

FATF



Anti-money laundering and
counter-terrorist financing
measures

South Africa

Follow-up Report &
Technical Compliance Re-Rating

November 2023

Follow-up report





The Financial Action Task Force (FATF) is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. The FATF Recommendations are recognised as the global anti-money laundering (AML) and counter-terrorist financing (CTF) standard.

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South Africa's :2nd Enhanced Follow-up Report

Introduction

The FATF Plenary adopted the mutual evaluation report (MER) of South Africa in October 2021.¹ Based on its technical compliance results, South Africa was placed in enhanced follow-up as it was rated non-compliant (NC) with 5 FATF Recommendations and partially compliant (PC) with 15 FATF Recommendations.² This is South Africa's first follow-up report (FUR) in which it is seeking re-ratings.

Overall, the expectation is that countries will have addressed most, if not all, technical compliance deficiencies by the end of the third year from the adoption of their MER. This report does not address what progress South Africa has made to improve its effectiveness.

The following expert reviewers, supported by Ms Ravneet Kaur, Policy Analyst from the FATF Secretariat, assessed South Africa's request for technical compliance re-ratings:

- Ms. Virpi, Koivu, Senior Ministerial Adviser, Ministry of Justice, Finland
- Mr. Sebastien Guillaume, Head of Compliance, Ministry of Finance, Treasury, Belgium
- Ms. Ferti Srikandi, Financial Intelligence, PPATK, Indonesia

The second part of this report summarises South Africa's progress in improving technical compliance, while the third part sets out the conclusion and includes a table showing South Africa's MER ratings and updated ratings based on this follow-up report.

Progress to improve Technical Compliance

This section summarises South Africa's progress to improve its technical compliance by addressing some of the technical compliance deficiencies identified in the MER (R.1, R.2, R.5, R.6, R.7, R.8, R.10, R.12, R.14, R.15, R.17, R.18, R.22, R.23, R.24, R.25, R.26, R.27, R.28 and R.32).

¹ www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-South-Africa.pdf

² For Recommendations, the possible technical compliance ratings are: compliant (C), largely compliant (LC), partially compliant (PC), non-compliant (NC) and not applicable (N/A). For Immediate Outcomes, the possible level of effectiveness ratings are: high effectiveness (HE), substantial effectiveness (SE), moderate effectiveness (ME) and low effectiveness (LE).

Progress to address technical compliance deficiencies identified in the MER

Recommendation 1

	Year	Rating
MER	2021	PC
FUR2	2023	↑ LC

- a) **Criterion 1.1 (Partly Met)** In its 4th round MER, South Africa was in the process of completing its NRA. The NRA involved the participation of a range of authorities and some private sector representatives and was completed and adopted (not published) in November 2022 covering ML, TF and PF. The NRA is supplemented by SRAs covering several financial and DNFBP sectors.
- b) The 2022 NRA relies on a large amount of qualitative data, external sources and internal expert information. However, the NRA would benefit from more systematic weighing of the significance of the various types of contextual factors, threats and vulnerabilities in relation to mitigating measures, and pointing out the residual risks more clearly. The analysis of risks relating to the abuse of the NPO sector is not complete.
- c) **Criterion 1.2 (Met)** The Inter-Departmental Committee (IDC) established in 2018 and the NRA Working Group established in 2019 continue to co-ordinate actions to assess risks. This criterion remains met.
- d) **Criterion 1.3 (Mostly Met)** In its 4th round MER, South Africa's commitment to keep the ML/TF NRA up-to-date was acknowledged but not recorded in any official document. The 2022 NRA notes that an objective of the National Strategy sets out the "ongoing identification and assessment of ML, TF and PF threats, vulnerabilities and risks, the development and implementation of commensurate strategies to mitigate these risks" as an objective which clearly reflects the intention to keep the NRA up-to-date but does not provide a clear timeframe.
- e) **Criterion 1.4 (Mostly Met)** In its 4th round MER, although risk assessments had been shared with some FIs, there were no specific mechanisms to enable sharing with FIs as well as DNFBPs. Sectoral risk assessments of some DNFBPs have been published on the Financial Intelligence Centre (South Africa's FIU), FIC website, a version of the TF risk assessment has been published and there are plans to publish the 2022 NRA. The findings of the NRA have been shared with supervisors and the private sector by the Inter-Departmental Working Group through the South African Integrated ML Task Force (SAMLIT). There are also mechanisms, through which the supervisors have shared the findings with FIs.
- f) **Criterion 1.5 (Mostly Met)** In its 4th round MER, aside from the SARB:PA, authorities in South Africa with AML/CFT responsibilities did not allocate resources based on risks. South Africa's 2023 – 2026 National Strategy adopted in November 2022, broadly indicates the goal to require risk-based supervision consistently and across all FIs and DNFBPs including through the allocation of resources and efforts. This being applied at the supervisory level based on SRAs and documentation on risk-based supervisory methods, including the intended frequency of inspections on the basis of the nature of risks by supervisors such as the FSCA-PA and the FIC. However, there is inadequate documentation provided

by South Africa to determine whether risk-based measures are taken by other authorities, particularly LEAs, and other competent authorities informed of identified national risks, including allocation of resources.

- g) **Criterion 1.6 (a)-(b)** (*Mostly Met*) In its 4th round MER, the exclusion of CFIs, credit providers other than money lenders against securities, FinTech companies offering financial services that are not Financial Services Providers (FSPs), dealers in precious metals and stones (DPMS) that are not Krugerrand dealers (KRDs), accountants (for activities other than providing financial services), and company services providers (CSPs) other than attorneys of several entities from AML/CFT obligations, supervision and monitoring were not based on proven low ML/TF risks. The deficiency has been mostly addressed with the relevant FIs (except for CFIs) and DNFBPs being added to the FIC Act as Accountable Institutions (AIs) and are thus subject to risk management measures. South Africa no longer has any FIs or DNFBPs that exclude the application of the FATF Recommendations.
- h) **Criterion 1.7 (a)-(b)** (*Mostly Met*) South Africa addresses higher risks through requiring AIs to consider risk factors communicated by the authorities based on the authorities' understanding of ML/TF risks at a national or sector level in its risk assessment. In its 4th round MER, some FIs and DNFBPs were not AIs and thus were not subject to requirements to address higher risks. The deficiency has been mostly addressed with the relevant FIs (except for CFIs) and DNFBPs being added to the FIC Act as AIs. However, there is no documentation on whether and how the conclusions of the NRA are incorporated in their risk assessments (risk management and compliance programme).
- i) **Criterion 1.8** (*Mostly Met*) Under the FIC Act, AIs can apply simplified CDD where they assess their ML/TF risks as lower. In its 4th round MER, FIs and DNFBPs that were not AIs were not subject to simplified CDD requirements where there were lower risks. The deficiency has been mostly addressed with the relevant FIs (except for CFIs) and DNFBPs being added to the FIC Act as AIs. However, there is no documentation on whether and how the conclusions of the NRA are incorporated in their risk assessments (risk management and compliance programme).
- j) **Criterion 1.9** (*Mostly Met*) Based on the FIC Act, and the SRAs and legislative mandate of supervisory bodies, supervisors are responsible for the supervision of AIs and have the power to impose sanctions for lack of compliance. In its 4th round MER, FIs and DNFBPs that were not AIs were not supervised or monitored for compliance of their obligations under R.1. The deficiency has been mostly addressed with the relevant FIs (except for CFIs) and DNFBPs being added to the FIC Act as AIs and are thus subject to supervision. Supervisors are obliged to ensure AIs comply with their obligations and lack of compliance is subject to sanctions.
- k) **Criterion 1.10 (a)-(d)** (*Mostly Met*) Under the FIC Act and Guidance Note 7, an AI must develop, document, maintain and implement an AML/CFT Risk Management Compliance Programme (RMCP) for the identification, assessment, monitoring, mitigation and management of ML/TF risks. In its 4th round MER, FIs and DNFBPs that were not AIs were not required to take the steps to identify, assess and understand their ML/TF risks as required by the criterion. The deficiency has been mostly addressed with the relevant FIs (except for CFIs) and DNFBPs being added to the FIC Act as AIs and are subject to risk management obligations.

- l) **Criterion 1.11 (a)-(c) (Mostly Met)** Under the FIC Act and Guidance Note 7, an AI must develop, document, maintain and implement an AML/CFT RMCP (see c.1.10) which must be approved by the board of directors, senior management or other persons or group of persons exercising the highest level of authority. The RMCP must be reviewed regularly, and the AI must take enhanced measures, in terms of the range, degree, frequency or intensity of controls, when risks are higher. In its 4th round MER, FIs and DNFBPs that were not AIs were not required to implement the requirements of this criterion. The deficiency has been mostly addressed with the relevant FIs (except for CFIs) and DNFBPs being added to the FIC Act as AIs and are subject to implementation and monitoring of market entry controls.
- m) **Criterion 1.12 (Mostly Met)** In its 4th round MER, the possibility to take simplified measures was not a possibility for FIs and DNFBPs that were not AIs. In addition, for AIs that could take simplified measures when the risks are assessed as lower, there are no requirements that such measures not be permitted when there is a suspicion of ML/TF or when the requirements under c.1.10 and c.1.11 are not met. The deficiency has been mostly addressed with the relevant FIs (except for CFIs) and DNFBPs being added to the FIC Act as AIs and are required to implement a risk management programme that provides for the manner in which enhanced or simplified CDD is performed. The amendment to the FIC Act includes a distinct CDD process when there are doubts about the veracity of information and when reporting suspicious and unusual transactions.
- n) **Weighting and conclusion:** Since the MER, South Africa has adopted its first national risk assessment of ML/TF risks, although there remain minor gaps in process and methodology which could affect risk-based measures and resource allocation. Almost all relevant FIs and DNFBPs (credit providers other than money lenders against securities, FinTech companies offering financial services that are not FSPs, DPMS that are not KRDS, accountants (for activities other than providing financial services), and CSPs other than attorneys) are now AIs and thus, obligations relating to risk assessment and mitigating measures are applicable to all AIs. Recommendation 1 is re-rated as **Largely Compliant**.

Recommendation 2

	Year	Rating
MER	2021	PC
FUR2	2023	PC

- a) **Criterion 2.1 (Mostly Met)** In its 4th round MER, South Africa had yet to develop co-ordinated and holistic AML/CFT national policies informed by identified risks, although existing policies addressed some of the risks identified, including those to promote financial inclusion, to bring sectors deemed high-risk (e.g., dealers in motor vehicles) under the AML/CFT regime, and to obligate CTRs. In November 2022, informed by the NRA, South Africa developed its National Strategy for 2023 to 2026 to set priorities for competent authorities. The National Strategy anticipates that risks identified and assessed in an on-going manner, are used to inform police and strategy. The National Strategy would benefit from greater clarity on the process for consistent future review.
- b) **Criterion 2.2 (Met)** In its 4th round MER, the IDC, which is the mechanism to enable inter-agency cooperation at the policy and operational level, did not

include supervisors of all the DNFBP sectors as well as the Companies and Intellectual Property Commission (CIPC), the company registry. The IDC established in 2018, coordinates the AML/CFT/CFP policy in South Africa as well as cooperation between the FIC, LEAs and supervisors of the financial sector. The FIC Act has been amended to cover supervision of FIs and DNFBPs that were previously uncovered. In 2020, the composition of the IDC was expanded to include the CIPC and in 2022, to include DNFBP supervisors. As such, all the relevant authorities are included in South Africa's coordination mechanism for national AML/CFT policies.

- c) **Criterion 2.3** (*Mostly Met*) In its 4th round MER, the IDC, the mechanism that enables policy makers to co-operate and where appropriate co-ordinate and exchange information did not involve all stakeholders at the time of the MER. This has been addressed with amendments to the FIC Act (see c.2.2). The MER also noted that the IDWG-CT, which is responsible for coordinating and overseeing the implementation of South Africa's international obligations associated with TF arising from the UNSCRs, did not include regulators responsible for overseeing implementation of the UNSCRs by FIs and DNFBPs. Although the Department of International Relations and Cooperation (DIRCO) which convenes the IDWG-CT may co-opt FI and DNFBP supervisors, this has not been done. Thus, the deficiency remains.
- d) **Criterion 2.4** (*Partly Met*) In its 4th round MER, there were no mechanisms to allow co-operation and coordination to combat the financing of proliferation of weapons of mass destruction. The South African Non-Proliferation Council for Weapons of Mass Destruction coordinates with the FIC, but its focus is on counter-proliferation measures rather than PF. There is increased domestic cooperation and coordination to improve the detection of PF, particularly at the operational level (e.g. through the STR reporting and social media monitoring). Although mainly involving the relevant LEAs, intelligence agencies and export control bodies, since 2022, this has included the FIC and the SSA. The formal CFP coordination is fragmented and lacks an integrated approach. Also, apart from the FIC, the financial sector supervisory bodies are not involved in CFP cooperation and coordination. The CFP Committee finalised its Priorities and Operational Plan (2023-2024) to expand representation, and this is pending approval.
- e) **Criterion 2.5** (*Not Met*) In its 4th round MER, there was no cooperation and coordination between relevant authorities to ensure the compatibility of AML/CFT requirements with data protection and privacy rules. In 2022, South Africa published the Public Compliance Communication 22A which provides guidance on information processing in terms of the FIC Act in relation to data protection, to clarify the interplay between the collection, assessment and reporting of client's personal information in compliance with the FIC Act and data protection laws. There is no other evidence of cooperation, nor of cooperation between other supervisors and the Information Regulator. The provisions of the Protection of Personal Data Act, its provisions explicitly exclude from its scope of application public bodies processing data in the ML/TF context.
- f) **Weighting and conclusion:** South Africa has developed national AML/CFT policies informed by risks identified in the NRA. There is a national coordination mechanism, which allows exchange of information amongst relevant authorities, particularly at operational level. While there are comprehensive national AML/CFT policies, improvements are still needed particularly for counter-

proliferation financing co-ordination as well as for cooperation with the Information Regulator. Since the MER, South Africa has taken measures to improve coordination on counter-proliferation financing but this remains fragmented and does not involve all financial sector supervisors, which is moderate shortcoming in the context of South Africa. Recommendation 2 remains as **Partially Compliant**.

Recommendation 5

	Year	Rating
MER	2021	PC
FUR2	2023	↑ C

- a) **Criterion 5.1 (Met)** The MER noted that the *Protection of Constitutional Democracy Against Terrorist and Related Activities Act No. 33 Of 2004 (POCDATARA)* criminalises TF in South Africa in line with the TF Convention, except for the fact that the definition of terrorist activity excludes certain acts committed during an armed struggle. This deficiency has been addressed through the deletion of the reference in the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 (Act 33 of 2004) (POCDATARA) to acts during an armed struggle so that this is not excluded from the scope of the definition of terrorist activity. TF is now criminalised in line with the TF Convention.
- b) **Criterion 5.2 (Met)** The MER noted that the TF offence under the POCDATARA covers all the requirements under c.5.2 (see MER c.5.2). The amendments to the POCDATARA does not change this and this criterion remains met.
- c) **Criterion 5.2 Bis (Met)** The MER noted that travel by individuals to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training is criminalised under the POCDATARA. Nevertheless, the POCDATARA has been amended to extend the criminalisation of terrorist acts to cover attempts-of this. The criterion remains met.
- d) **Criterion 5.3 (Met)** The MER noted that under the POCDATARA, the definition of proposer includes any funds or other assets whether from a legitimate or illegitimate source. The criterion remains met.
- e) **Criterion 5.4 (Met)** The MER noted that under the POCDATARA, the TF offense is not dependent on whether the funds were used to carry out or attempt a terrorist act and is not linked to a specific terrorist act. This has not changed and the criterion remains met.
- f) **Criterion 5.5 (Met)** The *mens rea* required for TF offenses includes both intent and negligence. Under South African law the intentional element of the offense can be inferred from objective factual circumstances. The criterion remains met.
- g) **Criterion 5.6 (Met)** In its 4th round MER, the sanction for the TF offence was significantly less compared to the ML offence and the terrorism offence and was not considered proportionate compared to the ML offence. The POCDATARA was amended in 2023 to increase the maximum imprisonment for TF from 15 years to 30 years (which is comparable to the maximum prison sentence for ML). The

POCDATARA has been amended so that the sentence for TF is increased to a fine not exceeding R100 million (approximately EUR 5 million) or to imprisonment for a period not exceeding 30 years. The maximum sentence of imprisonment for TF is now the same as for ML offences.

- h) **Criterion 5.7 (Met)** The MER noted that under the Interpretation Act, criminal liability and sanctions for TF extends to legal persons and under the Criminal Procedure Code, criminal liability does not preclude the possibility of parallel criminal, civil or administrative proceedings where more than one form of liability is available. The criterion remains met.
- i) **Criterion 5.8 (a)-(d) (Met)** The MER noted that under the POCDATARA, the TF offence extends to any person who threatens, attempts, conspires, aids, abets, induces, incites, instigates, or commands, counsels, or procures the commission of TF. The criterion remains met.
- j) **Criterion 5.9 (Met)** South Africa has an all-crimes approach; therefore, TF offenses are predicate offenses for ML. The amendments to the POCDATARA do not affect this and the criterion remains met.
- k) **Criterion 5.10 (Met)** The *POCDATARA* defines 'terrorist activity' as acts committed inside or outside South Africa, having effects or causing harm inside or outside South Africa and/or influencing persons etc. inside or outside South Africa. The criterion remains met.
- l) **Weighting and conclusion:** Since the MER, South Africa has addressed the major deficiency identified in the MER relating to the scope of the TF offence. South Africa has also amended the POCDATARA so that the maximum sentence of imprisonment for TF is now the same as for ML offences, which makes it proportionate compared to the ML offence. Recommendation 5 is re-rated as **Compliant**.

Recommendation 6

	Year	Rating
MER	2021	NC
FUR2	2023	↑ PC

- a) **Criterion 6.1 (Partly Met)** In its 4th round MER, South Africa had no mechanisms establishing a domestic process for identifying targets or for procedures to be followed when making a designation proposal. South Africa relies on the freezing mechanism of the POCDATARA as in its 4th round MER, but the Act has now been amended. The freezing mechanism in the POCDATARA is not the mechanism to make TFS designation proposals. In November 2022, a TFS Operational Framework was approved by the Justice, Crime Prevention and Security sub-committee of the Cabinet. The Operational Framework, which is not a public document, sets out the inter-agency collaboration, role-clarification and process flows for designations under the UNSCR 1267, and the process for South Africa to identify a person or entity at the UN level. However, there is no explicit reference to UNSCR 1988, which is a deficiency in respect of each sub-criterion, and the criterion as there is a doubt as to whether TFS proposals relating to UNSCR 1988 can be made.

- a. (a) (mostly met) The Operational Framework identifies the Inter-Departmental Committee (IDC) as the authority responsible for the TFS proposals, which is made on the recommendations by the Counter Terrorism Functional Committee (CTFC). Listing proposals are communicated to the Minister.
 - b. (b) (partly met) The Operational Framework describes the mechanism for identifying designation targets via the coordination of the CTFC. The assessment of the CTFC will be taken to the Counter-Intelligence Coordinating Forum (CICF) and the IDC to endorse or reject the proposal. The considerations in the Operational Framework upon which the CTFC makes its recommendations places a limitation on the application of the framework to bona fide South African nationals.
 - c. (c) (not met) In making its recommendation, the CTFC takes into account a list of consideration as listed in the Operational Framework. The language in the Operational Framework does not elaborate on the evidentiary standard of proof required when deciding whether or not to make a proposal for designation, but one of the considerations is whether there is sufficient evidence for prosecution under South African Law. It is not conditional upon the existence of a criminal proceeding. Section 23 of the POCDATARA that applies a threshold of “reasonable grounds to believe” to freezing orders, does not apply to designation proposals.
 - d. (d) and (e) (not met) Based on the procedure as laid out by the Operational Framework, when a listing decision is communicated to DIRCO (as the contact point for interaction with UN and foreign ministries of other countries to seek additional information), DIRCO “writes to the UNSC informing South Africa’s decision to list”? However, the Framework does not make reference to the procedures and standard forms of the UN Sanctions Regime nor prescribe the level of detail that must be provided, as specifically required by these criteria.
- b) **Criterion 6.2 (Mostly Met)** For UNSCR 1373, the Operational Framework provides a procedure for TFS designations and South Africa relies on the freezing mechanism of the POCDATARA as in its 4th round MER, but now the freezing order may be issued on any asset of a designated person (e.g., is no longer *in rem*). Neither the Operational Framework nor the POCDATARA indicate that the National Prosecuting Agency (NPA) must make a ‘prompt determination’ to apply to the Court for an *ex parte* decision on the designation.
- a. (partly met) The competent authority having the responsibility for designating persons or entities that meet the UNSCR 1373 criteria for designations is the High Court which may make appropriate orders based on the *ex parte* application by the National Director of Public Prosecutions. This may be based on a designation by South Africa or on the request of another country but there is no specified process or timeframe for the National Director to bring these cases to the High Court.
 - b. (partly met) Designated targets for the freezing mechanism in the POCDATARA. Section 23 was amended in January 2023 to extend coverage of assets of a designated entity at any point in time and the

procedure is no longer *in rem*. However, the considerations in the Operational Framework upon which the CTFC makes its recommendations to identify and propose listings places a limitation on the application of the framework to bona fide South African nationals.

- c. (mostly met) Under section 23 of the POCDATARA, a freezing order may be made in respect of any entity, where there are “*reasonable grounds to believe*” that the entity has committed, or attempted to commit, participated in or facilitated the commission of a specified offence, whether the designation is put forward by the national authorities or at the request of a foreign country. However, there is no requirement in law that this should be made promptly.
 - d. (partly met) In making its recommendation, the CTFC takes into account a list of consideration as listed in the Operational Framework. The language in the Operational Framework does not elaborate on the evidentiary standard of proof required when deciding whether or not to make a proposal for designation but one of the considerations is whether there is sufficient evidence for prosecution under South African Law. It is not conditional upon the existence of a criminal proceeding. Designation is not conditional upon the existence of a criminal proceeding as the case is put before the High Court *ex parte*. Section 23 of the POCDATARA that applies a threshold of “*reasonable grounds to believe*” to freezing orders, does not apply to designation proposals.
 - e. (not met) DIRCO is the contact point for interaction with UN and foreign ministries of other countries to seek additional information or dialogue or lobby actions, if required. However, there is no documented requirement prescribing requests made to foreign countries.
- c) **Criterion 6.3 (Met)** As in its 4th round MER, South Africa’s competent authorities have legal authorities and procedures, within their statutory mandates, to collect or solicit information to identify property of persons or entities that meet the criteria for designation. The application under the POCDATARA is *ex parte*. This criterion remains met.
- d) **Criterion 6.4 (Mostly Met)** In its 4th round MER, there were no provisions for authorities to implement TFS without delay for UNSCRs 1267, 1989 and 1988, and in practice, the process could take months. The FIC Act was amended in December 2022 to address this. Under section 26A of the FIC Act, UNSCRs have immediate effect upon their adoption by the UNSC. AIs are informed of UNSCRs by means of notification within 24 hours and TF lists are published online on the following day from their receipt from the UN. AIs may subscribe to online updates to receive information without delay. The FIC Act prescribes the relevant obligations for AIs and the FIC provides detailed guidance. However, not all the guidance has been updated since the amendments to the FIC.
- e) **Criterion 6.5 (Mostly Met)** In its 4th round MER, the freezing order under the POCDATARA only focused on specific property identified in South Africa at the time of the order rather than on any asset of a designated person.
- a. (met) South Africa requires all natural and legal persons within the country to freeze, without delay and without prior notice, the funds or other assets of designated persons and entities. The freezing obligation is immediate and without prior notice.

- b. (met) The FIC Act has been amended. The obligations under sections 26A and 26B are wide in scope, and the deficiencies identified in the MER as regards actions *in rem* and funds or other assets of persons and entities “acting on behalf or, or at the direction, of a designated person”, have been addressed. Section 23 of the POCDATARA has also been amended, covering now funds or other assets of persons and entities “acting on behalf or, or at the direction, of or otherwise associated with a designated person”.
- c. (met) South Africa has expanded the scope of section 4 of the POCDATARA and amended section 26B of the FIC Act, to prohibit “any person” from dealing with funds, assets, economic resources, financial or related services in a broad manner, so that it covers the requirements of the sub-criterion.
- d. (mostly met) At the time of the MER, the Presidential proclamation in the *Gazette* and notices published on the websites of the SAPS and the FIC that communicate designations did not contain clear guidance on specific obligations. There was also no mechanism for UNSCR 1373. The FIC Act was amended in December 2022 to establish freezing obligations in respect of UNSCR obligations relating to UNSCR 1373 as well as persons and entities that are associated with the Taliban, Al-Qaida or ISIL (Da’esh) pursuant to UNSC Resolutions 1267 (1999), 1988 (2011), 1989 (2011) and 2253 (2015) obligations. AIs are informed of UNSCRs by means of notification on the FIC website within 24 hours from their receipt from the UN. The FIC will issue notices on its website of freezing orders under section 23 of the POCDATARA Act (pursuant to UNSC Resolution 1373), in accordance with section 3(1)(c) of the FIC Act which makes it an objective of the FIC to implement financial sanctions flowing from Resolutions of the UNSC AIs may subscribe to online updates to receive information without delay from the publication on the FIC website. The FIC Act prescribes the relevant obligations for While not all the guidance has been updated since the amendments to the FIC Act, this is a minor shortcoming since the FIC provides detailed guidance.
- e. (partly met) At the time of the MER, the requirement to report did not cover attempted transactions when the assets are not in the AI’s possession or control or assets frozen or actions taken under UNSCR 1373 obligations. Under the amended framework, the obligation of the AI is to report if it possesses or controls property linked to a sanctioned entity, but this still does not cover assets frozen or actions taken under UNSCR 1373 obligations. There is no specific obligation to report attempted transactions under the FIC Act although once a report is made, the Director can instruct the entity to report subsequent changes, including any attempt to deal with the asset.
- f. (met) Based on South Africa’s POCDATARA Act and Supreme Court Act, South Africa has adopted measures which protect the rights of bona fide third parties acting in good faith when implementing the obligations under Recommendation 6. Any person having an interest, which may be affected by a decision on an ex parte application (such as a freezing of a designated persons assets), may apply to a court for relief. South Africa complied with this sub-criterion and continues to do so under the amended POCDATARA.

- f) **Criterion 6.6** (*Partly Met*) In its 4th round MER, there was no publicly known procedure through which South Africa could bring delisting requests to the attention of the UNSC for consideration.
- a. (partly met) The delisting procedure is now described in the Operational Framework approved by the Justice, Crime Prevention and Security sub-committee of the Cabinet in 2022 but this is a confidential document and its procedures are not publicly known. An Advisory has been issued by the FIC in July 2023, which is available on the FIC website, but that was not applicable at the time of the review and does not affect the rating.
 - b. (partly met) There are no specific delisting procedures in relation to freezing actions taken pursuant to UNSCR 1373 although there is the possibility to make an application to the High Court through general civil litigation procedures. On the sanctions website, no information appears to be available for the purpose of delisting and unfreezing requests.
 - c. (met) Any person having an interest that may be affected by decision on an *ex parte* application (such as freezing order under the POCDATARA) may apply for a court for relief under the Supreme Court Act.
 - d. (not met) There is still no procedure to facilitate review by the 1988 Committee. This sub-criterion remains not met.
 - e. (not met) There is still no information available e.g. on a website on the procedures for informing designated persons and entities of the availability of the United Nations Office of the Ombudsperson, pursuant to UNSCRs 1904, 1989, and 2083 to accept de-listing petitions. This sub-criterion remains not met.
 - f. (met) Publicly known Uniform Rules of Court set out procedures whereby a person affected by a freezing order can seek relief. This sub-criterion remains met.
 - g. (partly met) At the time of the MER, the Presidential proclamation in the *Gazette* and notices published on the websites of the SAPS and the FIC that communicate designations did not contain clear guidance on specific obligations. There was also no mechanism for UNSCR 1373, and there has been no change to this. The mechanisms in c.6.5(d) are also used for communicating changes to the UNSC sanction lists to the FIs and DNFBCs and providing guidance to entities that may be holding targeted funds. However, not all the guidance has been updated since the amendments to the FIC.
- g) **Criterion 6.7** (*Mostly Met*) In its 4th round MER, an affected person would have to apply to a court for expenses for freezing related to UNSCR 1373, which remains the situation. There was no provision authorising use of funds or other assets that were frozen as provided for in UNSCR 1452. However, under the amended FIC Act, authorisation may be sought for basic expenses and the payment of charges as listed. There is no specific provision for extraordinary expenses.
- h) **Weighting and conclusion:** Since the MER, South Africa has mostly addressed deficiencies relating to delays in the implementation of TFS and freezing orders are broadly scoped and no longer focused on specific property (*in rem*). There are new provisions of law applied to freezing orders, but those do not cover the

process to be followed for identifying targets or for making designation proposals. That process is described in a specific confidential document adopted at a ministerial level (Operational Framework). However, while the Operational Framework has been formally approved by Cabinet, its relationship with the legislation has not been formally defined resulting in important procedural shortcomings in the light of both legislations and the Operational Framework. There is no explicit reference in the Operational Framework to UNSCR 1988 and consideration to recommend designations are only limited to bona fide South African nationals, which create doubt as to whether South Africa is able to implement TFS relating to UNSCR 1988 or non-South African nationals. Further, the Operational Framework should set out the evidentiary thresholds for making TFS proposals. As the Operational Framework is a confidential document, at the time of the review there was also insufficient publicly known information on delisting procedures. Recommendation 6 is re-rated as **Partially Compliant**.

Recommendation 7

	Year	Rating
MER	2021	PC
FUR2	2023	↑ LC

- a) **Criterion 7.1 (Mostly Met)** In its 4th round MER, the mechanism in South Africa to implement PF-related TFS did not allow for implementation without delay in all instances as the publication of the Minister’s notice in the Gazette is done within a matter of days after the adoption of a UNSCR and notifications issued by the FIC sometimes took three to five days over weekends. With the amendment to the FIC Act, UNSCRs, including those relating to PF, have immediate effect upon their adoption by the UNSC. AIs are informed of UNSCRs by means of notification within 24 hours, although not always within a matter of hours, and TF lists are published online on the following day from their receipt from the UN. AIs may subscribe to online updates to receive information without delay. The FIC Act prescribes the relevant obligations for AIs and the FIC provides detailed guidance.
- b) **Criterion 7.2 (Mostly Met)** In its 4th round MER, the obligation to freeze under the FIC Act was not without delay in all instances.
- a. (met) The FIC Act has been amended and sets out the obligation to freeze once the TFS is in force. The updates to the procedures (c.7.1) ensures that TFS is in force and therefore implemented without delay.
 - b. (met) In the 4th round MER, the FIC Act complied with each sub-criterion except that it excluded funds and other assets of persons acting on behalf of, or at the direction of a designated person or entity. Thus, property of a non-designated person that would be acting for a designated person and that would have not been acquired for the benefit of a designated person. The FIC Act has been amended to specifically cover “for the benefit of, or on behalf of, or at the direction of” a designated person or entity.
 - c. (met) South Africa prohibits all persons from making any funds or other assets available to or for the benefit of designated persons and entities;

unless licensed, authorised or otherwise notified in accordance with the relevant UNSCRs. The deficiencies identified in the MER for this sub-criterion (through 7.2.b) have been addressed.

- d. (mostly met) Guidelines issued on the FIC Act's obligation in relation to TFS for R.7 provided general guidance and limited materials and sector specific details to guide in practice entities with implementation. Under the FIC Act as amended in December 2022, AIs are informed of UNSCRs by means of notification within 24 hours and TF lists are published online on the following day from their receipt from the UN. AIs may subscribe to online updates to receive information without delay. The FIC Act prescribes the relevant obligations for AIs and the FIC provides detailed guidance. However, not all the guidance has been updated since the amendments to the FIC Act.
 - e. (met) In its 4th round MER, the FIC Act required all FIs and DNFBPs to report assets frozen or actions taken pursuant to TFS. Under the amended framework, the AI remains obliged to report if it possesses or controls property linked to a sanctioned entity. There is no specific obligation to report attempted transactions under the FIC Act although once a report is made, the Director can instruct the entity to report subsequent changes, including any attempt to deal with the asset. The sub-criterion remains met.
 - f. (met) In its 4th round MER, South Africa's laws ensured that no criminal or civil action would lie against any person complying in good faith with a provision related to implementation of obligations under R.7. This has not changed and the sub-criterion remains met.
- c) **Criterion 7.3 (Met)** In its 4th round MER, some FIs and DNFBPs were not AIs and thus were not subject to measures for monitoring and ensuring compliance with the requirements of R.7. The deficiency has been addressed with the relevant FIs and DNFBPs being added to the FIC Act as AIs and there are monitoring measures that apply to every responsible supervisory body. These can impose sanctions for compliance failures and institute court proceedings.
- d) **Criterion 7.4 (Partly Met)** In its 4th round MER, there were no provisions nor publicly known procedures enabling or informing listed persons and entities to petition a request for de-listing at the Focal point established pursuant to UNSCR 1730.
- a. (not met) The FIC issued an Advisory on Requests for Delisting From a Targeted Financial Sanctions List in July 2023 which is available on the FIC website, that lays down the de-listing procedure. However, that Advisory was not yet applicable at the time of the review and does not affect the rating.
 - b. (met) Publicly known Uniform Rules of Court set out procedures whereby a person affected by a freezing order can seek relief.
 - c. (mostly met) In its 4th round MER, the FIC Act did not cover "extraordinary expenses". Exemptions may still be sought under the amended FIC Act, but there is still no specific provision for extraordinary expenses.

- d. (mostly met) The FIC Act requires appropriate notification a decision of the UNSCR to delist under an existing UNSCR and does this by publishing a notice on the FIC website. In the 4th round MER, it was found that the Guidelines (GN7) issued on TFS for R.7 did not precisely clarify FIs', DNFBPs', and other persons' or entities' obligations to respect a de-listing or unfreezing action. No change is reported in relation to this. The sub-criterion remains mostly met.
- e) **Criterion 7.5 (Mostly Met)**
- a. (mostly met) The FIC Act is in line with the requirements of this sub-criterion but in its 4th round MER, permission to conduct financial services or deal with property if it is necessary to accrue interest or other earnings due on accounts was not limited to interests or other earning or payments that arose prior to the date on those became subject to the provisions of the UNSCR. This remains unchanged and the sub-criterion remains mostly met.
- b. (met) Under the FIC Act, the Minister “*may permit*” the conduct of financial services or deal with property if it is necessary to make a payment to a third party which is due under a contract, agreement or other obligation made before the date on which the person or entity was identified and permission is to be given in accordance with the UNSCR”, covering conditions (i), (ii), and (iii) of c.7.5(b). This has not changed and the sub-criterion remains met.
- f) **Weighting and conclusion:** Since the MER, South Africa addressed shortcomings relating to delays in the implementation of TFS as with the relevant FIs and DNFBPs being added to the FIC Act as AIs the obligations apply to all relevant FIs and DNFBPs. The main deficiency that remains relates to the lack of publicly known de-listing procedures. Recommendation 7 is re-rated as **Largely Compliant**.

Recommendation 8

	Year	Rating
MER	2021	NC
FUR2	2023	↑ PC

- a) **Criterion 8.1 (Partly Met)** In March 2012, South Africa published a Strategic Risk assessment of its broader NPO sector. However, this did not identify a subset of organisations that, based on their activities or characteristics, are likely to be at risk of TF abuse, including identifying the threats they face and assessing and implementing measures in response to the threats.
- a. (partly met) As of March 2023, 270 000 NPOs were registered with the Department of Social Development (DSD). South Africa has identified which subset of organisations that fall within the FATF definition of NPO (trusts, companies or other associations established for a public purpose, and the income of which is not distributable to its members or office-bearers except as reasonable compensation for services rendered). However, registration under the NPO Act is only compulsory for NPOs that make donations that go out of South Africa or provide humanitarian,

charitable, religious, educational or cultural services outside South Africa. Since the registration of NPOs has been voluntary until recent amendments, there is a lack of certainty over the total number of NPOs falling within that definition. A Workplan for the development of a TF SRA in collaboration with the NPO Sector commenced in October 2022, which included work on a desk-top analysis to define the sub-sector of NPOs at risk for terrorist financing in South Africa. Timelines for developing a joint/collaborative perception Survey and a First Phase (Initial TF SRA) and Second (Final TF SRA) is planned to be completed during April 2023 and July 2023, respectively. The work relating to this criterion is on-going.

- b. (partly met) The SRA acknowledges internationally recognised inherent risks of how terrorist entities in general can be used the NPO sector. In South Africa's 2022 NRA, the nature of threats posed by terrorist entities to NPOs is briefly identified but remains insufficiently in-depth to provide clarity on TF risks related to NPOs.
 - c. (partly met) South Africa has recently amended the NPO Act to make registration for certain categories of NPOs compulsory and introduced other requirements in relation to these. However, no in-depth review has been done in the 2022 NRA nor in the National Strategy.
 - d. (partly met) South Africa failed to demonstrate that it has followed up on the policy recommendations stemming from the March 2012 Risk Assessment or periodically reassesses the sector by reviewing new information on the sector's potential vulnerabilities to terrorist activities. However, a specific NPO TF SRA is planned for 2023.
- b) **Criterion 8.2 (Partly Met)**
- a. (mostly met) Given that the registration of NPOs in South Africa was voluntary during the onsite, management policies of NPOs in South Africa would not apply to all NPOs relevant to R.8. For certain categories of NPOs, the 2022 amendments to the NPO Act creates obligations for registration, accounting and reporting. However, as the work on the identification of NPOs exposed to TF risk is still on-going, not all relevant NPOs may be covered by the obligations under the NPO Act.
 - b. (partly met) During the onsite, there were no outreach activities to educate the donor community on TF risks and vulnerabilities faced by NPOs. Since then, there have been some training, awareness raising and capacity building. DSD has also been engaging the donor community to encourage the adoption of risk-based approaches to funding to mitigate TF risks. While this development is welcome, there is no evidence that this is being done in a systematic manner and to what extent these address identified TF risks relating to NPOs.
 - c. (not met) During the onsite, there were no discussions with NPOs on developing and refining best practices to address TF risk and vulnerabilities. The DSD is working with a core team of NPOs to refine best practices to address TF risk and vulnerabilities. This work is still on-going.
 - d. (mostly met) The NPO Act requires that all registered NPOs must conduct financial transactions by means of a banking account. This would not have applied to all NPOs at risk at the time of the onsite as registration was

voluntary. For certain categories of NPOs, the 2022 amendments to the NPO Act creates obligations for registration. However, as the work on the identification of NPOs exposed to TF risk is still on-going, not all relevant NPOs may be covered by the obligations under the NPO Act.

- c) **Criterion 8.3** (*Partly Met*) In its 4th round MER, South Africa did not demonstrate that it took steps to promote effective supervision or monitoring or risk-based measures to NPOs at risk of TF abuse. The 2022 amendments to the NPO Act require the registration of NPOs that make donations that go out of South Africa or provide humanitarian, charitable, religious, educational or cultural services outside South Africa. The NPO Act and the Regulations thereunder establish supervision and monitoring framework for registered NPOs, through the collection of information on the structures, finances and officials of these NPOs and activities in foreign countries. However, as the work on the identification of NPOs exposed to TF risk is still on-going, not all relevant NPOs may be covered by the obligations under the NPO Act. No information has been provided on actual supervision and monitoring of NPOs and how these are risk-based.
- d) **Criterion 8.4** (*Partly Met*) In its 4th round MER, South Africa did not demonstrate that monitored compliance of NPOs and applied risk-based measures for non-compliance, including clarity on the sanctions specified violations by NPOs or persons acting on their behalf.
- a. (partly met) DSD has established a unit to monitor NPO activities but has yet to develop a risk assessment tool and develop their risk understanding to do this effectively.
 - b. (not met) The penalty provision in the NPO Act still does not indicate the amount of the fine and the length of imprisonment for a violation of the Act. The registration of an NPO may also be cancelled due to non-compliance. As there has been no change, the sub-criterion remains not met.
- e) **Criterion 8.5** (*Mostly Met*)
- a. (met) South Africa's NPO Directorate co-operates, co-ordinates and shares information with other authorities. It responsible for liaising with other organs of state and interested parties. Via DSD, the NPO Directorate, is a standing member of the IDC on AML/CFT and chairs a newly formed NPO Task Team.
 - b&c. (met) Criminal investigations (R.30-31) would be carried out in the same way as for other suspicions of TF and there are no limitations imposed by the NPO Act. The SAPS: DPCI have the capacity to investigate suspected TF activities, including through NPOs. The FIC has access to any public register under the FIC Act. In addition, DSD is in the process of appointing a panel of Forensic Investigators and Data Analyst to conduct preliminary investigations on suspicious NPOs.
 - d. (not met) No information has been provided on any mechanism that has been established to comply with this sub-criterion and the sub-criterion remains not met.
- f) **Criterion 8.6** (*Met*) In its 4th round MER, South Africa had not identified a point/s of contact nor developed procedures to respond to international

requests for information regarding NPOs suspected of TF or involvement in other forms of terrorist support. The points of contact and procedures to respond to international requests for information regarding particular NPOs suspected of terrorist financing or involvement in other forms of terrorist support are the same as for any other terrorist or terrorist financing suspicions ie the Central Authority (DOJ) for receiving, transmitting and executing MLAs including MLAs in respect of TF and NPOs. Other channels may also be used, depending on the requesting authority and the nature of the request.

- g) **Weighting and conclusion:** Since the MER, South Africa, has amended the NPO Act. The main improvement has been to require the registration of a certain category of NPOs at risk so that accounting and reporting measures can be implemented against them. South Africa has also started taking steps to address administration and management of NPOs to mitigate TF risks. South African authorities also have the range of investigative powers to investigate suspected TF activities involving NPOs. However, South Africa still needs to work on assessing the TF risk and threats of NPOs as well as to review whether the measures taken, address these risks. For certain categories of NPOs, the 2022 amendments to the NPO Act creates obligations for registration. However, as the work on the identification of NPOs exposed to TF risk is still on-going, not all relevant NPOs may be covered by the obligations under the NPO Act. Recommendation 8 is re-rated as **Partially Compliant**.

Recommendation 10

	Year	Rating
MER	2021	PC
FUR2	2023	↑ LC

- a) Requirements to implement preventive measures are primarily covered by the FIC Act. Schedule 1 Act sets out the AIs under the FIC Act that have AML/CT obligations. In the 4th round MER, the FIC Act did not cover all FIs and thus obligations did not cover Cooperative Financial Institutions (CFIs), credit providers other than money lenders against securities and some fintech companies that offer financial services and are not VASPs or FSPs. The Schedule was amended in December 2022 to expand the list of AIs. This now covers Cooperative Banks and all types of credit providers. It also widens and clarifies the definition of money remitters accountable under the FIC Act to include all money or value transfer providers and fintech services. CFIs are not yet included but this is a small gap as they are marginal in size and the risk they represent.
- b) **Criterion 10.1 (Mostly Met)** The FIC Act states that an AI “*may not*” establish a business relationship or conclude a single transaction with an anonymous client or a client with an apparent false or fictitious name which, as advised by South Africa, creates a statutory prohibition for all AIs. The language of the legislation could benefit from greater clarity through positive language indicating the prohibition.
- c) **Criterion 10.2 (a)-(e) (Mostly Met)** The deficiency in the 4th round MER, that the obligations under the FIC Act did not cover all FIs, has been mostly addressed with the expansion of the list of AIs in the Schedule. However, as at the onsite, the concept of a single transaction does not include situations where the transaction is carried out in

several operations that appear to be linked. The amendment to the FIC Act requires AIs to repeat CDD measures where there is doubt as to the veracity of previously obtained information or where an STR is lodged, which covers situations where there is an ML/TF suspicion.

- d) **Criterion 10.3** (*Mostly Met*) The deficiency in the 4th round MER, that the obligations under the FIC Act did not cover all FIs, has been mostly addressed with the expansion of the list of AIs in the Schedule. However, there has been no change to the Guidance Note (GN) on the exemption that information could be used from sources other than the original source of the information although this should only be done in cases where AIs are confident that they can adequately manage ML/TF risks. However, considering the very narrow circumstance where this applies, this gap is minor.
- e) **Criterion 10.4** (*Mostly Met*) An AI must establish and verify the identity of the person representing the client, as well as that other person's authority to act on behalf of the client. The deficiency in the 4th round MER, that the obligations under the FIC Act did not cover all FIs, has been mostly addressed with the expansion of the list of AIs in the Schedule.
- f) **Criterion 10.5** (*Mostly Met*) Under the amendment to the FIC Act, the definition of "beneficial owner" extends to the situation where the beneficial owner exercises effective control of the client who is a natural person. The deficiency in the 4th round MER, that the obligations under the FIC Act did not cover all FIs, has been mostly addressed with the expansion of the list of AIs in the Schedule.
- g) **Criterion 10.6** (*Mostly Met*) AIs must obtain information to reasonably understand the nature of the business relationship concerned and the intended purpose of such. The deficiency in the 4th round MER, that the obligations under the FIC Act did not cover all FIs, has been mostly addressed with the expansion of the list of AIs in the Schedule.
- h) **Criterion 10.7** (*Mostly Met*) The FIC Act requires FIs to conduct ongoing due diligence on the business relationship. The deficiency in the 4th round MER, that the obligations under the FIC Act did not cover all FIs, has been mostly addressed with the expansion of the list of AIs in the Schedule.
- i) **Criterion 10.8** (*Mostly Met*) If a client is a legal person or a natural person acting on behalf of a partnership, trust or similar arrangement between natural persons, an AI must, in addition to the steps to establish the nature of the client's business and the ownership and control structure of the client. The deficiency in the 4th round MER, that the obligations under the FIC Act did not cover all FIs, has been mostly addressed with the expansion of the list of AIs in the Schedule.
- j) **Criterion 10.9** (*Mostly Met*) AIs must provide in their RMCP, the way and the processes by which the AI conducts additional due diligence measures in respect of legal persons, trusts and partnerships and in line with the requirements in the GN7. The deficiency in the 4th round MER, that the obligations under the FIC Act did not cover all FIs, has been mostly addressed with the expansion of the list of AIs in the Schedule.
- k) **Criterion 10.10** (*Mostly Met*) Under the amendment to the FIC Act, the definition of "beneficial owner" extends to the situation where the beneficial owner exercises effective control of the client who is a natural person. The deficiency in the 4th round MER, that the

obligations under the FIC Act did not cover all FIs, has been mostly addressed with the expansion of the list of AIs in the Schedule.

- l) **Criterion 10.11** (*Mostly Met*) Under the amendment to the FIC Act, the definition of “beneficial owner” extends to the situation where the beneficial owner exercises effective control of the client who is a natural person. The deficiency in the 4th round MER, that the obligations under the FIC Act did not cover all FIs, has been mostly addressed with the expansion of the list of AIs in the Schedule.
- m) **Criterion 10.12 and 10.13** (*Mostly Met*) In its 4th round MER, there was no additional CDD measures to be applied on the beneficiary of life insurance and other investment related insurance policies, nor a requirement to include such beneficiary as a relevant risk factor in determining whether enhanced measures are applicable. The obligation under the FIC Act to conduct CDD now applies to life insurers. South Africa has issued a Directive for insurers that sets out the requirements for additional CDD measures. While the additional obligations are not set out in the FIC Act, the FIC Act provides for the issuance of such Directives and non-compliance can be sanctioned under the FIC Act.
- n) **Criterion 10.14** (*Mostly Met*) AIs must in all circumstances refrain from establishing the business relationship or to conclude a single transaction with a client if it is unable to establish or verify the identity of a client or the beneficial owner. The deficiency in the 4th round MER, that the obligations under the FIC Act did not cover all FIs, has been mostly addressed with the expansion of the list of AIs in the Schedule.
- o) **Criterion 10.15** (*NA*) Customers are not allowed to utilise the business relationship prior to verification.
- p) **Criterion 10.16** (*Mostly Met*) South Africa requires AIs to perform CDD on prospective clients as well as on all clients it engaged with before the FIC Act took effect. In its 4th round MER. The deficiency in the 4th round MER, that the obligations under the FIC Act did not cover all FIs, has been mostly addressed with the expansion of the list of AIs in the Schedule.
- q) **Criterion 10.17** (*Mostly Met*) EDD must be conducted for higher risk business relationships and the FIC Act has been amended to also require this for higher-risk single transactions. The deficiency in the 4th round MER, that the obligations under the FIC Act did not cover all FIs, has been mostly addressed with the expansion of the list of AIs in the Schedule.
- r) **Criterion 10.18** (*Mostly Met*) AIs must develop, maintain and implement a Risk Management and Compliance Programme (RMCP) to assess, manage and mitigate its ML/TF risks, and to calibrate CDD accordingly. However, there has been no change in the FIC Act to specifically require simplified CDD measures in the manner prescribed by the criterion. The deficiency in the 4th round MER, that the obligations under the FIC Act did not cover all FIs, has been mostly addressed with the expansion of the list of AIs in the Schedule.
- s) **Criterion 10.19** (*Mostly Met*) The deficiency in the 4th round MER, that the obligations under the FIC Act did not cover all FIs, has been mostly addressed with the expansion of the list of AIs in the Schedule.

- t) **Criterion 10.20 (Mostly Met)** In its 4th round MER, AIs were not explicitly permitted not to pursue CDD, when it reasonably believed that performing the CDD process would tip-off the client. The FIC Act has been amended to require an AI to consider filing an STR and may discontinue the CDD process if it reasonably believes that in performing the CDD will disclose to the client that an STR will be filed. Although the language of the obligation to file an STR when an FI forms a suspicion of ML/TF during the CDD is “contemplated”, there is a general obligation under the FIC Act to file an STR whenever a suspicion is formed, or ought to have been formed. The deficiency in the 4th round MER, that the obligations under the FIC Act did not cover all FIs, has been mostly addressed with the expansion of the list of AIs in the Schedule.
- u) **Weighting and conclusion:** In the 4th round MER, the FIC Act did not cover all FIs and thus obligations in this Recommendation did not cover Cooperative Financial Institutions (CFIs), credit providers other than money lenders against securities and some fintech companies that offer financial services and are not VASPs or FSPs. The Schedule was amended in December 2022 to expand the list of AIs to mostly address this gap. Only CFIs are not covered and in view of the marginal size and risk represented by this sector, the gap is minor. Only minor deficiencies remain. Recommendation 10 is re-rated as **Largely Compliant**.

Recommendation 12

	Year	Rating
MER	2021	NC
FUR2	2023	↑ LC

- a) **Criterion 12.1 (Mostly Met)** In its 4th round MER, the definition of PEPs that are foreign prominent public official was limited to “*an individual who holds, or has held at any time in the preceding 12 months...*”, excluding officials who held such functions only in the period prior to this. The definition of PEPs in the FIC Act has been amended to remove this limitation. The Public Compliance Communication requires EDD to be conducted and senior management approval for establishing business relationships with a PEP. The deficiency in the 4th round MER, that the obligations under the FIC Act did not cover all FIs, has been mostly addressed with the expansion of the list of AIs in the Schedule.
- b) **Criterion 12.2 (Mostly Met)** The FIC Act has been amended to remove the limitation to organisations based in South Africa in the definition of PEPs entrusted with a prominent function. The deficiency in the 4th round MER, that the obligations under the FIC Act did not cover all FIs, has been mostly addressed with the expansion of the list of AIs in the Schedule.
- c) **Criterion 12.3 (Mostly Met)** The definition of PEPs in the FIC Act has been amended to remove the twelve-month limitation as well as the limitation to organisations based in South Africa. In its 4th round MER, there were time and scope limitations on the definition of PEPs. The deficiency in the 4th round MER, that the obligations under the FIC Act did not cover all FIs, has been mostly addressed with the expansion of the list of AIs in the Schedule.
- d) **Criterion 12.4 (Mostly Met)** In its 4th round MER, in relation to life insurance policies, there were no clear requirements for AIs to put in place risk management systems to

determine whether an existing customer or the beneficial owner becomes a PEP, and to subsequently obtain senior approval for continuing the relationship with such customers. The FIC Act has been amended to include life insurance business as an AI and thus they have an obligation to obtain senior approval for continuing the relationship with such customers as well as to require the RMCP to provide for the manner in which and the processes by which an AI determines a client is a PEP. South Africa has issued a Directive for insurers that sets out further requirements pertaining to PEPs so that where higher risks are identified, enhanced scrutiny on the business relationship with the policyholder must be conducted and filing an STR should be considered. While these additional obligations are not set out in the FIC Act, the FIC Act provides for the issuance of such Directives and non-compliance can be sanctioned under the FIC Act. The Prudential Authority is the competent authority in this instance and is enforceable (section 43A of the FIC Act), which provides that a supervisory body may issue a directive regarding the application of the FIC Act and impose an administrative sanction on an AI (section 45C(1)(a)) if it has failed to comply with any directive made in terms of the FIC Act. The deficiency in the 4th round MER, that the obligations under the FIC Act did not cover all FIs, has been mostly addressed with the expansion of the list of AIs in the Schedule.

- e) **Weighting and conclusion:** Since the MER, South Africa has amended the FIC Act to remove limitations in scope and time to the definition of PEPs. EDD and senior management approval for establishing business relationships with a PEP are required. Requirements relating to dealing with PEPs on life insurance policies are generally in line with the Recommendation. Recommendation 12 is re-rated as **Largely Compliant**.

Recommendation 14

	Year	Rating
MER	2021	PC
FUR2	2023	↑ LC

- a) **Criterion 14.1** (*Met*) In its 4th round MER, no registration or licensing requirements applied to any persons who conduct purely domestic money or value transfer business except banks. The FIC Act has been amended to cover “a person who carries on the business of a money or value transfer provider” as an AI and thus they have an obligation under the FIC Act to register with the FIC.
- b) **Criterion 14.2** (*Mostly Met*) In its 4th round MER, South African authorities did not demonstrate that any of their actions resulted in proportionate and dissuasive sanctions being imposed. Since the onsite, the Compliance and Enforcement Division in SARB:FinSurv has investigated several instances of unauthorized MVTS activity which will have to be referred to law enforcement agencies, which are ongoing. As such, it has not yet been demonstrated that these actions have resulted in the application of proportionate and dissuasive sanctions.
- c) **Criterion 14.3** (*Met*) As in its 2021 MER (See c.14.3), MVTS providers are monitored for AML/CFT compliance by their respective supervisors (i.e., SARB:PA, SARB:FinSurv or under the FIC Act for MVTSs providing pure domestic services). The criterion remains met.
- d) **Criterion 14.4** (*Mostly Met*) In its 4th round MER, banks that are authorised dealers (ADs) were not required to maintain a list of agents, and there were no requirements

for these agents to be licensed or registered. Although SARB:FinSurv maintains a list of all agents of ADLAs, these did not extend to domestic MVTS.

SARB:PA has issued two Directives that provide that only banks may provide MVTS and that establish requirements for CDD and information collection requirements for banks that engage the services of an agent. While these additional obligations are not set out in the FIC Act, the FIC Act provides for the issuance of such Directives and non-compliance can be sanctioned under the FIC Act. FinSurv’s legislative mandate regarding ADs is solely in respect of cross-border transactions, and does not extend to domestic MVTS transactions. The SARB:PA has a legislative mandate in respect of domestic MVTS transactions, and maintains a list of confirmed MVTS relationships.

- e) **Criterion 14.5 (Mostly Met)** In its 4th round MER, there was no requirement for MVTS providers to include agents in their AML/CFT programme. SARB:PA has issued Directives to require a bank’s RMCP to include details regarding the management and monitoring of MVTS agency arrangements. The FIC Act provides for the issuance of such Directives and non-compliance can be sanctioned under the FIC Act. Fin:Surv has issued the Currency and Exchanges Manual which requires that ADLA’s RMCP include agents in their AML/CFT programmes and monitor them. It is not clear how the obligations in this manual are enforceable.
- f) **Weighting and conclusion:** Since the MER, the FIC Act has been amended to cover “a person who carries on the business of a money or value transfer provider” as an AI and the supervising authorities have issued Directives to require the implementation of AML/CFT obligations. Law enforcement action against unauthorised MVTS activity has been stepped up although no sanctions have been imposed as yet and the enforceability of the Currency and Exchanges Manual which requires that ADLA’s RMCP include agents in their AML/CFT programmes and monitor them, is not clear. Recommendation 14 is re-rated as **Largely Compliant**.

Recommendation 15

	Year	Rating
MER	2021	NC
FUR2	2023	↑ PC

- a) **Criterion 15.1 (Mostly Met)** In its 4th round MER, ML/TF risks relating to new technologies were identified only to a limited extent. Aside from risks relating to crypto assets, the 2022 NRA and TRFA identify the vulnerability of other new technologies to a limited extent. The FIC Act has been amended to require that the RMCPs of AIs include new and existing products and services but this does not make any reference to new delivery mechanisms or new or developing technologies.
- b) **Criterion 15.2 (Mostly Met)** In its 4th round MER, there was no specific provision requiring AIs to undertake ML/TF risk assessments prior to the launch or use of new products, business practices and technologies, and to take appropriate measures to manage and mitigate the risks. The deficiency in the 4th round MER, that the obligations under the FIC Act did not cover all FIs, has been mostly addressed with the expansion of the list of AIs in the Schedule. The FIC Act has been amended to require that the RMCPs of AIs include new and existing products and services, but this does not make any reference to new delivery mechanisms or new or developing technologies.

- c) **Criterion 15.3** (*Met*) In its 4th round MER, VAs and VASPs risks not adequately identified, assessed, and understood yet, and no risk-based measures taken. Since the onsite, South Africa has assessed the ML/TF risks relating to VA activities and VASPs in the 2022 NRA which captures the size, scale and complexity of the sector and identified supervisory and law enforcement measures to respond to the risks including the inclusion of crypto-assets (CAs) and crypto-asset service providers (CASPs) as AIs. The scope of CASPs is in line with the FATF definition of VASPs. As noted in c.1.10 and c.1.11, under the FIC Act and Guidance Note 7, as an AI, CASPs must develop, document, maintain and implement a RMCP for the identification, assessment, monitoring, mitigation and management of ML/TF risks which is reviewed regularly, and take enhanced measures, in terms of the range, degree, frequency or intensity of controls, when risks are higher
- d) **Criterion 15.4** (*Partly Met*) In its 4th round MER, there were no requirements for VASPs to be licensed or registered. CAs are now defined as a financial product for the purpose of the Financial Advisory and Intermediary Services (FAIS) Act and are CASPs regulated under FSCA. The FAIS Act requires a CASP to be licensed and are subject to fit and proper market entry requirements. However, there is no clear requirement for VASPs created in South Africa but do not have a business in South Africa to be licensed under the Act.
- e) **Criterion 15.5** (*Not Met*) In its 4th round MER, as there were no requirements for VASPs to be licensed or registered, there were no further requirements to take action against non-licensed/registered VASPs. Although there are now licensing requirements for CASPs under the FAIS Act and the FIC has undertaken a CASP individual risk assessment of all 28 identified CASP entities active in South Africa, the sanctions for unauthorised VASP activities are not clear. CASPs that do not register as AIs under the FIC Act are subject to administrative sanctions which include the possibility of financial penalties. It has not been demonstrated that South Africa is taking action to identify unauthorised VASP activities and applying appropriate sanctions.
- f) **Criterion 15.6** (*Mostly Met*) In its 4th round MER, there were no requirements for VASPs to be subject to AML/CFT supervision. CAs are now defined as a financial product for the purpose of the Financial Advisory and Intermediary Services (FAIS) Act and CASPs are regulated under FSCA which have relevant powers required under the criterion. South Africa has indicated that in relation to CASPs, from April 2023, supervision has been risk-sensitive and driven by ML/TF risks.
- g) **Criterion 15.7** (*Not Met*) In its 4th round MER, no reporting guidelines dedicated to VASPs' obligations had been issued. South Africa has issued guidelines to all AIs, including CASPs. However, South Africa has not demonstrated that they have provided guidelines and feedback specifically targeted towards measures to combat ML/TF in relation to VA activity, particularly in detecting and reporting suspicious transactions. A Public Compliance Communication relating specifically to VASPs has been issued but only outside the review period in July 2023.
- h) **Criterion 15.8** (*Met*) In its 4th round MER, aside from the general obligation to report suspicious and unusual transactions, CASPs were not subject to the AML/CFT regime nor the sanctions for non-compliance. With the inclusion of CA/CASPs as AIs, CASPs are subject to the same sanctions under the FIC Act for failure to report or for tipping off as other businesses (see R.35). Financial penalties can also be applied to directors and senior management of CASPs that are legal persons.
- i) **Criterion 15.9** (*Partly Met*) In its 4th round MER, VASPs were not subject to the AML/CFT regime. With the inclusion of CA/CASPs as AIs under the FIC Act, the

AML/CFT obligations and deficiencies apply similarly. (a) The FIC Act read with the regulations provide for a single transaction threshold of R5000 (EUR 250). (b) This sub-criterion is not in place.

- j) **Criterion 15.10 (Mostly Met)** In its 4th round MER, VASPs were subject to the same TFS obligations as any other person but there were no measures in place for monitoring and ensuring compliance. With the inclusion of CA/CASPs as AIs under the FIC Act, the AML/CFT obligations and measures apply similarly. The deficiencies relating to Recommendations 6 and 7 would apply here.
- k) **Criterion 15.11 (Met)** In its 4th round MER, there was no supervisory authority for VASPs exists to exchange information with foreign counterparts. CAs are now defined as a financial product for the purpose of the Financial Advisory and Intermediary Services (FAIS) Act and are CASPs regulated under FSCA, and the FIC is the supervisor of CASPs. The FIC and the FCSA are empowered by the FIC Act and the FSRA respectively to exchange information with their foreign counterparts.
- l) **Weighting and conclusion:** Since the MER, South Africa has assessed the ML/TF risks relating to VA activities and VASPs in the 2022 NRA but this has not been adequately done so for other new technologies. South Africa has identified supervisory and law enforcement measures to respond to the risks including the inclusion of CAs/CASPs as AIs. As an AI, CASPs must implement an RMCP to manage ML/TF risks. CASPs are somewhat subject to licensing requirements although South Africa has not demonstrated enforcement of this. Preventive measures that apply to AIs to some extent and R.16 requirements are not yet in place. Risk based supervision and monitoring framework are not yet in place. Recommendation 15 is re-rated as **Partially Compliant**.

Recommendation 17

	Year	Rating
MER	2021	NC
FUR2	2023	NA

- a) **Criterion 17.1 and 17.2 (Not Applicable)** In its 4th round MER, there were no explicit requirements or clear prohibition for the AI relying on a third party to obtain immediately information concerning outsourced CDD measures, to satisfy itself that copies of relevant data will be made available upon request, and to satisfy itself that the third party is regulated, supervised and has measures in place for compliance with CDD and record keeping requirements. Also, although South Africa provides general information to AIs on considerations on (the level of) country risk as periodically advised by the FATF, this did not refer to the determination of where the third party that meets the conditions to rely on for CDD measures can be based.
- b) Although, there has been no change in the FIC Act regarding reliance on third parties, South Africa has issued authoritative guidance in the form of the Public Compliance Communication (PCC) 43 in respect of shared clients. The PCC states (s4.2) that an AI may never delegate its compliance to any other AI and/or any other entity and that (s4.3) in the event that the first party AI is inspected by their supervisory body, and the CDD compliance measures and controls are found to be inadequate, the first party AI will remain liable for this non-compliance and will not be able to transfer this non-compliance to the third party AI that assisted by providing the CDD information The

PCC also differentiates (s.5) the type of information that can be requested from third parties and those which cannot.

- c) **Criterion 17.3 (Not Applicable)** No use has been made of the consideration for countries to include requirements for FIs that rely on a third party that is part of the same financial group and the situation remains the same since the MER.
- d) **Weighting and conclusion:** Since the MER, South Africa issued authoritative guidance in respect of shared clients which clarifies that for such circumstances, an AI may never delegate its compliance to any other AI and/or any other entity and that in the event that the first party AI is inspected by their supervisory body, and the CDD compliance measures and controls are found to be inadequate, the first party AI will remain liable for this non-compliance and will not be able to transfer this non-compliance to the third party AI that assisted by providing the CDD information. In view of this, Recommendation 17 is re-rated as **Not Applicable**.

Recommendation 18

	Year	Rating
MER	2021	PC
FUR2	2023	↑ LC

- a) **Criterion 18.1 (Mostly Met)** In its 4th round MER, the obligations under the FIC Act did not cover Cooperative Financial Institutions (CFIs), credit providers other than money lenders against securities and some fintech companies. This deficiency has been mostly addressed with the expansion of the list of AIs in the Schedule (see R.10). There were no procedures regarding screening of employees and non-core FIs are not required to have an independent audit function. The FIC issued a Directive in 2023 requiring all AIs to screen employees in line with the sub-criterion. Although South Africa's legislation requires the constitution of a cooperative bank to appoint an audit committee, this committee does not need to have AML/CFT responsibilities. There has been no change since the MER.
- b) **Criterion 18.2 (Met)** In its 4th round MER, there was no requirement for financial groups to implement group-wide programs. South Africa has amended the FIC Act to include obligations in line with the requirements of this criterion. Under the amended FIC Act, AIs must develop a Risk Management and Compliance Programme that provides for the manner in which its group wide programmes implement all its obligations in terms of the FIC Act, exchange information with its branches and subsidiaries and have adequate safeguards to protect confidentiality of information.
- c) **Criterion 18.3 (Met)** In its 4th round MER, there was no requirement for mitigation in the situation in which the host country does not permit the proper implementation of AML/CFT measures consistent with the home country requirements. South Africa has amended the FIC Act to include obligations in line with the requirements of the criterion.
- d) **Weighting and conclusion:** Since the MER, South Africa amended the FIC Act to clarify the obligations in line with Recommendation 18 and the remaining gaps are minor. Recommendation 18 is re-rated as **Largely Compliant**.

Recommendation 22

	Year	Rating
MER	2021	PC
FUR2	2023	↑ LC

- a) Requirements to implement preventive measures are primarily covered by the FIC Act. Schedule 1 Act sets out the AIs under the FIC Act that have AML/CT obligations. For the purpose of this Recommendation, in the 4th round MER, DPMS (other than KRDS covered as RIs), accountants (for activities beyond providing financial services), and CSPs other than attorneys are not covered by the FIC Act. The Schedule was amended in December 2022 to expand the list of AIs covering legal practitioners including attorneys practicing for their own account (which includes conveyancers and notaries); advocates that practice with a Fidelity Fund Certificate (i.e. those advocates that are able to deal directly with the clients from the public); and legal firms, trust service providers and widens the definition to include activities carried out by trust and company service providers, including accountants, who assist in the creation and management of business operations for clients or who act as nominees for clients and a new category for high value good dealers that apply to business of high-value goods receiving payments in any form of R100 000 (approximately EUR5 000) or more per item, whether payments are in a single transaction or more. This includes but is not limited to motor vehicles dealers, Kruger Rand dealers, dealers in precious metals and dealers in precious stones.
- b) **Criterion 22.1 (Met)** In its 4th round MER, the AML/CFT obligations under R.10 did not apply to CSPs that are not attorneys; accountants (for activities beyond provision of financial services), and DPMS. These activities are now covered under the FIC Act as mentioned in R.10. Other DNFBPs including casinos and real estate agents were already covered since the time of the MER (See 2021 MER, c.22.1). A new category covers high value good dealers that apply to business of high-value goods receiving payments in any form of R100 000 (approximately EUR 5000) or more per item, whether payments are in a single transaction or more.
- c) **Criterion 22.2 (Met)** In its 4th round MER, the FIC Act did not cover DPMS (other than KRDS covered as RIs), accountants (for activities beyond providing financial services), and CSPs other than attorneys. These are now covered under the FIC Act and must comply with the record-keeping requirements as mentioned under R.11.
- d) **Criterion 22.3 (Mostly Met)** In its 4th round MER, DPMS (other than KRDS covered as RIs), accountants (for activities beyond providing financial services), and CSPs other than attorneys. These are now covered under the FIC Act and must comply with the PEPs requirements as mentioned under R.12. The remaining minor shortcoming in R.12 remains.
- e) **Criterion 22.4 (Mostly Met)** In its 4th round MER, DPMS (other than KRDS covered as RIs), accountants (for activities beyond providing financial services), and CSPs other than attorneys. These are now covered under the FIC Act and must comply with the new technologies requirements as mentioned under R.15. The remaining shortcomings in R.15 remain.
- f) **Criterion 22.5 (Partly Met)** In its 4th round MER, DPMS (other than KRDS covered as RIs), accountants (for activities beyond providing financial services), and CSPs other than attorneys. These are now covered under the FIC Act and must comply with the

reliance on third-parties' requirements as mentioned under R.17. The remaining shortcomings in R.17 remain.

- g) **Weighting and conclusion:** Since the MER, South Africa has amended the FIC Act to expand the list of AIs to cover DPMS (other than KRDs covered as RIs), accountants (for activities beyond providing financial services), and CSPs other than attorneys were not covered by the FIC Act. This addresses the major shortcoming relating to the coverage of AIs that was identified in every criterion of this Recommendation. Remaining deficiencies identified in the related individual Recommendations remain. Recommendation 22 is re-rated as **Largely Compliant**.

Recommendation 23

	Year	Rating
MER	2021	PC
FUR2	2023	↑ C

- a) Requirements to implement preventive measures are primarily covered by the FIC Act. Schedule 1 Act sets out the AIs under the FIC Act that have AML/CT obligations. For the purpose of this Recommendation, in the 4th round MER, DPMS (other than KRDs covered as RIs), accountants (for activities beyond providing financial services), and CSPs other than attorneys are not covered by the FIC Act. The Schedule was amended in December 2022 to expand the list of AIs, covering legal practitioners including attorneys practicing for their own account (which includes conveyancers and notaries); advocates that practice with a Fidelity Fund Certificate (i.e. those advocates that are able to deal directly with the clients from the public); and legal firms, trust service providers and widens the definition to include activities carried out by trust and company service providers, including accountants, who assist in the creation and management of business operations for clients or who act as nominees for clients and a new category for high value good dealers that apply to business of high-value goods receiving payments in any form of R100 000 (approximately EUR5 000) or more per item, whether payments are in a single transaction or more. This includes but is not limited to motor vehicles dealers, Kruger Rand dealers, dealers in precious metals and dealers in precious stones.
- b) **Criterion 23.1 (Met)** In its 4th round MER, DPMS (other than KRDs covered as RIs), accountants (for activities beyond providing financial services), and CSPs other than attorneys and legal professional privilege is respected, as the FIC Act excludes the requirement to report if the relevant information was obtained through communications between an attorney and the client made in confidence for the purposes of legal advice or litigation which is pending or contemplated or which has commenced; or a third party and an attorney for the purposes of litigation which is pending or contemplated or has commenced. These entities are now covered under the FIC Act and must comply with the requirements to report suspicious transactions.

The obligation under the FIC Act to report STRs is a broad obligation that applies to any business and to persons associated with a business and is not limited to AIs. They would therefore cover all aspects of a lawyer's practice except that described specifically by the FIC Act which are communications made in confidence between an attorney and the client for the purposes of legal advice or litigation which is pending or contemplated, or which has commenced, or between a third party and an attorney for the purposes of

litigation which is pending or contemplated or has commenced. This does not cover the situation under the FATF Recommendations where lawyers are required to file STRs.

- c) **Criterion 23.2 (Met)** In its 4th round MER, the AML/CFT obligations did not apply to CSPs that are not attorneys; accountants (for activities beyond provision of financial services), and DPMS. These are now covered under the FIC Act and must comply with the internal control requirements as mentioned under R.18. The FIC Act applies RMCP provisions to all AIs and accordingly, DNFBPs must implement group-wide programmes in so far as they operate in a group. Requirements for specific DNFBPs to have an independent audit function is contained in their respective enabling legislation.
- d) **Criterion 23.3 (Met)** In its 4th round MER, the AML/CFT obligations did not apply to CSPs that are not attorneys; accountants (for activities beyond provision of financial services), and DPMS. These are now covered under the FIC Act and must comply with the higher-risk countries requirements as mentioned under R.19.
- e) **Criterion 23.4 (Met)** In its 4th round MER, the AML/CFT obligations did not apply to CSPs that are not attorneys; accountants (for activities beyond provision of financial services), and DPMS. These are now covered under the FIC Act and must comply with the tipping-off and confidentiality requirements as mentioned under R.21.
- f) **Weighting and conclusion:** Since the MER, South Africa has amended the FIC Act to expand the list of AIs to cover DPMS (other than KRDs covered as RIs), accountants (for activities beyond providing financial services), and CSPs other than attorneys were not covered by the FIC Act. This addresses the major shortcoming relating to the coverage of AIs that was identified in every criterion of this Recommendation. Recommendation 23 is re-rated as **Compliant**.

Recommendation 24

	Year	Rating
MER	2021	PC
FUR2	2023	↑ LC

- a) **Criterion 24.1 (Met)** In its 4th round MER, information which could be obtained at the Companies and Intellectual Property (CIPC) offices and on its website on processes of creating legal persons only covered basic information and there were no processes for obtaining and recording of BO information. Amendments to the Companies Act in 2023 create a process for all companies to obtain and keep beneficial ownership information in their securities registers.

There are different requirements for both affected companies (public companies and state-owned companies) and all other companies (these form the majority) to collect and update, which are set out in the Companies Act. However, all companies must disclose to the CIPC copies of their securities registers. The CIPC website has been updated to include processes for obtaining and recording of BO information.

- b) **Criterion 24.2 (Partly Met)** In its 4th round MER, South Africa had not assessed the ML/TF risks that all types of legal persons and arrangements created in the country are exposed to. This was done as part of the NRA approved in November 2022, confirming the risk that corporate structures are used as vehicles for ML and TF, and assessing the ML/TF threats (such as corruption and organised crime) to legal persons. The SRA on legal persons and legal arrangements will be completed in June 2023. This more

focussed risk assessment would benefit from an assessment of the link between the use of companies and (i) identification of high-risk sectors, (ii) assessment of emerging risks, (iii) consideration of risks involving NPOs more specifically, (iv) consideration of risks relating to foreign companies, (v) risk mitigation and (vi) assessment of BO transparency, which are not adequately considered in the NRA.

- c) **Criterion 24.3** (*Met*) As noted in the MER, legal persons created in South Africa must be registered with CIPC with details on who incorporated it, the company name, the number of directors, the number of authorised shares, and the objects and powers and full details of the directors. All the information entered in the companies register is publicly available at the CIPC and on its website. This has not changed and the criterion remains met.
- d) **Criterion 24.4** (*Met*) As noted in the MER, companies must maintain the information required by this criterion within South Africa and must notify the CIPC of the location where the information is maintained or can be accessed, if not at the company's registered office. Since the MER, the Companies Act was amended to require that every company submit an annual return to the CIPC. This has not changed and the criterion remains met.
- e) **Criterion 24.5** (*Met*) Although there are some mechanisms as noted in the MER to ensure that some of the information is accurate and up to date there was no time limit for filing certain changes and no requirement for securities registers on shareholding to be kept up to date. Amendments to the Companies Act in 2022 and Regulations thereunder. These require specific updates of new information to CIPC within ten business days and an amendment to the company's security register within five days."
- f) **Criterion 24.6** (*Mostly Met*) In its 4th round MER, South Africa did not have a comprehensive mechanism to ensure that all legal persons keep accurate and up-to-date information on BO, nor other mechanisms, like through a BO register. Further, not all entities with reporting obligations were AIs and the process did not guarantee timely access to BO information by LEAs. The amended Companies Act creates a process for all companies to obtain and keep beneficial ownership information in their securities registers, copies of which must be disclosed to the CIPC. The Companies Act Regulations was amended in 2023 to allow electronic access to the annual returns and documents filed with it by companies, which law enforcement can request access to. The Regulation states that electronic access is based on such conditions as the CIPC may determine after consultation with the Minister and the FIC, clearer language on how these conditions apply and timeframe for access would be benefit the process. As noted in the MER, the FIC can also obtain BO information from AIs which are now more broadly covered (see c.1.6). However, the deficiency relating to timely access through this mechanism remains.
- g) **Criterion 24.7** (*Met*) In its 4th round MER, the obligation to obtain and keep up-to-date and accurate BO information did not cover reporting entities that were not AIs. Amendments to the Companies Act in 2023 create a process for all companies to obtain and keep beneficial ownership information in their securities registers and the Regulations thereunder require that the security register be kept up to date as soon as practicable but no later than ten business date after and change.
- h) **Criterion 24.8** (*Partly Met*) In its 4th round MER, directors or prescribed officers whose obligations to the company include having to comply with any lawful requests to provide basic and shareholder information from the securities register which in some cases could include BO information, are not required to be resident in South Africa.

Although the amendments to the Companies Act provides clarity on the obligation to collect and maintain BO information, including the role of the company secretary, who is a South African resident, to ensure that BO information is maintained. However, there is no specific provision to require an authorised person (directors, employees or designated other persons) resident in South Africa to be accountable to competent authorities for providing basic/BO information and giving further assistance.

- i) **Criterion 24.9** (*Met*) In its 4th round MER, there were no obligations on the CIPC or the companies to maintain records of a company for any period after it had been dissolved. Under the amended Regulations of the Companies Act, company records and supporting documentations must be maintained for five years after such company is dissolved, and in relation to BO information pertaining to persons holding the beneficial interest of 5% or more of the securities issued by the affected company may be disposed of after seven years.
- j) **Criterion 24.10** (*Mostly Met*) In its 4th round MER, timelines for obtaining information using a subpoena varied from seven to ten days or more and or had to be repeated several times to get to BO information. The amended Companies Act creates a process for all companies to obtain and keep beneficial ownership information in their securities registers, copies of which must be disclosed to the CIPC. The Regulations thereunder require the CIPC to give electronic access to the securities registers “to such persons and on such conditions as may be determined by the Commission, after consultation with the Financial Intelligence Centre” which include South African Revenue Service; the Financial Intelligence Centre; SA Police Services (DPCI); National Prosecuting Authority; Special Investigating Unit; Share Transactions Trading Electronic; SA Reserve Bank; Financial Sector Conduct Authority; all regulatory bodies and organs of state in terms of matters of common interest. South Africa has advised that there are no conditions governing data access except those relating to security of the data. Nevertheless, clearer language on how these conditions apply would benefit the process. However, South Africa has provided statistics to show that 56% of requests, made mostly by law enforcement, were completed on the day they were submitted and 75% were completed within five days.
- k) **Criterion 24.11** (*NA*) This is non-applicable as bearer shares or bearer share warrants are not recognised under the Companies Act. This has not changed.
- l) **Criterion 24.12** (*Met*) In its 4th round MER, although companies are required to keep a record of changes relating to identity of each person with a beneficial interest in the securities held in a register, there was no requirement for the information to be filed with the register. The requirement for registration has been added with the amendments to the Companies Act in 2023.
- m) **Criterion 24.13** (*Mostly Met*) In its 4th round MER, there were no sanctions for failure by a company to keep information at least for five years after it has dissolved. There is now a legal obligation to do so (see c.24.9) but there is no sanction for non-compliance. However, this is mitigated by regulation 5(4) of the Companies Regulations that requires the CIPC to keep records for five years after the dissolution of a company, which means that the weighting given to this deficiency is very minor. The criterion remains mostly met.
- n) **Criterion 24.14** (*Mostly Met*) In its 4th round MER, basic and shareholder information with the CIPC required a court process before it could be shared with a foreign country. This could take ten working days or longer. Some authorities were able to use their powers to obtain BO information on behalf of foreign but these powers were only useful

to the extent that the subject person possesses BO information. Improvements on BO collections made pursuant to amendments to the Companies Act and the Regulations thereunder mitigate this concern. Amended regulations also allow the CIPC to be able to exchange information with international authorities “in order to verify any information or documentation filed or to be filed with the regulatory agency”. Although the scope of information that can be shared is broad, the purpose for which they can be shared through this more direct mechanism is narrow and does not include broader law enforcement or supervisory needs.

- o) **Criterion 24.15 (Partly Met)** In its 4th round MER, South Africa did not have a clear mechanism for monitoring the quality of assistance received from other countries in response to requests for basic and BO information. This has not changed and the criterion remains partly met.
- p) **Weighting and conclusion:** Although ML/TF risks of legal persons and arrangements was assessed as part of the NRA approved in November 2022, this has not been done comprehensively. South Africa’s commitment to develop a dedicated SRA relating to this is positive. Since the MER, South Africa has amended its Companies Act and the Regulations thereunder which provide more clear obligations to collect, maintain and update basic and BO information which is also kept with the CIPC. LEAs and competent authorities have electronic access to the information. The remaining deficiencies are narrow, i.e., there is no specific provision to require an authorised person resident in South Africa to be accountable to competent authorities and no clear mechanism for monitoring the quality of assistance received from other countries in response to requests for basic and BO information. Recommendation 24 is re-rated as **Largely Compliant**.

Recommendation 25

	Year	Rating
MER	2021	PC
FUR2	2023	↑ LC

- a) **Criterion 25.1 (Met)** In its 4th round MER, inter-vivos trusts which have property present in South Africa must be registered under the Trust Property Control (TPC) Act, but the Act did not specify who must be identified in the trust instrument and the kind of information which must be obtained by the trustee or must be part of the instrument at the time of lodging it for registration. Obligations under the FIC Act did not have the requirement to keep the information current. There were no requirements on any trustees to hold information on agents and service providers to the trust. Although professional trustees, as AIs, must maintain information for at least five years from the date that their involvement with the trust ceases, the information would not cover other natural persons who might be exercising ultimate effective control over the trust, nor information on agents and service providers to the trust.

The TPC was amended in 2023 to implement the requirements relating to the holding of ownership information. (a) The TPC requires the trustee to keep up-to-date record of the prescribed information relating to the beneficial owners of the trust. The prescribed information required referred to in the TPC Regulations include the identity details of the trustee and the beneficial owner. (b) The amended TPC includes the obligation for the trustee to record the prescribed details relating to AIs which the trustee uses as agents to perform any of the trustee's functions relating to trust

property, and from which the trustee obtains any services in respect of the trustee's functions relating to trust property. (c) Professional trustees are now AIs for the purpose of the FIC Act and are subject to record-keeping obligations which requires that records relating to a business relationship must be kept for at least five years from the date on which the business relationship is terminated.

- b) **Criterion 25.2** (*Mostly Met*) In its 4th round MER, the obligation to keep information up to date and accurate was limited to professional trustees who are AIs, and did not extend to other trustees. The amended TPC Act specifically requires that the information prescribed under the Regulations of the TPC Act “is kept up to date” but does not expand on what the time thresholds are and how this should be maintained. The definition of a “beneficial owner” in the TPC Act is broadly defined and covers the scope defined under the FATF Methodology.
- c) **Criterion 25.3** (*Met*) In its 4th round MER, there were no explicit measures to ensure that trustees disclose their status to FIs and DNFBPs when forming a business relationship or carrying out an occasional transaction above the threshold. The amended TPC Act required that a trustee must disclose their position as a trustee to any AIs with which the trustee engages in that capacity and must make known that the relevant transaction or business relationship relates to trust property.
- d) **Criterion 25.4** (*Met*) As noted in the MER, there are no legal restrictions to prevent trustees from providing competent authorities with any information relating to a trust; or from providing FIs, DNFBPs, and VASPs, upon request, with information on the beneficial ownership and assets of the trust to be held or managed under the terms of the business relationship. The criterion remains met.
- e) **Criterion 25.5** (*Met*) In its 4th round MER, processes available to LEAs to access BO information did not always ensure timely access to such information. Competent authorities, in particular LEAs, have powers to obtain access to any information on trusts held by professional trustees and other AIs. Amendments to the TPC Act has resulted in obligations on the part of trustees to maintain BO information relating to the trust and to file this with the Master of the High Court, who must keep an electronic register of the information. Regulations under the TPC Act require that relevant South African authorities, including law enforcement authorities have direct access to the register.
- f) **Criterion 25.6** (*Mostly Met*) In its 4th round MER, although South Africa has mechanisms to provide international cooperation for basic information on trusts, not all basic information is collected and maintained and the information is not always provided rapidly. Amendments to the TPC Act has resulted in obligations on the part of trustees to maintain BO information relating to the trust. However, there is insufficient information to demonstrate that the mechanisms allow the information to be obtained and shared internationally in a timely manner.
- g) **Criterion 25.7** (*Met*) In its 4th round MER, no administrative or criminal sanctions are applicable to other trustees who are not professional trustees. Under the amended TPCA, a trustee who fails to comply with disclosure obligations commits an offence is liable to a fine not exceeding R10 million (approximately EUR 500 000), or imprisonment for a maximum of five years, or to both. In addition, the Master of the High Court can remove a trustee from office if the trustee fails to perform satisfactorily any duty imposed upon him/her by the TPCA or to comply with the requirements of the TPCA or any lawful request of the Master. The prescribed sanctions are proportionate and dissuasive.

- h) **Criterion 25.8 (Met)** In its 4th round MER, it was noted that the Criminal Procedure Act and the National Prosecuting Authority Act prescribed sanctions for failure to provide requested information to competent authorities. However, the deficiency identified was that not all trustees must obtain and hold information required, not all information required under the same criterion is covered and most of the sanctions only apply for failure to provide information and not failure to grant LEAs timely access to information. Amendments to the TPC Act has resulted in obligations on the part of trustees to maintain BO information relating to the trust and timely access to information for LEAs (c.25.4 and c.25.5).
- i) **Weighting and conclusion:** Since the MER, South Africa has amended its TPC Act and the Regulations thereunder to provide more clear obligations to collect, maintain, update and allow access to information relating to the trust, including BO information. Remaining deficiencies relate to clarity on how BO information should be kept updated and mechanisms to share information internationally. Recommendation 25 is re-rated as **Largely Compliant**.

Recommendation 26

	Year	Rating
MER	2021	PC
FUR2	2023	↑ LC

- a) **Criterion 26.1 (Mostly Met)** In its 4th round MER, CFIs, credit providers other than money lenders against securities, and fintech companies offering financial services other than as FSPs did not have a designated AML/CFT supervisor. The amended FIC Act expands the scope of AIs and the designated supervisors for the above list of entities. Under the amended FIC Act, CFIs are now supervised by the SARB:PA, although not yet for AML/CFT, and credit service providers are now supervised by the Financial Intelligence Centre. Aside from crypto asset service providers, there are no fintech companies that offer financial services and crypto asset service providers are now supervised by the Financial Sector Conduct Authority.
- b) **Criterion 26.2 (Met)** In its 4th round MER, stand-alone credit providers other than money lenders against securities, and fintech companies offering financial services that are not FSPs were not subject to market entry controls. Under the amendments to the Financial Sector Regulation Act, the financial sector regulator must make standards, that must be complied with by significant owners of financial institutions. The National Credit Act requires registration of credit providers and the Financial Sector Conduct Authority (FSCA) requires registration of crypto asset service providers.
- c) **Criterion 26.3 (Partly Met)** In its 4th round MER, for banks, mutual banks, cooperative banks, CFIs, FSPs, CIS managers, ADLAs, the fit and proper standards established by the regulators did not extend to significant owners or beneficial owners. There were no integrity-related requirements/criteria in place for CFIs. There were no measures to prevent criminals from owning, controlling, or managing CFIs, credit providers other than moneylenders against securities, fintech companies offering financial services that are not FSPs, and public FIs (for the managing aspect). The Financial Sector Regulation Act has been amended to insert the definition of beneficial owner enabling the financial sector regulator to install standards with respect to fit and proper requirements. SARB:PA has issued Directives that apply to banks, mutual banks, insurers and now CFIs that extend measures to significant/beneficial owners. For ADLAs, this has been

done through the ALDA Manual published by the SARB:FinSurv in 2022. In relation to the remaining entities identified, the laws do not clearly apply the requirements.

- d) **Criterion 26.4 (Mostly Met)** In its 4th round MER, consolidated group supervision for AML/CFT was not in place for core principles and its supervisory framework was not in line with the core principles. Further, credit providers other than money lenders against securities, and fintech companies offering financial services that are not FSPs were not subject to supervision. Under the amended FIC Act, co-operative banks are now supervised by the SARB:PA and credit service providers are now supervised by the Financial Intelligence Centre and are thus subject to AML/CFT compliance and monitoring. No information has been provided to show that consolidated group AML/CFT supervision (except for banks) is in line with the Core Principles. The criterion remains mostly met given the materiality of the banking sector.
- e) **Criterion 26.5 (Met)** In its 4th round MER, SARB:PA was not yet assessing individual institution's or group's ML/TF risk profiles for the insurance sector, ADLA's head offices were inspected once a year regardless of the risk assessment and onsite inspections of TSPs, Postbank and Ithala by the FIC was not based on a risk tool. The SARB:PA has since implemented institutional risk profiling for all life insurers. Risk ratings have been assigned to each insurer and the supervisory manual has been updated so that the frequency of risk ratings is aligned. FinSurv now uses a risk matrix tool to determine which ADLAs will be inspected based on their risk rating and this is included in the annual inspection plan. The FIC uses high risk indicators and institutional risk assessments in all inspections and this applies to TSPs, Postbanks and Ithala.
- f) **Criterion 26.6 (Mostly Met)** In its 4th round MER, the FIC had not undertaken risk assessments of domestic MVTs, public FIs except Postbank, credit providers other than money lenders against securities, and fintech companies offering financial services. SARB:PA issued a Directive in 2022 applicable to all AIs under its purview, including domestic MVTs. Since 2020-21, it has introduced a risk rating tool and required entities to provide ML/TF data which informs the risk rating tool. The FIC has implemented a supervisory risk-rating tool for all individual DNFBP, CASPs, Credit providers, and Post Bank, entities for the purposes of conducting high-risk DNFBP and FI entity supervision for its supervisory plan for 2023/24.
- g) **Weighting and conclusion:** Since the MER, South Africa has amended the FIC Act to expand the list of AIs which bring most of the entities into the AML/CFT framework, and thus many of the requirements of this Recommendations become applicable. South Africa's supervisory authorities have taken several steps to introduce risk-based supervision, although some gaps in coverage remain, including in relation to CFIs. Recommendation 26 is re-rated as **Largely Compliant**.

Recommendation 27

	Year	Rating
MER	2021	PC
FUR2	2023	↑ LC

- a) **Criterion 27.1 (Mostly Met)** Supervisory bodies in South Africa have the powers through the FIC Act or the ability to issue regulations or Directives to supervise, monitor and ensure compliance of AIs under their purview. In its 4th round MER, there were no AML/CFT obligations or compliance oversight for CFIs, credit providers other than

money lenders against securities, and some fintech companies, which were not covered by the FIC Act. The amended FIC Act expands the scope of AIs and the designated supervisors for the above list of entities. Under the amended FIC Act, CFIs are now supervised by the SARB:PA although not for AML/CFT as CFIs are not AIs. Credit service providers are now supervised by the Financial Intelligence Centre. Aside from crypto asset service providers, there are no fintech companies that offer financial services and crypto asset service providers are now supervised by the Financial Sector Conduct Authority.

- b) **Criterion 27.2 (Met)** As noted in the MER, the supervisory body can appoint inspectors to determine level of compliance of an AIs with the FIC Act and the appointed inspectors may enter the premises of the accountable for these purposes. The criterion remains met.
- c) **Criterion 27.3 (Met)** As noted in the MER, the FIC or a supervisory body may direct AIs to provide a wide range of information. In conducting an inspection, the inspector may order the production of document or information relating to the affairs of the AI. The criterion remains met.
- d) **Criterion 27.4 (Met)** The FIC and supervisory bodies have powers to impose a range of administrative sanctions on any AIs under the FIC Act, aside from other supervisors who can also impose sanctions on entities under their purview. The MER noted that when a licensee has contravened a directive issued by the SARB:PA or the FSCA, the relevant regulator may suspend or revoke the license. The FIC Act empowers allows supervisors to impose restriction or suspension of certain specified business activities under their purview.
- e) **Weighting and conclusion:** Since the MER, South Africa has amended the FIC Act to expand the list of AIs which bring most of the entities, except for CFIs. into the AML/CFT framework. Recommendation 27 is re-rated as **Largely Compliant**.

Recommendation 28

	Year	Rating
MER	2021	PC
FUR2	2023	↑ LC

- a) **Criterion 28.1 (Mostly Met)** As in its 4th round MER, operating a casino requires an appropriate license (National Gambling Act, ss. 8 and 11). Each provisional licensing authority (PLA) for casinos had its own rules on the criteria of fitness and propriety (underpinned by the legislation) but they were inconsistent as to who must be fit and proper and the criteria for fitness and propriety. Although this has not been addressed, the inconsistency is minor. The criterion remains mostly met.
- b) **Criterion 28.2 (Met)** Since the MER, South Africa has amended the FIC Act to expand the list of AIs which has resulted in all the DNFBPs being covered. The FIC is the designated competent authority responsible for monitoring and ensuring compliance of the DNFBPs with AML/CFT requirements.
- c) **Criterion 28.3 (Met)** Attorneys were not “subject to AML/CFT monitoring for compliance with the FIC Act; the authorities had not demonstrated that the LPC has systems in place to carry out such monitoring. Since the MER, South Africa has amended the FIC Act to expand the list of AIs which has resulted in all the DNFBPs being covered,

including attorneys with the transfer of responsibility from the LPC to the FIC. The FIC is the designated competent authority and the FIC Supervisory Plan for the DNFBP Sector for 2023-24 sets out the monitoring plan for all the DNFBPs including those identified above. Specifically for attorneys, the FIC inspections have been carried out since the financial year of 2020-21.

d) Criterion **28.4** (*Mostly Met*)

- a. For DPMS, accountants (for activities other than provision of financial services), and CSPs other than attorneys, there were no measures to prevent criminals from owning, controlling, or managing the entity or being professionally accredited. Since the MER, South Africa has amended the FIC Act to expand the list of AIs which has resulted in all the DNFBPs being covered.
- b. The fit and proper criteria applied to attorneys and TCSPs were unclear and inadequate to prevent criminals or their associates from being professionally accredited. The FIC has issued Directive 8 and PCC 55 which include requirements on screening of employees for all AIs. It is not entirely clear how these apply to lawyers who are not employees.
- c. In its 4th round MER, supervisory bodies did not have the power to suspend or withdraw licenses for AML/CFT non-compliance. Competent authorities have powers to impose a range of administrative sanctions on DNFBPs under the FIC Act, including the power to impose restriction or suspension of certain specified business activities.

e) Criterion **28.5** (*Mostly Met*)

- a. In its 4th round MER, FIC did not use a risk-based system for TSPs and thus did not demonstrate the frequency and intensity of supervision driven by ML/TF risks, and supervision was not risk sensitive. In 2023, the FIC issued Directives 6 and 7 which elaborates the risk-based mechanism applicable to all DNFBPs (as AIs), including TCSPs. Based on data collected through risk and compliance returns, SRAs, Institutional Risk Assessments, referrals from other divisions/entities/DNFBP regulators and red flags such as adverse media to conduct risk-based inspections, the FIC risk-rates individual entities and places them in categories to guide inspections.
 - b. It is not clear how the above mechanism ensures that the supervision is able to establish that adequate internal controls are in place.
- f) **Weighting and conclusion:** Since the MER, South Africa has amended the FIC Act to expand the list of AIs which bring all DNFBPs into the AML/CFT framework and the FIC is the designated competent authority responsible for monitoring and ensuring their compliance with AML/CFT requirements. This is done since a developing risk-based approach although there are some gaps relating to the supervision relating to market entry controls. Recommendation 28 is re-rated as **Largely Compliant**.

Recommendation 32

	Year	Rating
MER	2021	PC
FUR2	2023	PC

- a) **Criterion 32.1 (Partly Met)** In its 4th round MER, the Exchange Control Regulations (ECR) (the legislation that articulates prohibited, restricted and controlled goods) did not prohibit, restrict or control incoming BNIs payable in foreign currency and it was not illegal to send BNIs through the mail. This has not changed and the criterion remains partly met.
- b) **Criterion 32.2 (Partly Met)** In its 4th round MER, there was no requirement to declare incoming BNIs payable in foreign currencies at ports and airports. This has not changed and the criterion remains partly met.
- c) **Criterion 32.3 (Partly Met)** In its 4th round MER, the disclosure system at land crossings and ports did not cover incoming BNIs payable in foreign currency. This has not changed and the criterion remains partly met.
- d) **Criterion 32.4 (Partly Met)** In its 4th round MER, the powers of customs officials to question and obtain additional information did not cover incoming BNIs payable in foreign currency. This has not changed and the criterion remains partly met.
- e) **Criterion 32.5 (Partly Met)** In its 4th round MER, the sanctions did not cover incoming BNIs payable in foreign currency. This has not changed and the criterion remains partly met.
- f) **Criterion 32.6 (Partly Met)** In its 4th round MER, although the SARB:FinSurv provided the FIC with all cross-border transactions for EFTs, this information, did not contain information of declarations of physical transportation of cash nor information regarding suspicious incidents of such transportation. Since 2022, South Africa has enhanced the electronic traveler declaration system which enables the FIC to receive live electronic feed of all traveler declaration information, which includes cash declared or seized. However, this has only been implemented at three international airports and although there are plans to do so, this has not yet been implemented in all ports of entry.
- g) **Criterion 32.7 (Mostly Met)** In its 4th round MER, inter-agency coordination was only implemented at one international airport and not at other entry/exit points of South Africa. South Africa has since established interagency Port Management Committees at land, sea and airports of entry as well as enacted several pieces of legislation that enhance information sharing between SARS Customs and other relevant authorities. South Africa has also established several inter-agency cooperation committees at the operational level to combat cash smuggling and conducts joint operations at ports of entry.
- h) **Criterion 32.8 (Met)** As noted in the MER, goods can be seized and held to determine whether the Customs & Excise Act or any other law (including ML/TF suspicion) have been complied with in respect of such goods. This has not changed and the criterion remains met.
- i) **Criterion 32.9 (Partly Met)** In its 4th round MER, the following documentation was not comprehensively collected: (i) how or if a declaration which exceeds the

prescribed threshold in another currency is captured in the Passenger Processing System (PPS); (ii) how or if false declarations (including non-declarations) are captured in the PPS; (iii) what the process is for filing reports pertaining to suspicions of ML/TF related to R.32 and how or if these suspicions are captured in the PPS. The PPS system has been improved to require all travelers to make an electronic declaration. Currency must be declared and if this is above the threshold (in any currency), it will be captured in the PPS. False and non-declarations are also captured in the PPS. The FIC now receives all travel declaration data directly. It remains unclear whether non-declarations and suspicious reports relating to ML/TF are captured in PPS as there is no specific procedure for retaining information when there is a suspicion of ML/TF. The ML/TF suspicion would be established during the investigation.

- j) **Criterion 32.10** (*Met*) The MER noted the legislation (C&E Act, Tax Administration Act of 2011 and Protection of Personal Information Act 2 of 2013) ensured safeguards against improper use of information collected through the declaration system. This has not changed and the criterion remains met.
- k) **Criterion 32.11** (*Mostly Met*) Penalties and measures did not cover incoming BNIs payable in foreign currency. This has not changed, and the criterion remains mostly met.
- l) **Weighting and conclusion:** Since the MER, South Africa has improved information sharing and coordination amongst its agency to deal with ML risks pertaining to cash couriers at border entry/exit points and has started to expand implementation of initiatives to more entry points. However, deficiencies identified in the MER relating to gaps in the framework on incoming BNIs payable in foreign currency that affect several criteria have not been addressed. Some improvements have been made to the Passenger Processing System (PPS) but there remain gaps, principally relating to capturing of suspicious reports relating to ML/TF. Recommendation 32 remains as **Partially Compliant**.

Conclusion

Overall, South Africa has made progress in addressing most of the technical compliance deficiencies identified in its MER and has been upgraded as follows on

- R.5 and R.23 from PC to C
- R.1, R.7, R.10, R.14, R.18, R.22, R.24, R.25, R.26, R.27 and R.28 from PC to LC
- R.12 from NC to LC
- R.17 from NC to NA
- R.6, R.8 and R.15 from NC to PC

However, as it has not made sufficient progress on R.2 and R.32, these remain rated partially compliant.

Table 1. Technical compliance ratings, [October 2023]

R.1 LC (FUR 2023) PC	R.2 PC (FUR 2023) PC	R.3 LC	R.4 LC	R.5 C (FUR 2023) PC
R.6 PC (FUR 2023) NC	R.7 LC (FUR 2023) PC	R.8 PC (FUR 2023) NC	R.9 LC	R.10 LC (FUR 2023) PC
R.11 LC	R.12 LC (FUR 2023) NC	R.13 LC	R.14 LC (FUR 2023) PC	R.15 PC (FUR 2023) NC
R.16 LC	R.17 NA (FUR 2023) NC	R.18 LC (FUR 2023) PC	R.19 LC	R.20 LC
R.21 C	R.22 LC (FUR 2023) PC	R.23 C (FUR 2023) PC	R.24 LC (FUR 2023) PC	R.25 LC (FUR 2023) PC
R.26 LC (FUR 2023) PC	R.27 LC (FUR 2023) PC	R.28 LC (FUR 2023) PC	R.29 LC	R.30 C
R.31 C	R.32 PC (FUR 2023) PC	R.33 LC	R.34 LC	R.35 LC
R.36 LC	R.37 LC	R.38 LC	R.39 LC	R.40 LC

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

South Africa has five Recommendations rated PC. South Africa will remain in enhanced follow up and will report back to the FATF on progress achieved in improving the implementation of its AML/CFT measures in October 2024.

Annex to the FUR

Summary of Technical Compliance –Deficiencies underlying the ratings

Recommendations	Rating	Factor(s) underlying the rating ³
<ul style="list-style-type: none"> 1. Assessing risks & applying a risk-based approach 	PC (MER) LC (FUR 2023)	<ul style="list-style-type: none"> Gaps in process and methodology in South Africa's NRA which could affect risk-based measures and resource allocation. CFIs are not AIs.
<ul style="list-style-type: none"> 2. National cooperation and coordination 	PC (MER) PC (FUR 2023)	<ul style="list-style-type: none"> Coordination of counterproliferation financing remains fragmented and does not involve all supervisors. There is no cooperation on data protection between supervisors and the Information Regulator.
<ul style="list-style-type: none"> 3. Money laundering offence 	LC (MER)	<ul style="list-style-type: none"> A minor shortfall exists for self-laundering (acquisition, possession or use of proceeds does not extend to the perpetrator of the predicate offense).
<ul style="list-style-type: none"> 4. Confiscation and provisional measures 	LC (MER)	<ul style="list-style-type: none"> There is a minor gap for confiscation of instrumentalities intended for use in ML, predicate, and TF offenses.
<ul style="list-style-type: none"> 5. Terrorist financing offence 	PC (MER) C (FUR 2023)	<ul style="list-style-type: none"> Nil
<ul style="list-style-type: none"> 6. Targeted financial sanctions related to terrorism & TF 	NC (MER) PC (FUR 2023)	<ul style="list-style-type: none"> The relationship between the Operational Framework and TFS legislation is unclear and there are procedural shortcomings. There is no explicit reference in the Operational Framework to UNSCR 1988. The evidentiary threshold for making TFS proposals are not clear. The considerations in the Operational Framework to recommend designations is only limited to bona fide South African nationals. There are insufficient publicly known information on de-listing procedures.
<ul style="list-style-type: none"> 7. Targeted financial sanctions related to proliferation 	PC (MER) LC (FUR 2023)	<ul style="list-style-type: none"> Not all the guidance provided by the FIC on relevant obligations for AIs, has been updated. There is no specific provision in the FIC Act for extraordinary expenses relating to exemptions. Permission to deal with property if it is necessary to accrue interest or other earnings due on accounts is not limited to interests or other earning or payments that arose prior to the date on those became subject to the provisions of the UNSCR. There are insufficient publicly known information on de-listing procedures.
<ul style="list-style-type: none"> 8. Non-profit organizations 	NC (MER) PC (FUR 2023)	<ul style="list-style-type: none"> The work relating to the identification of NPOs that fall within the FATF definition is ongoing. The assessment of the nature of threats posed by terrorist entities to NPOs in South Africa is insufficiently in-depth and has not been included in the National Strategy nor followed up in policy. Not all NPOs exposed to TF risk may be covered by the obligations under the NPO Act. Outreach and engagement to is not being done in a systematic manner to address identified TF risks and adopt best practices.

³ Deficiencies listed are those identified in the MER unless marked as having been identified in a subsequent FUR.

		<ul style="list-style-type: none"> • There is no risk-based supervision and monitoring of NPOs exposed to TF risk. • The NPO Act does not prescribe a fine and/or imprisonment for non-compliance.
• 9. Financial institution secrecy laws	LC (MER)	<ul style="list-style-type: none"> • Legal obstacle to information sharing between FIs where required under R.13, 15, or 17.
• 10. Customer due diligence	PC (MER) LC (FUR 2023)	<ul style="list-style-type: none"> • CFIs are not AIs. • A single transaction does not include situations where the transaction is carried out in several operations that appear to be linked. • Additional CDD measures for life insurers are not set out in the FIC Act.
• 11. Record keeping	LC (MER)	<ul style="list-style-type: none"> • No obligations for CFIs, credit providers other than money lenders against securities, and some fintech companies.
• 12. Politically exposed persons	NC (MER) LC (FUR 2023)	<ul style="list-style-type: none"> • CFIs are not AIs. • Additional CDD measures for life insurers are not set out in the FIC Act.
• 13. Correspondent banking	LC (MER)	<ul style="list-style-type: none"> • No obligations for CFIs, credit providers other than money lenders against securities, and some fintech companies.
• 14. Money or value transfer services	PC (MER) LC (FUR 2023)	<ul style="list-style-type: none"> • No sanctions have been applied for unauthorized MVTS activity yet. • It is not clear how the obligations in the Currency and Exchange Manual are enforceable.
• 15. New technologies	NC (MER) PC (FUR 2023)	<ul style="list-style-type: none"> • The requirements relating c.15.1 and 15.2 do not make any reference to new delivery mechanisms or new or developing technologies. • There are no licensing requirements for VASPs created in South Africa that do not have a business in South Africa. • It has not been demonstrated that South Africa is taking action to identify unauthorised VASP activities and applying appropriate sanctions. • South Africa has not demonstrated that the regulators implement risk-based supervision and monitoring of VASPs. • Guidelines and feedback issued do not specifically targeted towards measures to combat ML/TF in relation to VA activity. • R.16 requirements for VA transfers are not in place.
• 16. Wire transfers	LC (MER)	<ul style="list-style-type: none"> • No obligations for CFIs, credit providers other than money lenders against securities, and some fintech companies. • Minor shortcomings for: verifying originator information with regard to batched transfers, record keeping, and screening wire transfers to comply with international sanctions.
• 17. Reliance on third parties	NC (MER) NA (FUR 2023)	<ul style="list-style-type: none"> • Nil.
• 18. Internal controls and foreign branches and subsidiaries	PC (MER) LC (FUR 2023)	<ul style="list-style-type: none"> • CFIs are not AIs. • The audit committee of a cooperative bank does not need to have AML/CFT responsibilities.
• 19. Higher-risk countries	LC	<ul style="list-style-type: none"> • No obligations for CFIs, credit providers other than money lenders against securities, and some fintech companies.
• 20. Reporting of suspicious transaction	LC	<ul style="list-style-type: none"> • Outer limit of 15 days allowed to report after forming suspicion creates an ambiguity that could undermine the requirement to report as soon as possible when a suspicion is formed.
• 21. Tipping-off and confidentiality	C	<ul style="list-style-type: none"> • Nil
• 22. DNFBPs: Customer due diligence	PC (MER) LC (FUR 2023)	<ul style="list-style-type: none"> • Shortcomings identified for R.12, R.15, and R.17.
• 23. DNFBPs: Other measures	PC (MER) C (FUR 2023)	<ul style="list-style-type: none"> • Nil

<ul style="list-style-type: none"> 24. Transparency and beneficial ownership of legal persons 	<p>PC (MER) LC (FUR 2023)</p>	<ul style="list-style-type: none"> ML/TF risks for legal persons and arrangements assessed as part of the 2022 NRA contain several inadequacies. There is no specific provision to require an authorised person resident in South Africa to be accountable to competent authorities. There is no clear mechanism for monitoring the quality of assistance received from other countries in response to requests for basic and BO information. Clarity in the language of the regulation that requires providing electronic access to information to relevant authorities.
<ul style="list-style-type: none"> 25. Transparency and beneficial ownership of legal arrangements 	<p>PC (MER) LC (FUR 2023)</p>	<ul style="list-style-type: none"> Lack of clarity what is meant by the requirement to keep information up to date. Insufficient information on mechanisms to be able to share information internationally in a timely manner.
<ul style="list-style-type: none"> 26. Regulation and supervision of financial institutions 	<p>PC (MER) LC (FUR 2023)</p>	<ul style="list-style-type: none"> CFIs are not supervised for AML/CFT. Supervision of a few sectors are not risk-based or in line with Core Principles. Some gaps exist for market entry of certain non-core sectors.
<ul style="list-style-type: none"> 27. Powers of supervisors 	<p>PC (MER) LC (FUR 2023)</p>	<ul style="list-style-type: none"> CFIs are not supervised for AML/CFT.
<ul style="list-style-type: none"> 28. Regulation and supervision of DNFBPs 	<p>PC (MER) LC (FUR 2023)</p>	<ul style="list-style-type: none"> Licensing requirements for casinos is inconsistent across provinces. The FIC Directive does not apply to lawyers who are not employees. The supervisory mechanism does not ensure that the supervision is able to establish that adequate internal controls are in place.
<ul style="list-style-type: none"> 29. Financial intelligence units 	<p>LC</p>	<ul style="list-style-type: none"> Operational analysis adversely affected by gaps in intelligence holdings due to some DNFBPs not being covered under the AML/CFT framework. Strategic analysis is not specific to identifying ML and TF related trends and patterns.
<ul style="list-style-type: none"> 30. Responsibilities of law enforcement and investigative authorities 	<p>C</p>	<ul style="list-style-type: none"> Nil
<ul style="list-style-type: none"> 31. Powers of law enforcement and investigative authorities 	<p>C</p>	<ul style="list-style-type: none"> Nil
<ul style="list-style-type: none"> 32. Cash couriers 	<p>PC (MER) PC (FUR 2023)</p>	<ul style="list-style-type: none"> Gaps in the regime pertaining to BNIs. Enhancements to the electronic traveler declaration system which enables the FIC to receive live electronic feed of all traveler declaration information, which includes cash declared or seized, has not been implemented at all ports of entry. There is no specific procedure for retaining information when there is a suspicion of ML/TF.
<ul style="list-style-type: none"> 33. Statistics 	<p>LC</p>	<ul style="list-style-type: none"> Not all AML/CFT agencies maintain statistics on international cooperation requests.
<ul style="list-style-type: none"> 34. Guidance and feedback 	<p>LC</p>	<ul style="list-style-type: none"> Some guidance may not provide enough sector specific detail.
<ul style="list-style-type: none"> 35. Sanctions 	<p>LC</p>	<ul style="list-style-type: none"> No coverage for CFIs, credit providers other than money lenders against securities, some fintech companies, DPMS, accountants (for activities beyond providing financial services), and CSPs that are not attorneys.
<ul style="list-style-type: none"> 36. International instruments 	<p>LC</p>	<ul style="list-style-type: none"> A minor deficiency relating to self-laundering (acquisition, possession or use of proceeds of crime does not extend to the perpetrator of the predicate offense).
<ul style="list-style-type: none"> 37. Mutual legal assistance 	<p>LC</p>	<ul style="list-style-type: none"> Minor shortcomings relating to confidentiality, the absence of a case management system and timely provision of MLA.

<ul style="list-style-type: none"> • 38. Mutual legal assistance: freezing and confiscation 	LC	<ul style="list-style-type: none"> • Restraint orders can only be enforced if they are not subject to appeal or review. • No specific provision for confiscation of instrumentalities intended for use in criminal activities.
<ul style="list-style-type: none"> • 39. Extradition 	LC	<ul style="list-style-type: none"> • The authorities have not demonstrated they are able to execute extradition requests without undue delay and there is no case management system in place.
<ul style="list-style-type: none"> • 40. Other forms of international cooperation 	LC	<ul style="list-style-type: none"> • It is not clear that all authorities can cooperate or that all information can be provided rapidly. • South Africa did not establish that it exchanges information or assistance when there is an inquiry, investigation or proceeding underway. • The only competent authority which gives feedback is the FIC.

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November 2023

Anti-money laundering and counter-terrorist financing measures in South Africa

Follow-up Report & Technical Compliance Re-Rating

As a result of South Africa's progress in strengthening its measures to fight money laundering and terrorist financing since the assessment of the country's framework, the FATF has re-rated the country on 18 Recommendations.

Follow-up report