

DIRECTIVE N° 002/SAMIFIN/DG/23 AMENDING AND SUPPLEMENTING CERTAIN PROVISIONS OF DIRECTIVE N° 001/SAMIFIN/DG/22 ON THE PREVENTION AND DETECTION OF MONEY LAUNDERING AND/OR TERRORIST FINANCING AND ON THE REPORTING OF SUSPECTED TRANSACTIONS

The Financial Intelligence Unit, or SAMIFIN in short,

In view of the Constitution;

Considering Law n°2014-005 of May 28, 2014 against terrorism and transnational organized crime;

In view of Law No. 2016- 020 of August 22, 2016 on the fight against corruption;

Having regard to Law No. 2016- 021 of August 22, 2016 on Anti-Corruption Poles;

In view of Law No. 2018- 043 of February 13, 2019 on the fight against money laundering and the financing of terrorism;

In view of Law No. 2021- 015 of August 05, 2021, amending, supplementing, and repealing certain provisions of Law No. 2016- 021 of August 22, 2016 on Anti-Corruption Poles;

In view of Ordinance No. 2019-015 of July 15, 2019 on the recovery of illicit assets;

In view of Decree n°2015- 036 of June 30, 2015 on the creation, organization and functioning of the Financial Intelligence Unit known as " Sampandraharaha Malagasy Iadiana amin'ny Famotsiam-bola sy ny famatsiambola ny asa fampihorohoroana " SAMIFIN ";

Considering the following:

(i) Illicit financial flows, economic and financial offences, corruption and/or related offences represent a permanent and growing threat to Madagascar's economic stability, calling into question the credibility of business sectors and formal professions. Faced with the increasing development of phenomena linked to money laundering and/or the financing of terrorism, transnational organized crime and corruption on both a national and international scale, it is vital to find an appropriate and effective response. In addition to tightening criminal policy on money laundering and/or the financing of terrorism, it is also essential to focus the fight against these scourges on prevention, and to involve all actors in the public and private sectors in order to create a synergy of joint action that will produce convincing results in the long term.

(ii) Through the many attempts, typologies and modus operandi used by criminals and/or offenders to disguise the origin of funds, invest the proceeds of crime and/or misdemeanour, resort to legal and accounting tricks and other possible forms of circumvention, the confidence of the public and international investors in Madagascar as part of the transparency and business climate could be compromised.

(iii) Madagascar's technical compliance with international standards in terms of anti-money laundering and combating the financing of terrorism (AML/CFT) must also take into account the country's capacity, and that of the institutions subject to AML/CFT measures, to face up to threats and take corrective measures to address identified risks and areas of vulnerability. If the levels of vigilance and prevention put in place for the sectors of activity and professions concerned are not adapted to the national context, offenders and/or criminals will always be able to continue to abuse all existing systems in order to pursue their misdeeds, the impact

of which will be considerable, both for the country and for economic operators. And this is without prejudice to the fact that certain business sectors and/or professions could disappear due to the loss of their credibility.

(iv) Even if the provisions of Law N° 2018- 043 of February 13, 2019 on the fight against money laundering and terrorist financing adopts the risk-based approach, the high circulation of cash, significant cash transactions remain problematic and can be exploited by offenders and/or criminals in the context of money laundering and/or terrorist financing. In order to reinforce due diligence measures and mitigate any risk inherent in such a practice, the institutions and professions subject to this directive should reinforce their respective anti-money laundering and anti-terrorist financing measures by introducing a threshold for cash transactions.

(v) The growth of e-money, which represents financial inclusion in Madagascar, is tending to be assimilated to bank accounts, and may constitute a channel for money laundering and/or the financing of terrorism. This is one of the reasons that prompted the legislator to introduce an obligation for professionals in the sector to put in place an appropriate anti-money laundering and anti-terrorist financing mechanism in the provisions of Law N° 2016-056 of February 02, 2017 relating to electronic money and electronic money institutions, as well as other subsequent texts.

(vi) The other professions grouped under the category of Designated Non-Financial Businesses and Professions (DNFBPs) can be an ideal channel for criminals and/or offenders to launder the proceeds of their crimes and misdemeanours, or even to finance terrorist acts. This is why it is necessary to reinforce measures aimed at identifying customers, beneficial owners and monitoring transactions.

(vii) Vigilance, including the monitoring of transactions by politically exposed persons (PEPs), reinforces prevention. This category of customers is exposed to risks of corruption and/or similar offences, money laundering and/or the financing of terrorism. The involvement of a politically exposed person in money laundering, terrorist financing or any other offence assimilated to corruption will seriously damage social peace and deteriorate the moral value of Malagasy society.

ADOPTS THIS DIRECTIVE:

TITLE I: GENERAL PROVISIONS

CHAPTER I: Purpose, scope, definitions

Article 1: The purpose of this directive is to supplement certain provisions of directive no. 001/SAMIFIN/DG/22 of June 14, 2022.

It applies to reporting institutions, as provided for by the provisions of Article 08 of Law No. 2018 - 043 of February 13, 2019 on money laundering and the financing of terrorism, namely:

- (i) Financial institutions;
- (ii) Designated Non-Financial Businesses and Professions (DNFBPs).

Article 02. Two new articles numbered 51 bis and 51 ter are inserted in **CHAPTER III- DUE DILIGENCE MEASURES**, as follows:

Article 51 bis (new). Without prejudice to the application of the provisions of Article 4 point 22 of Act no. 2018- 043 of February 13, 2019 on the fight against money

laundering and terrorist financing on the duration of the status of politically exposed person, reporting institutions shall adopt the risk-based approach.

Reporting institutions review and update the status of politically exposed persons by carrying out all due diligence relating to the "know your customer" (KYC) process.

The information and documents collected are kept for at least five (05) years.

Article 51 ter (new). The reporting institution decides to readjust the level of vigilance with regard to politically exposed persons in the light of the results of the "customer risk" analysis.

The new risk rating to be assigned may be low, medium or high, depending on the risk zones identified and in accordance with the provisions of article 47 of the directive of June 14, 2022.

TITLE IV: FINAL PROVISIONS

Article 03. The present directive comes into force upon notification to the Professional Association and/or order or group of each profession subject to it.

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