



# Anti-money laundering and counter-terrorist financing measures **KENYA**

3<sup>rd</sup> Enhanced Follow-up Report & 2<sup>nd</sup>  
Technical Compliance Re-Rating

August 2024





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

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## KENYA: 3<sup>rd</sup> ENHANCED FOLLOW-UP REPORT & 2<sup>nd</sup> REQUEST FOR TC RE-RATING

### I. INTRODUCTION

1. The ESAAMLG evaluated the Anti-Money Laundering and Combating the Financing of Terrorism and proliferation financing (AML/CFT/CPF) regime of the Republic of Kenya under its Second Round of Mutual Evaluations from 31<sup>st</sup> January to 11<sup>th</sup> February 2022. The Mutual Evaluation Report (MER) was adopted by the ESAAMLG Task Force of Senior Officials and the Council of Ministers in September 2022. According to the MER, the Republic of Kenya was Compliant (C) with 2 Recommendations, Largely Compliant (LC) with 1 Recommendation, Partially Compliant (PC) with 26 Recommendations and Non-Compliant (NC) with 11 Recommendations. Out of the 11 Immediate Outcomes (IOs), the Republic of Kenya was rated Moderate Level of Effectiveness on 2 IOs and Low Level of Effectiveness on 9 IOs. Details of the MER ratings are provided in Table 1.1.
2. This follow-up report assesses the progress made by Kenya to address the technical compliance deficiencies identified in its MER. New Technical Compliance (TC) re-ratings are given where sufficient progress has been made. The report does not cover the progress made by the Republic of Kenya in improving its effectiveness.
3. The following experts (assisted by Tirivafi Nhundu, Kennedy Mwai, and Bhushan Jomadar from the Secretariat) assessed Kenya's request for TC re-ratings and prepared its follow-up report:
  - Mr. Bheki Khumalo (Eswatini);
  - Mrs. Abby Dinka (Ethiopia);
  - Ms Tanvi Keerodhur (Mauritius),
  - Ms. Preeya Raghoonundun (Mauritius)
  - Mrs. Nomfanelo Kunene (Eswatini);
  - Ms. Phephile Dlamini (Eswatini); and
  - Mr. Thomas Mongella (Tanzania).
4. Section III of this report summarises the progress made by Kenya on technical compliance. Section IV sets out conclusions and contains a table of Recommendations for which a new rating has been given.

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

5. The MER<sup>1</sup> rated the Republic of Kenya's technical compliance as set out in Table 1.1. In light of these results, the Republic of Kenya was placed in the enhanced follow-up process<sup>2</sup>

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<sup>1</sup> Mutual Evaluation of the Republic of Kenya, September 2022 available at [https://www.esaamlg.org/reports/MER\\_of\\_Kenya-September\\_2022.pdf](https://www.esaamlg.org/reports/MER_of_Kenya-September_2022.pdf).

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

**Table 1.1. Technical Compliance Ratings<sup>1</sup> September 2022**

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

### III. OVERVIEW OF PROGRESS IN TECHNICAL COMPLIANCE

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

6. Since the adoption of the MER in September 2022, Kenya has taken measures aimed at addressing the technical compliance deficiencies identified in the MER. This section of the report summarises progress made by Kenya to improve its technical compliance by addressing the TC deficiencies identified in the MER.
7. In the 1<sup>st</sup> Re-rating request, Kenya was re-rated to Compliant with Recommendations 5, 10, 11, 13, 18, 19, 20, 21, 27, 29 and 36; Largely Compliant with Recommendations 23, and 32; and Partially Compliant with Recommendations 6 and 22.
8. In terms of this 2<sup>nd</sup> Re-rating request, Kenya has been re-rated for Recommendation 14 from NC to C; the Re-ratings for Recommendations 4, 9, 17, 30 & 31 from previously PC to C; the Re-ratings for Recommendation 16 from previously NC to LC; the Re-ratings for Recommendations 12, 24, 33, 39 and 40 from PC to LC; the Re-ratings for Recommendations 2 & 7 from previously NC to PC. While the rating for Recommendations 26 was maintained at PC. ESAAMLG welcomes the steps that Kenya has taken to improve its technical compliance deficiencies.

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

9. Under its Second Round MER, the Republic of Kenya was assessed on the requirements of Rec 2 and the deficiencies and rated as NC. To address these deficiencies, Kenya undertook amendments to its laws. Below is the analysis of the provisions aimed at addressing the outstanding deficiencies.
10. **Criterion 2.1 (Met)**- This Criterion was rated as Not Met in the 2022 MER. Kenyan national AML/CFT policies or strategies were not made available to the assessment team. Therefore, it was not possible to determine the extent to which the National Strategy and Action Plan is informed by the identified risks. Kenya AML/CFT policies is contained in the National AML/CFT/CPF Strategy (2021-2026) which was developed

<sup>1</sup> There are four possible levels of technical compliance: compliant (C), largely compliant (LC), partially compliant (PC), and non-compliant (NC).

following the National Risk Assessment that was conducted in 2021. The 2021 NRA was updated in 2023 to cover additional areas of the assessment *viz* (a) stand-alone Terrorism Financing Risk Assessment, (b) Virtual Assets and Virtual Assets Service Providers, (c) Non-Profit Organizations, (d) Legal Persons and Legal Arrangement, and (e) ML-TF Sectoral Risk Assessment for the banking sector. The NRA is supplemented with an Action Plan (2021-2024). As a results of the update of its ML/TF risk assessment in 2023, the country developed a National CFT strategy, 2023 and an Action Plan for the CFT Strategy (2023-2026), as well as a National AML Strategy, 2023 and an Action Plan. Both the updated AML and CFT Strategies aligns to the results and findings in the NRA. *Therefore, c2.1 is considered Met.*

11. **Criterion 2.2 (Met)**- This Criterion was rated as Partly Met in the 2022 MER. The assessors noted that the Regulations establishing the Committee have not complied with the POTA, and that Kenya did not have a competent authority to implement CFT National Strategies. Kenya amended its Prevention of Terrorism laws (POTA under Section 40E of POTA as (amended) to provide for the Counter Financing of Terrorism Inter-Ministerial Committee (CFTIMC). The CFTIMC is responsible for the formulate and supervise the implementation of the National Strategy and Action Plan on CFT while the AMLAB which is established under Section 50 of POCAMLA has a policy mandate for AML issues. *Therefore c2.2 is considered Met.*
12. **Criterion 2.3 (Partly Met)**- This Criterion was rated as Partly Met in the 2022 MER. On CFT matters, the CFTIMC established pursuant to Section 40D of POTA is mandated to formulate and supervise the implementation of the National Strategy and Action Plan on Counter Financing of Terrorism (Section 40E(1)(b)). The CFTIMC has representation of relevant policy-making stakeholders and is supported by the Law Enforcement Coordination Group (LECG) at an operational level (Section 40H of POTA). However, it is not clear how the CFTIMC mandate is shared with the National Taskforce (NTF) established through a gazette which has a similar mandate for the implementation of the National AML/CFT/CPF Strategy and Action Plan and making appropriate policy recommendations to relevant Government Agencies on combating the financing of terrorism. On AML matters, the policy-making organ is the Anti-Money Laundering Board established (Section 49 of POCAMLA). The functions of the AMLB include advising the Cabinet Secretary on (i) policies, best practices and related activities to identify proceeds of crime or proceeds of unlawful activities and to combat money laundering activities and (ii) act as a forum in which the FIU, associations representing categories of reporting institutions, state organs and supervisory bodies can consult one another on anti-money laundering developments, concerns and initiatives. It is also not clear how the CFTIMC, NTF and AMLAB allow for cooperation, coordination and exchange information together with the formulation of policies and activities. *Therefore c2.3 is considered Partly Met.*
13. **Criterion 2.4 – (Partly Met)**- This Criterion was rated as Not Met in the 2022 MER. The country introduced amendments to POTA and added the responsibility of formulating and supervising the implementation CPF to the CFTIMC’s mandate. However, while the country has now introduced new provisions under Sections **2, 4A and 4B** of POTA to provide measures for Countering Proliferation Financing, the deficiencies relating to the coordination between the CFTIMC and the NTF discussed under Criterion 2.3 above also affects this Criterion. *Therefore c2.4 is considered Partly Met.*

14. **Criterion 2.5- (Partly Met)**- This Criterion was rated as Partly Met in the 2022 MER. The Data Protection Obligations under Regulation 3.2 of the Interagency Guidelines on cooperation and coordination in the investigations and Prosecution of terrorism and Terrorism Financing provides that in interactions with each other, agencies shall at all times adhere to data protection policies and principles whenever there is inter-agency sharing of data. This requirement is only limited to CFT and does not extend to AML measures. However, there's no information about cooperation and coordination between relevant authorities to ensure the compatibility of AML/CFT requirements with Data Protection and Privacy rules. *Therefore c2.5 is considered Partly Met.*

*Weighting and conclusion*

15. Kenya has addressed the deficiencies identified in Criterion 2.1 and 2.2 and partially addressed the deficiencies identified in Criteria 2.3, 2.4 and 2.5. In view of the remaining deficiencies the Reviewers recommend that **Recommendation 2 should be re-rated from NC to PC**

**3.1.2 Recommendation 4 –Confiscation and Provisional Measures (Originally rated PC – Re-rated to C)**

16. The deficiencies in the MER in respect of R.4 were that: not all the competent authorities that were identified as key to the AML/CFT regime, in particular the NPS which is mandated to carry out majority of the criminal investigations have legal provisions empowering them to identify, trace, freeze, seize, preserve and manage property suspected to be proceeds of crime and subject to confiscation.
17. **Criterion 4.1- (Met)**- Kenya has measures including legislative measures that enable confiscations held by criminal defendants or third parties: (a) Kenya has legislative provisions for confiscation of property that has been laundered under the POCAMLA. The definition of Property under Section 2 of POCAMLA meets the requirements of the FATF Standards; (b) the revised POCAMLA provides for confiscation of property that is proceeds, benefits or instrumentalities used or intended to be used in ML or predicate offences. Section 2 of the POCAMLA provides for definition of 'proceeds of crime', 'property' and 'realizable property' and covers income or other benefits derived from such proceeds: (c) Kenya has amended the POTA under sections 44 (1) through the Anti-Money Laundering and Combating Terrorism Financing (Amendment) Act, 2023 by adding paragraphs (c) to POTA to provide for the proceeds of, or used in, or intended or allocated for use in the financing of terrorism, terrorist acts or terrorist organisations; (d) Section 44(1)(d) of POTA provides for confiscation of property of corresponding value. *Therefore c4.1 is considered Met.*
18. **Criterion 4.2 (Met)**- Kenya has implemented measures including legislative measures that enable competent authorities: (a) The ARA and EACC have powers to identify, trace and evaluate property that is subject to confiscation (Part VI of the POCAMLA; Sections 11 (1) (j) and 13 (2) (c) of the EACC Act; (b) the ARA, EACC, KRA and the IGP/NPS have powers to carry out provisional measures such as freezing or seizure, to prevent dissipation or recover property subject to confiscation; (c)&(d) Kenya National Police Service and EACC have powers to take appropriate investigative

measures to aid seizure, freezing and recovery of property subject to confiscation under the POCAMLA. *Therefore c4.2 is considered Met.*

19. **Criterion 4.3-(Met)**- In Kenya, the rights of bona fide third parties are protected from confiscation or forfeiture under S. 93 of the POCAMLA. *Therefore c4.3 is considered Met.*
20. **Criterion c4.4-(Met)**- Kenya has mechanisms for managing and, when necessary, disposing of property frozen, seized or confiscated under the POCAMLA (Ss. 72 (provides for appointment of a manager of property subject to a restraint order), 86 (provides for appointment of a manager of property subject to a preservation order) and 111(provides for the establishment of an Agency to manage the Criminal Assets Recovery Fund); ACECA (Ss. 56A (provides for the appointment of a Receiver) & 56C provides for recovery of funds and other assets). Additional mechanisms are provided under the Narcotic Drugs and Psychotropic Substances (Control) Act (Ss. 26 (1) (b); 31, 37, 38 and 39); and the Tax Procedure Act (S. 40). *Therefore c4.4 is considered Met.*

#### *Weighting and conclusion*

21. Kenya has addressed the deficiencies identified in Criterion 4.1, 4.2, 4.3 & 4.4. Since there are no remaining deficiencies, the *Reviewers recommend that Recommendation 4 should be re-rated from PC to C.*

#### *3.1.3 Recommendation 7 – Targeted Financial Sanctions Related to Proliferation (Originally rated NC – Re-rated PC)*

22. Under its Second Round MER, the Republic of Kenya was assessed on the requirements of Recommendation 7 which was rated as NC. Below is the analysis of the measures taken by the country to address the deficiencies identified in the MER.
23. **Criterion 7.1-(Met)**- The MER, 2022 rated Kenya as Not Met with the requirements of this Criterion. The Counter Financing of Terrorism Inter- Ministerial Committee is responsible for the implementation of targeted financial sanctions relating to prevention, suppression and disruption of proliferation financing pursuant to Regulation 4 of the Prevention of Terrorism (*Implementation of the United Nations Security Council Resolutions on the suppression of and Disruption of Proliferation Financing*) Regulations, 2023, (hereinafter POT-PFR, 2023). The Committee has nominated the Secretary to the Committee (DG of the FRC) to receive and circulate all designations made by the Security Council and any Sanctions List therefrom, including through electronic means, without delay to all persons which includes competent authorities and reporting institutions as designated under Reg 5(3) of the POT-PFR 2023. The term “without delay” has been defined under Reg. 2 of the same Regulations to mean within twenty-four hours of a designation by the United Nations Security Council or its relevant Sanctions Committee. Once circulated, all persons including reporting institutions within Kenya are obliged to implement TFS relating to PF without prior notice and without delay. In addition, Regulation 5(3)(e) requires circulation to any other person ‘so authorised’ in addition to the institutions listed under Regulation 5(3) (a) to (d) broaden the scope of implementation to any authorised person since the Cabinet Secretary has the authority to designate any other person for implementation

- of the mechanisms for detecting, freezing or seizing property or funds of a designated entity. *Therefore c7.1 is considered Met.*
24. **Criterion 7.2(a) (Met)**- Regulation 6 of POT-PF -R, 2023 provides that all persons including reporting institutions within Kenya shall, without prior notice, and without delay (Regulation 7) freeze funds or other assets of designated persons or entities. The definition of a person under the POTA Regulations means any natural or legal person. *Therefore c7.2(a) is considered Met.*
  25. **Criterion 7.2(b) (Met)**- Regulation 6(a)&(b) of the POT-PF- R, 2023 requires a jurisdiction to: (a) freeze all funds or other assets that are owned or controlled by the designated person or entity, and not just those that can be tied to a particular act, plot or threat of proliferation; ii) those funds or other assets that are wholly or jointly owned or controlled, directly or indirectly, by designated persons or entities under Reg.6(b)(i) of the POT-PF Regulations; (iii) the funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons or entities under Reg.6(b)(ii) of the POT-PF- R, 2023 ; (iv) funds or other assets of persons and entities acting on behalf of, or at the direction of designated persons or entities pursuant to Reg.6(b)(iii) of the POT-PF –R, 2023. *Therefore c7.2(b) is considered Met.*
  26. **Criterion 7.2(c) (Met)**- The Prevention of Terrorism Act Section 30G provides that a Kenyan national or any other person or entity within Kenya shall not make available any funds or other assets, economic resources or financial or other related services directly or indirectly, wholly or jointly, for the benefit of designated persons and entities. Regulation 10(1) of the POT-PFR, 2023 provides for conditions for provision of funds under license, authority or otherwise through notification in accordance with the relevant UNSCRs. *Therefore c7.2(c) is considered Met.*
  27. **Criterion 7.2(d) (Met)**- Regulation 5 POT –PFR, 2023 provides for mechanism for communicating designations to FIs and DNFBPs. Under Reg. 5(2), the Secretary of the Committee shall, on a daily basis, monitor the Sanctions Lists and circulate the Sanctions List, including through electronic means, to reporting institutions, supervisory bodies and self-regulatory bodies, national security organs and any other person so authorised to detect, freeze or seize the funds or the property of a designated entity; or to take such action as may be necessary to give effect to Resolution 1718 Resolutions (Reg.5(3)). This measure must be done without delay pursuant to Reg.7. The Secretary to Committee shall provide clear guidance on freezing to all persons and competent parties that may be holding targeted funds or other assets Pursuant to Reg.5(4) POTA-PFR, 2023. The term all persons used under Reg.5(4) is broad enough to cover FIs, DNFBPs and other persons or entities as envisaged under this Criterion. *Therefore c7.2(d) is considered Met.*
  28. **Criterion 7.2(e) (Met)**- Reg. 8(2) POT-PFR, 2023 requires that FIs and DNFBPs report within twenty-four hours to the Committee in a specified manner on any funds or other assets frozen or action taken in compliance with the prohibition requirements. For attempted transactions, Reg.8(3) requires reporting institutions to report any attempted transaction by a designated person or entity, by filing a suspicious transaction report to the Financial Reporting Centre. *Therefore c7.2(e) is considered Met.*



29. **Criterion 7.2(f) (Met)**- Regulations 23 of the POT-PFR 2023 provides that no proceedings shall lie against any person, reporting institution or government entity, in respect of effecting or implementing an order designating a person or an entity of freezing the property or funds of a designated person or entity in good faith under these regulations. *Therefore c7.2(f) is considered Met.*
30. **Criterion 7.3 (Partly Met)**- Reg.12(1) requires that the Financial Reporting Centre, supervisory bodies and self-regulatory bodies adopt measures for monitoring and ensuring compliance by reporting institutions with proliferation financing TFS obligations. In case of non-compliance of freezing obligations, the FRC, supervisory bodies and SRBs are required to impose administrative sanctions pursuant to Reg 12(3)(e) of the same regulations. As regulation 12 provides that specific sanctions apply for failure to comply with freezing sanctions this undermines the criminal sanctions provided for in Regulation 25. Though Reg 12(3)(e) of the PF regulations provides for the imposition of administrative sanctions, the regulation does not specify what the sanctions are, nor are the sanctions provided under the PF regulations. Based on the above, the reviewers concluded that the failure to comply with freezing obligations is not subject to civil, administrative or criminal sanctions. . *Therefore c7.3 is considered Partly Met.*
31. **Criterion 7.4(a) (Met)**- Reg. 13(1) POTA-PFR, 2023 provides mechanism for informing designated persons or entities to petition the Focal Point directly pursuant to UNSCR 1730 or through the Committee (Reg.13(2)(b) POTA-PFR, 2023). *Therefore c7.4(a) is considered Met.*
32. **Criterion 7.4(b) (Met)**- Kenya has publicly known procedures for delisting of false positives through an application process to the Committee. A person, whose name is similar to that of a designated person or entity, and whose funds have been inadvertently or mistakenly frozen due to the similarity, may apply for unfreezing pursuant to Reg. 16(1) POT-PFR, 2023. This is upon verification that that the person or entity involved is not a designated person or entity (Reg.16(3)). *Therefore c7.4(b) is considered Met.*
33. **Criterion 7.4(c) (Met)**- Kenya has set out mechanisms for authorising access to funds or other assets, in accordance with the exemption conditions set out in UNSCRs 1718. Reg. 17 POT-PFR, 2023 sets out the criteria for exemption from application of sanction measures under Res. 1718 as being funds or parts thereof to cover basic expenses, extraordinary expenses; funds or assets that are subject to judicial, administrative or arbitral lien or judgement; funds or assets that are required to carry out activities by the DPRK's mission to the United Nations and its specialized agencies and related organizations or other diplomatic and consular missions of the DPRK; funds or assets that the Sanctions Committee determines in advance on a case- by-case basis and which are required for the delivery of humanitarian assistance, denuclearization or any other purposes consistent with the objectives of Resolution 2270 (2016) and financial transactions with the DPRK Foreign Trade Bank or the Korea National Insurance Corporation if such transactions are solely for the operation of diplomatic or consular missions in the DPRK or humanitarian assistance activities that are undertaken by, or in coordination with, the United Nations. *Therefore c7.4(c) is considered Met.*

34. **Criterion 7.4(d) (Mostly Met)**- The mechanisms for communicating de-listings and unfreezing immediately upon taking such action is provided for under Reg. 14 POT-PFR, 2023 where the Committee notifies the delisted person or entity on such action through a public notice. This public notification applies to all persons and reporting institutions (FIs and DNFBPs) who may be holding targeted assets of the delisted person or entity. Reg. 14(1) also empowers the Committee to provide guidance on unfreezing. Reg 15 of the POT-PFR 2023 provides guidance to a person or reporting institution holding targeted funds or other assets whereby upon notification of the delisting of a person or an entity: they should take action, to unfreeze the funds or other assets without delay and shall be obliged to respect the delisting by the relevant Sanctions Committee. *Therefore c7.4(d) is considered Met.*
35. **Criterion 7.5(a) (Met)**- For funds or assets held in a bank account, as well as any additions thereto, or for to any interests or other earnings due on those accounts or payments due under contracts and/or agreements, the Reg. 18(1)(a), (b) and (c) provides for TFS to the extent where funds or assets may come into such account after the initial or successive freezing provided that any such interest, other earnings and payments continue to be subject to freezing obligations. *Therefore c7.5(a) is considered Met.*
36. **Criterion 7.5(b) (Met)**- The Criterion has been met through the provision of Regulation 18 (2) of the POT-PFR, 2023 which states that a designated person or entity shall not be prevented from making any payment due under a contract entered into prior to the listing of such person or entity under Resolution 1737 and continued by Resolution 2231, or pursuant to Resolution 2231, provided that the Committee has—(a) determined that the contract is not related to any prohibited items, materials, equipment, goods, technologies, assistance, training, financial assistance, investment, brokering or services referred to in Resolution 2231 and any future successor Resolutions; (b) determined that the payment is not directly or indirectly received by a person or entity subject to the measures in paragraph 6 of Annex B to UNSCR 2231; and (c) submitted prior notification to the Security Council of the intention to make or receive such payments or to authorise, where appropriate, the unfreezing of funds, other financial assets or economic resources, for this purpose, ten working days prior to such authorization. *Therefore c7.5(b) is considered Met.*

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

37. Kenya has addressed the deficiencies identified in c.7.1, c.7.2, c.7.4(a - c), & 7.5, and mostly addressed the deficiencies in c.7.4(d), partly addressed the deficiencies in c.7.3. In view of the moderate shortcomings, the *Reviewers recommend that Recommendation 7 should be re-rated from NC to PC.*

#### ***3.1.4 Recommendation 9 – Financial Institution Secrecy Laws (Originally rated PC – Re-rated to C)***

38. Under its Second Round MER, the Republic of Kenya was assessed on the requirements of Rec 9 and Kenya secrecy laws do not inhibit implementation of the FATF Recommendations. Competent authorities can access the information they require to properly perform their AML functions without the POCAMLA being an

obstacle. However, the law does not provide for access to information regarding CFT functions. There is a legal basis for information exchange from FIs to authorities and between competent authorities. However, there is a limitation on the sharing of information between FIs in the Insurance and Securities sector.

39. **Criterion 9.1(a)-(Met)**- Section 36C of POCAMLA allows the FIU to implement CFT measures and for supervisors to supervise, monitor and ensure compliance by reporting institutions with their CFT obligations. Section 36C(1)(c) of POCAMLA empowers the supervisors with powers to compel the production of any information or document relevant to monitoring compliance with the anti-money laundering, combating terrorism financing and countering proliferation financing requirements of reporting institutions. To this extent, the Capital Markets Authority, the Central Bank of Kenya, and the Insurance Regulatory Authority are able to compel production of documents from their supervised and regulated entities for the purposes of discharging their respective AML/CFT mandate.
40. **Criterion 9.1(b)-(Met)**- Section 2A of POCAMLA has extended the application of CFT measures by competent authorities specifically the FIU, supervisors and regulators which cures the deficiency identified in the MER relating to the scope of POCAMLA to cover CFT. In addition, Section 17(1) of the POCAMLA prevails on disclosure of information for the purposes of AML/CFT matters over any other laws between competent authorities.
41. **Criterion 9.1(c)-(Met)**- Section 32(2)(c) of the Banking Act provides that all information obtained in the course of an inspection shall be treated as confidential and solely for the purposes of the Act. However, Section 31(3)(a) of the Banking Act provides that the Central Bank may disclose any information including information on anti-money laundering, counter-terrorism financing and countering proliferation financing to any monetary authority, fiscal or tax agency, fraud investigations agency, domestic or foreign counterparts, or the Financial Reporting Centre, where such information is reasonably required for the proper discharge of the functions of the Central Bank under the Proceeds of Crime and Anti-Money Laundering Act, 2009. The scope of this provision is wide enough to enable the Central Bank to share information, including with other competent authorities and international counterparts on AML/CFT.

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

42. Kenya has addressed the deficiencies identified in Criterion 9.1. Since there are no remaining deficiencies the Reviewers request that ***Recommendation 9 should be re-rated from PC to C.***

#### ***3.1.5 Recommendation 12 – Politically Exposed Persons (PEPs) (Originally rated PC – Re-rated to LC)***

43. Under its Second Round MER, the Republic of Kenya was assessed on the requirements of Rec 12 based on the Prevention of Crime and Anti-Money Laundering Act, 2009 (POCAMLA) and was rated PC. The Republic of Kenya enacted the Proceeds of Crime and Anti-Money Laundering Regulations, 2023 (POCAMLR), and some amendments have been made to the POCAMLA through the Anti-Money Laundering and Combating of Terrorism Laws (Amendment) Act, 2023. The assessment will show

whether the amendments that have been made to POCAMLA through the Anti-Money Laundering and Combating of Terrorism Laws (Amendment) Act, 2023 and the newly enacted POCAMLR, 2023 are consistent with the requirements of R.12.

44. **Criterion 12.1(a) (Met)**- Regulation 26(1)(a) of the POCAML Regulations 2023 now requires reporting institutions to put in place risk management systems to determine whether a customer or the BO is a PEP. *Therefore c12.1(a) is considered Met.*
45. **Criterion 12.1(b) (Met)**- Regulation 26(1)(b) of the POCAML Regulations 2023 now requires the reporting institutions, in case of business relationship with a foreign PEP, to obtain senior management approval prior to the establishment of such business relationships or continuing such relationships for existing customers. *Therefore c12.1(b) is considered Met.*
46. **Criterion 12.1(c) (Met)**- Regulation 26(1)(c) of the POCAML Regulations 2023 requires reporting institutions, in case of business relationship with a foreign PEP, to take reasonable measures to establish the source of wealth and the source of funds of the customer and the BO who have been identified as a PEP. *Therefore c12.1(c) is considered Met.*
47. **Criterion 12.1(d) (Met)**- Regulation 26(1)(d) of the POCAML Regulations 2023 requires reporting institutions, in case of business relationship with a foreign PEP, to conduct enhanced ongoing monitoring on the business relationship. *Therefore c12.1(d) is considered Met.*
48. **Criterion 12.2(a) (Met)**- Regulation 26(2) of the POCAML Regulations 2023 requires a reporting institution to put in place risk management measures to determine whether a customer or the BO is a domestic politically exposed person which includes an individual who holds a prominent function within an international organisation. *Therefore c12.2(a) is considered Met.*
49. **Criterion 12.2(b) (Met)**- Regulation 26(3) of the POCAML Regulations 2023 requires a reporting institution in case where there is higher risk business relationship with such a person to adopt the measures under Regulations 26(1) (b-d) of the POCAML Regulations 2023. *Therefore c12.2(b) is considered Met.*
50. **Criterion 12.3 (Partly Met)**- Regulation 26(5) of the POCAML Regulations 2023 provides for the definition of PEPs which also covers family members or close business associate for all types of PEPs. Reg 26(5) of the POCAML Regulations 2023 has to be read with Reg 26 (1) & (2) of the POCAML Regulations 2023 which requires reporting institutions to apply the relevant requirements of criteria 12.1 and 12.2 to family members or close business associate. However, after review of Reg 26(5)(j) of the POCAML Regulations 2023 it is noted that the definition PEP more specifically with regards to close associate only refers to close 'business' associate which only covers one category of close associates as provided in the FATF Guidance for PEP. *Therefore c12.3 is considered Partly Met.*
51. **Criterion 12.4 (Met)**- Regulation 26(4) of the POCAML Regulations 2023 requires reporting institutions in relation to life insurance policies, to take reasonable measures to determine, at the latest, at the time of the pay-out of the policy, whether the beneficiary or the beneficial owner of the beneficiary of such a policy is a politically exposed person and, in case higher risks are identified, in addition to the normal CDD

measures, to inform senior management before the pay-out of the policy proceeds and conduct enhanced scrutiny on the whole business relationship with the policyholder and consider making a suspicious transaction report. *Therefore c12.4 is considered Met.*

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

52. Kenya has addressed the deficiencies identified in Criterion 12.1, 12.2 & 12.4 and partially addressed the deficiencies in Criterion 12.3. The minor deficiency is with regards to the legal framework in Kenya that most incorporate the requirements relating to PEPs, however, there is a minor gap whereby the definition of PEP falls short on the definition of close associates only refers to close 'business' associates and is not extended to other close associates as provided in the FATF Guidance for PEP in June 2013. In view of the remaining deficiencies the Reviewers request that *Recommendation 12 should be re-rated from PC to LC.*

#### ***3.1.6 Recommendation 14 – Money or Value Transfer Services (MVTs) (Originally rated NC – Re-rated to C)***

53. Under its Second Round MER, the Republic of Kenya was assessed on the requirements of Rec 14 based on the Prevention of Crime and Anti-Money Laundering Act, 2009 (POCAML) and it was rated NC. The Republic of Kenya enacted the Proceeds of Crime and Anti-Money Laundering Regulations, 2023 (POCAML), and some amendments have been made to the POCAML through the Anti-Money Laundering and Combating of Terrorism Laws (Amendment) Act, 2023. The assessment will show whether the amendments that have been made to POCAML through the Anti-Money Laundering and Combating of Terrorism Laws (Amendment) Act, 2023 and the newly enacted POCAML, 2023 are consistent with the requirements of R.14.
54. ***Criterion 14.1-(Met)-*** Kenya was rated Met in the MER on criterion 14.1 and the position remains as in the MER. *Therefore, the rating for c14.1 remains Met.*
55. ***Criterion 14.2-(Met)-*** Section 33A of the CBK Act makes it an offence for any person to operate as an authorised dealer for transacting in foreign exchange business. Moreover, Regulation 45 of the Money Remittance Regulations, 2013 requires any person who carries out remittance business in Kenya to be licensed. In addition to the above Section 12 of the National Payment System Act requires any person carrying out payment service provider business to be authorised. The CBK has carried out periodic monitoring and identification of persons/entities involved in illegal/unlicensed MVTs through investigations and collaboration with the Criminal Investigation Bureau unit of the Kenya National Police Force and thus identified persons operating without the required licence/registration/authorisation. The country director and other company directors were arrested, and both they and the company were fined. *Therefore, c14.2 is considered Met.*
56. ***Criterion 14.3-(Met)-*** In Sections 2A of POCAML as amended through the AML/CFT (Amendment) Act 2023 now extend the scope of POCAML to also include TF. In addition, section 36A (3A) of POCAML as amended through the AML/CFT (Amendment) Act 2023 now provides powers for a supervisory body, namely the CBK,

to supervise and enforce AML/CFT obligations to the respective institutions under its purview. section 36A (3A) of POCAMLA as amended through the AML/CFT (Amendment) Act 2023 to be read with Reg 31(c) of the POCAML Regulations 2023 provides that a reporting institution that offers money or value transfer services should ensure that the provider of such services is subject to an effective system for monitoring and ensuring compliance with AML/CFT measures and that these systems are regularly monitored for compliance. *Therefore c14.3 is considered Met.*

57. **Criterion 14.4-(Met)-** Reg 31(d) of the POCAML Regulations 2023 requires that a reporting institution that offers money or value transfer services should ensure that the provider of such services and its agents are licensed or registered by a competent authority or the provider maintains a current list of its agents accessible by competent authorities in the countries in which the MVTS provider and its agents operate. *Therefore c14.4 is considered Met.*
58. **Criterion 14.5-(Met)-** Reg 31(e) of the POCAML Regulations 2023 requires that a reporting institution that offers money or value transfer services should ensure that the provider of such services that use agents should include the agents in their AML/CFT programmes and monitor the agents for compliance with these AML/CFT programmes. *Therefore c14.5 is considered Met.*

#### ***Weighting and Conclusion***

59. Kenya has addressed the deficiencies identified in Criteria 14.2, 14.3, 14.4 & 14.5 while criterion 14.1 was rated Met in the MER. Since there are no remaining deficiencies the Reviewers request that ***Recommendation 14 should be re-rated from NC to C.***

#### ***3.1.7 Recommendation 16 – Wire Transfers (Originally rated NC – Re-rated to LC)***

60. Under its Second Round MER, the Republic of Kenya was assessed on the requirements of Rec 16 based on the Prevention of Crime and Anti-Money Laundering Act, 2009 (POCAMLA) and it was rated NC. The Republic of Kenya enacted the Proceeds of Crime and Anti-Money Laundering Regulations, 2023 (POCAMLRL), and some amendments have been made to the POCAMLA through the Anti-Money Laundering and Combating of Terrorism Laws (Amendment) Act, 2023. The assessment will show whether the amendments that have been made to POCAMLA through the Anti-Money Laundering and Combating of Terrorism Laws (Amendment) Act, 2023 and the newly enacted POCAMLRL, 2023 are consistent with the requirements of R.16.
61. **Criterion 16.1(a)-(Met)-** FIs Reg 32(1) (a) of the POCAML Regulations 2023 requires a reporting institution undertaking a wire transfer to ensure that the information accompanying the domestic or cross-border wire transfer always have the following information: (a) required and accurate originator information including (i) the name of the originator; (ii) the originator account number where such an account is used to process the transaction or; in the absence of an account number, shall include a unique transaction reference number which makes it possible to trace the transaction; and (iii)

- the originator's address, or national identity number, or passport number, or date and place of birth. *Therefore c16.1(a) is considered Met.*
62. **Criterion 16.1(b)-(Met)**- Reg 32(1) (b) of the POCAML Regulations 2023 requires a reporting institution undertaking a wire transfer to ensure that the information accompanying the domestic or cross-border wire transfer always has the required beneficiary information which includes: (i) the name of the beneficiary; and (ii) the beneficiary account number where such an account is used to process the transaction or; in the absence of an account number, it should include a unique transaction reference number which makes it possible to trace the transaction. *Therefore c16.1(b) is considered Met.*
63. **Criterion 16.2-(Met)**- Reg 32(3) of the POCAML Regulations 2023 now provides that where several individual cross-border wire transfers from a single originator are bundles in a batch file for transmission to beneficiaries: (a) the reporting institution should ensure that the batch file contains required and accurate originator information, and full beneficiary information, that is fully traceable within the beneficiary country; and (b) the reporting institution shall include the originator's account number or unique transaction reference number. *Therefore c16.2 is considered Met.*
64. **Criterion 16.3-(N/A)**- Kenya does not apply a de Minimis threshold for the requirements of criterion 16.1. *Therefore, the rating for c16.3 remains N/A.*
65. **Criterion 16.4- (Not Met)**- There is no requirement for the reporting institution to verify the information pertaining to its customer where there is a suspicion of ML/TF. *Therefore c16.4 is considered Not Met.*
66. **Criterion 16.5- (Met)**- Reg 32(4) of the POCAML Regulations 2023 requires the ordering reporting institution to ensure that the information accompanying the wire transfer includes originator information as indicated for cross-border wire transfers, unless this information can be made available to the beneficiary financial institution and appropriate authorities by other means for domestic wire transfers. *Therefore c16.5 is considered Met.*
67. **Criterion 16.6- (N/A)**- This criterion was rated N/A in the MER and the position remains as in the MER. *Therefore, the rating for c.16.6 remains N/A.*
68. **Criterion 16.7- (Met)**- Reg 42 of the POCAML Regulations 2023 to be read with Reg 32 of the POCAML Regulations 2023 requires a reporting institution ordering or beneficiary to maintain all information related to the wire transfer for at least seven years. *Therefore c16.7 is considered Met.*
69. **Criterion 16.8- (Met)**- This criterion was rated Met in the MER and the position remains as in the MER. *Therefore, the rating for c16.8 remains Met.*
70. **Criterion 16.9- (Met)**- Pursuant to Regulation 32(5)(a) of the POCAML Regulations 2023, an intermediary reporting institution, for cross-border wire transfers, should ensure that all originator and beneficiary information that accompanies a wire transfer is retained with it. *Therefore c16.9 is considered Met.*
71. **Criterion 16.10- (Met)**- Regulation 32(5)(b) of the POCAML Regulations 2023 provides that where technical limitations prevent the required originator or beneficiary information accompanying a cross-border wire transfer from remaining with a related

domestic wire transfer, the intermediary reporting institution shall keep a record, for at least seven years, of all the information received from the ordering institution or another intermediary reporting institution. *Therefore c16.10 is considered Met.*

72. **Criterion 16.11- (Met)-** This criterion was rated Met in the MER and the position remains as in the MER. *Therefore, the rating for c16.11 remains Met.*
73. **Criterion 16.12- (Met)-** Regulation 32(6) of the POCAML Regulations 2023 now requires intermediary financial institutions to have risk-based policies and procedures for determining: (a) when to execute, reject, or suspend a wire transfer that lacks required originator or required beneficiary information; and (b) the appropriate follow-up action. *Therefore c16.12 is considered Met.*
74. **Criterion 16.13- (Met)-** This criterion was rated Met in the MER and the position remains as in the MER. *Therefore, the rating for c16.13 remains Met.*
75. **Criterion 16.14- (Partly Met)-** Regulation 14(3) of the POCAML regulations requires a reporting institution to take measures to satisfy itself of the true identity of any applicant and BO seeking to enter a business relationship or to carry out a series of transactions by requiring the true identity of the applicant and BO for the purposes of verifying that identity. The above regulation applies to CDD requirements for customers and is not extended to the identity of the beneficiary and also where the identity has not been previously identified. *Therefore, the rating for c16.14 remains Partly Met.*
76. **Criterion 16.15- (Met)-** Regulation 32(6) of the POCAML Regulations 2023 now requires a beneficiary financial institution to have risk-based policies and procedures for determining: (a) when to execute, reject, or suspend a wire transfer that lacks required originator or required beneficiary information; and (b) the appropriate follow-up action. *Therefore c16.15 is considered Met.*
77. **Criterion 16.16- (Met)-** MVTS providers are reporting institutions under the POCAMLA and Regulation 27(1) requires the reporting institution to ensure that its foreign branches and subsidiaries shall observe AML/CFT measures consistent with the Act and the POCAML regulations to the extent permissible by the laws of the host country. And where the minimum requirements of the host country are less strict than those applicable in Kenya, the reporting institution shall ensure that the branches and subsidiaries apply the requirements of the POCAMLA and POCAML regulations. *Therefore, the rating for c16.16 is Met.*
78. **Criterion 16.17- (Met)-** Regulation 32(7) of the POCAML Regulations 2023 requires a money or value transfer service provider that controls both the ordering and the beneficiary side of a wire transfer shall: (a) take into account all the information from both the ordering and beneficiary sides in order to determine whether a suspicious transaction report has to be filed; and (b) file a suspicious transaction report in any country affected by the suspicious wire transfer, and make relevant transaction information available to the Financial Intelligence Unit. *Therefore c16.17 is considered Met.*
79. **Criterion 16.18- (Met)-** Regulation 32(8) of the POCAML Regulations 2023 now provides that wire transfers to and from persons or entities that are designated under the United Nations Security Council Resolution 1267 (1999), 1373 and other United



Nations resolutions relating to the prevention of terrorism and terrorism financing are prohibited. *Therefore c16.18 is considered Met.*

### *Weighting and Conclusion*

80. Kenya has addressed the deficiencies identified in Criterion 16.1, 16.2, 16.5, 16.7, 16.8, 16.9, 16.10, 16.11, 16.12, 16.13, 16.15, 16.16, 16.17 & 16.18, and partly addressed criterion 16.14, while Criteria 16.3 & 16.6 are not applicable, the authorities have not addressed the deficiencies identified in the MER for Criterion 16.4. In view of the remaining deficiencies the *Reviewers recommend that Recommendation 16 should be re-rated from NC to LC.*

### *3.1.8 Recommendation 17 – Reliance on Third Parties (Originally rated PC – Re-rated to C)*

81. Under its Second Round MER, the Republic of Kenya was assessed on the requirements of Rec 17 based on the Prevention of Crime and Anti-Money Laundering Act, 2009 (POCAML) and it was rated NC. The Republic of Kenya enacted the Proceeds of Crime and Anti-Money Laundering Regulations, 2023 (POCAML), and some amendments have been made to the POCAML through the Anti-Money Laundering and Combating of Terrorism Laws (Amendment) Act, 2023. The assessment will show whether the amendments that have been made to POCAML through the Anti-Money Laundering and Combating of Terrorism Laws (Amendment) Act, 2023 and the newly enacted POCAML, 2023 are consistent with the requirements of R.17.
82. **Criterion 17.1(a)-(Met)**- Regulation 33(4) of POCAML Regulations 2023 now provides where a FI rely on a third party to perform elements of customer due diligence measures, or to introduce business, the ultimate responsibility for CDD measures should remain with the FI relying on the third party, which should be required to immediately obtain the **necessary** information concerning the relevant elements of customer due diligence requirements as required by these Regulations. *Therefore c17.1(a) is considered Met.*
83. **Criterion 17.1(b)-(Met)**- Regulation 33(5) of POCAML Regulations 2023 now provides where a FI rely on a third party to perform elements of customer due diligence measures, or to introduce business, the ultimate responsibility for CDD measures should remain with the FI relying on the third party, which should be required to take adequate steps to satisfy itself that copies of identification data and other relevant documentation relating to the customer due diligence requirements shall be made available from the third party without delay upon request. *Therefore c17.1(b) is considered Met.*
84. **Criterion 17.1(c)-(Met)**- Regulation 33(6) of POCAML Regulations 2023 now provides where a FI rely on a third party to perform elements of customer due diligence measures, or to introduce business, the ultimate responsibility for CDD measures should remain with the FI relying on the third party, which should be required to satisfy itself that the third party is regulated, supervised or monitored by a competent authority and has measures in place for compliance with, customer due diligence and

record-keeping requirements in line with the Act and these Regulations. *Therefore c17.1(c) is considered Met.*

85. **Criterion 17.2-(Met)**- Regulation 33(7) of POCAML Regulations 2023 provides that where a reporting institution intends to rely on a third party that is based in another country, the institution shall assess the money laundering, terrorism financing and proliferation financing risks that the country poses and the adequacy of customer due diligence measures adopted by the reporting institutions in that country. *Therefore c17.2 is considered Met.*
86. **Criterion 17.3(a)-(Met)**- Regulation 33(8)(a) of POCAML Regulations 2023 provides that where a reporting institution relies on a third party that is part of the same financial group to perform elements of customer due diligence, or to introduce business, that reporting institution shall ensure that the group applies customer due diligence and record-keeping requirements and programmes against money laundering, terrorism financing and proliferation financing. *Therefore c17.3(a) is considered Met.*
87. **Criterion 17.3( b)-(Met)**- Regulation 33(8)(b) of POCAML Regulations 2023 provides that where a reporting institution relies on a third party that is part of the same financial group to perform elements of customer due diligence or to introduce business, that reporting institution shall ensure that the implementation of those customer due diligence and record-keeping requirements and anti-money laundering, counter-terrorism financing and counter-proliferation financing programmes are supervised at a group level by a competent authority. *Therefore c17.3(b) is considered Met.*
88. **Criterion 17.3(c)-(Met)**- Regulation 33(8)(c) of POCAML Regulations 2023 provides that where a reporting institution relies on a third party that is part of the same financial group to perform elements of customer due diligence or to introduce business, that reporting institution shall ensure that any higher country risk is adequately mitigated by the group's anti-money laundering, counter-terrorism financing and counter-proliferation financing policies. *Therefore c17.3(c) is considered Met.*

#### ***Weighting and Conclusion***

89. Kenya has addressed the deficiencies identified in Criterion 17.1, 17.2 & 17.3. Since there are no remaining deficiencies, the *Reviewers recommend that Recommendation 17 should be re-rated from PC to C.*

#### ***3.1.9 Recommendation 24 – Transparency and Beneficial Ownership of Legal Persons (Originally rated PC – Re-rated to LC)***

90. Under its Second Round MER, the Republic of Kenya was assessed on the requirements of Rec 24 based on the Prevention of Crime and Anti-Money Laundering Act, 2009 (POCAML) and it was rated PC. The Republic of Kenya enacted the Proceeds of Crime and Anti-Money Laundering Regulations, 2023 (POCAMLR), and some amendments have been made to the POCAML through the Anti-Money Laundering and Combating of Terrorism Laws (Amendment) Act, 2023. The

assessment will show whether the amendments that have been made to POCAMLA through the Anti-Money Laundering and Combating of Terrorism Laws (Amendment) Act, 2023 and the newly enacted POCAMLR, 2023 are consistent with the requirements of R.24.

91. **Criterion 24.1-(Met)**- The mechanisms that identify the different types, forms and basic features of legal persons in Kenya are the Companies Act for limited companies (ss. 6 - 10) and the Limited Liability Partnerships Act for limited liability partnerships (s. 6) (also see Legal persons and arrangements in the Executive Summary). Information on the process of creating of companies (including incorporation of a foreign company) is provided in ss. 11 – 19 of the Companies Act and for creation of LLPs in ss. 16 – 23 of the LLP Act. The processes for obtaining and recording basic information are provided in the Companies Act (ss.12 - 14, 93 – 95) and the LLP Act (ss. 17, 33). This criterion was rated Met in the MER and the position remains as in the MER. *Therefore, the rating for c24.1 remains Met.*
92. **Criterion 24.2-(Met)**- Kenya has carried out a national ML/TF risk assessment of all types of legal persons created in the country and the ML/TF risk assessment was published in October 2023. *Therefore c24.2 is considered Met.*
93. **Criterion 24.3-(Met)**- Kenya requires all companies created in the country to be registered at the Companies Registry, which records the company name; list of members; basic regulating powers; legal form and status, address of the registered office (s. 13(2) of the Companies Act); a list of directors (s. 16(2) of the Companies Act), and a certificate of incorporation is issued as proof of incorporation (s. 18(10) of the Companies Act). This information is publicly available, as any member of the public has the right to inspect the register (S.852 of the Companies Act), and, if they desire, apply for copies of the records in the Register or the Foreign Companies Register in hard or soft copy, which are provided upon payment of a fee prescribed in the Regulations – if any (S. 853 of the Companies Register). This criterion was rated Met in the MER and the position remains as in the MER. *Therefore, the rating for c24.3 remains Met.*
94. **Criterion 24.4-(Met)**- Section 93 of the Companies Act requires companies to maintain a register of their members or shareholders, the register must state the number and category of shares held by each member or shareholder including the amount. In addition, section 1006 of the same Act, the company records are to be maintained in hard copy or electronically to ensure that they are accessible. Moreover, section 1007 of the same Act requires the records to be kept at the company's registered office in Kenya and should be made available for inspection. Section 1006A of the Companies Act as amended in 2023 and now provides for the company to provide for the record of the name of the company, certificate of proof of incorporation, the form, status, address or place of business including the list of directors, the categories of shares (including their voting rights). The above information is required to be notified to the Registrar of companies. *Therefore c24.3 is considered Met.*
95. **Criterion 24.5-(Met)**- Kenya has a mechanism to ensure that information referred to in Criteria 24.3 and 24.4 is accurate and updated on a regular basis using an ePlatform feature called LINK A BUSINESS; requiring companies to file annual returns (Ss. 705 & 706 of the Companies Act, 2015). Failure to file annual returns within the prescribed

time attracts sanctions in form of a fine of Ksh 500,000 (USD 5,000) for the company and each director that is in default. A company is required to communicate any changes to the membership to the Registrar (S. 93 (9)) within 14 days or face sanctions (S. 93 (10) – fine of up to Ksh 500,000 equivalent to approximately USD 5,000; and a further daily fine of Ksh 50,000 (USD 500) for every day the company continues to be in violation, applicable to both the defaulting officers of the company and the company itself). Link a business also applies to LLPs. Further, any change in the LLP must be reported to the Registrar as per Section 33 of the LLP Act. This criterion was rated Met in the MER and the position remain as in the MER. *Therefore, the rating for c24.5 remains Met.*

96. **Criterion 24.6-(Met)-**

**Criterion 24.6(a)-(Met)-** a) Under Ss. 93 and 93A of the Companies Act, and Regulations 6 – 16 of the Companies (Beneficial Ownership) Regulations, 2020, Kenya require companies to obtain, hold and keep updated information of their beneficial owners; and file a copy of the BO register with the Registrar not more than 30 days after its preparation. Any changes must be brought to the attention of the Registrar within 14 days of such changes. The duty to obtain and maintain BO information is on the company.

**Criterion 24.6(b)-(Met)-** Kenya mandatorily requires companies to take all reasonable steps to obtain and hold up-to-date information on the companies' beneficial owners (see S. 93A of the Companies Act, 2015; and Reg. 3 (3) of the Companies (Beneficial Owners) Regulations 2020.

**Criterion 24.6(c)-(Met)-** Competent authorities in Kenya have the power to access and can use existing information (including FIs and DNFBPs records; information held by other competent authorities; information held by the company or that held by listed companies, where disclosure is required) as set out under c. 31(1) (a).

This criterion was rated Met in the MER and the position remains as in the MER. *Therefore, the rating for c24.6 remains Met.*

97. **Criterion 24.7-(Met)-** Beneficial owner is adequately defined in Section 3 of the Companies Act. Section 93A of the same Act requires companies to keep a register of its beneficial owners and the information relating to the BO is prescribed in the POCAML Regulations 2023. Notwithstanding the above, Section 93A requires all companies to update any amendment to the register of BO within 14 days after making the amendment. In addition, Reg 16(2) of the POCAML Regulations 2023 requires a reporting institution to (a) identity and take reasonable measures to verify the identity of a BO by obtaining the identity of the natural person (if any) who ultimately has a controlling ownership interest in a legal person or arrangement or; (b) to the extent that there is doubt under (a) as to whether the person(s) with the controlling ownership interest is the beneficial owner(s) or where no natural person exerts control through ownership interests, the identity of the natural person(s) (if any) exercising control of the legal person or arrangement through other means; or (c) where no natural person is identified under (a) or (b) above, the identity of the relevant natural person who holds the position of senior managing official. *Therefore c24.7 is considered Met*

98. **Criterion 24.8 (a)-(Met)**- Section 243A (1) of the Companies Act now requires a private company with a paid-up capital of less than five million shillings or a company limited by guarantee may appoint a company secretary. In addition, a private company or company limited by guarantee not having a company secretary or a resident director is required to appoint a contact person who shall be a natural person with a permanent residence in Kenya for the case of a company registered before the coming of this provision, the company should lodge a notice to the Registrar of the said appointment, within sixty days of coming into force of this provision pursuant to section 243(2)(a)&(b) of the Companies Act. The person appointed under section 243(2)(a) &(b) of the Companies Act shall be responsible for (a) keeping a copy of the record relating to directorship, shareholding, beneficial ownership and any other information required to be kept by the company under the Act; and (b) make the copies available to competent authorities and the Registrar pursuant to Section 243A (4) (a)&(b) of the same Act. Under section 243A (3) of the same Act, the company shall lodge with the Registrar for registration a notice of the appointment of the contact person, specifying the person's name and residential address and such other particulars (if any) as are prescribed for the purposes of this section. *Therefore c24.8(a) is considered Met*
99. **Criterion 24.8 (b)&(c)-(N/A)**- This is not applicable in Kenya since Kenya has chosen the option of Criterion 24.8a for this criterion. *Therefore c24.8(b)&(c) is considered N/A.*
100. **Criterion 24.9 -(Met)**- Sections 850 (1) and 851 (1) of the Companies Act has been amended through the Anti-Money Laundering and Combating the Financing of Terrorism (Amendment) Act, 2023 which now provides for the keeping of original records for not less than seven years after they are lodged. In addition, sections 904A and 992A of the Companies Act as amended through the Anti-Money Laundering and Combating the Financing of Terrorism (Amendment) Act, 2023 now require officials of the company, local representatives or liquidators of a company to keep records for a minimum period of 7 years after strike off. The above should be read together with Reg 16(2) of the POCAML Regulations 2023 which provides for the identification and verification of BO information in a legal person and maintaining of the records of all information linked to the legal person (domestic and international) for a minimum period of 7 years from the date of the relevant business or transaction was completed or the termination of an account or business relationship under Reg 42(1) of the same regulations. *Therefore c24.9 is considered Met*
101. **Criterion 24.10 -(Met)**- Kenya's competent authorities, and in particular law enforcement authorities, have all the powers necessary to obtain timely access to the basic and beneficial ownership information held by the relevant parties, as demonstrated in the analysis under c. 31.1 (a). This criterion was rated Met in the MER and the position remain as in the MER. *Therefore, the rating for c24.10 remains Met.*
102. **Criterion 24.11(a) -(Met)**- Kenya has legal provisions for companies that had already issued bearer shares or share warrants to convert them into registered shares under S. 504 (3) and notify the Registrar within thirty days, but they cannot exercise any rights due to them before such conversion into registered shares. This criterion was rated Met in the MER and the position remain as in the MER. *Therefore, the rating for c24.11(a) remains Met.*

103. **Criterion 24.11(b) (N/A)** - This sub criterion was rated N/A in the MER and the position remain as in the MER. *Therefore, the rating for c24.11(b) remains N/A.*
104. **Criterion 24.11 (c) (N/A)**- This sub-criterion is not applicable, as the law does not put a threshold on the beyond or below which disclosure is mandatory. All bearer shares and share warrants, regardless of whether majority, controlling or minority are to be converted to registered shares. This requirement of disclosure of controlling interest is, therefore, inapplicable. These sub criteria were rated N/A in the MER and the position remain as in the MER. *Therefore, the rating for c24.11(c) remains N/A.*
105. **Criterion 24.11 (d) (N/A)**- This sub criterion was rated N/A in the MER and the position remain as in the MER. *Therefore, the rating for c24.11(d) remains N/A.*
106. **Criterion 24.12(a) -(Met)**- The Companies Act has been amended through the Anti-Money laundering and Combating the Financing of Terrorism (Amendment) Act, 2023 with the introduction of section 93 (2) and Section 138A which now requires nominee shareholders and nominee directors respectively to disclose the nominee status to the company and the company is thereafter required to file same to the Registrar. The company is required to disclose the date on which each person was registered as a member or a nominee shareholder under section 93(2)(b) of the Companies Act. Moreover, section 138A (2) of the Companies Act provides that a company shall enter in its register of nominee directors—(a) the name and address of the nominee director;(b) the date on which the person became a nominee director; and (c) the name and address of the nominee director’s nominator. Section 138A (3) of the Companies Act requires every company registered before the coming into effect of this provision shall lodge with the Registrar, a copy of its register of nominee directors within sixty days of coming into effect of this provision. Section 138A (4) of the Companies Act requires a company to lodge with the Registrar, a copy of any amendment to its register of nominee directors within fourteen days after making the amendment. Section 138A (7) of the Companies Act also applies to foreign companies registered in Part XXXVII of this Act. *Therefore c24.12(a) is considered Met.*
107. **Criterion 24.12(b) -(N/A)**- This sub-criterion was rated N/A in the MER and the position remains as in the MER. *Therefore c24.12(b) is considered N/A.*
108. **Criterion 24.12(c) -(Met)**- Criterion 24.12 gives the country an option and Kenya has chosen 24.12(a). *Therefore c24.12(c) is considered Met.*
109. **Criterion 24.13 -(Met)**- Kenya operates a wide range of sanctions that are both dissuasive and proportionate for breaches of or failure to adhere to the duties and obligations laid out in this recommendation. Both the legal person and all natural persons that fail to comply are sanctioned for failure to collect and maintain records of BO; keep and update records when there are changes to beneficial ownership of a legal person; avail the information to LEAs and other relevant entities, when required to; and retain the records for a specified minimum period after a transaction or transactional relationship has come to an end. This criterion was rated Met in the MER and the position remain as in the MER. *Therefore, the rating for c24.13 remains Met.*
110. **Criterion 24.14(a) -(Met)**- Kenya has demonstrated that competent authorities have mechanisms to rapidly provide international cooperation (in relation and specific to basic and beneficial ownership information) through MLA or other forms of

international cooperation, by facilitating access by foreign competent authorities to basic information held by the Kenya Companies Registry, on the basis set out in Rec 37. This criterion was rated Met in the MER and the position remain as in the MER. *Therefore c24.14(a) is considered Met.*

111. **Criterion 24.14(b) -(Met)-** Kenya has demonstrated that competent authorities have mechanisms to rapidly provide international cooperation (in relation and specific to basic and beneficial ownership information) through MLA or other forms of international cooperation, by exchanging shareholder information, on the basis set out in Rec 37. *Therefore c24.14(b) is considered Met.*
112. **Criterion 24.14(c) (Met)-** Kenya has demonstrated that the FRC can obtain BO information from the Registry under S. 24 (r) and provide it to a foreign FIU or relevant foreign competent authority under S. 24 (k) of the POCAMLA. Kenya has further demonstrated that competent authorities have mechanisms to rapidly provide international cooperation (in relation and specific to basic and beneficial ownership information) through MLA or other forms of international cooperation, by using their investigative powers, in accordance with the domestic law, to obtain BO information on behalf of foreign counterparts, on the basis set out in Rec 37. *Therefore c24.14(c) is considered Met.*
113. **Criterion 24.15 - (Partly Met)-** The reviewers take note that Kenya has implemented a case management system to monitor the quality of assistance they receive from other countries in response to basic and BO information or request for assistance in locating beneficial owners residing abroad. Kenya has provided Basic and beneficial ownership information to other countries through mutual legal assistance, coordinated by the Office of Attorney General, request for information through the Ministry of Foreign affairs and Embassies, through exchange of information for tax purposes (through KRA) and Registry to Registry. Although the authorities have informed that information has been requested, the information provided does not assist the Reviewers in making a determination on whether the information provided has assisted in assisting the countries or locating the BO residing abroad. *Therefore c24.15 is considered Partly Met.*

#### ***Weighting and Conclusion***

114. Kenya has addressed the deficiencies identified in Criteria 24.1, 24.2, 24.3, 24.4, 24.5, 24.6, 24.7, 24.8, 24.9, 24.10, 24.11, 24.12, 24.13 & 24.14 and partially addressed the deficiencies identified in Criterion 24.15. In view of the minor remaining deficiencies the *Reviewers recommend that Recommendation 24 should be re-rated from PC to LC.*

#### ***3.1.10 Recommendation 26 – Regulation and Supervision of Financial Institutions (Originally rated PC – Re-rated to PC)***

115. Under its Second Round MER, the Republic of Kenya was assessed on the requirements of Rec 26 based on the Prevention of Crime and Anti-Money Laundering Act, 2009 (POCAMLA) and it was rated PC. Whilst most sectors are subjected to licensing requirements, there are some gaps for market entry of certain non-core principles sectors. Additionally, control requirements to prevent criminals and their associates from holding substantial interest or being a beneficial owner is missing from

most legislative requirements. Moreover, supervision of AML/CFT requirements is not carried out on the basis of the risk profile of institutions, ML/TF risks in respective sectors and in the country as a whole. Additionally, there is not requirements for TF supervision.

116. **Criterion 26.1-(Met)**- Sections 2A of POCAMLA as amended through the AML/CFT (Amendment) Act 2023 now extend the scope of POCAMLA to also include TF. In addition, section 36A(3A) of the POCAMLA extends the coverage of a supervisory or self-regulatory body as follows: a supervisory body or Self-regulatory body shall, in carrying out its mandate under this Act, apply its regulatory and supervisory powers and obligations conferred to it under any written law for purposes of supervision and enforcement of the obligations to combat money laundering, terrorist financing and proliferation financing. *Therefore c26.1 is considered Met.*
117. **Criterion 26.2 (Met)**- All FIs subject to core principles are required under different legislations to obtain a licence from the respective regulatory authorities prior to operating in Kenya as follows: Section 3 and 4 of the Banking Act places a restriction on transacting any banking business or financial business or the business of a mortgage finance company without a valid licence. Section 4 of the Banking Act requires a written application for a license prior to commencing such business. In addition, Section 33S of the Central Bank of Kenya Act has been revised to include the licensing of digital credit providers which covers all non-deposit taking microfinance institutions.

Sections 2 and 19 of the insurance Act were amended by the AML/CFT Amendment Act of 2023 to substitute the words 'authorised' and 'registered' with 'licensed' in order to take into consideration the finding of the MER 2020 that insurance companies are only required to be registered rather than licensed. With the amendment any person carrying out insurance business is now required to be licensed in Kenya.

Sections 23(1) and 23(2) of the Capital Market Act provide for the several types of licences under the CMA.

For other non-core principle FIs, they are required to be licensed under their respective legislations:

Sections 3 and 4 of the Money Remittance Regulations make provision for the licensing of money remittance services providers and Part 3 of the Forex Bureau guidelines provides for the licensing of foreign exchange businesses.

Section 4 of the Microfinance Act states that a license is needed in order for a person to carry out deposit-taking business. The amendment brought through Section 33S of the Central Bank of Kenya Act now provides for non-deposit-taking micro-finance activities to be licensed under the same Act.

Section 4 of the National Payment System Regulations provides for payment service provider to seek authorisation from the Central Bank prior to commencing such business.

Section 22 of the Retirement Benefit Act requires retirement benefits schemes, managers, corporate trustees, custodians and administrators to be registered in Kenya.



The authorities informed that section 2.4 of the CBK prudential guidelines prohibits the establishment of shell banks however, the guidelines were not brought to the reviewers' attention for analysis and thus will have to rely on the findings of the MER. Regulation 30 of the POCAML Regulations prevents reporting institutions to permit the use or enter into a correspondent financial relationship with shell bank or respondent FI to be used or its accounts to be used by shell banks. *Therefore c26.2 is considered Met.*

118. **Criterion 26.3 (Met)**- Competent authorities in Kenya are required to take the necessary legal or regulatory measures to prevent criminals or their associates from holding (or being a BO of) significant or controlling interest, or holding a management function in a FI. Kenya has revised their legal framework to align the definition of BO with that of the FATF glossary for all reporting institutions and have appropriate framework for the vetting of fit and proper assessment for substantial shareholders, directors and senior managers in order to determine their suitability.

*Bank, Forex Bureaus, Money remittance and Payment system operators*

Section 4(5) of the Banking Act empowers the CBK to vet proposed directors and senior officers at licensing stage. The requirements give due consideration to the character, professional and moral suitability of the proposed persons. Accordingly, the First Schedule requires consideration of criminal records for significant shareholders. In addition, Section 9A requires a fit and proper test to be performed for directors, Chief Executive Officers, significant shareholders, and any shareholder who is not a significant shareholder if there are reasonable grounds to believe that the actions of the person exert controls or significantly influences the institution. Section 3 of the CBK Bureau Guidelines, CBK also assesses the competency and integrity of the proposed management of a foreign exchange bureau, taking into consideration the history and character of the applicant's shareholders as well as a declaration that none of its directors and shareholder were convicted of a criminal offence involving fraud, ML, tax evasion or any other acts of dishonesty. Furthermore, CBK has adequate measures to prevent criminals from holding a significant or controlling interest or holding a management function in an MVTs provider in terms of Regulations 16-19 of the Money Remittance Regulations. Regulation 4(2) and Second Schedule of the National Payments Systems Regulation, CBK assesses significant shareholders, directors/trustees and managers of a proposed payment service provider. The law also empowers the relevant authorities or supervisors to prevent such persons from performing any such functions in a regulated entity should they fail to satisfy the fit and proper requirement. The provisions of the above laws also allow for the disqualification of a shareholder, director or senior manager who no longer meets the fit and proper test.

#### **CMA**

Section 12B (2) (a) of the CMA Act requires the CMA to vet significant shareholders and beneficial owners. Section 24A (1) & (2) of the Capital Market Act provides for the authority to consider the reputation, character, financial integrity and reliability of the chairperson, directors, chief executive officer, management and all other personnel when considering an application for a license. In carrying out the assessment, CMA assesses whether the person has contravened the provision of any law, in Kenya or

elsewhere, designed for the protection of members of the public against financial loss due to dishonesty incompetence, or malpractice by persons engaged in transacting with marketable securities.

### ***Insurance***

Section 196B (2) (a) of the Insurance Act requires the IRA to vet significant shareholders and beneficial owners. Section 5.2.1 and 6 of the Insurance Regulatory Authority Guidelines on the suitability of persons, the IRA assesses the criminal record of the proposed directors, senior management and key persons in control functions.

### ***Microfinance Banks***

Section 2 of the Microfinance Act has been amended to provide for the definition of Significant shareholder which includes a beneficial owner. The Microfinance Act has introduced a new Section 36B (2)(a) to provide for the vetting of significant shareholders and beneficial owners. In view of the above amendments, the Beneficial Owners of Microfinance Act are now subject to vetting by the CBK under Microfinance Act and the Regulations of 2008.

### ***Pensions***

In addition to the requirements under the POCAML Regulations with regards to identification of shareholders and BO. Section 22A of the Retirement Act requires give regards to the reputation, character, financial integrity and reliability of the trustee, manager, custodian or administrator. In assessing these elements, the Retirement Benefits Authority takes into account whether the person has contravened the provision of any law, in Kenya or elsewhere, designed for the protection of members of the public against financial loss due to dishonesty, incompetence, or malpractice by persons engaged in transacting with marketable securities. *Therefore c26.3 is considered Met.*

119. ***Criterion 26.4(a) (Met)***- Section 36D (1) & (2) of POCAMLA as amended through the AML/CFT (Amendment) Act 2023 now requires supervisory bodies to effectively monitor reporting entities to use a risk-based approach to supervision. In applying a risk-based approach to supervision, the supervisory bodies and the FRC should ensure that: (a) have a clear understanding of the risks of money laundering, terrorist financing and proliferation financing at national, sectoral and institutional levels; (b) have on-site and off-site access to all relevant information on the specific domestic and international risks associated. In addition, section 36B of the POCAMLA as amended through the AML/CFT (Amendment) Act 2023 provides that a supervisory body may cooperate and coordinate with domestic and foreign counterparts for purposes of combating ML/TF. section 36 C (1) (f) of POCAMLA as amended in 2023 now provides for powers to the supervisory authorities to undertake consolidated supervision for AML/CFT purposes. *Therefore c26.4(a) is considered Met.*
120. ***Criterion 26.4(b) (Met)***- Sections 2A of POCAMLA as amended through the AML/CFT (Amendment) Act 2023 now extend the scope of POCAMLA to also include TF. Section 36C (1) of the POCAMLA as amended through the AML/CFT (Amendment) Act 2023 now provides powers for supervisory bodies to supervise, monitor and ensure compliance with AML/CFT requirements. Reporting institutions providing MVTS, or

money or currency changing services are under the purview of the CBK and hence covered under the above provision. *Therefore c26.4(b) is considered Met.*

121. **Criterion 26.5(a-c) (Not Met)**- Although supervisory authorities now have extensive powers for fulfilling their obligations in effectively monitoring reporting entities under Section 36D(1-3) of the POCAMLA as amended through the AML/CFT (Amendment) act 2023, the reviewers could not determine that the frequency and intensity of the on-site and off-site AML/CFT supervision of the FIs or the group are determined based on the ML/TF risks and policies, internal controls and procedures associated with the institution or group as identified by the supervisor's assessment of the FI's or group risk profile; the ML/TF risks present in the country and the characteristics of the FIs or groups allowed to them under the RBA. *Therefore c26.5(a – c) is considered Not Met.*
122. **Criterion 26.6 (Not Met)**- Although the authorities have informed that they have undertaken risk assessment of FIs, these risk assessment of FIs and groups were not shared with the reviewers. Also, there is no information that the risk assessment is done periodically and it also covers when there are major events or developments in the management and operations of the FI or group. *Therefore c26.6 is considered Not Met.*

#### ***Weighting and Conclusion***

123. Kenya has addressed the deficiencies identified in Criterion 26.2, 26.3 & 26.4, and did not address deficiencies identified in c.26.5 and c.26.6. Moreover, the authorities have not demonstrated how the financial institutions supervisors are carrying out their on-site and offsite on the basis of the risks identified by the supervisors. In view of the remaining deficiencies the **Reviewers recommend that Recommendation 26 should be maintained at PC.**

#### ***3.1.11 Recommendation 30 – Responsibilities of Law Enforcement and Investigative Authorities (Originally rated PC Re-rated to C)***

124. Under its Second Round MER, the Republic of Kenya was assessed on the requirements of Rec 30 based on the relevant legislative framework and it was rated PC. The only deficiency was that the standards set under Recommendation 30 do not apply to all non-law enforcement competent authorities.
125. **Criterion 30.1- 30.3 (Met)**- These criteria were rated Met in the MER and the position remains as in the MER. *Therefore, the ratings for c30.1 – 30.3 remain Met.*
126. **Criterion 30.4 (Met)**- Pursuant to Section 5B of the RBA Act, the RBA has the authority to conduct investigations where it has reasonable cause to believe, either that a predicate offence to ML/TF has been committed. The Authority may also depute a suitably qualified person in writing to conduct investigations into the matter on behalf of the Authority pursuant to Section 5B(1)(c) of the RBA Act. Similarly, Sections 9(2)(e) of the IRA Act empowers the IRA Commissioner to investigate, or, by an instrument in writing appoint any person, other than a person in the employ of that member, to investigate the affairs of a person subject to any ML/TF investigations that relates to its mandate. Further, Section 11(1) of the IRA Act allows the authority to investigate the whole or that part of the affairs of that other person. The two pieces of legislation i.e. Section 5B(1)(c) of the RBA Act and Section 9(2)(e) and 11(1) of the IRA Act also allow for instances covered under Rec. 30.3. given that the definition of a person is broad enough to cover legal persons such as the FIU. *Therefore c30.4 is considered Met.*

127. **Criterion 30.5 (Met)**- This criterion was rated Met in the MER and the position remains as in the MER. *Therefore, the rating for c30.5 remains Met.*

**Weighting and Conclusion**

128. Kenya has addressed the deficiencies identified in Criterion 30.4 while the other Criteria were already Met in the MER and the authorities confirmed that there have not been any legislative changes and therefore these ratings are maintained. Since there are no remaining deficiencies, the *Reviewers recommend that Recommendation 30 should be re-rated from PC to C.*

**3.1.12 Recommendation 31 – Powers of Law Enforcement and Investigative Authorities (Originally rated PC – Re-rated to C)**

129. Under its Second Round MER, the Republic of Kenya was assessed on the requirements of Rec 31 based on the legislative framework in place at the time of the assessment and rated Partially Compliant with R. 31. The country has revised its framework to address the deficiencies highlighted in the MER. Below is the analysis of the country's measures with this Criterion:

130. **Criterion 31.1(a)-(d) (Met)**- The MER rated Criterion 31.1 as Mostly Met. However, the assessors rated all the sub-Criterion (a)-(d) as Met. The assessors did not identify any deficiency to warrant a Mostly Met ratings. The reviewers have examined these circumstances and is satisfied that the position remains the same as in the MER but the Mostly Met rating was a typo error. *Therefore c31.1(a-d) is considered Met.*

131. **Criterion 31.2(a) – (c) (Met)**- These sub criteria were rated Met in the MER and the position remain as in the MER. *Therefore, the rating for c31.2 (a – c) remains Met.*

132. **Criterion 31.2(d) (Met)**- This Criterion was rated as Not Met in the MER given that that LEAs in Kenya were not mandated by law to use controlled deliveries as an investigation technique for ML/TF and associated predicate offences. The National Police Service Act has been amended by introducing a new Section 56A (1) which provides that an authorised officer may, if he or she considers it necessary to do so, allow controlled delivery with a view of investigating an offence and the identification of persons involved in the commission of the offence. *Therefore c31.2(d) is considered Met.*

133. **Criterion 31.3(a) (Met)**- This Criterion was rated as Not Met in the MER. The MER noted that Kenya has not demonstrated that it has mechanisms in place to enable competent authorities to identify, in a timely manner, whether natural or legal persons hold or control accounts. Investigating authorities are now able to identify, in a timely manner, whether legal or natural persons hold or control accounts through a request to the Financial Reporting Centre pursuant to Section 24(ba) of POCAMLA. Additionally, investigating authorities may apply for monitoring orders vide Section 125 of POCAMLA directing a reporting institution to give information to an authorised officer or through a search warrant issued pursuant to Section 118 of the Criminal Procedure Code and Section 180(1) of the Evidence Act. *Therefore c31.3(a) is considered Met.*

134. **Criterion 31.3(b) (Met)**- The MER rated Kenya as Not Met with the requirements of this Criterion. The deficiency identified in the MER was that Kenya had not

demonstrated that its competent authorities have a process(es) to identify assets without prior notification to the owner. Section 24(ba) of POCAMLA may be used by competent authorities to identify assets by obliging the FRC to identify assets without prior notice to the owner and sharing such information with competent authorities. Law enforcement may also obtain information regarding assets without prior knowledge or notice of the owner through Section 125 of POCAMLA which empowers an authorised officer to apply, ex parte, for monitoring orders directing a reporting institution to disclose information obtained by it about transactions conducted through an account held by a particular person with it. *Therefore c31.3(b) is considered Met.*

135. **Criterion 31.4 (Met)**- This Criterion was rated as Not Met in the MER. Competent authorities conducting investigations of money laundering, associated predicate offences and terrorist financing are able to ask for all relevant information held by the Financial Reporting Centre and the FRC is under obligation to provide such information pursuant to Section 24(ba) of POCAMLA. (See C.29.5 on functions of the FRC). *Therefore c31.4 is considered Met.*

#### *Weighting and Conclusion*

136. Kenya has addressed all the deficiencies identified in the MER relating to this Recommendation. In view of this, the *Reviewers recommend that Recommendation 31 should be re-rated from PC to C*

#### *3.1.13 Recommendation 33 – Statistics (Originally rated PC –re-rated LC)*

137. Under its Second Round MER, the Republic of Kenya was assessed on the requirements of Rec 33 and it was rated PC.
138. **Criterion 33.1(a)-(Met)**- The Criterion was rated as Mostly Met in the MER. The deficiency identified in the assessment was that there was no specific reference to reports disseminated to LEAs. Statistics on STRs received and disseminated are amongst others maintained in the GoAML system. The FRC maintains database and keep statistics of all STRs received from reporting institutions and disseminated to various agencies pursuant to Section 24(j) of POCAMLA. Section 24(j) provides that the FRC shall create and maintain a database of all reports of suspicious transactions, related Government information and such other materials as the Director-General may from time to time determine to be relevant to the work of the Centre. *Therefore c33.1(a) is considered Met.*
139. **Criterion 33.1(b)- (Partly Met)**- This Criterion was rated as Not Met in the MER. Kenya maintains an electronic case management system. The Kenyan authorities informed that the Case Management System (CMS) is utilized by all competent authorities, including law enforcement agencies (LEAs). With the use of the CMS this has significantly enhanced the collection and collation of statistics for both money laundering (ML) and terrorist financing (TF) purposes. The police can log information on cases, including the status of investigations. The Office of the Director of Public Prosecutions (ODPP), as one of the competent authorities, also uses the CMS to log the status of cases, including those that have been concluded and those related to prosecutions. However, the authorities have not provided any evidence on how the

different institutions listed above maintain statistics on investigations, prosecutions and convictions of ML/TF offences. *Therefore c33.1(b) is considered Partly Met.*

140. **Criterion 33.1(c)- (Met)-** This Criterion was rated as Mostly Met in the MER. The main deficiency was that the rest of the LEAs (other than ARA and EACC) were not able to demonstrate that they keep statistics relating to property frozen, seized and confiscated. The authorities have established that under the Kenyan legal system, asset freezing, seizure and confiscation are within the mandate of the EACC and ARA hence the elements of this Criterion have been met as other LEAs only play an assistive role in the process of freezing and confiscation but are not mandated to effect and maintain records on the same. *Therefore c33.1(c) is considered Met.*

141. **Criterion 33.1(d)- (Met)-** This sub-criterion was rated Met in the MER and the position remains as in the MER. *Therefore, the rating for c33.1(d) remains Met.*

#### **Weighting and Conclusion**

142. Kenya has addressed the deficiencies relating to Criterion 33.1 (a) and (c), and partly addressed Criterion 33.1(b). Criterion 33.1(d) was rated Met in the MER and the position remain as in the MER. In view of the remaining deficiencies the *Reviewers recommend that Recommendation 33 should be upgraded from PC to LC.*

#### **3.1.14 Recommendation 39 – Extradition (Originally rated PC – Re-rated to LC)**

143. Under its Second Round MER, the Republic of Kenya was assessed on the requirements of Rec 39 based on the Prevention of Terrorism Act, 2012(POTA and was rated PC.

144. **Criterion 39.1(a)-(Met)-** This Criterion was rated as Not Met in the MER. The deficiency identified was that TF is not an extraditable offence. Kenya introduced amendment to sections 4A, 4B, 5, 8, 9, 9A, and 14A under the Prevention of Terrorism Act, 2012. With these amendments, TF is now an extraditable offence under the schedule to the Extradition (Contiguous and Foreign Countries) Act, (Cap. 76) and the Extradition (Commonwealth Countries) Act, (Cap. 77). *Therefore c39.1(a) is considered Met.*

145. **Criterion 39.1(b)- (Mostly Met)-** This Criterion was rated as Not Met in the MER on account that there were no mechanisms for prioritizing requests or a case management system for monitoring and tracking the timely execution of extradition requests. The authorities have submitted that the jurisdiction has an automated and centralized Case Management System in place which is used by the Central Authority and the different competent authorities to categorize, record, and transmit the requests. The DPP case management system which has been shared with the reviewers has case no. title, type, status, country, and request type. This is useful for Mutual Legal Assistance. The case management system also has fields useful for prioritisation of cases for purposes of executing extradition requests. However, in terms of processes, it is not clear what mechanisms or measures the country has in place for the timely execution of extradition requests. *Therefore c39.1(b) is considered Mostly Met.*

146. **Criterion 39.1(c)-(Met)-** This sub-criterion was rated Met in the MER and the position remains as in the MER. *Therefore, the rating for c39.1(c) remains Met.*

147. **Criterion 39.2(Met)**- This criterion was rated Met in the MER and the position remains as in the MER. *Therefore, the rating for c39.2 remains Met.*
148. **Criterion 39.3(Met)**- This criterion was rated Met in the MER and the position remains as in the MER. *Therefore, the rating for c39.3 remains Met.*
149. **Criterion 39.4(Met)**- This Criterion was rated as Not Met given that Kenya had no simplified extradition mechanisms. Section 10(1)A in the Extradition (Contiguous and Foreign Countries) Act, now allows for simplified Extradition Procedures. It provides that 10A (1) A fugitive criminal being sought by a requesting State may consent to be extradited to that requesting State without conducting formal extradition proceedings. Further, Section 13A (1) of the Extradition (Commonwealth Countries) Act, (Cap. 77) provides that a fugitive criminal being sought by a requesting State may consent to be extradited to that requesting State without conducting formal extradition proceedings. *Therefore c39.4 is considered Met.*

#### *Weighting and Conclusion*

150. Kenya has addressed the deficiencies identified in Criterion 39.1(a) and 39.4, and mostly addressed Criterion 39.1(b). Criterion 39.1(c), 39.2 and 39.3 were rated Met in the MER and the position remains as in the MER. In view of the minor remaining deficiencies with regards to what mechanisms or measures the country has in place for the timely execution of extradition requests, the *Reviewers recommend that Recommendation 39 should be re-rated from PC to LC.*

#### *3.1.15 Recommendation 40 – Other Forms of International Co-operation. (Originally rated PC – Re-rated to LC)*

151. **Criterion 40.1-(Met)**- This criterion was rated Met in the MER and the position remain as in the MER. *Therefore, the rating for c40.1 remains Met.*
152. **Criterion 40.2-(Met)**- In the 2022 MER, the overall rating for this Criterion was rated as Mostly Met, yet all the sub-criteria under the Criterion was rated as Met. The reviewers have considered this rating and corrected the error in the assessment ratings. *Therefore c40.2 is considered Met*
153. **Criterion 40.2(a)-(e) (Met)**-. These sub-criteria were rated Met in the MER and the position remain as in the MER. *Therefore, the rating for c40.2(a)-(e) remains Met.*
154. **Criterion 40.3 (Met)**- This criterion was rated Met in the MER and the position remain as in the MER. *Therefore, the rating for c40.3 remains Met.*
155. **Criterion 40.4 (Not Met)**- This Criterion was rated Not Met on account that Kenya has not demonstrated that, upon request, where its main AML/CFT competent authorities request assistance, they provide feedback in a timely manner to competent authorities from which they have received assistance, on the use and usefulness of the information obtained. Although the jurisdiction submitted that there are no legal impediments that prohibit providing feedback to competent authorities from which they have received assistance, there is no information on how the modalities being used allow for such feedback to be provided on a timely manner, or on the use and usefulness of the information obtained (e.g., timelines and processes/procedures for swift responses, type of feedback provided). *Therefore c40.4 is considered Not Met.*

156. **Criterion 40.5(a) (Met)**- This criterion was rated Met in the MER and the position remains as in the MER. *Therefore, the rating for c40.5(a) remains Met.*
157. **Criterion 40.5(b) (Mostly Met)**- This Criterion was rated as Mostly Met in the MER, 2022. The main deficiency identified by the assessors was that Kenya needs to demonstrate, by citing relevant provisions of the law, how other key LEAs or competent authorities like the EACC, ODPP, Office of the Attorney General, etc. are not prohibited from rendering assistance by confidentiality laws. The National Police Service, the FRC and the KRA are authorized officers under the POCAMLA hence are not prohibited by secrecy provisions to exchange information or assistance on account of Section 17 of POCAMLA which overrides any obligation as to secrecy or other restriction on disclosure of information imposed by any other law. However, it is still not clear whether other competent authorities are prohibited from sharing of information with foreign counterparts. *Therefore c40.5(b) is considered Mostly Met.*
158. **Criterion 40.5(c)&(d) (Met)**- This criterion was rated Met in the MER and the position remains as in the MER. *Therefore, the rating for c40.5(c)&(d) remains Met.*
159. **Criterion 40.6 (Met)**- This criterion was rated Met in the MER and the position remains as in the MER. *Therefore, the rating for c40.6 remains Met.*
160. **Criterion 40.7- 40.9 (Met)**- These criteria were rated Met in the MER and the position remains as in the MER. *Therefore, the ratings for c40.6 – 40.9 remain Met.*
161. **Criterion 40.10 (Met)**- The FRC is able to provide feedback to their foreign counterparts, upon request and whenever possible, on the use of information provided for both ML and TF pursuant to Section 23(2)(b)(1). Kenya was admitted as a full member of the EGMONT in February 2024 and is governed by its principles specifically Principle no. 19 relating to the provision of feedback on exchange of information. Since the admission to EGMONT, the authorities informed that they have been able to exchange information with their counterparts through this platform. *Therefore c40.10 is considered Met.*
162. **Criterion 40.11(a) (Met)**- Section 24(k) empowers the FRC to exchange all information required to be accessible or obtainable directly or indirectly by it. *Therefore c40.11(a) is considered Met.*
163. **Criterion 40.11(b) (Met)**- The FRC has the powers to exchange any other information which it has the power to obtain or access, directly or indirectly, domestically, subject to the principle of reciprocity and mutual agreement. Section 24(l) of POCAMLA provides that the Centre may, on the basis of mutual agreement and reciprocity, enter into any agreement or arrangement, in writing, with a foreign financial intelligence unit which the Director-General considers necessary or desirable for the discharge or performance of the functions of the Centre: Provided that the Director-General is satisfied, that the foreign financial intelligence unit has given appropriate undertakings for protecting the confidentiality of anything communicated to it; and for controlling the use that will be made of that information. *Therefore c40.11(b) is considered Met.*
164. **Criterion 40.12 (Met)**- All competent authorities in Kenya may cooperate and coordinate with domestic and foreign counterparts for purposes of combating money laundering, terrorism financing or proliferation financing. The scope of such



cooperation is outlined under Section 36B of POCAMLA which extends cooperation and coordination to (a) sharing information and documents with a domestic or foreign counterpart; (b) conducting inquiries or undertaking onsite inspection on behalf of a domestic or foreign counterpart; (c) on behalf of a domestic or foreign counterpart, appointing competent persons to investigate any matter under POCAMLA, and (d) authorising or facilitating foreign counterparts to undertake inquiries under POCAMLA. *Therefore c40.12 is considered Met.*

165. **Criterion 40.13 (Met)**- This Criterion was rated as Not Met in the MER. The main deficiency was that the IRA did not have a legal basis for sharing information with their foreign counterparts. Section 36B of POCAMLA which extends cooperation and coordination extends sharing information and documents with a domestic or foreign counterpart for all financial supervisors, including the IRA, with respect to information that is domestically available to them, including information held by financial institutions and in a manner proportionate to their respective needs. *Therefore c40.13 is considered Met.*
166. **Criterion 40.14 (Met)**- The relevant laws cited in C.40.12 above do not restrict the types of information that can be shared with foreign counterparts. In particular, Section 36B (2) of POCAMLA allows for the exchange of information with counterparts on regulatory, prudential and AML/CFT purposes. The text and spirit of Section 36B (2)(a)-(d) of POCAMLA does not limit the type of information that can be shared with foreign counterparts. *Therefore c40.14 is considered Met.*
167. **Criterion 40.15 (Met)**- Financial supervisors are able to conduct inquiries on behalf of foreign counterparts by dint of Section 36B(2)(b) of POCAMLA. POCAMLA under Section 32B(2)(d) also facilitates the ability of foreign counterparts to conduct inquiries themselves in Kenya for AML/CFT purposes including inquiries aimed at facilitating effective group supervision. *Therefore c40.15 is considered Met.*
168. **Criterion 40.16 (Met)**- There is an obligation to keep confidential any information obtained or exchanged by requesting foreign financial supervisors. Such information may only be disclosed to a third party with the written consent of the supervisory body in Kenya that is providing the information. The requested information shall be used only for the specified purpose as per the request (See Sec.36B (3) of POCAMLA) Kenyan authorities to clarify whether in the event that the requesting Supervisor is under a legal burden to disclose or report such information, the requesting financial supervisor is expected to promptly inform their Kenyan counterpart of this burden. *Therefore c40.16 is considered Met.*
169. **Criterion 40.17 (Met)**- This criterion was rated Met in the MER and the position remain as in the MER. *Therefore, the rating for c40.17 remains Met*
170. **Criterion 40.18 (Met)**- This criterion was rated Met in the MER and the position remain as in the MER. *Therefore, the ratings for c40.18 remains Met.*
171. **Criterion 40.19 (Met)**- This criterion was rated Met in the MER and the position remain as in the MER. *Therefore, the rating for c40.19 remains Met.*
172. **Criterion 40.20 (Met)**- Kenya's legal framework is broad enough to allow competent authorities to exchange of information with non-counterparts. The deficiency

identified in the MER on Section 24(k) of POCAMLA has now been addressed through an amendment. *Therefore c40.19 is considered Met.*

**Weighting and Conclusion**

173. Kenya has addressed the deficiencies identified in Criteria 40.10, 40.11, 40.12, 40.13, 40.14, 40.15, 40.16 & 40.20 and mostly addressed Criterion 40.5 and has not addressed the deficiency in Criterion 40.4. The Kenyan authorities informed that there has not been any legislative or changes in the international cooperation framework and thus the ratings in the MER is maintained for Criteria 40.1, 40.2, 40.3, 40.5(a, c-d), 40.6, 40.7, 40.8, 40.9, 40.17, 40.18 & 40.19. In view of the remaining deficiencies the **Reviewers recommend that Recommendation 40 be re-rated from PC to LC.**

**IV. CONCLUSION**

174. The Republic of Kenya has made progress in addressing some of the technical compliance deficiencies identified in its MER. Reviewers considered information provided in support of the request for re-rating for Recommendations 14 from NC to C; the Re-ratings for Recommendations 4, 9, 17, 30 & 31 from previously PC to C; the Re-ratings for Recommendation 16 from previously NC to LC; the Re-ratings for Recommendations 12, 24, 33, 39 and 40 from PC to LC; the Re-ratings for Recommendations 2 & 7 from previously NC to PC; and the Re-ratings for Recommendations 26 is maintained at PC.

175. Considering the overall progress made by the Republic of Kenya since the adoption of its MER, its technical compliance with the FATF Recommendations has been revised as shown in Table 2.1.

**Table 2.1 Technical Compliance Re-rating, September 2024**

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

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

