the underlying offenses, particularly with a view to identifying the proceeds or instruments of the offenses. Partnerships with foreign counterparts are very active, particularly with those in France and the United States. They have also developed in tax matters.

414. Criterion 40.18 [met] - In police matters, Madagascar is a member of INTERPOL and as such collaborates closely with other member States. The exchange of information is done in particular via the INTERPOL protected network under X400 protocol (early warning system).

415. BIANCO, which has investigative powers, has signed cooperation agreements with Mauritius and France, and is developing relations with China, Hong Kong, Thailand and Malaysia.

416. In the region, international cooperation is organized under the regional platform of the Indian Ocean Commission. This links Madagascar to organizations such as Eurojust, the European Judicial Network, or the Sahel Judicial Platform. Madagascar is also creating an authority in charge of recovering ill-gotten property and has joined the ARINSA network.

417. Criterion 40.19 – [met] Joint international investigation teams may be established on the basis of a treaty, including a multilateral convention to which Madagascar is a party, such as the Palermo Convention. Special investigative techniques may be used on the basis of this convention or on a case-by-case basis.

Indirect Information Exchange.

418. Criterion 40.20 – [met] There is no provision prohibiting the authorities of Madagascar from conducting an indirect exchange of information as defined by the FATF Methodology.

Weighting and Conclusion

419. In the absence of any provisions or texts relating to supervisory services cooperation, SAMIFIN feedback, or cooperation in tax matters, **Recommendation 40 is rated partially compliant.**

420. *Table summarizing Compliance with the FATF Recommendations*

| Compliance with the FATF Recommendations | | |
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| Recommendation | Rating | Factor(s) justifying the rating |
| 1. Risk assessment and application of a risk-based approach | NC | <ul style="list-style-type: none"> • Madagascar has not assessed all ML / TF risks to which the country is exposed • Financial institutions and designated non-financial professions are not required to assess their ML / TF risks, and take mitigating actions |
| 2. National cooperation and coordination | PC | <ul style="list-style-type: none"> • Madagascar has not developed national policies taking account of ML / TF risks • Madagascar does not have a mechanism to fight the financing of the proliferation of weapons of mass destruction |
| 3. . Money laundering offense | LC | <ul style="list-style-type: none"> • Counterfeiting and piracy of products, and stock market offenses are not predicate offenses to ML |
| 4. Confiscation and provisional measures | LC | <ul style="list-style-type: none"> • C.4.4 Madagascar has not yet adopted arrangements for managing frozen, seized and confiscated property |
| 5. Terrorist financing offense | PC | <ul style="list-style-type: none"> • TF offense does not extend to terrorists (individuals) financing and terrorist organizations • Cases involving an organization located abroad or acts committed or planned abroad are not provided for |
| 6. Targeted Financial Sanctions Related to Terrorism and Terrorist Financing | NC | <ul style="list-style-type: none"> • Madagascar does not have the identification and designation mechanisms provided for in United Nations Security Council Resolutions 1267/1989 and 1373 • Incomplete definition of the notion of 'funds' • No general prohibition on making funds available to individuals and entities subject to financial sanctions • Insufficient means of communication to financial institutions and designated non-financial businesses and professions • Absence of protective measures for good faith third parties • Absence of procedures (i) governing requests to the relevant United Nations Committee when a person fails to meet or no longer meets the designation criteria; (ii) relating to the designations and delistings in resolution 1373 ; and (iii) for communicating delistings to the private sector |
| 7. Targeted financial sanctions related to proliferation | NC | <ul style="list-style-type: none"> • Absence of legal framework for targeted financial sanctions related to mass destruction weapons proliferation |
| 8. Non-Profit Organizations | PC | <ul style="list-style-type: none"> • Absence of analysis of the structure, risks, and vulnerabilities of the sector • No action to raise awareness in the sector has been conducted. |
| 9. Laws on the professional secrecy of financial institutions | C | |
| 10. Customer due diligence | NC | <ul style="list-style-type: none"> • Absence of obligation to implement due diligence measures in all cases provided for in R.10 and for all categories of financial institutions; • 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 |

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| | | <p>constant vigilance over business relationship</p> <ul style="list-style-type: none"> • Absence of specific due diligence measures applicable to legal persons, legal arrangements and life insurance contracts • Absence of a risk-based approach • 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 |
| 11. Retention of documents | PC | <ul style="list-style-type: none"> • Document retention obligation de conservation des documents does not cover the books of accounts, commercial correspondence and any analysis made on the clients' transactions • The arrangements for access to information and documents held by competent national authorities, other than the financial intelligence service, are unclear. |
| 12. Politically Exposed Persons (PEPs) | PC | <ul style="list-style-type: none"> • 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 |
| 13. Bank Correspondence | PC | <ul style="list-style-type: none"> • Absence of obligation to understand the respective responsibilities in respect of AML / CFT and the regulation of transit accounts • Absence of obligation ensure that bank correspondents do not allow shell banks to use their accounts |
| 14. Funds or securities transfer services | PC | <ul style="list-style-type: none"> • Absence of mechanisms to detect persons providing money or securities transfer services without being authorized <p>Absence of information on the supervision exercised by the Ministry of Finance on funds or securities transfer services</p> <ul style="list-style-type: none"> • Absence of obligation to integrate agents in AML/FT programs |
| 15. New technologies | NC | <ul style="list-style-type: none"> • Legislation is silent on the identification, assessment and mitigation of ML / TF risks presented by new products and business practices |
| 16. Electronic transfers | NC | <ul style="list-style-type: none"> • 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 |
| 17. Use of third parties | PC | <ul style="list-style-type: none"> • Obligations do not apply only to credit institutions and manual money changers • The scope of vigilance for which it is possible to resort |

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| | | <p>to a third party is not clear</p> <ul style="list-style-type: none"> ● Absence of obligation to make sure that the third party complies with the due diligence and retention requirements ● The Malagasy national authorities do not determine the countries in which third parties who fulfill the requisite conditions can be established ● The case of using a third party belonging to the same financial group is not provided for by the regulations in force |
| 18. Internal Controls and Foreign Branches and Subsidiaries | LC | <ul style="list-style-type: none"> ● The obligations applicable to insurance, CEM and postal financial services are limited to those of AML and CFT Laws ● Absence of obligation to have policies and procedures that promote a high degree of ethics and professionalism |
| 19. . Countries at higher risk | PC | <ul style="list-style-type: none"> ● 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 ● Absence of measures for communicating to financial institutions the concerns raised by risky countries |
| 20. Suspicious Transaction Reporting | LC | <ul style="list-style-type: none"> ● STRs do not apply to transaction attempts |
| 21. Disclosure and Confidentiality | C | |
| 22. Designated Non-Financial Businesses and Professions: Customer Due Diligence | NC | <ul style="list-style-type: none"> ● Scope : trusts and companies service providers and dealers in precious metals and stones are not subject to the AML / CFT system ● Absence of due diligence requirements for DNFBP, DNFBPs except for casinos ● Due diligence requirements for casinos are limited to customer identification and data retention |
| 23. Designated non-financial businesses and professions: other measures | NC | <ul style="list-style-type: none"> ● The reporting requirement does not apply to all activities provided for regarding lawyers, notaries and accountants ● Absence of obligation regarding internal control and enhanced due diligence measures |
| 24. Transparency and beneficial owners of legal entities | PC | <ul style="list-style-type: none"> ● Absence of assessment of ML / FT risks associated with legal persons ● Absence of obligation for companies to keep basic information and the list of board members ● Absence of information on beneficial owners ● Insufficient regulation of bearer shares, shares registered in the name of nominees and directors acting on behalf of another person |
| 25. Transparency and beneficial owners of legal constructions | NC | <ul style="list-style-type: none"> ● Madagascar does not authorize the creation of a trust or other similar legal construction and does not regulate the situation of such constructions having a link with the country |
| 26. Regulation and supervision of | PC | <ul style="list-style-type: none"> ● Insufficient provisions relating to market access ● CSBF supervision (credit institutions and manual |

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| financial institutions | | <p>money changers) does not take account of ML / TF risks</p> <ul style="list-style-type: none"> • Absence of supervision of ML / FT in the insurance sector, CEM and postal financial services |
| 27. Powers of supervisory authorities | LC | <ul style="list-style-type: none"> • the CEM is not subject to ML/TF supervision |
| 28. Regulation and control of designated non-financial businesses and professions | NC | <ul style="list-style-type: none"> • Absence of supervision real estate agents • The supervision of all other reporting DNFBPs does not extend to AML / CTT • The powers of the self-regulatory bodies of legal and accounting professionals are not clearly described and it is not established that the sanctions they may impose apply to the AML / CFT |
| 29. Financial Intelligence Units (FIUs) | LC | <ul style="list-style-type: none"> • The budget of SAMIFIN fluctuates and affects its ability to mobilize the resources requisite for its functions. • The sharing of information relating to cases that have been discontinued with the Advisory Board hampers confidentiality and data protection of SAMIFIN. |
| 30. Responsibilities of Criminal Prosecution Authorities and Investigating Authorities | C | |
| 31. Powers of Criminal Prosecution Authorities and of Investigating Authorities | C | |
| 32. Cash Couriers | PC | <ul style="list-style-type: none"> • Absence of coordination among competent authorities • Absence of international cooperation |
| 33. Statistics | PC | <ul style="list-style-type: none"> • With the exception of SAMIFIN data relating to suspicious transaction report, no statistical data relating to AML / CFT is systematically maintained |
| 34. Guidelines and feedback | NC | <ul style="list-style-type: none"> • Absence of guidelines and feedback toward the financial and non-financial sectors |
| 35. Sanctions | NC | <ul style="list-style-type: none"> • Sanctions applicable to credit institutions and insurance companies do not extend to members of the board of directors • Sanctions applicable to manual money changers are not proportionate and dissuasive • Absence of sanctions applicable to casinos and to real estate agents • It has not been established that the existing sanctions apply to violations by lawyers, notaries and accountants of their AML / CFT obligations |
| 36. International instruments | PC | <ul style="list-style-type: none"> • No action is taken to implement Resolution 1373 |
| 37. Mutual legal assistance | LC | <ul style="list-style-type: none"> • The Malagasy law requires dual criminality, including for non-coercive measures |
| 38. Mutual legal | LC | <ul style="list-style-type: none"> • Absence of coordination of seizures and confiscations |

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| assistance: gel et confiscation | | with foreign authorities and management or sharing of funds seized |
| 39. Extradition | LC | <ul style="list-style-type: none"> • In case of refusal of extradition of a Malagasy citizen, it is not provided for that the subject will be prosecuted in Madagascar |
| 40. Other forms of international cooperation | PC | <ul style="list-style-type: none"> • Absence of texts organizing cooperation with supervisory authorities, feedback on the usefulness and use of the information provided, and in tax matters |

2.
