



LAW No. 2023 – 026

amending and supplementing certain provisions of Law No. 2018-043
of February 13, 2019 on the fight against money laundering and the financing of
terrorism

EXPLANATORY STATEMENT

The efficiency of the fight against money laundering, the financing of terrorism and the financing of the proliferation of weapons of mass destruction depends on the country's capacity to face the various threats and reduce its vulnerability to the scourge.

Although Law No. 2018-043 of February 13, 2019 on the fight against money laundering and the financing of terrorism was promulgated and published in the Official Journal of the Republic, it demonstrates its limits compared to international standards.

Based on the results obtained during previous progress report assessments, Madagascar remains under the status of “enhanced monitoring”. This means that, in order to move to the status of “regular monitoring”, the country must continue its efforts to quickly remedy the strategic deficiencies identified.

Improving the Malagasy legal framework is therefore one of the essential steps to address the various threats and reduce the country's vulnerability to the phenomenon. This initiative is also part of a need to promote financial transparency, which contributes to the establishment of a secure economic environment that is attractive for investment, a guarantee of achieving the development objectives set by the General Policy of the State.

It is in this spirit that a reform of the above-mentioned law is necessary.

To this end, this law makes it possible to satisfy four of the big six recommendations of the FATF : Recommendation 5 relating to the offence of terrorist financing, Recommendations 6 and 7 on targeted financial sanctions linked to terrorism and the financing of terrorism, the financing of the proliferation of weapons of mass destruction, Recommendation 10 on customer due diligence duties,

Recommendation 20 relating to the reporting of suspicious transactions.

It also helps to improve the technical compliance expected from Madagascar on other recommendations such as Recommendation 2 on national cooperation and coordination, Recommendation 14 on the funds or value transfer service, Recommendation 15 on new technologies, Recommendation 16 on electronic transfers, Recommendation 26 on the regulation and control of financial institutions, Recommendation 27 on the powers of supervisory authorities, Recommendation 28 on the regulation and control of designated non-financial businesses and professions.

To this end, the law highlights several major areas.

On the terminology aspect, it provides an extension of the definition of terrorist financing to the financing of travel by individuals (Cf. art 3). It gives better definitions to the terms used in order to identify the aspect of money laundering, terrorist financing and the financing of the proliferation of weapons of mass destruction (Cf. art 4, 5).

The law criminalizes the financing of the proliferation of weapons of mass destruction, which cannot be dissociated from the fight against terrorism and its financing according to FATF standards; it gives the State latitude to define by regulation a mechanism for implementing targeted financial sanctions and the freezing of assets linked to them (Cf. art.17).

In terms of preventing money laundering, the financing of terrorism and the financing of the proliferation of weapons of mass destruction, it strengthens the State's commitments and extends the national strategy for combating money laundering and the financing of terrorism to that linked to the proliferation of weapons of mass destruction. (Cf. art. 6). It regulates the obligations of Designated Non-Financial Enterprises and Professions in terms of document retention and reporting of suspicious transactions (Cf. art. 7) as well as those of institutions subject to it for the risks presented by a customer, a transaction or a product, an analysis of information relating to the purpose and nature of the business relationship (Cf. art. 8). Under certain conditions, it eases the vigilance measures imposed on institutions subject to it (Cf. art. 9).

In order to promote transparency in financial transactions, this law requires the identification of the path of information related to batch transfers (Cf. art. 10). It also provides for obligations for providers of funds or value transfer services (Cf. art. 11).

For greater efficiency in detecting money laundering, the financing of terrorism and the financing of the proliferation of weapons of mass destruction, the law provides:

- the extension of the missions assigned to the Financial Intelligence Unit to the fight against the financing of the proliferation of weapons of mass destruction. (Cf. art. 12);
- the possibility for the Financial Intelligence Unit to refer to the control and supervisory authorities for any failure noted in the application of vigilance measures and the application of directives issued to subject establishments (Cf. art. 13);
- the extension of the obligation to report suspicions relating to

transactions or attempted transactions involving funds that appear to come from the commission of a crime or offence or likely to finance terrorism or the proliferation of weapons of mass destruction. (Cf. art. 14);

- the adoption of the risk-based approach to control and the information of the institutions subject to it by the control and supervisory authorities on the concerns or weaknesses of countries presenting a risk of money laundering, the financing of terrorism and the financing of the proliferation of weapons of mass destruction (Cf. 16).

This law comprises (22) twenty-two articles.

The first article sets out the purpose of the law.

Article 2 modifies and supplements the provisions of the preliminary article by adding the financing of the proliferation of weapons of mass destruction to the subject of Law No. 2018-043 of February 13, 2019 on the fight against money laundering and the financing of terrorism.

Articles 3 and 4 make changes to the definitions of the terms “terrorist financing” and “occasional customer” referred to in Articles 2 and 4.13 of the Act.

Article 5 inserts new points into the terminology provided for in Article 4 of the Act, numbered respectively: 19 (l), 19 (m), 19 (n), 33, 34, 35, 36, 37, 38 and 39.

Articles 6, 10, 12, 13, 14, and 15 amend and supplement the provisions of Articles 7, 16.d, 23, 24, 27 and 29 of Law No. 2018-043 of February 13, 2019 on the fight against money laundering and the financing of terrorism.

Articles 7, 8, 11, and 16 insert new paragraphs into Articles 8, 13, 16.d, and 31 of the Act.

Articles 9 and 18 add new articles numbered 15 bis entitled “*Relief of vigilance measures*”, 55 bis entitled “*Financing of the proliferation of weapons of mass destruction*” and 55 ter entitled “*Implementation of Security Council resolutions on financing the proliferation of weapons of mass destruction*”.

Sections 19, 20, 21 and 22 deal with final provisions and insert an emergency provision. This is the purpose of this Act.



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The National Assembly and the Senate adopted during their respective plenary sessions of December 13, 2023 and December 14, 2023.

THE PRESIDENT OF THE REPUBLIC,

In view of the Constitution,

In view of the Decision No. 04-HCC/D3 of January 31, 2024 of the High Constitutional Court,

PROMULGATE THE LAW WHOSE CONTENT FOLLOWS:

Article 1. The purpose of this law is to modify and supplement certain provisions of Law No. 2018-043 of February 13, 2019 on the fight against money laundering and the financing of terrorism.

Article 2. The provisions of the preliminary article of Law No. 2018-043 of February 13, 2019 on the fight against money laundering and the financing of terrorism are amended and supplemented as follows:

“Preliminary Article (new). – The purpose of this law is to define the rules aimed at preventing, detecting, interrupting and suppressing all activities for the purposes of money laundering, financing terrorism, as well as financing the proliferation of weapons of mass destruction , whether or not associated with money laundering.”

Article 3. The provisions of Article 2 on the definition of terrorist financing are amended

and supplemented as follows:

“Article 2 (new). Definition of terrorist financing .

Any act committed by a natural or legal person who, by any means whatsoever, by himself or through an intermediary, has provided or collected funds and other assets, with the intention of having them used or knowing that they will be used, in whole or in part, for the purposes of:

- to commit one or more terrorist acts or;
- to finance a terrorist organization or a terrorist individual.

Attempting to finance terrorism also constitutes a terrorist financing offence.

It is not required that the funds and other property were actually used to commit or attempt to commit one or more terrorist acts or that they be linked to one or more specific terrorist acts.

Any natural or legal person who knowingly helps, assists, organizes or contributes to the commission of the aforementioned acts is considered an accomplice.

The offence of financing terrorism is applicable if the act was committed on the territory of Madagascar regardless of the nationality of the perpetrator, or abroad by a person of Malagasy nationality or to the detriment of a Malagasy national. The perpetrator of the offence may be prosecuted even if the terrorist organisation or the terrorist act committed or planned are located in one or more other countries.

It also constitutes an offence of financing terrorism to finance the travel of any person, throughout Malagasy territory or to another State with the aim of committing, organising or preparing terrorist acts, or in order to participate in them or to provide or receive training in terrorism.

Knowledge or intention, as elements of the above activities, may be inferred from objective factual circumstances.

Negligence, lack of vigilance, failure to comply with regulations in force are considered as culpable intent for the offences provided for by this law.

Terrorist financing is a predicate offence for money laundering.

The offence is committed regardless of the legal or illegal origin of the funds and other property.

Article 4. The provisions of point 13 of Article 4 on terminology are amended and supplemented as follows:

"Article 4.13 (new) - " Occasional customer" means any natural or legal person who, not having or using his account, requests the assistance of a credit institution, another banking service provider or any other financial institution, for the exclusive purpose of preparing or carrying out a one-off transaction or of being assisted in the preparation or carrying out of such a transaction, whether this is carried out in a single transaction or in several transactions appearing to be linked to each other . "

Article 5. It is inserted in Article 4 on the terminology of points numbered 19 (l), 19 (m), 19 (n), 33, 34, 35, 36, 37, 38 and 39 as follows:

Point 19 (l) (new) service providers to trusts and companies;

Point 19 (m) (new) any person acting as a "trustee" or manager of a "trust" or similar legal arrangement, owning property in Madagascar;

Point 19 (n) (new) dealers in precious stones and/or metals;

Point 33 (new) "Virtual asset " means the digital representation of value that can be exchanged digitally, or transferred and that can be used for payment or investment purposes. Virtual assets do not include digital representations of fiat currencies, securities and other financial assets already governed by other specific provisions in force;

Point 34 (new) "Competent authorities" means any public authority which, by virtue of a law or regulation, is responsible for, or participates in, the fight against money laundering, the financing of terrorism and the financing of the proliferation of weapons of mass destruction.

These competent authorities include in particular:

- the Financial Intelligence Unit
- the authorities responsible for the investigation or prosecution of money laundering, related origin offences, the financing of terrorism and the financing of the proliferation of weapons of mass destruction, the seizure or freezing and confiscation of criminal assets;
- the authorities responsible for receiving declarations or communications on the cross-border transport of cash and bearer negotiable instruments;
- the authorities vested with powers of control or supervision in the fight against money laundering, the financing of terrorism and the financing of the proliferation of weapons of mass destruction

Item 35 (new) " Correspondent bank " means an entity, typically a foreign bank, that acts under a mandate to carry out certain transactions on behalf of a local bank; such transactions include, in particular, the provision of a current or other liability account and the provision of related services, such as cash management, international funds transfers, check clearing, transit accounts and foreign exchange services.

Point 36 (new) “ Virtual Asset Service Provider ” means any natural or legal person who carries out, on a commercial basis, on behalf of or on behalf of a client, one or more of the following activities or operations:

- exchange between virtual assets and fiat currency;
- exchange between one or more forms of virtual assets;
- transfer of virtual assets;
- conservation and/or administration of virtual assets or instruments enabling the control of virtual assets;
- participation and provision of financial services related to the offer of an issuer and/or the sale of virtual assets.

Point 37 (new) “ Proliferation of weapons of mass destruction ” means the manufacture, acquisition, possession, development, export, transshipment, brokering, transportation, transfer, stockpiling or use of nuclear, chemical or biological weapons and their means of delivery and associated materials.

Point 38 (new) “ Funds or value transfer service ” means any service which consists of accepting cash, cheques or any other instrument of payment or deposit of value and paying an equivalent amount in cash or in any other form to a beneficiary, by means of a communication, message, transfer or clearing system to which the funds or value transfer service belongs.

Operations may involve one or more intermediaries or financial institutions authorized by law.

Point 39 (new) “ Trust ” means the legal relationships created by a person, the settlor, by act inter vivos or mortis causa, when property has been placed under the control of a “trustee” in the interest of a beneficiary or for a specific purpose;

The “ *trust* ” has the following characteristics:

- the *trust assets* constitute a separate mass and are not part of the *trustee 's estate* ;
- the title to the *trust property* is in the name of the *trustee* or another person on behalf of the *trustee* ;
- the *trustee* is vested with the power and charged with the obligation, for which he must account, to administer, manage or dispose of the property in accordance with the terms of the *trust* and the special rules imposed on the *trustee* by law.

The fact that the settlor retains certain prerogatives or that the *trustee* has certain rights as a beneficiary does not necessarily preclude the existence of a *trust* .

The rest remains unchanged.

Article 6. The provisions of Article 7 on the national strategy and coordination of the fight against money laundering and the financing of terrorism are amended and supplemented as follows:

“Article 7 (new). National strategy and coordination of the fight against money laundering, the financing of terrorism and the financing of the proliferation of weapons of mass destruction.

Based on the risks identified, within the framework of the national risk assessment, the State adopts the National Strategy for Combating Money Laundering, the Financing of Terrorism and the Financing of the Proliferation of Weapons of Mass Destruction.

The State is setting up a coordination and guidance committee responsible for evaluating the national strategy, monitoring its implementation and facilitating cooperation between the various stakeholders in the fight.

The creation, organization and operation of this committee are determined by decree taken in the Council of Ministers.

Article 7. A paragraph 3 is inserted into Article 8 on professions subject to Titles II and III , worded as follows:

“Paragraph 3 (new) – The procedures for implementing the obligations relating to vigilance measures, document retention and reporting of suspicious transactions by designated non-financial businesses and professions are set out by regulation.”

The rest remains unchanged.

Article 8. Paragraphs 8 and 9 are inserted into Article 13 on the identification of customers by taxable establishments, worded as follows:

“Paragraph 8 (new) – When the risk of money laundering, terrorist financing and financing of the proliferation of weapons of mass destruction, presented by a customer, a product or a transaction is considered to be high, the institutions subject to the regulation shall increase the intensity of the due diligence measures, the terms of which shall be set out by regulation.

The criteria for assessing the level of risk are determined by regulation by the control and supervisory authorities.

Paragraph 9 (new) – Taxable establishments are required to analyse information on the purpose and nature of the business relationship envisaged between the parties.

The rest remains unchanged.

Article 9. An article numbered 15a entitled “ *Relief of vigilance measures* ” is inserted after Article 15, worded as follows:

“Article 15a (new). Easing of vigilance measures.

In the absence of suspicions of money laundering, terrorist financing and financing of the proliferation of weapons of mass destruction or when the level of exposure to risk is low or non-existent in light of the risk assessment, subject institutions may reduce, under certain conditions, the intensity of the vigilance measures relating to transactions and customer identification provided for in this law.

Where the taxable establishment is unable to comply with the due diligence obligations, it is required not to establish the business relationship, not to carry out the transaction or to terminate the existing relationship and to immediately submit a suspicious transaction report.

In the event of suspicion of money laundering and terrorist financing, when the subject institution considers that the due diligence obligations risk alerting the client, it may not fulfill them and must immediately transmit a suspicious transaction report to the Financial Intelligence Unit.

Article 10. The provisions of paragraph 7 of Article 16.d are amended as follows:

“Paragraph 7 (new) – When several cross-border electronic transfers originating from the same payer are transmitted in batches, the beneficiary’s financial institutions shall identify the path of the information relating thereto.”

The rest remains unchanged.

Article 11. A new paragraph 8 is inserted in Article 16.d, worded as follows:

“Paragraph 8 (new) – Providers of money and value transfer services using agents or sub-agents are required to:

- communicate the list of their agents or sub-agents to the competent authority;
- integrate their agents and sub-agents into their programs to combat money laundering and the financing of terrorism and monitor compliance with said programs;
- submit a suspicious transaction report to the Financial Intelligence Unit and in all relevant

countries;

- make available to the Financial Intelligence Unit all relevant information on their operations.

The rest remains unchanged.

Article 12. The provisions of Article 23 on general provisions are amended and supplemented as follows:

“Article 23 (new). General provisions.

A Financial Intelligence Unit, organized under the conditions set by decree taken in Council of Ministers, is responsible for receiving and analyzing the declarations required by the persons and organizations referred to in Article 8 and for disseminating the analysis report to the authorities concerned.

The Financial Intelligence Unit's mission is to lead the fight against money laundering and the financing of terrorism and the financing of the proliferation of weapons of mass destruction.

Article 13. The provisions of paragraph 10 of Article 24 on jurisdiction are amended as follows:

“Paragraph 10 (new). The Financial Intelligence Unit shall notify the competent control and supervisory authorities of any failure to implement vigilance measures or apply the directives it issues. These authorities shall inform the Financial Intelligence Unit of the follow-up action taken.”

The rest remains unchanged.

Article 14. The provisions of Article 27 on the obligation to report suspicions are amended and supplemented as follows:

“Article 27 (new). Obligation to report suspicious.

Any natural or legal person from financial institutions or designated non-financial businesses and professions referred to in Article 8 is required to report without delay to the Financial Intelligence Unit, upon detection of suspicion, any transactions or attempted transactions involving funds that appear to come from the commission of a crime or offence or likely to finance terrorism or the proliferation of weapons of mass destruction.

The above-mentioned persons are required to report the transactions carried out even if it was impossible to suspend their execution or if it only became apparent after the transaction had been carried out that it involved suspicious funds.

They are also required to report without delay any information tending to reinforce or refute the suspicion.

As part of more effective cooperation between the State administrative services which are directly or indirectly involved in the fight against money laundering, capital, the financing of terrorism and the financing of the proliferation of weapons of mass destruction, public officials who observe facts which they know or suspect to be related to money laundering or the financing of terrorism, by informing the Financial Intelligence Unit.

Article 15. The provisions of Article 29 on opposition to the execution of operations are amended and supplemented as follows:

“Article 29 (new) – Opposition to the execution of operations.

If, due to the seriousness or urgency of the matter, the Financial Intelligence Unit considers it necessary, it shall immediately notify the Public Prosecutor of the competent jurisdiction with a view to blocking the operation concerned.

Article 16 – New paragraphs 3, 4 and 5 are inserted into Article 31 on the control and supervisory authorities of Financial Institutions and Designated Non-Financial Enterprises and Professions, worded *as follows* :

“ **Paragraph 3 (new)** – As part of their supervisory missions with regard to Designated Non-Financial Enterprises and Professions or Non-Profit Organizations, the control and supervisory authorities or, failing that, the Financial Intelligence Unit adopt the risk-based approach and issue measures, the implementation procedures for which are set out by regulation.

Paragraph 4 (new) – The supervisory and control authorities shall inform the institutions subject to the regulations of concerns or weaknesses concerning countries presenting a high risk in terms of the fight against money laundering and the financing of terrorism.

Paragraph 5 (new) – Where the subject institution belongs to a financial group, the control is also carried out at group level. The supervisory authority establishes the risk profiling of money laundering and terrorist financing of the subject institution or the financial group, and regularly reviews the assessment of their risk profile of money laundering and terrorist financing.

The rest remains unchanged.

Article 17. The title of *Section II of Chapter II of Title IV* of Law No. 2018-043 of February 13, 2019 on the fight against money laundering and the financing of terrorism is amended as follows:

**“Section II (new) Penalties applicable to the financing of terrorism
and financing of weapons of mass destruction”**

Article 18. After Article 55, two articles numbered 55 **bis** entitled “ *Financing the proliferation of weapons of mass destruction* ” and 55 **ter** entitled “ *Implementation of Security Council resolutions on financing the proliferation of weapons of mass destruction* ” are inserted, worded as follows:

“Article 55a (new). Financing the proliferation of weapons of mass destruction.

Whoever, for the purpose of proliferation of weapons of mass destruction, collects, raises, makes available, moves or provides funds or assets or other economic resources, or finances in whole or in part persons or entities, shall be punished by a term of forced labour and a fine equal to at least five times the value of the property or funds used for the financing.

The penalty is forced labour for life and a fine equal to at least five times the value of the property or funds used in the financing operations if the acts were committed in one of the following circumstances:

- in the exercise or on the occasion of the exercise of his profession;
- within the framework of a criminal organization;
- when the perpetrator is a repeat offender. Convictions handed down abroad are taken into account to establish repeat offending.

The freezing, seizure or confiscation procedures provided for before the competent courts are applicable in matters of financing the proliferation of weapons of mass destruction in accordance with the legislation relating to the recovery of illicit assets .

Article 55 ter (new). Implementation of Security Council resolutions on financing the proliferation of weapons of mass destruction.

The State defines by regulation a mechanism for implementing the resolutions of the United Nations Security Council in the fight against the financing of the proliferation of weapons of mass destruction.

Article 19. All provisions contrary to this law are and remain repealed.

Article 20. Regulatory texts will be taken as necessary for the application of this law.

Article 21. Due to the urgency and in accordance with the provisions of Article 4 of Ordinance No. 62-041 of September 19, 1962 relating to the general provisions of domestic law and private international law, this law shall enter into force immediately upon its publication by radio broadcast and television or posting, regardless of its insertion in the Official Journal of the Republic.

Article 22. This law shall be published in the Official Journal of the Republic. It shall be executed as a law of the State.

Promulgated in Antananarivo, February 1st 2024.

Andry RAJOELINA