



Anti-money laundering and Counter-terrorist financing measures

MALAWI

**4th Enhanced Follow Up Report and
1st Technical Compliance Rating**

April 2024

Follow - Up Report





The Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) was officially established in 1999 in Arusha, Tanzania through a Memorandum of Understanding (MOU). As at the date of this Report, ESAAMLG membership comprises of 21 countries and also includes a number of regional and international observers such as COMESA, Commonwealth Secretariat, East African Community, FATF, GIZ, IMF, SADC, United Kingdom, UNODC, United States of America, World Bank and World Customs Organization.

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

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MALAWI: 4th ENHANCED FOLLOW-UP REPORT & 1ST REQUEST FOR RE-RATING

I. INTRODUCTION

1. The Mutual Evaluation Report (MER) of Malawi was adopted by the Task Force and approved by the Council of Ministers in September 2019. According to the MER, Malawi was Compliant (C) on 17 Recommendations, Largely Compliant (LC) on 12 Recommendations, Partially Compliant (PC) on 10 Recommendations and Non-Compliant (NC) on 1 Recommendation. Out of the 11 Immediate Outcomes (IOs), Malawi was rated Moderate Level of Effectiveness on Seven (7) IOs and Low Level of Effectiveness on 4 (Four) IOs. Details of the MER ratings are provided in the Table 2.1 below. This follow-up report assesses the progress made by Malawi to resolve the technical compliance shortcomings identified in its MER. In general, countries are expected to have corrected most or all of their technical compliance shortcomings by the end of the third year of follow-up at the latest. This report does not cover the progress made by Malawi in improving its effectiveness.
2. The assessment of Malawi request for technical compliance re-ratings and the preparation of this report were undertaken by the following experts (Supported by ESAAMLG Secretariat: Chris Likomwa and Vanevola Otieno):
 - Zenobia Barry (Namibia)
 - Susan Mangori (Botswana)
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3. Section III of this report summarises the progress made by Malawi on technical compliance. Section IV sets out conclusions and contains a table of Recommendations for which a new rating has been given.

II. KEY FINDINGS OF THE MUTUAL EVALUATION REPORT

4. The MER¹ rated Malawi technical compliance ratings as set out in Table 2.1 below. In the light of these results, Malawi was placed in the enhanced follow-up process²;

Table 2.1. Technical compliance ratings³ September 2019

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

III. OVERVIEW OF PROGRESS IN TECHNICAL COMPLIANCE

3.1 Progress in resolving the technical compliance deficiencies identified in the MER/FUR

5. Since the adoption of its MER in September 2019, Malawi has taken measures aimed at addressing the technical compliance deficiencies identified in its MER. This section of the report summarises progress made by Malawi to improve its technical compliance by addressing the TC deficiencies identified in its MER.
6. ESAAMLG welcomes the steps that Malawi has taken to improve its technical compliance deficiencies. Following this progress, Malawi has been re-rated to Compliant with Recommendations 3, 7 and 34. Recommendations 2 and 16 have been upgraded to LC.

¹ Mutual Evaluation Report (MER) of Malawi, September 2019, https://www.esaamlg.org/index.php/Mutual_Evaluations/readmore_me/427

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

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

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

7. Malawi was rated met on criteria 2.2, 2,3 and 2.5. The deficiencies in the MER were that there were no policies which were informed by identified risks and that there was limited scope of mechanisms to facilitate coordination for purposes of combatting the financing of proliferation of weapons of mass destruction as the 2017 CFT Regulations did not cover UNSCR Resolution 2231.
8. Malawi has developed AML/CFT Policy in February 2023. The policy is informed by the risks that were identified in 2018 when the authorities carried out NRA. Further, the authorities have developed a National Strategy for Countering Terrorism and Preventing Violent Extremism for the year 2023 to 2028. There is also a National Action Plan Against Trafficking in Persons for years 2023 to 2028. The authorities indicated that the policies, other than being informed by the 2018 NRA, have also been informed by the present understanding of risks. However, other than the NRA (2018), the AML/CFT and other policies were developed in February 2023, and as such it is not possible to determine whether the policies are regularly reviewed. The authorities also indicated that they are in the process of updating the NRA. **Therefore c.2.1 is mostly met.**
9. Malawi was rated met on c.2.2 and c.2.3 and the position remain as is in the MER. In relation to c.2.4, the MER found that the National Committee's mandate extended to issues relating to CPF. However, the mandate did not extend to arrangement or framework for coordination and cooperation on UNSCR 2231 in relation to Iran (See R7 in the MER). Reg. 2 of the Financial Crimes (Suppression of TF & Proliferation) (Amendment) Regulations 2023 has addressed the deficiency by incorporating Resolution 2231 and defining it to mean a Resolution 2231 of the Security Council passed on 20th July, 2015 and its successor resolutions. **Therefore c.2.4 is met and c.2.5 is met** as was assessed in the MER.

Weighting and conclusion

10. Malawi has largely addressed the deficiencies in R.2. It was not possible to determine that the policies are regularly reviewed since they were developed in 2023 and it was less than a year at the time of submitting the FUR. Therefore c.2.1 short comings are minor while c.2.2, 2.3, 2.4, and 2.5 are met. ***The outstanding shortcoming is considered minor. Therefore, R.2 is re-rated from PC to LC.***

3.1.2 Recommendation 3 – Money Laundering Offence (Originally rated PC – Upgraded to C)

11. In the MER, assessors found that Malawi had two sections that criminalized the offence of ML and these were Section 42 (1) of the Financial Crimes Act, 2017 (FCA) and Section 331A of the Penal Code and both had different material elements and, on that basis, concluded that the Penal Code was not in line with the Vienna and the Palermo Conventions. Assessors also found that Malawi would not be able to conduct ML offence for terrorism as it did not constitute a predicate offence for ML. To address these deficiencies Malawi has amended the Penal Code and the Financial Crimes Act in 2023.
12. Malawi has maintained two legislations that criminalize ML. The FCA, 2017 and the Penal Code. She has repealed and replaced s.331A (Penal Code (amendment) Act 2023. The new section provides *that any person who, knowingly or who has reasonable grounds to believe that any property, including his own property, in whole or in part, directly or indirectly, represents proceeds of a predicate offence – (a) converts or transfers the property with the aim of (i) concealing or disguising the illicit origin of that property; or (ii) aiding any person, including himself, involved in the commission of the offence to evade the legal consequences thereof, (b) conceals or disguises the true nature, origin, location, disposition, movement or ownership of the property; (c) acquires, possesses or uses that property; or (d) participates in, associates with or conspires to commit, attempts to commit or aids, abets or facilitates the commission of any act or omission referred to in paragraphs (a), (b) or (c), commits an offence.* The language of S. 331A of the Penal Code is word for word S.42 (1) of the FCA, 2017. The amended Penal Code S.331A is now consistent with the Vienna and Palermo Conventions. The sentence has also been streamlined to up to life imprisonment for natural and MK 500, 000, 000 (\$300, 000) for a legal person. The deficiency in c.3.1 has been addressed. **Therefore c.3.1 is met.**
13. Assessors noted that the offence of terrorism was not criminalised therefore not a predicate offence for ML. S. 217B of the Penal Code has been amended in 2023. It provides that; *(1) Any person who carries out a terrorist act commits an offence and shall, upon conviction, be liable to imprisonment for life, and, (2) Any person who aids, abets or attempts to carry out a terrorist act commits an offence and shall, upon conviction, be liable to imprisonment for life.* The deficiency in c.3.2 has been addressed. With the *amendment to S. 217B of the Penal Code terrorism is now considered as a predicate offence for ML.* **Therefore c3.2 is met.** Malawi applies all crimes approach which comprise all category of criminal offences in terms of Section 2(10) of the FCA. The law has not changed in respect of **c.3.3** and the rating will remain N/A. **Similarly, c.3.4 remains met.**

14. Malawi has repealed and replaced S.42 (2) of the FCA to provide more clarity as necessitated by case law. The new subsection provides that; *For purposes of proving an offence under subsection (1), it is not necessary that a person be convicted of the predicate offence.* Therefore, **c.3.5 is met.** Ss. 2(10) and 42 of the FCA requires that predicate offences for money laundering should extend to conduct that occurred in another country, which constitutes an offence in that country, and which would have constituted a predicate offence had it occurred domestically. **Therefore c.3.6 is met.** The legal framework governing criteria c.3.7, c.3.8, c.3.9, c.3.10, and c.3.11 has not changed and they all remain met.

Weighting and conclusion

15. Malawi has addressed the deficiencies that were noted in c.3.1, c.3.2 and c.3.6. **Therefore R.3 is re-rated from PC to C.**

3.1.3 Recommendation 7 - Targeted Financial Sanctions related to Proliferation (Originally rated PC – Upgraded to C)

16. In the Second Round MER, Malawi was assessed against the provisions of its Financial Crimes (Suppression of Terrorist financing and proliferation) Regulations, 2017 (CFT Regulations, 2017) to implement the UNSCR relating to the suppression and disruption of proliferation of weapons of mass destruction and its financing. R7 was rated PC and mainly there were two deficiencies that were noted: a) there were no mechanisms to implement UNSC Resolution 2231 and its successor resolutions and; b) there were no provisions to allow designated persons to make any payment due under a contract entered into prior to listing. To address the deficiencies Malawi amended the Regulations in 2023 to provide for mechanisms to cover UNSCR 2231.
17. Reg. 2 of the Financial Crimes (Suppression of TF & Proliferation) (amendment) Regulations 2023 provides that *“Resolution 2231” means Resolution 2231 of the Security Council passed on 20th July, 2015 and its successor resolutions.* Since the MER found that all other requirements of c.7.1 were met, therefore, Malawi implements targeted financial sanctions without delay (See also Malawi MER on c.6.4) to comply with United Nations Security Council Resolutions, relating to the prevention, suppression and disruption of proliferation of weapons of mass destruction and its financing. **Therefore, c.7.1 is met.**
18. The deficiency in c.7.1 had a cascading effect on c.7.2(a). Since Reg. 2 of the Financial Crimes (Suppression of TF & Proliferation) (amendment) Regulations 2023 has incorporated UNSCR 2231, therefore, the deficiency has been addressed. Malawi has the necessary legal authority and has identified competent authorities responsible for implementing and enforcing targeted financial sanctions. **Therefore c.7.2a is met. The**

requirements of c.7.2 (b-f) were rated met in the MER and the legal framework remain the same. Therefore c.7.2 (b), (c), (d), (e), and (f) will remain met.

19. Reg. 2 of the Financial Crimes (Suppression of TF & Proliferation) (amendment) Regulations 2023 covers coordination and cooperation on UNSCR 2231 in relation to Iran. It addresses the deficiency in c.7.1 that had an impact on c.7.3. The RBM and FIA monitors and ensures compliance of FIs and DNFBPs with TFS obligations through onsite and off-site inspections, Guidance to FIs and DNFBPs on TFS for Proliferation and trainings. Reg 12 of the Suppression of TF and Proliferation provides for fines of K500, 000,000 or twenty-years imprisonment in case of non-compliance by a natural person and a fine of K500,000,000 for a legal person for participating in activities, the object or effect of which is directly or indirectly, to circumvent the prohibitions or to enable or facilitate the contravention of the provisions of the Regulations. Malawi therefore has adopted measures for monitoring and ensuring compliance by the FIs and DNFBPs on TFS in relation to PF. **Therefore c.7.3 is met.**

20. The deficiency in c.7.1 had a cascading effect on c.7.4(a). Since Reg. 2 of the Financial Crimes (Suppression of TF & Proliferation) (amendment) Regulations 2023 has incorporated UNSCR 2231, therefore, the deficiency has been addressed. Malawi has fully developed and implemented publicly known procedures to submit de-listing requests to the Security Council in the case of designated persons and entities that no longer meet the criteria for designation. **The requirements of c.7.4 (a-d) were rated met in the MER and the legal framework remain the same. Therefore c.7.4 (a), (b), (c) and (d) will remain met. Therefore c.7.4 is met.**

21. Reg 15 of the Suppression of TF and Proliferation Regulations 2023 permits access to the frozen accounts in relation to obligations that arose prior to the date on which accounts were frozen. It provides for addition to the accounts of any property including interest or other earnings, payments due under contracts, agreement, or obligations that were concluded or arose before the account became frozen and any funds transferred to the account. The funds received or credited into a frozen account shall be treated in according with the Regulations. **Therefore c.7.5 (a) is met.** Reg. 14 (1) (a) (b) and (c) permits a designated person or entity where freezing action has been taken pursuant to UNSCR 1737 and continued by UNSCR 2231, or taken pursuant to UNSCR 2231 to make any payment due under a contract entered into prior to the listing of such person or entity in the following circumstances; (a) the contract was entered into by the designated person prior to his being listed on the United Nations Consolidated List, or (b) the contract is not related to any of the prohibited items, materials, equipment, goods, technologies, assistance, training, financial assistance, investment, brokering or services referred to in

Resolution 2231 or other relevant Resolution as may be adopted by the Security Council from time to time; and (c) the payment is not directly or indirectly due to a person or entity subject to measures in paragraph 6 of Annex B to Resolution 2231. **Therefore c.7.5 (b) is met.**

Weighting and conclusion

22. Malawi has addressed the deficiencies that were noted in respect of R7. Omission of UNSCR 2231 from the legal framework had a cascading effect on all criteria of the Recommendation. *Therefore, R7 is re-rated from PC to C.*

3.1.4 Recommendation 16 – Wire Transfers (Originally rated PC – Upgraded to LC)

23. In the Second Round MER, Malawi was assessed against the provisions of the ML/TF Regulations 2011. A number of deficiencies noted were: a) there were no specific obligations for ordering FIs to include full beneficiary information in cross-border batch files; b) there were no specific requirements for ordering FIs to be required to include the account number or a unique transaction reference number, provided that this number or identifier will permit the transaction to be traced back to the originator or the beneficiary; c) there was no specific obligation prohibiting the ordering financial institution to execute wire transfer if it does not comply with the requirements specified in criteria 16.1-16.7; d) there was no specific obligation to intermediary and beneficiary financial institutions to have risk-based policies and procedures for determining when to execute, reject or suspend a wire transfer lacking required originator or beneficiary information; e) there was no specific requirement for FIs to take reasonable measures which include post-event monitoring or real-time monitoring to identify cross-border wire transfers that lack complete originator information or required beneficiary information; and f) there was no specific obligation for MVTs providers to take into account all the information from both the ordering and beneficiary FIs in order to determine whether an STR has to be filed and file an STR in any country affected by the suspicious wire transfer, and make relevant transaction information available to the FIA. Criteria c.16.1, c. 16.4, c.16.7, c.16.7, c.16.9, c.16.10, c.16.11, c.16.14, c.16.16 and c.16.18 were rated met in the MER. Malawi promulgated Financial Crimes (Money Laundering) Regulations 2020 (FC(ML) Regulations 2020) which replaced the 2011 Regulations.

24. Financial institutions conducting wire transfers, regardless of amount, are required to ascertain that such transactions are accompanied by accurate and originator information. Reg 20 (2) FC(ML) Regulations 2020 provides that a FI shall include accurate and complete originator and beneficiary information and other related messages when conducting domestic and international electronic funds transfers. Originator Information includes

name, address, identity number, an account number of the originator or unique transaction reference number and other related messages that are sent (Reg 20 (3)). **Therefore c.16.1 (a) remains met.** Under Reg 20 (3), beneficiary includes name, address, an account number of the beneficiary, Society for Worldwide International Financial Telecommunication code and other related messages that are sent. **Therefore c.16.1 (b) remains met.**

25. The FIs have an obligation to include both accurate originator and beneficiary information where several individual cross-border wire transfers from a single originator are bundled in a batch file for transmission to beneficiaries. Further, the beneficiary information should be fully traceable (Reg 20(8) of the FC(ML) Regulations 2020). **Therefore c.16.2 is met.** Malawi requires accurate originator and beneficiary information on all wire transfers regardless of the amount and **c.16.3 will remain N/A.**
26. Under Reg 20(4) of the FC(ML) Regulations 2020 FIs are required to verify the identity of the originator or beneficiary for all electronic funds' transfers. Reg 20 (2) of the FC (ML) Regulations 2020 requires FIs to include accurate and complete originator and beneficiary information and other related messages when conducting domestic electronic funds transfers and such information shall remain with the transferor related message through the payment chain. There is no distinction for domestic and international wire transfer requirements. **Therefore c.16.4 and c.16.5 are met.** There is no requirement that the information accompanying the domestic wire transfer be made available to the beneficiary FI and appropriate authorities by other means. Further, there is no requirement for the ordering FI to make the information available within three business days of receiving the request either from the beneficiary FI or from appropriate competent authorities. Also, it is not clear if Law enforcement authorities would be able to compel immediate production of such information. **Therefore c.16.6 is not met.**
27. S.28(3) of FCA 2017 provides that all records and information collected under subsection (1) shall be maintained in accordance with s. 22. On this basis the MER rated the criterion met and the legal framework remain the same. **Therefore c.16.7 remains met.** A FI is obliged to monitor, not to execute and report to FIA wire transfers which do not contain complete originator and beneficiary information in accordance with Reg 20 (9) of the FC (ML) Regulations 2020. **Therefore c.16.8 is met.**
28. An intermediary FI is obliged to retain all originator and beneficiary information that accompanies a wire transfer (Reg 20 (5)) of the FC (ML) Regulations 2020. The legal framework for c.16.10 requirements has not changed. **Therefore c.16.9 and c.16.10 are met.**

29. Reg 20 (7) of the FC (ML) Regulations 2020 requires beneficiary FIs to take reasonable measures, including post event monitoring or real-time monitoring to identify cross-border electronic funds transfers that lack the required originator or beneficiary information. **Therefore c.16.11 is met.** Intermediary FIs have a legal obligation to use risk-based approach to determine when to execute, reject or suspend a wire transfer lacking originator and beneficiary information and to make a follow-up (Reg 20(6) FC(ML) Regulations, 2020). **Therefore c.16.12 is met.**
30. A beneficiary FI is required to take reasonable measures including post event monitoring to identify cross border wire transfers that lack originator or beneficiary information (Reg 20(7)). Reg 20 (4) creates an obligation for FIs, for all wire transfers, to verify the identity of originator or beneficiary (Refer to R 11 in the MER). There is a legal obligation on beneficiary FIs to use risk-based approach to determine when to execute, reject or suspend a wire transfer lacking originator and beneficiary information and to make a follow-up (Reg 20(6) FC(ML) Regulations 2020). **Therefore c.16.13, c.16.14 and c.16.15 are met.**
31. Criterion 16,16 was rated net on the basis of S.28 (1) of the FCA which remains applicable and therefore this criterion will remain met. **Therefore c.16.16 is met.** S. 28 of the FC (Amendment) Act, 2023 requires MVTs providers that controls both the ordering and the beneficiary side of a wire transfer to consider all the information from both the ordering and beneficiary sides in order to determine whether STR should be filed. Further, the section requires such MVTs to file STR in any country affected by the suspicious wire transfer, and make relevant transaction information available to the FIA. **Therefore c.16.17 (a) and (b) are met.** The legal framework for c.16.18 has not changed and the criterion will remain met.

Weighting and conclusion

32. Malawi has addressed most of the deficiencies that were noted in R16 except the requirements of c.16.6. There is no requirement that the information accompanying the domestic wire transfer be made available to the beneficiary FI and appropriate authorities by other means. Further, there is no requirement for the ordering FI to make the information available within three business days of receiving the request either from the beneficiary FI or from appropriate competent authorities. Also, it is not clear if Law enforcement authorities would be able to compel immediate production of such information *Therefore R.16 is re-rated from PC to LC.*

3.1.5 *Recommendation 34 – Guidance and Feedback (Originally rated PC – Upgraded to C)*

33. In the Second Round MER, Malawi was rated PC on the requirements of this recommendation. The deficiency noted was the lack of guidance and feedback to assist the DNFBPs other than casinos to understand their AML/CFT obligations.
34. The MER established that Malawi has a legal framework to issue guidance that requires competent authorities, supervisors and SRBs to have guidelines and feedback sessions. Such legal framework remains in place. S. 5 (a) & (e)(i) of the FCA. 2017 empowers the FIA or where appropriate, the FIA in consultation with a supervisory authority or self-regulatory body to issue, in writing, instructions, directions, directives, guidelines or rules to reporting institutions as it may consider necessary for the better carrying out of its functions under the Act.

GUIDANCE

35. Competent authorities, supervisors and SRBs have continued to issue guidance to Reporting Institutions. Since the Guidelines to the Mobile Operating Systems in 2011, AML/CFT Guidance for FIs issued in October 2018 (Assessors already considered the Guidelines), the RBM (Central Bank) also issued Guidance Notes on Management of ML/TF Risks amidst COVID-19 in 2020. The RBM also conducts various workshops where the guidelines are further explained.
36. In 2021 FIA issued AML/CFT Guidelines to All DNFBPs (accountants, casinos and gaming houses, lawyers, real estate and dealers in precious metals and stones). The Guidelines, among other things, cover areas such Risk-Based Approach, Customer Identification and verification, Compliance Programs, CDD, Record Keeping and Retention and Reporting. FIA has also conducted awareness workshops, covering Compliance Officers of casinos, real estate, lawyers, accountants and DPMS since 2021 on the Financial Crimes (ML) Regulations 2020, Guidelines, Bi-annual statistics on reporting provided to FIs and DNFBPs, Follow-up Guidance on implementation of remedial issues after onsite inspections and off-site monitoring.

FEEDBACK

37. Competent authorities, Supervisors and SRBs provide feedback in various ways such as letters to Reporting Institutions on information that was provided spontaneously or upon request, feedback on onsite examinations and following up on remediation issues for banks, insurance, capital markets, microfinance, forex bureaus and MTAs, Semi-annual returns feedback to banks and follow-up on any significant gaps, quarterly meetings with Compliance Officers of reporting institutions and feedback to RIs on annual compliance reports. All this is being done on continuous basis. **Therefore, c.34.1 is met.**

Weighting and conclusion

38. Malawi has addressed all the deficiencies that were noted in R34. *Therefore R.34 is re-rated from PC to C.*

IV. CONCLUSION

39. Malawi has made progress in resolving some of the technical compliance deficiencies identified in its MER. Reviewers considered information provided in support of the request for re-rating of Recommendations 2, 3, 7, 16, and 34 initially rated PC. Based on this, Recommendations 3, 7 and 34 have been upgraded from PC to C. while Recommendations 2 and 16 have been upgraded to LC.

40. Considering overall progress made by Malawi since the adoption of its MER, its technical compliance with the FATF Recommendations has been revised as shown in Table 4.1 below.

Table 4.1 Technical Compliance Re-rating, April 2024

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

41. Malawi 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.