



# Anti-money laundering and counter-terrorist financing measures

# Jamaica

5<sup>th</sup> Enhanced Follow-up Report & Technical  
Compliance Re-Rating

December 2022

Follow-up Report





The Caribbean Financial Action Task Force (CFATF) is an inter-governmental body consisting of twenty-four member states and territories of the Caribbean Basin, Central and South America which have agreed to implement common countermeasures to address money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. For more information about the CFATF, please visit the website:

**This report was adopted via written process by the CFATF in accordance with paragraph 92 of the CFATF Procedures for the Fourth Round of AML/CFT Evaluations, 2014 as amended, and paragraph 20 of the CFATF ICRG Procedures for the 4<sup>th</sup> Round of AML/CFT Evaluations, 2018 as amended.**

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<https://www.cfatf-gafic.org/documents/4th-round-meval-reports>

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## **Jamaica's Fifth Enhanced Follow-Up Report- December 2022**

### **1. INTRODUCTION**

1. The mutual evaluation report (MER) of Jamaica was adopted in November, 2016, during the XLIV Caribbean Financial Action Task Force (CFATF) Plenary held in the Turks and Caicos Islands and published in January 2017. Since it met the thresholds of having eight (8) or more NC/PC ratings for technical compliance and a low or moderate level of effectiveness for seven (7) or more of the eleven (11) effectiveness outcomes, Jamaica was placed under the enhanced follow-up process<sup>1</sup>.
2. This FUR analyses the progress of Jamaica in addressing the technical compliance requirements of the recommendations being re-rated. Technical compliance re-ratings are given where sufficient progress has been demonstrated.
3. This report does not analyse any progress Jamaica has made to improve its effectiveness.
4. The assessment of Jamaica's request for technical compliance re-ratings and the preparation of this report was undertaken by the Group of Experts consisting of, Ms. Casandra Seetahal (Legal Expert), Senior Legal Counsel, Anti-Terrorism Unit, Office of the Attorney General and Ministry of Legal Affairs, Trinidad and Tobago and Ms. Vasilena Ivanova (Financial Expert), Policy Officer, Central Bank of Aruba with support from Mr. Pedro Harry, Law Enforcement Advisor of the CFATF Secretariat.
5. Section 4 of this report summarises the progress made to improve technical compliance. Section 5 contains the conclusion and a table illustrating Jamaica's current technical compliance ratings.

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<sup>1</sup> Regular follow-up is the default monitoring mechanism for all countries. Enhanced follow-up is based on the CFATF's policy that deals with members with significant deficiencies (for technical compliance and/or effectiveness) in their AML/CFT systems and involves a more intensive process of follow-up.

## 2. FINDINGS OF THE MUTUAL EVALUATION REPORT & FOLLOW-UP

6. Jamaica's MER ratings<sup>2</sup> and updated ratings based on its earlier FUR<sup>3</sup> are as follows:

R.	Rating	R.	Rating
1	PC (MER 2016) PC (FUR 2021)	21	PC (MER 2016) ↑ C (FUR 2021)
2	PC (MER 2016) ↑ LC (FUR 2021)	22	PC (MER 2016) ↑ PC (FUR 2021)
3	LC (MER 2016)	23	PC (MER 2016) PC (FUR 2021)
4	LC (MER 2016)	24	PC (MER 2016) PC (FUR 2021)
5	LC (MER 2016) ↑ LC (FUR 2021)	25	PC (MER 2016)
6	NC (MER 2016) ↑ LC (FUR 2021)	26	PC (MER 2016)
7	PC (MER 2016) PC (FUR 2021)	27	PC (MER 2016)
8	NC (MER 2016) ↑ PC (FUR 2021)	28	PC (MER 2016)
9	C (MER 2016)	29	LC (MER 2016)
10	PC (MER 2016) ↑ LC (FUR 2021)	30	LC (MER 2016)
11	PC (MER 2016) ↑ LC (FUR 2021)	31	LC (MER 2016)
12	PC (MER 2016) ↑ C (FUR 2021)	32	LC (MER 2016)
13	C (MER 2016)	33	PC (MER 2016) ↑ LC (FUR 2021)
14	PC (MER 2016) ↑ LC (FUR 2021)	34	LC (MER 2016)
15	LC (MER 2016) ↓ PC (FUR 2021)	35	PC (MER 2016)
16	LC (MER 2016)	36	LC (MER 2016)
R.	Rating	R.	Rating
17	PC (MER 2016) ↑ LC (FUR 2021)	37	LC (MER 2016)
18	PC (MER 2016) ↑ LC (FUR 2021)	38	LC (MER 2016)
19	PC (MER 2016) ↑ LC (FUR 2021)	39	LC (MER 2016)
20	C (MER 2016)	40	PC (MER 2016)

<sup>2</sup> There four possible levels of technical compliance are: compliant (C), largely compliant (LC), partially compliant (PC), and non-compliant (NC). Effectiveness ratings for the 11 Immediate Outcomes are: Low, Moderate (Mod), Substantial or High.

<sup>3</sup> Current ratings and the year confirmed are indicated based on the original MER or follow-up re-ratings.

7. Given these results and the effectiveness ratings in the MER, Jamaica was on enhanced follow-up as of the last FUR<sup>4</sup>.

### 3. OVERVIEW OF PROGRESS TO IMPROVE TECHNICAL COMPLIANCE

8. In keeping with the CFATF Mutual Evaluation Procedures, this FUR considers progress made up until 1 January 2022. In line with the ME Procedures and FATF Methodology, the Group of Experts' analysis has considered progress to address the deficiencies identified in the MER and the entirety (all criteria) of each Recommendation under review, noting that this is cursory where the legal, institutional or operational framework is unchanged since the MER or previous FUR.
9. This section summarises the progress made by Jamaica to improve its technical compliance by implementing new requirements where the FATF Recommendations have changed since the MER was adopted.

#### 4. Progress on Recommendations which have changed since adoption of the MER

##### 4.1.1 Recommendation 1 (originally rated PC)

10. In its 4<sup>th</sup> Round MER, Jamaica was rated PC with R.1. The technical deficiencies included, (i) the incompleteness of the national risk assessment, (ii) lack of involvement by private sector in the conduct of the NRA, (iii) no requirement for ensuring that the risk assessment is up-to-date, (iv) no mechanism in place to provide information on the risk assessment(s) to relevant competent authorities, FIs and DNFBPs and self-regulating bodies, (v) no requirement to allocate resources based on the understanding of risk, (vi) Terrorist Prevention Act (TPA) Regulations does not apply to DNFBPs, no provision in the TPA for FIs and DNFBPs maintain procedures to assess TF risks, no requirements for policies, control and procedures to be approved by senior management and (iv) application of de minimis threshold of US\$250.00 not being based on any established criteria/national risk assessment.
11. **Criterion 1.1:** Jamaica completed its first money laundering (ML) and terrorist financing (TF) National Risk Assessment (NRA) in May 2016 and its second ML/TF NRA on August 16, 2021. The second NRA involved the participation of both public and private sector officials (unlike the first NRA). The second NRA covered the period from January 2016 to December 2019 with the findings being reasonable, comprehensive and robust. Following the completion of the second NRA, Jamaica developed and implemented a National Action Plan (NAP).
12. **Criterion 1.2:** As highlighted in the 2016 MER, the National Anti-Money Laundering Committee (NAMLC) is the competent authority charged with the responsibility of coordinating action to assess ML/TF risks. The 2021 NRA conducted by Jamaica involved participation of representatives from private sector officials from Financial Institutions (FIs), Designated Non-Financial Businesses and Professions (DNFBPs) and public sector officials as the exercise was one that involved inter-agency collaboration.
13. **Criterion 1.3:** Jamaica has completed two NRAs between 2016 and 2021 and has therefore sufficiently demonstrated that it is keeping its ML/TF risk assessment up-to-date. The NRA is not a "one-off" exercise and is required to be kept up-to-date on a periodic basis with each NRA building on the previous one to reflect changes in the existing ML/TF risks in the country

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<sup>4</sup> There are three categories of follow-up based on mutual evaluation reports: regular, enhanced and enhanced (expedited). For further information see the CFATF Mutual Evaluation Procedures.

(section 11.2 of the 2021 NRA). Further, the authorities communicated that they are currently in the process of formalizing the NRA program by giving the NAMLC the statutory basis and formally including the conduct of future NRAs into the structure of the NAMLC.

14. **Criterion 1.4:** The findings of the 2021 NRA were published on the website of different competent authorities including the [Bank of Jamaica](#) (BOJ) and the [Financial Investigation Division](#) (FID), as well as the Ministry of Finance and Planning (MOFP) and are available to the different sectors including FIs, DNFBPs as well as the general public. To provide/share further information on the findings of the 2021 NRA, the Jamaican authorities also held discussions with various private sector officials.
15. **Criterion 1.5:** The NAP developed and implemented by Jamaica was approved by the Cabinet on 16 August 2021 and was subsequently shared with all competent and AML/CFT authorities. It contains various measures to mitigate and address the ML/TF risks identified in the 2021 NRA, to strengthen Jamaica's anti-money laundering (AML), counter-terrorism financing (CFT) and counter-proliferation financing (CPF) framework, and to allocate resources on the basis of the ML/TF risks including higher risk identified in the 2021 NRA, and is therefore not a public document. There is no mention of the allocation of resources to all competent authorities in the NAP, specifically, among others, law enforcement agencies (LEAs). Though, the 2021 NRA notes that law enforcement has to strategically manage their resources and that resources including software and training were provided to LEAs to investigate ML and TF offences (section 5.6 of the 2021 NRA). In weighting this deficiency in the NAP. In weighting this deficiency, the Group of Experts took into consideration the ML/TF risks that exist and context of Jamaica and treated this deficiency as minor.
16. **Criterion 1.6: (a)** The de minimis threshold was established as a result of an assessment conducted by financial crime investigative authorities that found that transactions that pose the most risk for ML/TF are those in excess of approximately US\$250.00. The exception was created by Jamaica to foster financial inclusion. In Jamaica, the de minimis threshold is not applicable to all financial institutions and activities. Reporting entities, with the exception of money transfer and money remittance agents and agencies,<sup>5</sup> are exempted from collecting CDD information in circumstances involving customer transactions of US\$250.00 (de minimis threshold). Reporting entities are authorised to apply the de minimis threshold in limited circumstances and not in cases where the nature of the transaction is such to give rise to knowledge, belief or suspicion that the transaction constitutes ML and TF (Regs. 7A and 6A of the Proceeds of Crime (POC) (ML) Regulations, 2019 and Terrorism Prevention (TP) Reporting Entities (RE) Regulations, 2019, respectively).
17. Regulations 7A and 6A of the POC (ML) and the TP (RE) Regulations, 2019, require reporting entities to establish risk profiles relative to all business relationships and one-off transactions (the product of a formal assessment of ML/TF risks by the regulated sector to determine the level of risk of a client or a transaction, which also takes into consideration the ML/TF risks at the national level). The Regulations further require reporting entities to undertake reasonable due diligence for all transactions including verification of the applicant's identification for business and source of funds involved. Based on the interpretation of the provisions of the

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<sup>5</sup> Given the higher risk associated with money transfer and remittance services, money transfer and money remittance agents and agencies are excluded from the de minimis threshold of US\$250.00 (Regs 8 (2) of the POC (MLP) Regulations and the TP (RE) Regulations and based on the findings of the 2021 NRA). A thematic study conducted by the BOJ in 2021 also notes that money remittance inflows for 2019 and May 2020 averaged US\$202.50 and US\$234.80 per recipient, respectively.

Regulations, an exemption cannot be granted in higher risk situations and limits the circumstances in which the de minimis threshold can be applied (commensurate with the level of risk and also not in circumstances where there is knowledge, belief or suspicion of ML/TF).

18. The Bank of Jamaica's (BOJ) Guidance provides extensive clarity and guidance to the reporting entities it supervises on the application of the de minimis threshold including the requirement to conduct ML/TF risk assessments to all transactions with no exemptions. Further, the BOJ Guidance notes that transactions assessed as high risk or falling within the category of high risk are considered critical transactions, which should not be subject to the de minimis approach. From a materiality standpoint, the Experts gave significant weighting to the BOJ Guidance, given that the BOJ supervises most of the material and higher risk sectors (deposit taking institutions - banks and money service businesses (MSBs), etc). Based on the foregoing, the Experts considered that the application of de minimis threshold is strictly limited, occurs in limited circumstances and is only applicable to particular types of FIs (except for MSBs which are considered higher risk based on the findings of the 2021 NRA) and DNFBPs. Guidance on the application of Regulation 7A of the POC (ML) Regulations is also reflected in the FSC Guidelines which mandate reporting entities to develop risk profiles for all business relationships and one-off transactions, FIs are required to conduct risk assessments and ensure that same take into consideration the risk at the national level. Taking into account the amendments to the Regulations in 2019 and the existence of the de minimis threshold, concerns remain that there is a disconnect between the de minimis approach and the requirement to apply a risk-based approach to all transactions and business activities. The Experts treated this deficiency as minor and placed more weight to the requirements present in the law with which all reporting entities are required to comply.
19. Dealers in Precious Metals and Stones are not required to comply with the FATF Recommendations due the fact that they are prohibited from engaging in cash transactions with a customer equal to or above EUR/US\$15,000.00 (see requirements of FATF Recommendations 22 and 23 (c.22.1 (c) and 23.1 (b)). Section 101A (Limit on cash transactions) of the Proceeds of Crime Act (POCA) prohibits individuals and entities in Jamaica (except for certain FIs) from conducting cash transactions above the threshold of JA\$1 million (less than US\$8,000.00).
20. **(b)**: No financial activity in Jamaica is exempted on the basis that it is carried out by a natural or legal person on an occasional or very limited basis, proven that there are low ML and TF risks.
21. **Criterion 1.7: (a)** FIs and DNFBPs are required to establish risk profiles of business relationships and one-off transactions to determine the level of risk and apply enhanced due diligence (EDD) measures in higher-risk situations (Regs 7A (4) and 6A (1) of the POC (MLP) and TP (RE) Regulations, 2019, respectively). In establishing the risk profile and employing measures commensurate to the risk, FIs and DNFBPs are required to consider the national, regional and business environment in which they operate (Regs 7A (1) and 6A (1) of the POC (MLP) and TP (RE) Regulations, 2019, respectively). In considering the business environment in which they operate, the Group of Experts interpreted this to mean that FIs and DNFBPs are required to consider the ML/TF risks at the national, regional and international level in which they operate. The Group of Experts' interpretation was confirmed by Jamaica. **(b)** To further supplement the requirements of the criterion, Jamaica requires FIs and some DNFBPs (with the exception of real estate dealers, accountants and attorneys-at-law) to incorporate the higher risk issues identified in the NRA into their own risk assessments based on their customers, products and services (para. 80 of the BOJ AML/CFT/CFP Guidelines, 2021, para. 125 of the Financial

Services Commission (FSC) Guidelines, 2021 and para. 138 of the BGLC AML/CFT/CPF Guidelines).<sup>6</sup> The requirements contained in the guidelines are enforceable. Taking into consideration that Jamaica has fully addressed the requirement in part (a) and the requirement of the criterion being optional, the Group Experts did not consider (b) to be a deficiency that impacts the rating assigned.

22. **Criterion 1.8:** As reflected in the analysis of c.1.6, FIs and DNFBPs are required to assess their ML/TF risks and develop risk profiles by taking into consideration, inter alia, the ML/TF risks at national level in order to make a determination as to whether to apply SDD (Regs 7A and 6A of the POC (ML) and TP (RE) Regs, 2019, respectively). The Regulations also mandate FIs and DNFBPs to establish risk profiles for all business relationships and one-off transactions. FIs and DNFBPs are strictly prohibited from applying SDD in circumstances where there is a higher-risk situation. Consequently, the application of the de minimis threshold is not allowed in circumstances where there is knowledge, belief or suspicion of ML or TF or it represents a higher risk for ML/TF. Despite the de minimis threshold remaining, the disconnect between same and the requirements in the Regulations, the Group of Experts did not consider the deficiency to be egregious having weighted same by taking into consideration the requirements in the Regulations with which all FIs and DNFBPs are required to comply.
23. **Criterion 1.9:** The requirements of Terrorism Prevention Act (TPA) Regulations, including the application of CDD, are applicable to all DNFBPs by virtue of the designations made by the Minister of Finance and the Public Service in 2017, 2019 and 2022 pursuant to s. 15 (2) of the TPA.
24. **Criterion 1.10**
  - a. The deficiency that was cited in the MER is not addressed. Jamaica has communicated its commitment to address the deficiency (no equivalent provision in the TPA to maintain procedures to assess TF risks) would be addressed in its next round of legislative amendments. In assessing the impact of this deficiency on final rating for c.1.10 and R.1, the Group of Experts weighted and considered the deficiency to be minor given the risk of TF is low based on the findings of the NRA which was accepted by the Group of Experts.
  - b. No deficiency was cited in the MER for this sub-criterion.
  - c. Jamaica has drafted and implemented AML/CFT Guidelines for some DNFBPs (with the exception of attorneys-at-law, real estate dealers and accountants) to document risk assessments and maintain the risk assessments up-to-date (for example, para. 152 of the Gaming Authority AML/CFT Guidance and paras. 139 and 142 of the revised FSC AML/CFT/CFP Guidelines). In weighting the deficiency that exists at c. 1.10 (c) and concluding that the deficiencies are minor, the Group of Experts took into consideration the ML/TF risks of the sectors not covered by the guidelines (medium and medium low based on the NRA) and their materiality.

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<sup>6</sup> Dealers in precious metals and stones are excluded from Jamaica's AML/CFT regulatory system based, inter alia, on the prohibition of cash transactions exceeding JAM\$1M (less than US\$8,000.00), which falls below the FATF cash transaction threshold of US\$15,000 for dealers in precious metals. Further, notaries in Jamaica are required to be attorneys with minimum ten (10) years' experience and are supervised by the General Legal Council (GLC).



- d. Competent authorities have access to AML/CFT risk assessments conducted by FIs and DNFBPs. Competent authorities are authorised to examine and take copies of information and documents in the possession or control of the FI and DNFBP concerned (s.91A (2) of the Proceeds of Crime Act (POCA) and s.18A (e) the TP (Amendment) Act). Similar provisions are contained in the guidance issued by the BOJ and the FSC (paras. 79 and 146, respectively).

**25. Criterion 1.11:**

- a. Regulated businesses (FIs and DNFBPs) are required to establish and implement programmes, policies, procedures and controls for the purpose of detecting and preventing ML and TF (Regs 5 and 18 (2) of the POC (MLP) Regs, 2019 and the TPA, respectively). The various guidance issued to some DNFBPs (with the exception of attorneys-at-law, real estate dealers and accountants) mandates that programmes, policies, procedures and controls are required to be approved by the board or subject to senior management involvement. The Experts considered the deficiency that exists (the DNFBPs not covered by the requirement of senior management approval in the guidance, being attorneys-at-law, real estate dealers and accountants) to be minor taking into consideration the ML/TF risks associated with the sectors (medium and medium low) and the materiality of those sectors.
- b. No deficiency was cited in the MER for this sub-criterion.
- c. No deficiency was cited in the MER for this sub-criterion.

26. **Criterion 1.12:** Regarding the application of the de minimis approach (i.e., CDD exemption for transaction under US\$250.00), please refer to the Experts' analyses of c.1.6 and 1.8, above. Further, the deficiencies in c. 1.9, c. 1.10 and c. 1.11 have been significantly addressed and re-rated with only minor deficiencies existing.

**Weighting and Conclusion**

27. Jamaica has substantially addressed the majority of the deficiencies that were identified in the MER. Jamaica has completed its second ML/TF NRA on August 16, 2021, which involved the active participation of the private sector and largely helped to deepen the identification and understanding of the ML/TF risks the country faces. Further, Jamaica has strengthened its legal framework to address the deficiencies. The Group of Experts considered and weighted the remaining deficiencies that exist, which include no mention of the allocation of resources to all competent authorities in the NAP, disconnect between the requirement related to the application of the de minimis threshold and the subsequent amendment to the Regulations mandating application of due diligence and risk-based approach for all business relationships and transactions, no provision in the TPA to maintain procedures to assess TF risks as well as the AML/CFT Guidelines not being applicable to some DNFBPs (attorneys-at-law, real estate dealers and accountants) with respect to the requirements of documenting and keeping the risk assessments up-to-date, and having programmes, policies, procedures and controls approved by senior management. In weighting these deficiencies, the Group of Experts took into consideration the factors of ML/TF risks that exist at the time of the review, materiality and context and determined that the deficiencies were minor in nature. **Jamaica is re-rated as Largely Compliant with R.1.**

#### 4.1.2.Recommendation 25 (originally rated PC)

28. In its 4<sup>th</sup> round MER, Jamaica was rated PC with R.25. The technical deficiencies included: (i) The Trustee Act does not mandate trustees to hold information on other regulated agents of, and services providers to, the trust, including investment advisors or managers, accountants, and tax advisors, (ii) There is no legal obligation for information on trustees, settlors, beneficiaries and protectors (if any) to be kept accurate and as up to date as possible, (iii) No specific citation outside of the FID Act and the Mutual Assistance in Criminal Matters Act (MCMA) given to facilitate the exchange of information, (iv) No mechanisms in place to ensure that trustees are adequately covered by Jamaica's AML/CFT regime and (v) Sanctions contained in the Trustee Act and applicable to trustees to ensure that they are legally liable for any failure to perform the duties relevant to meeting their obligations are not proportionate and dissuasive.
29. **Criterion 25.1:**
- a. Trustees are required to obtain and hold adequate and accurate information on the identity of a settlor, a protector (if any), an enforcer, a beneficiary or class of beneficiaries, any other trustee or other trust official and any person who has effective control of the trust (s.30A of the Trust Act, 2019, s.19 of the TCSPA (Change of Name and Amendment), 2021. Section 16 (IB) of the TCSPA (Change of Name and Amendment), 2021 imposes similar requirements on as of s.30A of the Trust Act, 2019 and explicitly requires TCSPs to obtain information on any other person who has ultimate effective control. For AML/CFT purposes, TSCPs are required to comply with CDD requirements which mandate that the person having ultimate effective control of the trust should be identified (Reg 13 of the POC (ML) Regulations). Licensees are required to maintain a register of beneficiaries containing information such as the name, address, occupation, tax information number or any other identification number on the beneficiary (Reg 9 of the TCSP, Regulation, 2022).
  - b. Trustees are also required to keep adequate, accurate and current records in respect of the identity of a Trust Service Provider (TSP) and any other agent(s) of the trust including investment advisor, manager, accountant and tax advisor (s.30A (1)(B) of the Trust Act, 2019).
  - c. A licensee is required to ensure that records are retained for at least seven years (s.16(3A) of the TCSPA (Change of Name), Amendment 2021 and 30A of the Trust Act, 2019). However, there is no explicit requirement for professional trustees to maintain information for at least five years after their involvement with the trust ceases. This deficiency is nevertheless rectified by virtue of the record keeping requirements of Regulation 14 of the POC (ML), Regulations, 2019 which mandates service providers, including TCSPs to maintain records for a period of seven years commencing on the date on which the relevant financial business was completed or the business relationship was terminated, whichever occurs later.
30. **Criterion 25.2:** All information on the trustees, settlors, protectors and beneficiaries are required to be kept accurate and up to date as possible (s. 30A of the Trust Act, s.16 of the TCSPA, 2017 as amended by s.23 of the TCSPA (Change of Name), Amendment 2021 and Regulation 9(1) of the TCSP Regulations). The Regulations mandate that BO information on the client be made forthwith but, in any event, no later than three days.

31. **Criterion 25.3<sup>7</sup>:** Trustees are required to disclose their status to FIs and DNFBPs (Regulation 13 (1)(c) of the POC (MLP) Regulations.
32. **Criterion 25.4:** Regarding the requirement of c.25.4, s.31A of the TCSPA (Change of Name), Amendment, 2021 provides for trustees to inform FIs and DNFBPs at which the assets of the trust are kept, that the trustee is acting for the trust and shall provide full, accurate and up-to-date information on all the beneficiaries of the trust, on the assets of the trust being held or managed by the trustee, and on any change of status of a beneficiary under the trust. Additionally, TSPs when acting as trustees are required to make such disclosure to a regulated business when conducting a one-off transaction or entering into a business relationship (Reg 12 of the TCSP, Regulations, 2022). The provision of Regulation 12 also mandates the TSP to disclose the beneficial owners of the TSP.
33. **Criterion 25.5:** The FSC as the regulator for TSCPs under the TCSPA (Change of Name and Amendment), 2021 have adequate powers to obtain information in a timely manner from trustees and all other relevant parties on the beneficial ownership and control of trust including information on the beneficial owner, the residence of trustees and assets held and managed by FIs and DNFBPs in relation to any trustees with which they have a business relationship or one-off transaction based on the provision set out in the TCSPA and the Regulations (s.30, 31, 32,33,34 and 35 of the TCSPA and Reg 11 of the TCSP, Regulations). Further, the FSC under the POCA can examine and take away copies of any document in the control of any entity it supervises for AML/CFT (s.91A (2) POCA). As referenced in the MER, LEA investigatory powers, *inter alia*, production and inspection orders and search and seizure warrants in the POCA (s.115 etc), TPA (s.21 etc) and the Financial Investigation Division Act (s.31 etc) can also be used to obtain the information specified by c.25.5 FIs and DNFBPs, including TCSPs, in a timely manner. Based on the provisions of Regulation 9 of the TCSPs, Regulation, 2022 (register of beneficiary information) along with the requirement/ analysis referenced in 25.4 and the various record keeping requirement of the TCSPA, Trust Act, TSCPA Regulations, POCA etc, the information is available for LEAs and the FSC to access in a timely manner.
34. **Criterion 25.6:** The FSC is the competent authority responsible for the supervision of TCSPA. The FSC is authorised to share information with an authority outside of Jamaica that has corresponding functions to that of the FSC under the TCSPA (s.42 of the TCSPA (Change of Name), Amendment, 2021). Additional circumstances and persons with whom the FSC can share information are specified at s.42 a-h of the TCSPA (Change of Name), Amendment, 2021.
35. **Criterion 25.7:** All Trustees including international, domestic and professional trustees are subject to the AML/CFT regime of Jamaica by virtue of enactment of the TCSPA (Change of Name) Amendments, 2021. Further, s.3(2) of the Trust Act, 2019 stipulates that the legislation is applicable to both domestic and foreign trusts. TCSPs are subject to AML/CFT requirements of the POCA, TPA and UNSCRIA and the relevant Regulations by virtue of being classified as designated non-financial institutions (DNFBPs) in Jamaica (Terrorist Prevention (Designated Reporting Entity) and Proceeds of Crime (DNFI), Orders, 2022). The TCSPA (Change of Name) Amendments, 2021 and the Trust Act, 2019 set out a range of sanctions which are applicable to trustees and which establish proportionate and dissuasive sanctions. These sanctions are separate from the sanctions that are available under the POCA, TPA and other secondary provisions such as the Regulation. Sanctions are as follows-

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<sup>7</sup> No clear deficiency was cited in the MER of Jamaica.

- i. A Trustee who fails to keep the relevant information as required in 25.1 (a) commits an offence and is liable on summary conviction to a fine not exceeding JMD50,000.00 (327.54). - (S.30A of the Trust Act, 2019).
  - ii. TCSPs who breach the TCSPA (Change of Name), 2021 commits an offence and shall be liable on conviction to a fine not exceeding one million JMD (US\$6554.00) or a term of imprisonment not exceeding one year or to both (s.34).
  - iii. Administrative penalties are also available to the FSC for breaches by TCSPs with fines ranging from JMD\$50,000.00 (US\$196.00) to JMD300,000.00 (US\$1996-failure to produce documents or information requested by the Commission).
  - iv. Other Administrative sanctions available to the FSC for breaches to the TCSP Act ranged from issuing of directives and revocation of license
  - v. Failure to comply with CDD requirements- A fine of JMD\$5 million (US\$32,556.00) in the parish court and unlimited fine in the high court; and
  - vi. For breaches to s.16 of the TSPA- On summary conviction a fine not exceeding JMD 3 million (19,594.00) or in default of payment a term not exceeding 1 year
36. When considered in their entirety the Experts considered the range of sanctions to be proportionate and dissuasive. In determining the dissuasiveness of the sanctions, the Experts also took into consideration the range of sanctions that are available and the context of Jamaica (including most TCSPs are small firms). The authorities have also advised that the charge for the nature of the charge and the statute use will be dependent on the seriousness of the breach.
37. **Criterion 25.8:** The sanctions for breaches contained in the Trusts Act, 2019, TCSPA and the various AML/CFT laws including POCA and TPA and their Regulations are proportionate and dissuasive. The penalties are criminal in nature and are applicable to both natural and legal persons. Penalties include fines or imprisonment or both for contraventions to various provisions of the foregoing legislation and Regulations and are as follows:
- i. A trustee who contravenes s.30A of the Trusts Act commits an offence and is liable, on summary conviction in a Parish Court, to a fine not exceeding fifty thousand Jamaican dollars (US\$329.99).
  - ii. Contravention of s.15 of the TPA- A person who contravenes any of the provisions of, this section commits an offence and shall be liable on summary; conviction in a Resident Magistrate's Court to- (a) in the case of an individual, a fine not exceeding one million dollars (US\$6,599.78) or to imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment; or ( b) in the case of a body corporate, a fine not exceeding three million Jamaican dollars (US\$19,788.34).
  - iii. POCA- A business in the regulated sector (includes TCSPs) which fails to comply with any requirement or direction issued to it under Part V of POCA (Money Laundering) by the competent authority, commits an offence and is liable as per s.91A. S.94 and 95 establish offences for the non-disclosure by persons or nominated officers within the regulated sector. S.91A(5) provides for liability as follows “(a) on conviction before a Judge of a Parish Court, to a fine not exceeding three million (US\$19,788.34); or (b) on indictment before a Circuit Court, to a fine.”

- iv. The MLPRs, TCSPA and the Trust and Corporate Services Providers (Licensing and Operations) Regulations, 2022, also carry a range of fines for various offences.

### **Weighting and Conclusion.**

38. Jamaica has taken significant actions to address the deficiencies that exist in MER. The International Corporate and Trust Service Providers (Change of Name and Amendment) Act, 2021 amends the International Corporate and Trust Service Act to regulate domestic trust and corporate service providers and to change the Act. The establishment of the Trusts Act and subsequent amendments, together with the TCSPA 2019 amendment and Orders made (declaring TCSPs as reporting entities within the TPA and POCA), has introduced substantial changes to the framework rectifying outstanding deficiencies. **Recommendation 25 is re-rated to Compliant.**

#### **4.1.3.Recommendation 26 (originally rated PC)**

39. Jamaica was rated PC with R.26 in the 4<sup>th</sup> Round MER. The technical deficiencies that existed include: (i) The existence of a supervisory/regulatory gap regarding micro-finance institutions (MCIs), (ii) MCIs are not licensed or registered, (iii) Neither the Insurance, Securities nor Pensions Acts extend the fit and proper requirements to beneficial owners of licensed or registered FIs, (iv) No legal or regulatory measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest of holding a management position in an MCI, (v) Consolidated supervision not yet fully implemented, (vi) MCIs are not regulated, supervised or monitored for AML/CFT compliance, (vii) No information was provided to permit assessment of compliance with the Basel Committee on Banking Supervision Principles (BCPs), (viii) The requirements of c.26.5 are not applicable to MCIs as a supervisor has not yet been identified, (ix) The frequency and intensity of on-site inspections by the BOJ and FSC are only driven to a limited extent by ML/TF risks at the national and sectoral levels and (x) The measures identified in c. 26.6 do not fully address the requirement of the criterion for assessment of the ML/TF risk profile of a FI or group periodically.
40. **Criterion 26.1:** The supervisory/regulatory gaps that exist relative to MCIs are addressed by virtue of the enactment and implementation of the Microcredit Act (MCA) and Microcredit Rules and Regulations, 2021. MCIs are subject to the AML/CFT requirements contained in the POCA, TPA and the United Nation Security Council Resolution Implementation Act (UNSCRIA) and Regulations applicable to the foregoing laws which are applicable to all FIs and DNFbps. The BOJ is the competent authority responsible for the regulation and supervision of MCIs' compliance with the AML/CFT requirements by virtue of designation letters issued by the relevant Minister under POCA (February 25, 2021), TPA (March 5, 2021) and UNSCRIA (February 23, 2021).
41. **Criterion 26.2:** MCIs are required to be licensed in accordance with s.9 (1) of the MCA, 2021. Persons are prohibited from operating a microcredit service without obtaining a license from the regulatory authority, which is the BOJ (s.9 (2) of the MCA). The MCA, 2021 criminalises the operation of an MCI without the necessary license.
42. **Criterion 26.3:** The Insurance and Securities Acts make provision for the application of fit and proper requirements to be extended to the BO of entities operating under those legislations (s.11 (1) and 9(3) of the Insurance and Securities Acts, respectively; and Regulation 111 (1) (g) (h) and (i) of the Insurance Regulations). With respect to the private pension sector, pension services can only be provided by regulated businesses (investment managers) and investment

managers are the only obliged persons under the Pensions Act (Section 8(2)(f) of the Pensions Act). The Insurance and Securities Acts provide information regarding the BO for private pension funds given that all investment managers for superannuation funds under the Pension Act are required to be licensed as an investment manager under the Security Act and retirement schemes can only be offered by licensed securities dealers and life insurance companies. Furthermore, the MCA, 2021 provides the necessary measures for the purpose of assessing the suitability, fitness and propriety of the license applicant and substantial shareholders, and in the prevention of criminals or their associates from being a BO, or holding a significant or controlling interest of holding a management position in an MCI (s. 2 (2) and 19 of the MCA, 2021 and Reg 3 of the Microcredit (Requirements for Grant of License) Regulations, 2021).

43. **Criterion 26.4: (a)** Consolidated supervision is fully implemented with the enactment and implementation of the Banking Supervision Act (BSA). Various sections in the BSA including ss. 3, 37, 38, 39 and 68-71 make provisions for the implementation of consolidated supervision. Further, the supervision of financial holding companies (FHC) is further implemented with the enactment of the Banking Services (FHC) (License Application) Rules, 2019. Jamaica demonstrated compliance with Insurance Core Principles (ICP) 9 (Supervisory Review and Reporting) and ICP 10 (Preventative and Corrective Measures and Sanctions). Insufficient information was nevertheless provided to the Group of Experts to determine Jamaica's level of compliance with the other ICPs, where relevant to AML/CFT. With respect to the International Organization of Securities Commission (IOSCO) principles, Jamaica demonstrated that it is now compliant with the IOSCO principles, including principles 24 and 28 pertaining to collective investment schemes.
44. Jamaica was subjected to a Financial Sector Assessment Program (FSAP) by the International Monetary Fund (IMF) in 2018. The FSAP included an assessment to determine Jamaica's level of compliance with the Basel Core Principles for Effective Banking Supervision (BCPs). The report noted that Jamaica has markedly improved its compliance with the BCPs despite outstanding shortcomings that exist to become fully compliant, where relevant for AML/CFT. Since the FSAP, Jamaica has taken various actions to address the shortcomings including the implementation of a risk-based AML/CFT supervisory approach of financial groups under the BSA and risk-based supervision of the cambio sector. Whilst there are some remaining gaps related to BCPs 1, 3, 7, 14, 15 and 29, the Experts considered them to be minor given that Jamaica has taken important steps and measures to address the major shortcomings identified in the FSAP.  
  
(b) MCIs are required to comply with the preventive measures that are set out in the POCA (s.91A (2)), TPA (s.18A), 2019 and UNSCRIA as a result of the enactment and implementation of the MCA and Regulations, 2021. The BOJ is responsible for the supervision of the MCIs (s.4 of the MCA, 2021).
45. **Criterion 26.5:** The BOJ was designated as the competent authority with responsibility for the AML/CFT supervision of MCIs in March 2021. The BOJ is required to apply a risk-based approach (RBA) to AML/CFT supervision to MCIs (s.4 of the MCA). The on-site examination of the sector is yet to commence as MCIs were granted twelve (12) months from the appointed/commencement date (July 30, 2021) of the MCA, 2021 to apply for a license. Jamaica has advised that the frequency and intensity of supervision would be based on (a) the ML/TF risk at sectoral level and policies, internal controls and procedures associated with the sector and/or MCI's ML/TF risk profile; (b) the ML/TF risks identified at national level (based on the

findings of the NRA) and (c) the information gathered during the licensing process of MCIs utilized to establish a risk profile of the sector and individual MCIs operating within the sector.

46. Regarding the frequency and intensity of the on-site inspection of the other sectors, the BOJ and the FSC as the only AML/CFT supervisors for FIs apply a risk-based approach to supervision.

**FSC:** The level and frequency of supervision and the degree of intervention is dependent on the risk profile of the institutions. The primary off-site supervision tool utilised by the FSC is a self-assessment questionnaire which is utilised in conjunction with other sources of information including on-site audits, adverse media information and thematic studies, etc. The risk profile of the institution takes into consideration several different factors including the institution's internal control, size of the business, products and services and ownership structure. The on-site and off-site supervisory intensity is determined by the resultant risk rating of the entities that pose higher risk for ML/TF, which are subsequently prioritised. At the time of this re-rating assessment, the cycle used to conduct on-site inspection was high risk - 1-3 years, above average risk - 3-5 years, moderate risk - 4-6 years and low risk - 5-7 years. The FSC ensures that adequate resources are directed to areas and entities that pose higher risk for ML/TF. Additionally, the frequency and intensity of the inspections conducted by the FSC also take into consideration the ML/TF risks at the national level.

**BOJ:** The BOJ has developed a risk-based off-site thematic supervisory tool that has allowed better understanding of the ML/TF risks within the Deposit Taking Institutions (DTIs) sector following the completion of the NRA process. Thematic reviews are utilised for the DTIs' risk matrix and is used to facilitate enhanced supervisory scrutiny, as well as determine the scope of future on-site inspections. The BOJ has implemented a similar risk-based supervisory approach to that of the FSC including ensuring that the frequency and intensity of inspection are based on the risk profile of the institution. The BOJ ensures that resources are allocated to the areas and entities that are deemed to be high risk for ML/TF. This is done through the use of technology (SupTech tools). Similarly, the BOJ applies a risk-based approach to supervision of cambios and MVTS and ensures that the scope, frequency and intensity of on-site inspections are ML/TF risk driven, hence based on the risk profile of each regulated entity within the cambio and remittance sectors.

47. **Criterion 26.6:** The BOJ has remit of reviewing the ML/TF risks of FIs on an ongoing basis by means of on-site/off-site examinations on the basis of the consolidated supervision of the financial group (s. 64 (1)(a)(iii) of the BSA). In undertaking this function, as per s. 64(1) (a) (iii) of the BSA, the frequency and scope of the (on-site/off-site examinations) are determined according to the risk profile, systematic importance of the licensee and any matters that may be unique to the licensee, and not only when there are major events or developments in the management and operations of the DTI or group. A risk-based off-site thematic supervisory tool was developed by the BOJ to allow the better understanding of the ML/TF risks within the DTI sector. The BOJ periodically requests the FIs to submit data to be utilized in the ongoing understanding and managing of those risks. Similarly, FSC utilizes an AML/CFT self-assessment questionnaire for gathering information on the prime risks impacting the supervised sectors, which is annually disseminated among all licensees for the purpose of periodically updating the risk profile of each regulated business. Following the completion of an on-site inspection, FSC also updates the risk rating of the supervised entity.

### **Weighting and Conclusion**

48. Jamaica has taken actions to address most of the deficiencies identified in the MER. Jamaica remediated the supervisory/regulatory gap with respect to the microfinance sector by extending its AML/CFT regime to include MCIs, which are now required to be licensed in order to provide microcredit services and supervised, regulated and monitored for AML/CFT compliance by BOJ pursuant to POCA, TPA and UNSCRIA. The enactment of the BSA contributed to the implementation of group consolidated supervision for AML/CFT purposes. Nevertheless, there are a few outstanding deficiencies such as the lack of full compliance of Jamaica with the core principles (BCPs and ICPs). The Group of Experts appropriately weighted the deficiencies taking into consideration the factors of ML/TF risks, materiality and context in arriving at a judgement as to the rating to be applied. **Recommendation 26 is re-rated as Largely Compliant.**

#### **4.1.4.Recommendation 27 (originally rated PC)**

49. Jamaica was rated PC with R.27 in its 4<sup>th</sup> Round MER. The technical deficiencies included: (i) Micro credit lending institutions are not supervised neither are they subject to AML/CFT requirements, (ii) Given the deficiency noted in 26.1 relative micro credit lending institutions, supervisors do not have the authority to conduct inspections of these institutions, (iii) Supervisors are not authorised to compel the production of any information relevant to the monitoring compliance with AML/CFT requirements relative to micro lending institutions, (iv) Relevant enforcement powers for ML breaches do not extend to TF breaches, (v) The FSC is not empowered to administer administrative penalties for AML/CFT breaches, (v) The BOJ is unable to administer administrative penalties for AML/CFT breaches and (vi) No powers available for supervisors to sanction micro credit lending institutions.
50. **Criterion 27.1:** The BOJ is the designated competent authority responsible for monitoring and ensuring compliance by MCIs with AML/CFT requirements (s.4 of the MCA, 2021).
51. **Criterion 27.2:** The BOJ has a wide range of powers to conduct supervision, monitoring and ensuring compliance with AML/CFT requirements by MCIs including through the use of off-site and on-site inspections (s. 4 of the MCA, 2021, s. 91A(2) of the POCA and s.18A(2)(c) of the TPA, 2019).
52. **Criterion 27.3:** The BOJ and the FSC as the competent authorities responsible for the supervision of FIs (including MCIs) are authorised to examine and take copies of information or documents related to the operation of any business in the related sector (s.91A(2)(c) and 18A(2)(c) of the POCA and TPA, respectively). In practice, examinations can be conducted through off-site and on-site procedures and once an institution is approached for information, it is required to provide or grant access to the requested information. Failure to comply with a direction or requirement of a competent authority (BOJ or FSC) is considered an offence (s. 91A(5) and 18A(6) of the POCA and TPA, respectively).
53. **Criterion 27.4:** The BOJ and FSC's powers to administer administrative sanctions for breaches by FIs (including MCIs) pursuant to the requirements of the POCA and TPA and/or the ancillary Regulations are found at s.109 of the BSA and 8(1) of the FSCA. Pursuant to s. 138 of the POCA, 2019, the BOJ and the FSC can administer fixed penalty for AML breaches, however, no similar provision is contained in the TPA. Similar to the requirements of s.91A(6) of the POCA, the BOJ and FSC can suspend and revoke a license in circumstances where a reporting entity is convicted for an offence for a breach of TF regulatory measures (s.18A(6) of the TPA). Regarding the suspension and revocation of a license as cited in the TPA, this can only be done following a conviction and this represents a deficiency. Given Jamaica's ML/TF risks and



context, and taking into consideration that ML represents a greater risk than that of TF, the Group of Experts considered the deficiencies and weighted them to be minor in nature.

### **Weighting and Conclusion**

54. Jamaica has taken significant actions to address the deficiencies identified in the MER. Nevertheless, there are some deficiencies that remain, namely the lack of powers of the BOJ and FSC to administer administrative penalties for TF breaches. Given the ML/TF risks of Jamaica (based on the findings of the NRA) and context, the deficiencies were considered as minor by the Group of Experts taking into consideration that ML represents a greater risk to the jurisdiction. The Group of Experts placed more weight on the existence of a mechanism for the BOJ and FSC to administer administrative sanctions for ML infractions by reporting entities than the absence of such for TF. **Recommendation 27 is re-rated as Largely Compliant.**

#### **4.1.5.Recommendation 35 (originally rated PC)**

55. Jamaica was rated PC with R.35 in its 4<sup>th</sup> round MER. The technical deficiencies that existed included: (i) Most of the criteria for R.6 were not met and therefore sanctions were not applicable to them and (ii) whilst the fines were proportionate, the sanctions for entities (R.9-23) do not appear to be sufficiently dissuasive, considering that some entities are international companies for which the amount can be considered as minimal.

56. **Criterion 35.1:** The BOJ and the FSC are permitted to issue administrative sanctions for breaches with only some minor deficiency existing (see analysis and weighting of Experts in c.27.4). Regulation 18(4) of the TPA revised the sanctions that are applicable for breaches by reporting entities related to the overseas branches and subsidiaries. At its discretion, the court is permitted to take into account certain factors in determining the amount of the fine that can be imposed on a body corporate (s.139 of POCA). These factors include the nature of the business carried out by the body corporate, the size of the business concerned including the level of profit or total revenue generated therefrom by the body corporate and any other factor that the court consider necessary. Regarding, R.6, Jamaica was re-rated to largely compliant from partially compliant with the requirements in January 2021 as it addressed most of the deficiencies that existed. The sanctions that exist in the existing law (TPA, 2019) inclusive of life imprisonment and/ or fines are applicable to all offences committed under the TPA and its amendment. These sanctions are proportionate and dissuasive.

57. **Criterion 35.2:** The rating remains as in the MER. No changes to the AML/CFT framework.

### **Weighting and conclusion**

58. Jamaica has made significant progress to address the deficiencies that exist in its MER. The FSC and the BOJ are nevertheless unable to issue administrative sanctions against the entities they supervise for breaches under the TPA and its accompanying Regulations. Taking into consideration Jamaica's ML/TF risks, the Group of Experts assigned more weight to the sanctions that the BOJ and FSC can administer against reporting entities for ML breaches than TF, as the latter is low risk (based on the findings of the NRA). Overall, the Group of Experts considered the deficiency that exists to be minor. **Recommendation 35 is re-rated to Largely Compliant**

#### **4.1.6.Recommendation 40 (originally rated PC)**

59. Jamaica was rated PC with R.40 in its 4<sup>th</sup> Round MER. The deficiencies noted were as follows:  
(i) No indication as to whether other forms of international cooperation could be affected (or

not) by on-going investigations, inquiries or proceedings, (ii) no measures in the FSC Act with regards to ensuring that there are controls and safeguards to protect information that is exchanged, (iii) no indication that confidentiality of information is applicable to the Charities Commissioner, (iv) no umbrella provision in the TPA or TPA Regulations that are similar to s.91A of the POCA to enable sharing of information related to CFT, (v) No Provision in the TPA similar to s.91A(1)(d) of the POCA authorising the BOJ and the FSC to share CFT information relative to the requirements set out in sub-criterion 40.14(c), (vi) no provision which allows the BOJ or FSC to conduct enquiries on behalf of foreign counterparts in order to facilitate effective group supervision, (vii) No provisions in the BOJ Act or the FSC Act that require a requesting authority to promptly inform the BOJ or the FSC of its obligation to disclose or report information gathered from either supervisor in instances where they are legally obligated to disclose or report such information and (viii) the BSA is not in effect and therefore does not allow the BOJ to have the broadest parameters to exchange information.

60. **Criteria 40.1-40.3:** The ratings remain as in the MER. No changes to the AML/CFT framework
61. **Criterion 40.4:** Although the authorities provided information to demonstrate that the BOJ responses to request received were provided in a timely, the information provided does not address the requirement of the criterion (i.e. providing feedback on the usefulness of the information obtained, when requested). The rating in the MER therefore remains.
62. **Criterion 40.5:** Pursuant to section 34AA of the BOJ Act, the BOJ is permitted to collaborate with regulatory counterparts and competent authorities locally and overseas and facilitate regulatory cooperation with one or more regulatory counterparts. Collaboration includes facilitating cooperation pursuant to information sharing, investigation of regulatory breaches and related enforcement actions and implementation of strategies. Although not legally or otherwise (documented) provided for, Jamaican authorities has advised that in practice, circumstances involving where a request for assistance can impede an investigation, inquiry or proceeding legal advice will be sought from the relevant authority (including the Attorney General or the Director of Public Prosecution) on the approach that should be taken. Regulation 4 of the FSC (Overseas Regulatory Authority) (Disclosure) Regulations authorise the FSC to refuse a request in various circumstances and does not limit the refusal to circumstances where the request will impede the proceedings.
63. It should be noted that refusal is discretionary (i.e., the Regulations provide that the request “may be refused”) as implied in the criterion, Jamaica has advised that the FSC has not refused any request on the basis that it would impede an on-going investigation, inquiry or proceedings. In addition to the foregoing, LEAs, competent authorities and the FIU of Jamaica are in the practice of sharing information relative to investigations locally, regionally and internationally by virtue of the transnational nature of ML/TF. Jamaica has demonstrated, via statistics, that numerous requests are received and sent through various avenues to facilitate the international cooperation, including requests on ongoing investigations. Receipt of a request by one authority or LEA does not prohibit an interagency request being made, for example from a requesting authority to the DPP then to the BOJ, to facilitate international cooperation.
64. **Criterion 40.6:** The FSC is required to maintain confidentiality of the information it obtains from an overseas regulatory authority and shall not disclose same to any other person except in situation where it is required to do so under Jamaican law; or the overseas regulatory authority

or the person to whom the information relates consents to its release (Regulation 6 of the FSC (Overseas Regulatory Authority (Disclosure) Regulation, 2005<sup>8</sup>).

65. **Criterion 40.7:** Section 11 (1) and (2) of the Charities Act places an obligation on every person having official duty or being employed (past employees) in the administration of the Act to maintain secrecy and confidentiality. Section 11 (6) provides the legal framework in which the Charities Commission should be allowed to use the information including for tax purposes and otherwise. The use of the word “otherwise” is of concern to the Group of Experts as there is no information on the scope of which the information can be used.
66. **Criteria 40.8-40.11:** The ratings remain as was in the MER. No deficiencies cited in the MER. No changes to the AML/CFT framework.
67. **Criterion 40.12:** Competent authorities (supervisors) are permitted to share information related to CFT. Section 18A of the TPA introduced similar provisions to those found at s.91A of the POCA. The mechanism allows for, inter alia, competent authorities to share information pertaining to examinations conducted by it with other competent, supervisory and designated authorities or authority in another jurisdiction.
68. **Criterion 40.13:** The rating remains as was in the MER. No deficiency cited in the MER. No changes to the AML/CFT framework.
69. **Criterion 40.14:** The BOJ and FSC are authorised to share CFT information pertaining to sub-criterion 40.14 (c) as similar provisions to those in the POCA are now found in the TPA (see analysis 40.12). Based on the analysis mentioned in c.40.12, the BOJ and FSC are authorised to share information including that related to examination. The BOJ and FSC examinations include examination related to CDD and others specified in c.40.14 (c).
70. **Criterion 40.15:** The BOJ is permitted to render cooperation and conduct enquiries on behalf of foreign counterparts to facilitate effective group wide supervision (s.34AA (2) and (3) of the BSA). The FSC is permitted to conduct the foregoing in accordance with s.67F and 68F of the Securities Act. The requirement by the FSC to render cooperation to facilitate group wide supervision is applicable to entities mandated to operate under the Securities Act and those falling within the remit of the FSC (Overseas Regulatory Authority (Disclosure) Regulations. The BOJ can authorise and facilitate foreign counterparts request to conduct inquiries in Jamaica, in order to facilitate group wide supervision (Clause 8.1 of the MMOU). The BOJ also provided evidence of such actions occurring including with foreign counterparts who are not parties to the MMOU. No information was provided in relation to the FSC’s ability to facilitate such action. The Experts nevertheless considered this deficiency to be minor as more weight was assigned to the FSC’s ability to conduct the inquiries on behalf of the competent foreign authorities (which is mandatory) thereby ensuring the main objective of c.4015 is achieved.
71. **Criterion 40.16:** In accordance with Regulation 5 (1) of the FSC (Overseas Regulatory Authority (Disclosure) Regulations, a request for information may be executed in such as form and manner as the FSC and overseas regulatory authority may agree either generally or conditions specified by the Regulations. The conditions that are set out in the Regulations include the overseas regulatory authority provides an undertaking not to disclose the information without prior consent and the information is used for the purpose for which it was provided as

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<sup>8</sup> Although the Regulations exist pre- Jamaica on-site visit, the Regulations were never referenced by Jamaica in its TCQ and in the adopted MER.

approved by the Commission. The BOJ can effectively render cooperation in accordance with s.34AA (2)(3) and (4) of the BOJ Act and the provisions contained in the Multilateral MOU. Further, the authorities advised that a standard basis on which cooperation proceeds is the receiving party undertaking not to disclose the information without BOJ consent. Jamaica provided sanitised samples of information sharing to substantiate the foregoing.

72. Whilst, pursuant to the MMOU among Regional Authorities for the Exchange of Information and Cooperation and Consultation, 2019, to which the BOJ is a signatory, in the event that an Authority is legally compelled by an order of the court to disclose to a third party, information that has been provided in accordance with the Memorandum, that Authority should promptly notify the Requested Authority, indicating what information it is compelled to release and the circumstances surrounding its release; the requirement is limited to the parties of the MOU. Therefore, this remains as a deficiency which was considered as minor by the Group of Experts.
73. **Criteria 40.17- 40.19:** The ratings remain as was in the MER. No deficiencies cited in the MER. No changes to the AML/CFT framework.
74. **Criterion 40.20:** The single cited deficiency in the MER has been addressed. The BSA was brought into effect on September 29, 2015. The 9<sup>th</sup> and 10<sup>th</sup> Schedules of the Act provides for the broadest parameter to facilitate direct and indirect exchange of information to non-counterparts by the BOJ.

***Weighting and conclusion***

75. Jamaica has substantially addressed the requirements of R.40 including the deficiencies that were cited in the MER. Taking into consideration the ML/TF risks and context of Jamaica, minor deficiencies remain. These deficiencies include no provisions permitting the FSC to authorise or facilitate the ability of foreign counterparts to do so themselves in the context of the requirement of c.40.15 in order, to facilitate effective group supervision. Additionally, apart from the provision in MMOU among Regional Authorities for the Exchange of Information and Cooperation and Consultation, 2019 (which would only be applicable to parties of the MOU), relative to the requesting financial supervisor promptly informing the requested authority of any legal obligation to disclose or report the information; there are no legislative or otherwise provisions or other information that indicate such requirements are applicable to all requesting financial supervisors. **Recommendation 40 is re-rated to Largely Compliant.**

**5. CONCLUSION**

76. Overall, Jamaica has made significant progress in addressing the technical compliance deficiencies identified in R. 1, , 26, 27, 35 and 40 and only minor deficiencies remain and has been re-rated to largely compliant with the foregoing Recommendations. Jamaica has fully addressed the deficiencies of R.25 and has been re-rated to compliant
77. A summary table setting out the underlying deficiencies for the Recommendation assessed in this report is included in Annex A.
78. Overall, in light of the progress made by Jamaica since its MER was adopted, its technical compliance with the FATF Recommendations is as follows as of December 2022:

R.	Rating	R.	Rating
1	PC (MER 2016) PC (FUR 2021) ↑ LC (FUR 2022)	21	PC (MER 2016) ↑ C (FUR 2021)

2	PC (MER 2016) LC (FUR 2021)
3	LC (MER 2016)
4	LC (MER 2016)
5	LC (MER 2016) ↑ LC (FUR 2021)
6	NC (MER 2016) ↑ LC (FUR 2021)
7	PC (MER 2016) PC (FUR 2021)
8	NC (MER 2016) ↑ PC (FUR 2021)
9	C (MER 2016)
10	PC (MER 2016) ↑ LC (FUR 2021)
11	PC (MER 2016) ↑ LC (FUR 2021)
12	PC (MER 2016) ↑ C (FUR 2021)
13	C (MER 2016)
14	PC (MER 2016) ↑ LC (FUR 2021)
15	LC (MER 2016) ↓ PC (FUR 2021)
16	LC (MER 2016)
17	PC (MER 2016) ↑ LC (FUR 2021)
18	PC (MER 2016) ↑ LC (FUR 2021)
19	PC (MER 2016) ↑ LC (FUR 2021)
20	C (MER 2016)

22	PC (MER 2016) PC (FUR 2021)
23	PC (MER 2016) PC (FUR 2021)
24	PC (MER 2016) PC (FUR 2021)
25	PC (MER 2016) ↑ C (FUR 2022)
26	PC (MER 2016) ↑ LC (FUR 2022)
27	PC (MER 2016) ↑ LC (FUR 2022)
28	PC (MER 2016)
29	LC (MER 2016)
30	LC (MER 2016)
31	LC (MER 2016)
32	LC (MER 2016)
33	PC (MER 2016) ↑ LC (FUR 2021)
34	LC (MER 2016)
35	PC (MER 2016) ↑ LC (FUR 2022)
36	LC (MER 2016)
37	LC (MER 2016)
38	LC (MER 2016)
39	LC (MER 2016)
40	PC (MER 2016) ↑ LC (FUR 2022)

79. Jamaica has 33 Recommendations rated C/LC. Jamaica will remain in enhanced follow-up. Jamaica's next progress report is due by November 2023.

**Annex A: Summary of Technical Compliance –Deficiencies underlying the ratings<sup>9</sup>**

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating <sup>6</sup>

<sup>9</sup> Ratings and factors underlying the ratings are only include for those recommendations under review in this FUR. <sup>6</sup> Deficiencies listed are those identified in the MER unless marked as having been identified in a subsequent FUR.

R.1	PC (MER) PC (FUR-2021) LC (FUR 2022)	<ul style="list-style-type: none"> <li>• Disconnect between the application of the de minimis approach and subsequent amendments to the Regulations mandating due diligence and application of risk-based approach for all business relationships and transactions.</li> <li>• There is no mention of the allocation of resources to all competent authorities (e.g., LEAs and Office of the Director of Public Prosecution) in the NAP.</li> <li>• Not all DNFBPs (attorneys-at-law, real estate dealers and accountants) are required to have policies, procedures and controls approved by senior management.</li> <li>• No equivalent provision in the TPA or otherwise for FIs and DNFBPs to maintain procedures to assess TF risk.</li> <li>• Not all DNFBPs (attorneys-at-law, real estate dealers and accountants) are required to document and ensure that risk assessments are up-to-date.</li> </ul>
R.25	PC (MER) C (FUR)	<ul style="list-style-type: none"> <li>• All criteria are met.</li> </ul>
R.26	PC (MER) LC (FUR-2022)	<ul style="list-style-type: none"> <li>• Insufficient information provided to assess whether the FSC is fully compliant with the IAIS principles.</li> <li>• Minor deficiencies exist regarding Jamaica's compliance with the BCPs.</li> </ul>
R.27	PC (MER) LC (FUR-2022)	<ul style="list-style-type: none"> <li>• Suspension or revocation of a license by the BOJ and FSC is only permissible in the circumstance where there is a conviction.</li> <li>• The BOJ and FSC are not authorised to administer fixed penalty notice for TF breaches.</li> </ul>
R.35	PC (MER) LC (FUR-2022)	<ul style="list-style-type: none"> <li>• BOJ and FSC are not authorised to administer administrative sanctions (fixed penalty notice) for breaches under the TPA and its Regulations.</li> </ul>
R.40	PC (MER) LC (FUR-2022)	<ul style="list-style-type: none"> <li>• Concerns by the Group of Experts regarding the extent to which the Charities' Commissioner is allowed to use information and the extent to which secrecy and confidentiality will apply in those circumstances.</li> <li>• Apart from the provision in the multilateral MOU (applicable to countries that are signatories) in circumstances where the financial supervisor is under legal obligation to disclose or report the report, there is no documented requirement that they promptly inform the requested authority (BOJ and FSC) of its obligation (c.40.16).</li> </ul>

		<ul style="list-style-type: none"><li>• No provision for the FSC as appropriate to authorise or facilitate the ability of foreign counterparts to conduct enquiries themselves in order to facilitate effective group supervision</li></ul>
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December 2022

Anti-money laundering and counter-terrorist financing measures – Jamaica

## 5<sup>th</sup> Enhanced Follow-up Report & Technical Compliance Re-Rating

This report analyses Jamaica's progress in addressing the technical compliance deficiencies identified in the CFATF assessment of their measures to combat money laundering and terrorist financing of January 2017.

The report also looks at whether Jamaica has implemented new measures to meet the requirements of the FATF Recommendations that have changed since its 4th Round Mutual Evaluation assessment