



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

## **MADAGASCAR**

### **11<sup>th</sup> Enhanced Follow Up Report and Technical Compliance Re-Rating**

**September 2024**





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

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**This report was approved by the ESAAMLG Task Force of Senior Officials at the September 2024 meeting in Diani, Kenya.**

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## THE REPUBLIC OF MADAGASCAR: 11<sup>th</sup> ENHANCED FOLLOW-UP REPORT & 4<sup>th</sup> REQUEST FOR TC RE-RATING

### I. INTRODUCTION

1. The ESAAMLG Evaluated the Anti-Money Laundering and Combating the Financing of Terrorism and proliferation financing (AML/CFT/CPF) regime of the Republic of Madagascar under its Second Round of Mutual Evaluations in 2017, using the FATF 2013 evaluation methodology. The ESAAMLG Council of Ministers adopted the Mutual Evaluation Report (MER) in September 2018. According to the MER, the Republic of Madagascar was rated Compliant (C) on 4 Recommendations, Largely Compliant (LC) on 9 Recommendations, Partially Compliant (PC) on 15 Recommendations and Non-Compliant (NC) on 12 Recommendations. Out of the 11 Immediate Outcomes (IOs), the Republic of Madagascar was rated Moderate Level of Effectiveness on I.O. 6 and Low Level of Effectiveness on the others. The Tables 1 summarize the outcomes of technical compliance in the MER of Madagascar.
2. This follow-up report assesses the progress made by Madagascar to address the technical compliance deficiencies identified in its MER. New Technical Compliance (TC) re-ratings are given where sufficient progress has been made. The report does not cover the progress made by the Republic of Madagascar in improving its effectiveness.
3. The following experts (assisted by Tirivafi Nhundu, Kennedy Mwai, and Bhushan Jomadar from the Secretariat) assessed Madagascar's request for TC re-ratings and prepared its follow-up report:
  - Mr Bheki Khumalo (Eswatini);
  - Mrs Abby Dinka (Ethiopia);
  - Ms Tanvi Keerodhur (Mauritius),
  - Ms. Preeya Raghoonundun (Mauritius)
  - Mrs. Nomfanelo Kunene (Eswatini);
  - Ms. Phephile Dlamini (Eswatini); and
  - Mr. Thomas Mongella (Tanzania).
4. Section III of this report summarises the progress made by Madagascar on technical compliance. Section IV sets out conclusions and contains a table of Recommendations for which a new rating has been given.

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

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

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<sup>1</sup> Mutual Evaluation Report of Madagascar-<https://www.esaamlg.org/reports/Madagascar%20MER.pdf>

**Table 1. Technical Compliance Ratings<sup>3</sup> September 2018**

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

6. Madagascar has made significant overall progress in resolving the technical compliance shortcomings identified in its MER and ratings for 8 Recommendations have been revised. Table 2 indicates the technical compliance re-ratings following the Taskforce decision on April 2024.

**Table 2: Technical compliance re-ratings as at April 2024.**

<b>R.1</b>	R.2	R.3	R.4	R.5	R.6	R.7	R.8	R.9	<b>R.10</b>
<b>C</b>	PC	LC	LC	PC	NC	NC	PC	C	<b>PC</b>
R.11	R.12	<b>R.13</b>	R.14	R.15	<b>R.16</b>	R.17	R.18	<b>R.19</b>	R.20
PC	PC	<b>C</b>	PC	NC	<b>PC</b>	PC	LC	<b>LC</b>	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	<b>R.32</b>	R.33	<b>R.34</b>	R.35	R.36	R.37	R.38	R.39	R.40
C	<b>LC</b>	PC	<b>PC</b>	NC	PC	LC	LC	LC	PC

### III. OVERVIEW OF PROGRESS IN TECHNICAL COMPLIANCE

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

<sup>3</sup> There are four possible levels of technical compliance: compliant (C), largely compliant (LC), partially compliant (PC), and non-compliant (NC).

- 3.1. Progress to address technical compliance deficiencies identified in the MER**
7. Since the adoption of the MER in September 2018, Madagascar has taken measures aimed at addressing the technical compliance deficiencies identified in the MER. This section of the report summarises progress made by Madagascar to improve its technical compliance by addressing the TC deficiencies identified in the MER.
  8. ESAAMLG welcomes the steps that Madagascar has taken to improve its technical compliance deficiencies. Following this progress, Madagascar has been re-rated Compliant with Recommendation 5, Largely Compliant with Recommendations 2, 14, 22 & 23 and Partially Compliant with Recommendations 24, 25 & 28 while the ratings for Recommendations 26 & 35 has been maintained.

**3.1.1 Recommendation 2 – National Cooperation and Coordination (Originally rated PC- Re-rated to LC)**

9. The Republic of Madagascar was assessed on the requirements of Rec 2 under its Second Round MER. The MER noted the absence of an overall ML/TF risk assessment which consequently impacted on the country's developing national AML/CFT policies that take into account the identified risks. The country had also not adopted mechanisms for coordination and cooperation aimed at combating the financing of proliferation of weapons of mass destruction. Madagascar has made some amendments to its laws to improve national cooperation and coordination. The analysis below shows the progress of the country in this regard.
10. **Criterion 2.1 (Met)** This Criterion was rated as Not Met in the MER, 2018 as Malagasy authorities have not yet conducted a comprehensive analysis of the country's ML/TF risks. Since then, Madagascar adopted its national AML/CFT/CPF National Strategy in June 2022 covering the period 2022-2026 which was based on the outcome and finalisation of the NRA and adoption of the NRA by the Council of Ministers in June 2022. In addition, the Permanent Secretariat of the CNOC under Decree N° 2022-937 is required to keep the risk assessment and the national updated (Art 10(4) of the above Decree). The National Strategy also provides for the implementation of strategic objectives and targeted areas for intervention as prioritised based on the needs of the different competent authorities. *Therefore, c2.1 is considered Met*
11. **Criterion 2.2 (Met)** In the 2018 MER, Madagascar was rated as Met with this Criterion. However, the jurisdiction revised its legal and institutional frameworks to establish a new institution known as the National Committee as the designated authority for coordination of AML/CFT (CNOC). Art 7 of



the AML/CFT law (Law No. 2018-043 of February 13, 2019) requires the setting up of a coordination and orientation committee to be formally established through a Decree. Pursuant to this, the National Committee was established under Decree N ° 2022 -937 and is responsible for national AML/CFT policies. The Decree N ° 2022 -937 was established under Art 7 of the AML/CFT law which provides that the State shall draw up the National Strategy to combat money laundering and terrorist financing, taking into account the risks identified. *Therefore, the rating for c2.2 remains Met*

12. **Criterion 2.3 (Met)** This Criterion was rated Met in the 2018 MER. However, since the MER adoption, Madagascar revised its legal and institutional frameworks. Art 7 of the AML/CFT law No. 2018-043 requires the setting up of a coordination committee responsible for the adoption and assessment of the National AML/CFT Strategy. Pursuant to Art. 7, Madagascar established CNOC vide was set up under Decree N° 2022-937. CNOC is responsible for monitoring the implementation of the National Strategy and facilitates cooperation between the various stakeholders in the fight against ML/TF (Art 10(6) of the same Decree) at a policy level. At the operational level, the Permanent Secretariat composed of all the stakeholders (Art 12 of the same Decree) provides a mechanism to enable the competent authorities to cooperate, coordinate and exchange information with regards to the development and implementation of AML/CFT policies and activities. The authorities have set up 6 task forces under the Permanent Secretariat to coordinate and exchange information between LEAs, Supervisors, the FIU and the private sector. *Therefore, the rating for c2.3 remains Met.*
13. **Criterion 2.4 (Met)** This Criterion was rated Not Met in the 2018 MER. The deficiency identified by the assessors was that Madagascar had not adopted a mechanism to implement the United Nations Resolutions to combat the financing of the proliferation of weapons of mass destruction. Art 5 of the AML/CFT Act as amended on 1 Feb 2024 now provides for the proliferation of weapons of mass destruction. With this inclusion, the mandate of the CNOC as provided in criterion 2.3 above will now also include co-operation and where appropriate coordination mechanisms to combat PF. *Therefore, c2.4 is considered Met.*
14. **Criterion 2.5 (Partly Met)** This Criterion was not rated in the 2018 MER. While Madagascar has a 2015 law (N 2014-038) on the protection of personal data, which set up the national body responsible for this subject, there are however no foreseen mechanism to cooperate and coordinate with relevant authorities to ensure the compatibility of AML/CFT provisions with data protection and privacy rules. The National AML/CFT Strategy however has an intervention axis dedicated to the strengthening of operational cooperation

and information exchange between key AML/CFT stakeholders. *Therefore, c2.5 is considered Partly Met.*

#### *Weighting and conclusion*

15. Madagascar has addressed the deficiencies identified in c.2.1 and c.2.4, and party addressed the deficiencies in c.2.5. However, Madagascar does not have a mechanism to cooperate and coordinate with relevant authorities to ensure the compatibility of AML/CFT provisions with data protection and privacy rules. *In view of the minor remaining deficiencies the Reviewers recommend upgrading Recommendation 2 from PC to LC.*

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

16. In the 2nd Round of MER, the main deficiencies relating to this Recommendation was that 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. In light of the above, Recommendation 5 was rated as partially compliant. To address these deficiencies, Madagascar has made some amendments to its AML/CFT Law no. 2023-026. The effects of these amendments have been analysed and the ratings given below:
17. *Criterion 5.1 – (Met)-* This Criterion was rated as Met in the MER. The assessors found that 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. However, Madagascar revised its legal framework, specifically on the scope of the definition of terrorism. The reviewers have considered the revised law. In the new law, Article 2 of the AML/CFT Law No 2023-026 of 1 Feb 2024 provides a new definition of terrorist financing which includes the financing of a terrorist act, terrorist organisation or of an individual terrorist. Article 2 of Law No 2023-026 supplements Article 2 of Law No. 2018-043 of February 13, 2019, which criminalises TF consistent with the TF Convention. Under Article 2 of Law No. 2018-043, commission of one or more of the acts outlined under the amended provision in Article 2 of through Law No 2023-026 constitutes an offence. *Therefore, the rating for c5.1 remains Met.*
18. *Criterion 5.2 (Met) -* This Criterion was rated Not Met in the MER 2018 on account that terrorist financing was defined on the basis of, and tied to the commission of terrorist acts. Since the MER, Madagascar amended its AML/CFT Laws. Article 2 of the current Law No 2023-026 which supplements AML/CFT Law No. 2018-043 criminalises acts committed by a natural or legal

person who, by any means whatsoever, by himself or through an intermediary, provides or collects funds and other property, with the intention that such funds should be used or in the knowledge that they will be used, in whole or in part, for the purposes of committing one or more terrorist acts or financing a terrorist organisation or individual. It is not a requirement that TF is linked to a specific terrorist act or acts. *Therefore, c5.2 is considered Met.*

19. **Criterion 5.2.bis: (Met)**- This Criterion was rated as Partly Met in the 2018 MER. The main deficiency at the time of the assessment was that Malagasy law did not specifically address the funding of travel to participate in terrorist activities abroad. Article 2 of the AML/CFT Law (as amended) now provide for the offence of the financing of individuals (Malagasy national or foreigner) who travels to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorists acts or the providing or receiving of terrorist training. *Therefore, c5.2bis is considered Met.*
20. **Criterion 5.3 (Met)** - This Criterion was rated as Met in the MER. Article 2 of the AML/CFT Law (as amended) criminalises the terrorist offence regardless of whether the origin of the funds is from a legitimate or illegitimate source. *Therefore, the rating for c5.3 remains Met*
21. **Criterion 5.4 (Met)** – This Criterion was rated as Partly Met in the 2018 MER. The deficiency identified in the MER was that Malagasy law did not address the financing of terrorist organizations and individuals. There is no requirement that the funds and other property have actually been used to commit or attempt to commit one or more terrorist acts or that they are linked to one or more specific terrorist acts (see Article 2 of the AML/CFT Law No 2023-026) *Therefore c5.4 is considered Met*
22. **Criterion 5.5 (Met)** – This Criterion was rated as Met in the MER. Under Article 2 of the AML/CFT Law No 2023-026 of 1 Feb 2024 Knowledge or intent, as elements of the aforementioned activities, may be inferred from objective factual circumstances. *Therefore, the rating for c5.5 remains Met.*
23. **Criterion 5.6 (Met)** - This Criterion was rated as Met in the MER. Art 48 and 48 of the AML/CFT law provides for criminal sanctions to any natural person convicted of TF. The sanctions range from imprisonment and a fine of five times the value of the property or funds involved in the TF operations while for aggravating circumstances the sanctions is imprisonment for life and a fine of at least five times the value of the property or funds involved in the TF



operations. Madagascar has classified its offences into three categories (Article 1 of the Penal Code). The most serious offences are punishable by a sentence of afflictive and infamous penalty of forced labour for a term of not less than 5 years and not more than 20 years, or life imprisonment. Imprisonment and forced labour are both custodial sentences, which involve the detention of the convicted person in a penal institution. However, in case of forced labour, the convicted person, in addition to being in detention, performs compulsory work. TF offences under the provisions of the AML/CFT law is considered among the most serious offenses punishable by afflictive and infamous penalties (forced labour or life imprisonment). Therefore, the punishment of forced labour for TF offences is dissuasive and proportionate under the legal system of Madagascar. *Therefore, c5.6 is considered Met.*

24. **Criterion 5.7 (Met)** - This Criterion was rated as Met in the MER. Art 51 of the AML/CFT law provides for criminal sanctions that can be applied to legal persons for financing of terrorism. The sanctions provided under the above Article impose a fine of five times the specific fine incurred by the natural persons involved, without prejudice to their conviction as perpetrators or accomplices of the same offence. In addition, the competent supervisory authority with the advice of the Public prosecutor on the proceeding brought against a FI, may impose the appropriate sanctions under the relevant laws and regulations in force. The sanctions are proportionate and dissuasive in the context of Madagascar neither do the sanctions preclude parallel criminal, civil or administrative proceedings of the natural persons acting on behalf of the legal person so impugned. *Therefore, the rating for c5.7 remains Met.*
25. **Criterion 5.8 (Met)** – This Criterion was rated as Met in the MER. It is an offence Under Article 2 of Law N°2023- 026 (a) attempted terrorist financing also constitutes a terrorist financing offence; (b)&(c) any natural or legal person who knowingly helps, assists, organises or contributes to the commission of the aforementioned acts shall be considered an accomplice. (d) Malagasy law does not limit the offense of financing terrorism to a single individual. When a TF offence is committed within the framework of a criminal organization, a sentence of hard labour for life and a fine equal to at least five times the value of the property or funds involved in the terrorist financing operations is applied (Art.48 AML/CFT Law). The term "criminal organization" refers to any group structured for the purpose of committing crimes or offences. Thus, it is an offence to further the activities of a terrorist organisation. *Therefore, c5.8 is considered Met.*
26. **Criterion 5.9 (Met)** - This Criterion was rated as Met in the MER. TF offences are designated as ML predicate offences pursuant to Law No 2023-026 of 1 Feb 2024. *Therefore, the rating for c5.9 remains Met.*

27. **Criterion 5.10 (Met)**- This Criterion was rated as Partly Met in the 2018 MER. The deficiency identified was that 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. Under Article 2 Law No 2023-026, the offence of terrorist financing is applicable if the act was committed on the territory of Madagascar regardless of the nationality of the perpetrator, or abroad by a person of Malagasy nationality or to the detriment of a Malagasy national. The perpetrator may be prosecuted even if the terrorist organisation or the terrorist act committed or planned is located in one or more other countries. (Article 2 Law No 2023-026). *Therefore, c5.10 is considered Met.*

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

28. Madagascar has addressed all the deficiencies identified in the MER on Recommendation 5. *In view of this, the Reviewers recommend upgrading Recommendation 5 from PC to C.*

### ***3.1.3 Recommendation 14 – Money or Value Transfer Services (MVTS) (Originally rated PC re-rated to LC)***

29. During the 2nd MER, Madagascar did not have a mechanism for enforcing and punishing persons engaged in funds or value transfers without being authorized. Relationships between services and their partners were not fully regulated. Recommendation 14 was rated partially compliant. To address these deficiencies, Madagascar has made some amendments to its law.
30. **Criterion 14.1 (Met)**. This Criterion was rated as Met in the MER. However, due to changes in the legal framework of Madagascar, the Criterion has been reviewed against the change in laws. Art 5 of the AML/CFT Act has been amended through AML/CFT Law N°2023- 026 on February 1<sup>st</sup>, 2024 to provide the definition of Money or Value Transfer Service as any service which consists of accepting cash, cheques or any other payment instrument or deposit of value and paying an equivalent sum in cash or any other form to a beneficiary, by means of a communication, message, transfer or clearing system to which the money or value transfer service belongs. Under the Banking law N° 2020-011, Funds or value transfer in the Malagasy law constitutes a banking operation (article 5 of the same law). As per Art 27 to 33 of the Banking Law N° 2020-011 on September 1, 2020, the CSBF is the only competent authority to licensed MVTS in Madagascar. *Therefore, the rating for c14.1 remains Met.*

31. **Criterion 14.2 (Partly Met)**- This Criterion was rated as Partially Met in the MER. The main deficiency was that there was no mechanism to enforce and, where appropriate, punish persons who exercise funds or value transfer activities without being authorized. Madagascar revised its legal framework. Under the revised law, Madagascar has not demonstrated that they have taken any action, with a view to identify natural or legal persons that carry out MVTs without a license or registration. The case provided by the authorities was a warning made to an already registered and licensed bureau de change. *Therefore, the rating for c14.2 remains Partly Met.*
32. **Criterion 14.3 (Met)**- This Criterion was rated as Partly Met in the MER given that CEM was not supervised, and information was provided to the assessment team about on-the-spot checks by the Ministry of Finance. Madagascar revised its legal framework. Under the revised law, and further to the decision n° 002/2019-CSBF of 1st March 2019, CEM has been placed under the supervision of CSBF and is now subjected to monitoring for AML/CFT compliance. Since CEM is now a reporting entity and has to implement the AML/CFT obligations as per the AML/CFT law, the CSBF instructions and the SAMIFIN directives apply to reporting entities. *Therefore, the rating for c14.3 remains Met.*
33. **Criterion 14.4 (Met)**- This Criterion was rated as Met in the MER. However, due to changes in the legal framework of Madagascar, the Criterion has been reviewed against the change in laws. Art 16(d) of the AML/CFT Act has been amended through Law N°2023- 026 on February 1st, 2024 which now requires MVTs providers that use agents to communicate the list of their agents or sub-agents to the competent authority. In addition, under Art 27 of the Banking Law 2020, any person carrying out banking services as provided under Art 5 to 13 of the same law is required to be approved by the CSBF. *Therefore, the rating for c14.4 remains Met.*
34. **Criterion 14.5 (Met)**- This Criterion was rated Partly Met in the MER. The deficiency identified was that the authorities were unable to establish that money or value transfer services involve their agents in their AML/CFT program and monitor compliance. Art 16(d) of the AML/CFT Act has been amended through Law N°2023- 026 on February 1st, 2024, which now requires that MVTs providers using agents or sub-agents to include them in their AML/CFT programmes and monitor compliance with these programs. *Therefore, c14.5 is considered Met.*

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

35. Madagascar has addressed the deficiencies identified in the MER in criteria 14.1, 14.3 and 14.5. The outstanding deficiencies are that Madagascar has not taken any actions to identify natural or legal persons carrying out MVTs without a licence and applied sanctions. *In view of the minor deficiency, the Reviewers recommend that the ratings of Recommendation 14 be re-rated from PC to LC.*

**3.1.4 Recommendation 22 – Designated Non-Financial Businesses and Professions: Customer Due Diligence (Originally rated NC- Re-rated to LC)**

36. In the 2nd Round of MER, Madagascar was rated as NC. Only casinos had diligence obligations; these were limited to the obligation of customer identification and data retention. Since then, Madagascar has reviewed its law and amended the AML/CFT law. The analysis will show whether the amendments that have been made to the AML/CFT law are consistent with the requirements of R.22.
37. **Criterion 22.1 – (Met)-** This Criterion was rated as Not Met in the MER given that other than casinos, there was no specific provision relating to the identification of customers applies to the other categories of DNFBPs. DNFBPs are required in Madagascar to comply with the CDD requirements as follows: (a) casinos under Article 21(c) of the AML/CFT Act require casinos to check the identity of the customer when they engage in financial transactions amounting to 3 million Ariary (USD 658); (b) for real estate agents pursuant to Art 2(19) of the AML/CFT Act now provides for the full designations services and profession that is aligned with the FATF methodology. Real estate agents are now reporting persons under the AML/CFT Act and are required to comply with the CDD requirements under Rec 10 when involved in transactions for a client concerning the buying and selling of real estate; (c) for DPMS under Art 2(19) of the AML/CFT law now provides for jewellers to be under the category of DNFBPs operating in Madagascar.; (d) with respect to lawyers, notaries, other independent legal professionals and accounts, Art 2(19) of the AML/CFT law now requires lawyers, notaries, other independent legal professionals and accounts to be designated as DNFBPs and are required to carry out CDD requirements as per activities listed in the FATF methodology; (e) TCSPs are required under Art 2(19) of the AML/CFT law has been amended through law No 2023-026 of 1 Feb 2024 to include in the definition of DNFBPs Trust and company service providers and are under the same obligation to comply with CDD requirements for the activities only related to asset/property held in Madagascar only. *Therefore, c22.1 is considered Met.*

38. **Criterion 22.2 (Met)** – This Criterion was rated as Not Met given that other than casinos, there was no obligation relating to retention of data for the other categories of DNFBPs. Art 4 of the AML/CFT Act provides for the definition of DNFBPs and the record keeping requirements as described under Recommendation 11 applies to all reporting persons. Since DNFBPs are reporting institutions under the AML/CFT Act the requirements to keep records also apply to them and Recommendation 11 was re-rated Compliant in the 10<sup>th</sup> FUR. *Therefore, c22.2 is considered Met.*
39. **Criterion 22.3 (Met)**- This Criterion was rated as Not Met in the MER on account that there were no requirements for PEPs. DNFBPs are designated as reporting persons under Art 4 of the AML/CFT as amended and the requirements for PEPs described under Recommendation 12 apply to all reporting persons. Since DNFBPs are reporting institutions under the AML/CFT Act the requirements applicable to PEPs also apply and Recommendation 12 was re-rated Compliant in the 10<sup>th</sup> FUR. *Therefore, c22.3 is considered Met.*
40. **Criterion 22.4 (Partly Met)**- This Criterion was rated as Not Met in the MER as there was no requirement on the risks posed by new products and technologies. Art 16(c) of the AML/CFT Act 2018 requires reporting entities including DNFBPs to identify and assess the money laundering, financing of terrorism and financing of proliferation of weapons of mass destruction risks that may arise in relation to: (a). the development of new products and new business practices, including new delivery mechanisms; (b). the use of new or developing technologies for both new and pre-existing products. However, Madagascar is yet to comply with the requirements of criteria 15.3 to 15.11. *Therefore, c22.4 is considered Partly Met.*
41. **Criterion 22.5 – (Met)**- This Criterion was rated as Not Met since there was no requirement relating to use of third parties. Art 16(e) of the AML/CFT Act provides for reporting entities which includes DNFBPs to rely on a third party to perform customer due diligence measures as provided for by the AML/CFT Act. According to Article 4 of the same Act, DNFBPs are reporting persons and the provisions under Recommendation 17 therefore equally apply to DNFBPs and Recommendation 17 was re-rated Compliant in the 10<sup>th</sup> FUR. *Therefore, c22. is considered Met.*

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

42. Madagascar has addressed the deficiencies identified in criteria 22.1, 22.2, 22.3 & 22.5. There are minor deficiencies related to the fact that Madagascar is yet to comply with the requirements of the criteria 15.3-15.11 with regards to Rec 15. In view of the risk and context of Madagascar, the deficiencies are



considered minor, and *the Reviewers recommend upgrading Recommendation 22 from NC to LC.*

### **3.1.5 Recommendation 23 – Designated Non-Financial Businesses and Professions: Other Measures (Originally rated NC- Re-rated to LC)**

43. In the 2nd Round MER, this Recommendation was rated non-compliant. The main issue was that the scope of the suspicious transaction reporting obligation did 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 had no obligations relating to internal control and enhanced due diligence. Since the adoption of the MER, Madagascar has made some amendments to its laws. The analysis will show whether the amendments that have been made to the AML/CFT law are consistent with the requirements of R.23.
44. **Criterion 23.1 – (Partly Met)-** This Criterion was rated as Partly Met. The main deficiency was that the law did not cover trust and corporate service providers or dealers in precious stones and precious metals. Trust and Company service providers and DPMS are now subject to AML/CFT obligations since it has been defined as a reporting institution under the amended AML/CFT Act. All DNFBPs listed under the FATF standards exist in Madagascar and are under an obligation to report STR as set out in Rec 20: (a) this also applies to the lawyers, notaries and other legal professionals and accountants when they engage in a financial transaction as described in criterion 22.1(d); there is no requirement for a DPMS to report an STR when they engage in a cash transaction with a customer equal to or above USD/EUR 15,000; (c) TCSPs are under the obligation of the AML/CFT Act to report STRs since they are designated as reporting institutions under the same Act. *Therefore, c23.1 is considered Partly Met.*
45. **Criterion 23.2 – (Mostly Met)-** This Criterion was rated as Not Met in the MER as there was no obligation relating to internal controls for designated non-financial businesses and professions. Art 19 of the AML/CFT Act requires reporting institutions to implement internal programmes against ML/TF with regards to the ML/TF risks, size of the business and which also includes the implementation of internal policies, procedures and controls. In line with criterion 18.1. Moreover, Art 7 of the CSBF instructions N°001\_2022 on June 27, 2022, requires reporting institutions to have policies and procedures at the level of the parent company to ensure that their branches, subsidiaries and affiliated institutions are implementing measures against ML/TF risks which should be adapted to the subsidiary, branch and affiliated establishment and nature of activities, however, there is no provision for confidentiality of information exchanges in the field of AML/CFT. In view of the risk and

context of Madagascar, the deficiency is considered minor and that is in addition that there is no financial groups operating in Madagascar. *Therefore, c23.2 is considered Mostly Met.*

46. **Criterion 23.3 (Mostly Met)**- This Criterion was rated as Not Met in the MER as there was no obligation to apply enhanced due diligence measures to designated non-financial businesses and professions. Madagascar has addressed the deficiencies identified in Criteria 19.1 & 19.3 in the 9<sup>th</sup> FUR. FIs are required to implement countermeasures based on their internal compliance programs, however, Madagascar does not have mechanisms for the implementation of countermeasures to be applied proportionate to the risks (a) when called upon by the FATF and (b) independently of any call by the FATF. *Therefore, c23.3 is considered Mostly Met.*
47. **Criterion 23.4 – (Met)**- This Criterion was rated as Met in the MER but has been reviewed on account of change in the Malagasy legal framework. Madagascar was rated met in its MER and the provision of Art 28 of the AML/CFT Act provides that reporting parties (directors, officers and employees of FIs and DNFBPs) are prohibited from disclosing the filing of an STR to anyone. *Therefore, the rating for c23.4 remains Met.*

#### *Weighting and conclusion*

48. Madagascar has addressed the deficiency identified in criterion 23.4, mostly addressed the deficiencies in criteria 23.2 & 23.3 and partly addressed the deficiencies in criterion 23.1. There are minor deficiencies as there is no provision for confidentiality of information exchanges in the field of AML/CFT. In addition, there is no explicit obligation in the above instructions for financial groups to ensure that their foreign branches and majority of foreign subsidiaries apply the standard of the country of origin when the requirements of the host country are less restrictive. In view of the context of Madagascar whereby DNFBPs have limited foreign branches and subsidiaries the Reviewers are of the view that the deficiencies are minor and *recommend that Recommendation 23 should be re-rated from NC to LC.*

#### **3.1.6 Recommendation 24 – Transparency and Beneficial Owners of Legal Entities (Originally rated NC- Re-rated to PC)**

49. Recommendation 24 is rated non-compliant in the 2nd Round of MER in 2018. During the 2nd Round, all companies under the Malagasy law were not registered in the Trade and Companies Register (i.e., undeclared partnerships). Madagascar had also not conducted an assessment of the risks associated with different types of legal persons, in particular undeclared

partnerships. The Trade and Companies Register did not include any information on beneficial owners while companies were not required to keep a record of basic information and beneficial owners of the company. The analysis below will demonstrate progress made by the Malagasy authorities to address the deficiencies identified in this Recommendation.

50. **Criterion 24.1 (Met)**- This Criterion was rated as Partly Met in the MER as Madagascar did not have a mechanism that identifies and describes the different types, forms and basic features of legal entities and the procedures for creating such legal persons. RNCS (National Register of Companies and Trading) makes available to the public a website "RNCS Mada" the information relating to (a) the different types, forms and basic features of legal persons in the country: <https://www.rcsmada.mg/index.php?pgdown=statut&pgmenu=Informations%20G%C3%A9n%C3%A9rales>; and (b) the processes for the creation of legal persons: <https://www.rcsmada.mg/index.php?pgdown=guide>. Under Art 3 to 6 of the Commercial Code, the applicant should disclose the name of the shareholders, directors, registered business place, etc. Art IV-29 of the Initial Finance Law, legal entities or their agents, are required to declare to the Directorate General of Taxes using the form provided information related to BO at the time of filing their taxes or within 30 days of incorporation and updating the same at the time of their annual statements or income or within 30 days when the legal entity. *Therefore, c24.1 is considered Met.*
51. **Criterion 24.2 - (Not Met)**- This Criterion was rated as Not Met in the MER. Madagascar has not assessed the ML/TF risks associated with all types of legal persons created in the country. Although Madagascar indicated that they have carried out an NRA, the exercise did not cover legal persons. *Therefore, the rating for c24.2 remains Not Met.*
52. **Criterion 24.3 (Met)**- This Criterion was rated as Mostly Met in the MER. The deficiencies identified in the MER were that for some companies, the law allowed the partners of a corporation to decide that it would not be registered or the subject of any publicity measure for undeclared partnerships. All companies created in Madagascar are now registered in the National Trade and Companies Register (RNCS). Information relating the companies pursuant to Art 3 to 9 of the Commercial Code (legal form and status, the address of the registered office, basic regulating powers, and a list of directors) are available to any member of the public for inspection of the Register of the different types of companies that can be registered in Madagascar, and if they desire, they can apply for copies of the records in the Register in hard copies which are provided upon payment of a fee as provided in the same law. in its

website: <https://www.rcsmada.mg/index.php?pgdown=liste2>. *Therefore, c24.3 is considered Met.*

53. **Criterion 24.4 (Met)**- This Criterion was rated as Not Met in the MER. Art 3 to 9 of the Commercial Code requires companies to maintain a register of their members or shareholders and state the category of shares held by each member or shareholder and the amount. This information should be kept at the level of the company registered office address in Madagascar and should be made available for inspection which includes the name, proof of incorporation, form, status and address and place of business amongst others. *Therefore, c24.4 is considered Met.*
54. **Criterion 24.5 - (Met)**- This Criterion was rated as Partly Met in the MER as there was no obligation on the register to respect deadlines for updates on a timely basis. Art 56 to 59 requires legal entities registered in Madagascar to file any changes related to the changes to director, shareholder, articles of association, and minutes of the board to be filed within two months of the effective date. While for change in the transfer of the registered office address, the company will have to notify the RNCS within 15 days of the change. *Therefore, c24.5 is considered Met.*
55. **Criteria 24.6 (Met)**- This Criterion was rated as Not Met in the MER. Madagascar uses the following mechanisms to ensure that BO information on the company is obtained and available at a specific location: (a) Under Art IV-28 legal entities are required to keep the special register of BO which should contain accurate and up-to-date information relating to the identity of the BO, the nature, terms and extent of the control exercised over the legal entity and the date the natural person ceased to be the BO of the legal entity; (b) Pursuant to Art IV-(a) Art 22 of the Initial Finance Law 2024 requires the central registrar of BO under the authority of the Directorate General of Taxes to collect, retain, manage, and have data quality control and the provision of information on the BO of legal entities. For the above purposes the legal entity shall carry reasonable due diligence to ensure that the information contained in the special register is accurate and up to date. Madagascar has adopted the requirements of Criterion 24.6 (a) & (b). *Therefore, c24.6 is considered Met.*
56. **Criteria 24.7 (Met)**- This Criterion was rated as Not Met in the MER. Art IV-29 of the Initial Finance Law, legal entities or their agents, are required to declare to the Directorate General of Taxes using the form provided information related to BO at the time of filing their taxes or within 30 days of incorporation and updating the same at the time of their annual statements or income or within 30 days when the legal entity or the agent becomes aware

that there has been a change of information on the BO. *Therefore, c24.7 is considered Met.*

57. **Criteria 24.8 - (Not Met)**- This Criterion was rated as Not Met in the MER. Art IV-29 of the Initial Finance Law, legal entities or their agents, are required to declare to the Directorate General of Taxes using the form provided information related to BO at the time of filing their taxes or within 30 days of incorporation and updating the same at the time of their annual statements or income or within 30 days when the legal entity or the agent becomes aware that there has been a change of information on the BO. There is no provision under the Initial Finance Law 2024 that requires legal entities registered in Madagascar to cooperate with competent authorities to the full extent to determine the BO by requesting that one or more natural persons' resident in Madagascar be authorised by the legal entity and accountable to the competent authorities for providing basic information and BO information or providing further assistance. *Therefore, the rating for c24.8 remains Not Met.*
58. **Criteria 24.9 - (Met)**- This Criterion was rated as Not Met in the MER. Art IV.39 of the Finance Law 2024 requires all persons (directors and administrators) involved in the legal entities to keep the register of directors and administrators and supporting documents for at least five years after the date of the dissolution of the company. *Therefore, c24.9 is considered Met.*
59. **Criteria 24.10 - (Met)**- This Criterion was rated as Met in the MER but has been reviewed on account of the new legal framework in Madagascar. Art 25 of the AML/CFT law gives powers to SAMIFIN to access any information held by reporting institutions and that information could be related to basic and BO information. In addition, Madagascar has the legal basis for rapidly providing the widest possible range of information through MLA or other forms of international cooperation by facilitating access by foreign competent authorities to basic information held by the RNCS under Art 9 & 10 of the Law n° 2017-027 on international cooperation in criminal matters. *Therefore, the rating for c24.10 remains Met.*
60. **Criteria 24.11 - (Not Met)**- This Criterion was rated as Not Met in the MER. Art 53 of the Commercial Code still allows bearer shares in Madagascar, the authorities have not informed of the mechanism(s) to ensure that they are not misused for ML/TF purposes. *Therefore, the rating for c24.11 remains Not Met.*
61. **Criteria 24.12 - (N/A)**- This Criterion was rated as Not Met in the MER. This criterion is N/A since the authorities informed that nominee



directors/shareholders are not allowed in Madagascar. *Therefore, c24.12 is considered Not Applicable.*

62. *Criteria 24.13 (Partly Met)*- This Criterion was rated as Partly Met in the MER. Art IV. 40 of the Finance Law 2024 although provides monetary sanctions only which is found in the Tax Code. The authorities have not provided the Tax Code to the attention of the Reviewers to see whether the sanctions are proportionate and dissuasive. *Therefore, the rating for c24.13 remains Partially Met.*
63. *Criteria 24.14 (Met)*- This Criterion was rated as Partly Met as there was no information relating to the implementation of international cooperation in relation to basic and BO information. Madagascar has the legal basis for rapidly providing the widest possible range of information through MLA or other forms of international cooperation by facilitating access by foreign competent authorities to basic information held by the RNCS under Art 9 & 10 of the Law n° 2017-027 on international cooperation in criminal matters. The law 2017-017 on international cooperation provides for the exchange of information on criminal matters. *Therefore, c24.14 is considered Met.*
64. *Criteria 24.15 (Mostly Met)*- This Criterion was rated as Partly Met as there was no information relating to the quality of assistance. Art 10 of the Law n° 2017-027 on international cooperation in criminal matters requires the transmission of the information spontaneously to an authority or a competent authority of a foreign state. However, there is no legal provision for feedback. *Therefore, c24.15 is considered Mostly Met.*

### *Weighting and conclusion*

65. Madagascar has addressed the deficiency identified in criteria 24.1, 24.3, 24.4, 24.5, 24.6, 24.7, 24.9,24.10, & 24.14; mostly addressed the deficiencies in criterion 24.15 and partly addressed criterion 24.13 while criterion 24.12 is not applicable. There are some deficiencies since Madagascar has yet to assess the ML/TF risks associated with all types of legal persons created in the country. There is no provision under the Initial Finance Law 2024 that requires legal entities registered in Madagascar to cooperate with competent authorities for determining BO and allows LEAS access to basic and BO information. Bearer shares are still allowed in Madagascar and there is no mechanism(s) to ensure that they are not misused for ML/TF purposes. The Reviewers are of the view that the deficiencies are major and *recommend that Recommendation 24 should be re-rated from NC to PC.*

### 3.1.7 Recommendation 25 – Transparency and Beneficial Owners of Legal Constructions (Originally rated NC- Re-rated to PC)

66. Recommendation 25 was rated non-compliant in the 2nd Round of MER given that Madagascar did not have a legal framework applicable to trusts, in the absence of which foreign trusts may nevertheless operate in Madagascar. In this review, Malagasy law has been revised through the AML/CFT Act amendments. The analysis below will demonstrate progress made by the Malagasy authorities to address the deficiencies identified in this Recommendation.
67. **Criteria 25.1 (Mostly Met)**- This Criterion was rated as Not Met in the MER. Art 4 of the AML/CFT Act 2018 has been amended in 2024 to include TCSPs Art 4 (Point 19(l)) of the amended AML/CFT Act 2018. Moreover, Madagascar has enacted the Finance Law that now provides for a central register for beneficial owners: (a) Art IV-30 of the Finance Law 2024 now requires administrators of legal arrangements to obtain and hold adequate, accurate and current information on the parties to a legal arrangement, however, the law is silent on the parties that would be involved with the exception of the beneficial owner of the legal arrangement; (b) Art IV-30 of the Finance law now requires the administrator of a legal arrangement to hold basic information on the identity of the person involved in the legal arrangement; (c) Professional trustees are not defined under the current legal framework. *Therefore, c25.1 is considered Mostly Met.*
68. **Criteria 25.2 (Met)**- This Criterion was rated as Not Met in the MER. Article IV-32 of the Finance Law 2023.- Administrators of legal arrangements are required to identify and verify the identity of their beneficial owners and to keep a special register for this purpose in Madagascar which must be up to date with all modifications relating to the beneficiary's effective legal arrangement, and presented at any request from the Directorate General of Taxes and this is updated at least once a year. *Therefore, c25.2 is considered Met.*
69. **Criteria 25.3 (Met)**- This Criterion was rated as Met in the MER but has been reviewed on account of the introduction of a new law in Madagascar. Madagascar has measures to ensure that administrators disclose their status to FIs and DNFBPs when forming a business relationship or carrying out an occasional transaction. Article 13 of the AML/CFT law requires reporting institutions to identify their clients and where that involves a legal arrangement, this requires the disclosure of the administrator (trustee). *Therefore, the rating for c25.3 remains Met.*

70. **Criteria 25.4 (Met)**- This Criterion was rated as Met in the MER but has been reviewed on account of the introduction of a new law in Madagascar. Art IV-30 of the Finance Law 2024 now provides for administrators of legal arrangements. The new law does not present any obstacles that prevents administrators to share any information related to the legal arrangement with competent authorities or from providing FIs and DNFBPs when requested, with information on the BO and assets of the legal arrangement. Besides, LEAs have extensive powers for requesting any information from any person under the Criminal Code Procedure. *Therefore, c25.4 is considered Met.*
71. **Criteria 25.5 (Met)**- This Criterion was rated as Partly Met in the MER since there was no obligation for trustees to declare their status to financial institutions and DNFBPs. Art IV-30 of the Finance Law 2024 now provides for administrators of legal arrangements. The LEAs have extensive powers under Art 123, 129, 133 et seq., 206 et seq., 251 et seq of the Criminal Code procedure to conduct investigations and are able to obtain timely access and all the information held by the administrator, other parties, the BO and control of the legal arrangement which also includes (a) the beneficial ownership; (b) information on the residence of the administrator; (c) assets held or managed by the FI or DNFBPs, in relation to the administrator with which they have a business relationship or when they undertake an occasional transaction. The authorities to clarify the above to the Reviewers. *Therefore, c25.5 is considered Met.*
72. **Criteria 25.6 (Partly Met)**- This Criterion was rated as Not Met in the MER. Madagascar has the legal basis for rapidly providing the widest possible range of information through MLA or other forms of international cooperation by facilitating access by foreign competent authorities to basic information held by the RNCS under Art 9 & 10 of the Law n° 2017-027 on international cooperation in criminal matters. While the Reviewers take note of the proclamation of the Finance Law 2024 establishing the obligations regarding the Register of beneficial owners. The authorities should inform the Reviewers whether the Directorate General of Taxes is also under an obligation to share BO information on legal arrangements in line with this criterion. *Therefore, c25.6 is considered Partly Met.*
73. **Criteria 25.7 (Partly Met)**- (a) This Criterion was rated as Not Met in the MER. There is no provision whereby the administrators of legal arrangements are legally liable for any failure to perform their duties relevant to meeting their obligations; (b) Art IV. 40 of the Finance Law 2024 although provides for monetary penalties only which is found in the Tax Code could be restrictive to tax offences only. The authorities have not provided the Tax Code to the

attention of the Reviewers to see whether the sanctions are proportionate and dissuasive. *Therefore, c25.7 is considered Partly Met.*

74. **Criteria 25.8 (Not Met)**- This Criterion was rated as Not Met in the MER. Art IV-30 of the Finance Law 2024 now provides for administrators of legal arrangements. The legal framework does not provide for sanctions against trustees of legal arrangements for failure to grant competent authorities timely access to information regarding the legal arrangement. Moreover, the sanctions provided under the Tax Code seems to be monetary penalties and could be restrictive to tax offences only. The Reviewers did not have sight of the Tax Code to make a determination whether the sanction is proportionate and dissuasive. *Therefore, c25.8 is considered Not Met.*

#### *Weighting and conclusion*

75. Madagascar has addressed the deficiency in the MER for criterion 25.2, 25.3, 25.4 & 25.5 and mostly addressed the deficiencies identified in Criterion 25.1 and partly addressed the deficiencies identified in Criterion 25.6, 25.7 & 25.8. The Reviewers are of the view that the deficiencies are major and *recommend that Recommendation 25 should be re-rated from NC to PC.*

#### **3.1.8 Recommendation 26 – Regulation and Control of Financial Institutions** *(Originally rated PC- Maintained at PC)*

76. Recommendation 26 was rated partially compliant. Madagascar has made some amendments to its AML/CFT and Banking Laws. The analysis will show whether the amendments that have been made to AML/CFT Law are consistent with the requirements of R.26.
77. **Criteria 26.1 (Met)**- This Criterion was rated as Largely Met in the MER given that supervision had not started at the time of the assessment. The CEM has been approved as a Microfinance deposit and credit institution by the CSBF under decision n° 002/2019-CSBF of 1st March 2019 and is now under the supervision of the CSBF. *Therefore, c26.1 is considered Met.*
78. **Criteria 26.2 (Met)**- This Criterion was rated as Met in the MER but has been reviewed on account of the new legal framework in Madagascar. In Madagascar core principles FIs are required to be licensed and that includes those that provides MVTs or money or currency changing services. This criterion was rated Met in the MER and the authorities have informed that the legislative framework has not changed. *Therefore, the rating for c26.2 remains Met.*

79. **Criteria 26.3 (Met)**- This Criterion was rated Partly Met in the MER. At the time of the assessment, Regulations do not provide for the examination of beneficial owners when applying for authorization and significant transfers of ownership. Besides, existing diligence measures were limited. The CSBF is required to take the necessary measures to prevent criminals or their associates from being professionally accredited or holding or being the beneficial owner of a significant or controlling interest or holding a management function in a credit institution which includes microfinance activities under Art 232 of the Banking Law. While for the insurance sector, there are fit and proper requirements for managers, directors and shareholders under Decree 2001-1120 and the Insurance Code (Book IV, Chapter 2, Article 257). *Therefore, c26.3 is considered Met.*
80. **Criteria 26.4 (Mostly Met)**- This Criterion was rated as Mostly Met in the MER. The main deficiency identified were that AML/CFT did not apply to the Core Principles, and supervisory activities had not started due absence of implementing legislation and the CEM was not subject to AML / CFT supervision. (a)Core principles institutions fall under the supervision of the CSBF. Credit institutions are subject to AML / CFT regulation and supervision, but it has not been established that AML/CFT applies to the Core Principles institutions, especially in case of transfer of ownership or acquisition, or of cooperation of CSBF with its foreign counterparts. Art 47 of the Banking Law n°2020-011 of September 1, 2020, provides for consolidated and cross-border supervision reporting institutions when they belong to a group; (b) Now the CEM has been approved as a Microfinance deposit and credit institution by the CSBF and is now being monitored and supervised for AML/CFT purposed by the CSBF. *Therefore, the rating for c26.4 remains Mostly Met.*
81. **Criteria 26.5 (Not Met)**- This Criterion was rated as Not Met in the MER. Although supervisory authorities now have extensive powers for fulfilling their obligations in effectively monitoring reporting entities under the Banking law, the reviewers could not determine that the frequency and intensity of the on-site and off-site AML/CFT supervision of the FIs or the group is determined based on the ML/TF risks and policies, internal controls and procedures associated with the institution or group as identified by the supervisor's assessment of the FI's or group risk profile; the ML/TF risks present in the country and the characteristics of the FIs or groups allowed to them under the RBA. *Therefore, the rating for c26.5 remains Not Met.*
82. **Criteria 26.6 (Not Met)**- This Criterion was rated as Not Met in the MER. The CSBF has not provided information on whether they conduct individual



ML/TF risk assessments of FIs to determine their risk profiles periodically and when there are major events or developments in the management and operations of the FI or the group. *Therefore, the rating for c26.6 remains Not Met.*

### *Weighting and conclusion*

83. Madagascar has addressed the deficiency identified in criterion 26.1, 26.2, 26.3 & 26.4 however, the authorities have not addressed the deficiencies identified in criterion 26.5 & 26.6. The Reviewers are of the view that the deficiencies are major and *recommend that Recommendation 26 should be maintained at PC.*

### *3.1.9 Recommendation 28 – Regulation and Control of Designated Non-Financial Businesses and Professions (Originally rated NC- Re-rated to PC)*

84. Under its Second Round MER, the Republic of Madagascar was assessed on the requirements of Rec 28. Madagascar has made some amendments to its legal and institutional framework to address the deficiencies identified in the MER. The analysis will show whether the amendments that have been made to AML/CFT Law are consistent with the requirements of R.28.
85. *Criteria 28.1 (Partly Met)*- This Criterion was rated as Partly Met in the MER. The main deficiency identified was that surveillance did not extend to compliance by gaming institutions with their AML / CFT obligations. (a) Art 21 of the AML/CFT law 2018 requires that an applicant for operating a casino or gaming activities request from the Ministry of Finance in collaboration with the Ministry of Interior to obtain the authorization to open and operate a casino or gaming activities; (b)The authorities have not provided information on whether there are necessary measures to ensure that criminals or their associates are shareholders or beneficial owners of casinos; (c) Supervision of casino or gaming activities is carried out by a unit with the National Police under the Ministry of Interior which also covers AML/CFT matters. SAMIFIN has issued a specific Directive for casinos and gambling houses in accordance with the provisions of the AML/CFT law 2018. *Therefore, the rating for c28.1 remains Partly Met.*
86. *Criteria 28.2 (Partly Met)*- This Criterion was rated Not Met in the MER. (a)The Ministry of Finance and the Ministry of Interior monitor compliance with AML/CFT requirements for casinos; (b)Real estate agents have been designated as DNFBPs and are supervised for AML/CFT requirements by SAMIFIN; (c) DPMS are now considered as reporting institution further to the

amendment brought to the AML/CFT Act in 2024. There is no information on the supervising authority; (d) The National Chamber of Notaries ensures that entities providing services comply with AML/CFT requirements and the Order of Accountant and Financial Professions (OECFM) has established a Guidance (AML/CFT manual) for the professions; (e) TCSPs has only been designated as DNFBPs as from 1 Feb 2024 further to the amendment in Art 2 of the AML/CFT law 2018 in the recent amendment to the Act and there is no information on the supervisory authority for TCSPs. *Therefore, c28.2 is considered Partly Met.*

87. **Criteria 28.3 (Partly Met)**- This Criterion was rated as Partly Met given that it was 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. All DNFBPs are designated as reporting entities under the AML/CFT Act as amended. Casinos, Legal professionals and accountants are required to be monitored and supervised for AML/CFT supervision by their licensing authority Art 12 of the AML/CFT Act 2018. However, the DNFBP supervisors have only recently started monitoring these entities for AML/CFT purposes and have yet to develop appropriate systems for monitoring compliance with AML/CFT requirements. Currently, there is no supervisor for real estate and TCSPs. *Therefore, the rating for c28.3 remains Partly Met.*
88. **Criteria 28.4 (a)(Partly Met)**- This Criterion was rated as Partly Met in the MER. Only casinos, legal professionals and accountants are being supervised by their supervisor and SRBs respectively while for real estate agents and TCSPS they are not supervised. *Therefore, the rating for c28.4 remains Partly Met.*
89. **Criteria 28.4 (b)(Partly Met)**- This Criterion was rated as Partly Met in the MER. Casinos are being monitored for compliance with AML/CFT requirements by the Ministry of Finance and since Casinos are designated as reporting entities they are required to submit information on directors, shareholders and beneficial owners.

Real estate agents are designated as DNFBPs under the AML/CFT Law, however, there is no information on the licensing authority while they are being supervised by SAMIFIN for AML/CFT requirements.

DPMS is now reporting institutions further to the amendment to the AML/CFT Act in 2024. There is no information on the licensing and supervisory authorities.

The National Chamber of Notaries is a SRB and ensures that entities providing notarial services comply with AML/CFT requirements which includes provision for disclosure and monitoring of shareholders, directors and beneficial owners.

The Order of Accountant and Financial Profession is a SRB and has established AML/CFT guidance for the profession which provides for AML/CFT requirements with regards to disclosure and monitoring of shareholders, directors and beneficial owners.

TCSPs have been designated as reporting institutions since 1 Feb 2024 and there is no information on the licensing authority or supervisory authority for that sector.

*Therefore, the rating for c28.4 (b) remains Partly Met.*

90. **Criteria 28.4 (c)(Partly Met)**- This Criterion was rated as Partly Met in the MER. Article 31 of the AML/CFT Law authorises DNFBP supervisors to impose sanctions for failure to comply with AML/CFT/PF requirements. However, the law does not prescribe a range of sanctions which is applicable to DNFBP supervisors for failure to comply with AML/CFT requirements. For some DNFBPs, there are also no specific regulations which have been issued outlining the range of sanctions which are applicable for non-compliance with AML/CFT requirements. *Therefore, the rating for c28.4(c) remains Partly Met.*
91. **Criteria 28.5 (Not Met)**- This Criterion was rated as Not Met in the MER. The Reviewers take note that the Order of Accountant and Financial Professions (OECFM), Notaries Chamber, Lawyer Order, in collaboration with SAMIFIN are establishing their roadmap in implementation of Risk Based Supervision on AML/CFT. There is no other information on the other DNFBP supervisors. *Therefore, the rating for c28.5 remains Not Met.*

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

92. Madagascar partly addressed the identified deficiencies in criteria 28.1, 28.2, 28.3 & 28.4 and did not address the deficiencies in criterion 28.5. **The Reviewers are of the view that the deficiencies are major and recommend that Recommendation 26 should be re-rated from NC to PC.**

#### ***3.1.10 Recommendation 35 – Sanctions (Originally rated NC- Re-rated to PC)***

93. During the 2nd Round of MER, Madagascar was rated as non-compliant. At the time of the assessment in 2018, Madagascar did not have a range of proportionate and dissuasive sanctions applicable to credit institutions and

insurance companies subject to the AML Law. The sanctions did not extend to members of the board of directors or senior management of financial institutions and no financial penalty was provided for regarding electronic money institutions. Penalties for manual money changers were not sufficient, proportionate and dissuasive. Additionally, there were no penalties for casinos and real estate agents. Madagascar has made some amendments to the AML/CFT law of 2018 to address the identified deficiencies in the MER. The analysis will show whether the amendments that have been made to AML/CFT Law are consistent with the requirements of R.35.

94. **Criterion 35.1 - (Partly Met)**- This Criterion was rated as Partly Met in the MER. The main deficiencies identified were with regard to the range of sanctions applicable to the DNFBPs. Art 39 to 54 of the AML/CFT law 2018 provides for a range of proportionate and dissuasive criminal, civil and administrative sanctions for breaches of AML/CFT requirements to deal with natural or legal persons. However, (a) on Rec 6, Madagascar has not yet implemented a framework for the application of TFS, (b) Rec 8, the Regulators have access to a range of sanctions and NPO would be subject to the same sanction regime as a DNFBP under the AML/CFT law which presents major deficiencies in the regulation of NPOs in Madagascar (c) On Recs 9-23 (Preventive Measures and Reporting) – The AML/CFT law, SAMIFIN Global Directive and the CSBF Instructions provides for a range of criminal sanctions against non-compliance with obligations related to preventive measures and reporting of suspicious transactions. Nonetheless, natural persons who are convicted of money laundering offences shall be sentenced to two to ten years' imprisonment and a fine of at least three times the value of the property or funds pertaining to the money laundering transactions (Article 39 AML/CFT Law N°2018 -043). Are punishable by double the prescribed penalty and a fine of at least five times the value of the property or funds involved in the money laundering operations in aggravating circumstances. The aggravating circumstances include whether (a) the offence is committed in the exercise of a professional activity; b) the offender is a repeat offender. In this case, convictions handed down abroad are taken into account to establish recidivism; c) the money laundering offence is committed within the framework of a criminal organization.

Under Article 41 of AML/CFT Law N°2018 -043, Legal persons other than the State, on whose behalf or for whose benefit a subsequent offence has been committed by one of their organs or representatives, shall be punished by a fine of five times the fines specified for natural persons, without prejudice to the conviction of the latter as perpetrators or accomplices of the offence. The legal person may also be held liable when the failure to supervise or control the natural person who commits an AML/CFT offence. The range of sanctions

available against legal persons include (a) sentenced to permanent prohibition or to a maximum of five years from directly or indirectly engaging in certain professional activities; b) sentenced to permanent closure or closure for a period of up to five years of their establishments that were used to commit the offence; c) sentenced to dissolution when they were created to commit the offence; d) placed under judicial supervision. *Therefore, the rating for c35.1 remains Partly Met.*

95. **Criterion 35.2 - (Mostly Met)**- This Criterion was rated as Not Met in the MER. Art 39 - 55 of the AML/CFT Law 2018 provides for the sanctions that are applicable to the board members, directors, senior management and is also extended to beneficial owners (Art 39) of FIs and DNFBPs. However, the deficiencies identified in criterion 35.1 will have an impact on this criterion. *Therefore, c35.2 is considered Mostly Met.*

#### *Weighting and conclusion*

96. Madagascar has mostly addressed the deficiencies identified in Criterion 35.2. However, there are major deficiencies with regards to implementation of the TFS requirements with regards to TF and the regulation of NPOs in Madagascar. **The Reviewers are of the view that the deficiencies are major given the weight of criterion 35.1 and recommend that Recommendation 35 ratings should be maintained at PC.**

#### **3.1.11 CONCLUSION**

97. Madagascar has made progress in addressing some of the technical compliance deficiencies identified in its MER. Reviewers considered information provided in support of the request for re-rating for Recommendation 5 from PC to C, Recommendations 22 and 23 from NC to LC; the Re-ratings for Recommendations 2, and 14 from previously PC to LC; the Re-ratings for Recommendation 24, 25 and 28 from previously NC to PC; while the ratings for Recommendation 26 and 35 are maintained at PC.
98. Considering the overall progress made by Madagascar since the adoption of its MER, its technical compliance with the FATF Recommendations has been revised as shown in Table 4.1 below.



**Table 4.1: Technical Compliance Re-rating, August 2024**

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

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