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3rd Enhanced Follow-up Report

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**REPUBLIC OF GHANA: 3rd ENHANCED FOLLOW-UP REPORT AND
TECHNICAL COMPLIANCE RE-RATINGS**

I. INTRODUCTION

1. The mutual evaluation report (MER) of Ghana was adopted in May 2017. Ghana was placed on the enhanced follow-up process. Ghana requested for re-ratings in May 2018. As a result, Recommendation 16 and 17 was re-rated from PC to LC. The country's request for re-rating in its 2nd follow report in May 2019 was made out of time therefore, the second follow up report was provided for information purposes only and no rerating was granted at that time. This follow-up report assesses the progress made by Ghana to resolve the technical compliance shortcomings identified in its MER. TC Re-ratings are given where sufficient progress has been demonstrated. This report also analyses the progress made in implementing new requirements relating to FATF Recommendations which have changed since the the 1st FUR was adopted in May 2018: Recommendations 2,15,18 and 21. This report does not address the progress Ghana has made to improve its effectiveness. The progress made on improving effectiveness will be analysed as part of a subsequent follow-up assessment. Progress in this area will be assessed as part of a subsequent follow-up assessment, and if found to be sufficient, may result in re-ratings of Immediate Outcome ratings at that time.

II. FINDINGS OF THE MUTUAL EVALUATION REPORT

2. The MER¹ rated Ghana for technical compliance as follows:

Table 1 - Technical Compliance Ratings, May 2017

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

3. The following expert assessed Ghana's request for TC re-rating: Mr. Pius Agboola (National Insurance Commission, Nigeria) (supported by the GIABA Secretariat).

4. Section III of this report summarises Ghana's progress in improving technical compliance. Section IV sets out the conclusion and a table showing the Recommendations which have been re-rated.

¹ There are four possible levels of technical compliance: Compliant (C), Largely Compliant (LC), Partially Compliant (PC) and Non-compliant (NC).

III. OVERVIEW OF PROGRESS REPORTED

5. This section summarises Ghana's progress to improve its technical compliance by:
- a. Addressing the technical compliance deficiencies identified in the MER, and
 - b. Implementing new requirements where the FATF Recommendations have changed since the adoption of its 1st FUR by the GIABA Plenary in May 2018.

3.1. Progress to address technical compliance deficiencies identified in the MER

6. GIABA welcomes the steps that Ghana has taken to improve its technical compliance with Recommendations 16, 18 and 32; however, the progress made is insufficient to justify a re-rating of the Recommendations.

Recommendation 16 (R16) (Originally LC – no re-rating)

7. The main deficiency identified under Recommendation 16 was that there was no provision requiring financial institutions to include the beneficiary's account number with the beneficiary information in the message accompanying cross-border wire transfers.

8. Ghana revised BOG/FIC AML/CFT Guidelines for Banks & Non-Bank Financial Institutions in July 2018. Paragraph 1.35 of the guidelines addresses the deficiency in c16.1 relating to the absence of the requirement to accompany wire transfers with the beneficiary's account number or a unique transaction reference number. The deficiency under 16.1 cascades into c16.6, c16.9 and c16.10 which were largely met. As such, by addressing the deficiency in c16.1, the deficiencies in c16.6 and c16.10 have been fully addressed and the deficiencies in c16.9 have been largely addressed. In the case of c16.9. The guideline requires the intermediary FI to keep records of relevant information from *only* an ordering FI for a minimum of five (5) years in the case where there are limitations that prevent an intermediary or beneficiary FI from ensuring that the relevant information accompanies a wire transfer. The guideline does not require the intermediary FI to keep records received from *other intermediary financial institutions*. Most of the deficiencies identified in the MER have been addressed but only this minor deficiency remains. On that basis, R.16 is remains Largely Compliant.

Recommendation 18 (R18) (Originally LC –no re-rating)

9. The main deficiency identified was that the BoG/FIC AML/CFT Guidelines for Banks and Non-Bank Financial Institutions did not outline the specific measures which financial institutions are required to implement on group-wide basis. Part 1.24 of the BoG/FIC AML/CFT Guidelines for Banks and Non-Bank Financial Institutions (revised in July, 2018) lists these measures in some detail. However, the recent revision to R18 which clarified the obligation relating to sharing of information within financial groups by requiring that (i) the tipping-off provision should not inhibit information sharing and (ii) branches and subsidiaries should receive information from pertinent group-level functions when this is relevant and appropriate to risk management are not covered by the guidelines. On this basis R.17 remains Largely Compliant

Recommendation 32 (R32) (Originally LC- no re-rating)

10. The main deficiency identified was that the declaration system did not extend to cross-border transportation of currency by mail and cargo. In May 2019, the BoG revised the Directive on Currency Importation and Exportation in accordance with the Foreign Exchange Act, 2006 (Act 723) to cover cross-border transportation of currency by mail and cargo. The directive prohibits the transportation of currency by mail or cargo. Under Ghana's AML Act, 2008 currency includes negotiable instruments. There are however other minor deficiencies that are outstanding under C32.7² and C32.9.³ On that basis, R. 32 is remains Largely Compliant.

3.2 Progress on Recommendations which have changed since adoption of the MER

11. Since the adoption of Ghana's first follow-up report, the FATF have amended Recommendations 2, 15 and 21. This section considers Ghana's compliance with the new requirements.

Recommendation 2 (R2) (Originally LC no re-rating)

12. In October 2018, Recommendation 2 was revised to clarify the need for compatibility of AML/CFT requirements and data protection and privacy rules to strengthen inter-agency information sharing. Section 61 of the Data Protection Act 2012 exempts personal data for the purpose of the prevention or detection of crime, apprehension and prosecution of an offender and assessment or collection of tax. The data protection laws do not impede inter-agency information sharing mechanisms already in place as indicated in the country's 2nd round MER. However, the deficiency identified in the 2nd round MER concerning limited co-operation and coordination mechanisms to combat the financing of proliferation of weapons of mass destruction remains. R. 2 remains Largely Compliant.

Recommendation 15 (R15) (Originally C re-rating to PC)

13. In October 2019, Recommendation 15 was revised and specific requirements relating to virtual assets (VA) and virtual asset service providers (VASPs) were added to the Recommendation. The new requirements include: identifying, assessing and understanding ML/TF risks associated with VA activities or operations of VASPs; requirements for VASPs to be licensed or registered; requirements for competent authorities to apply adequate risk-based AML/CFT supervision as well as sanctions to VASPs; application of preventive measures to VASPs; and provision of international co-operation in relation to VASPs.

14. Ghana's AML law and the Payment Systems and Services Act, 2019 (Act 987) (sections 7 & 22 of Act 987) takes account of VASPs. VASPs are treated as financial institutions in Ghana and are subject to the same AML/CFT obligations as other FIs. Ghana has not taken steps to identify, assess, understand, and apply a risk-based approach to mitigate

² Ghana stated that there was some co-ordination among customs, immigration and other related authorities on issues related to the implementation of Recommendation 32. The adequacy of the cooperation was assessed as mostly met.

³ Ghana does not retain any information relating to ML/TF to facilitate international co-operation in accordance with Recommendations 36 to 40.

the ML/TF risk emerging from virtual asset activities and VASPs (c15.3 (a) and (b)). Although obligations under section 40 (1) (2)(a)(viii) of the AML Act, 2014 requires reporting entities including financial institutions to develop and implement policies, procedures and programmes, including risk management procedures in relation to ML/TF/PF, there is no provision requiring reporting entities to document risk identified, and keep the assessment up to date as required under c1.10.

15. VASPs are required to be licensed in Ghana. Sections 8, 23 and 24 of the Act 987 prescribes the application and licensing procedures for payment service providers and electronic money issuers. The BOG undertakes fit and proper test as part of licensing procedures for FIs to prevent criminals from accessing the financial system (Sections 8 (8), 10 (5), 18 (3), and 23 (c) of Act 987). Even though the law forbids a person (natural or legal) from carrying out VASP activities without the requisite license and imposes appropriate sanctions for such violations (sections 9, 11 and 25 of the Act 987), Ghana has not taken actions to identify natural or legal persons that carry out VASP activities without licence and no sanction has been applied for such violations.

16. The AML law and Act 987 empowers the BoG to regulate and supervise VASPs. BoG has the necessary powers to impose sanctions where applicable. However, since Ghana has not undertaken risk assessment for VASPs, the BoG is not able to undertake a risk-based supervision for these entities. Furthermore, Ghana has not provided any guidelines for VASPs. The law⁴ provides for a range of sanctions, which are also applicable to directors and senior management of FIs, including financial intermediation businesses which VASPs fall under⁵. However, the shortcoming noted under R.35 regarding the lack of proportionate or dissuasive sanctions impacts this requirement. In addition, VASPs are required to comply with the requirements of R.10 to 21, to the same extent as other financial institutions. Ghana's laws and regulations are substantially compliant with R10-21. Nevertheless, the shortcomings noted under R10-21 impact this requirement.

17. Concerning the obligations related to targeted financial sanctions, the Executive Instrument 2 defines funds to include digital instruments and sets forth measures to communicate designations and report freezing actions in keeping with the requirements of c6.5(d)and (e), c7.2 (d)&(e) and unfreezing actions pursuant to c 6.6(g) and c7.4(d). However, the E.I.2 does not expressly provide that the mechanisms for communicating designations and monitoring obligations for targeted financial sanctions, apply to VASPs. In addition, the minor deficiency relating to the Ghana's PF laws will apply. As regards international cooperation, financial supervisors have the legal basis to cooperate. In addition, section 52, of the MLA Act allows disclosure of information to a competent authority of a foreign state.

18. Ghana has complied with some of the requirements of R15, however, some key and fundamental criteria, including c15.3 (identifying, assessing and understanding ML/TF risk associated with VA activities or operations of VASPs) and c15.5 (ensuring actions are taken to identify natural or legal persons that carry out VASP activities without licence), constitute

⁴ Sections 9, 11, 12, 13, 16, 25, and 26, of the Act 987

⁵ Section 39 (5) of Act 749 as amended by Section 18 of Act 874, paragraph 44 of the AML Regulations, 2011, and BOG/FIC AML/CFT Guidelines for Banks & Non-Bank Financial Institutions

major shortcomings under this Recommendation. Consequently, R.15 is downgraded to Partially Compliant.

Recommendation 21 (R21) (Originally C re-rating LC)

19. In February 2018, Recommendation 21 was revised to clarify the fact that anti-tipping-off provisions are not intended to inhibit information sharing under Recommendation 18. The BoG guidelines require financial groups to implement group-wide programmes against ML/TF: policies and procedures for sharing information required for the purposes of CDD and ML/TF risk management, including provision of transaction information from branches and subsidiaries when necessary for AML/CFT purposes. The guideline does not however, expressly stipulate that prohibition from disclosing the fact that an STR has been filed should not be construed as prohibiting information sharing within a group. R. 21 is downgraded to Largely Compliant.

IV. CONCLUSION

20. Ghana has taken steps in addressing the technical compliance deficiencies identified in its MER. Nevertheless, Recommendations 16, 18 and 32 remain LC. Although some steps were taken to address some gaps with regards to these Recommendations, these measures were not sufficient to justify re-rating of these Recommendations. In particular, the FATF amendments to R.18 were not taken on board in the revised BOG guidelines.

21. As regards Recommendations (R.2,15 and 21) which were revised after the 1st follow-up report of Ghana was adopted, Recommendation 2 remains LC, Recommendation 15 (originally rated C) is downgraded rated PC and Recommendation 21 (originally rated C) has been downgraded to LC.

22. In light of the forgoing, Ghana's technical compliance with the FATF Recommendations has been re-rated as follows in the table below

Table 2. Technical compliance with re-ratings, May 2020

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

23. Ghana will remain on the enhanced follow-up, and will continue to report back to GIABA Plenary on progress to strengthen its implementation of AML/CFT measures. Ghana is expected to report back in May 2022.



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Anti-money laundering and counter-terrorist financing measures in Ghana

3rd Follow-up Report

The report also looks at whether Ghana measures meet the requirements of FATF Recommendations that have changed since their Mutual Evaluation in 2017.



Follow-up Report