



Anti-money laundering and counter-terrorist financing measures

Jamaica

3rd Enhanced Follow-Report &
Technical Compliance Re-Rating

January 2021





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JAMAICA: 3rd ENHANCED FOLLOW-UP REPORT

1. INTRODUCTION

1. The mutual evaluation report (MER) of Jamaica was adopted in November 2016. This is Jamaica's 3rd Enhanced Follow-up Report (FUR). This follow-up report analyses Jamaica's progress in addressing certain technical compliance deficiencies which were identified in Jamaica's MER. Re-ratings are given where sufficient progress has been made. This report also analyses Jamaica's progress in implementing new requirements relating to FATF Recommendations which have changed since Jamaica's assessment: R. 2, 5, 7, 8, 15, 18 and 21. This report does not address what progress Jamaica has made to improve its effectiveness. A later follow-up assessment will analyse progress on improving effectiveness which may result in re-ratings of Immediate Outcomes at that time.

2. FINDINGS OF THE MER AND 3rd FUR

2. The MER rated Jamaica as follows for technical compliance:

Table 1. Technical compliance ratings, January 2017

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

Note: There are four possible levels of technical compliance: compliant (C), largely compliant (LC), partially compliant (PC), and non-compliant (NC).

Source: Jamaica's Mutual Evaluation Report, January 2017.

<https://www.fatf-gafi.org/media/fatf/documents/CFATF-Mutual-Evaluation-Jamaica-2017.pdf>

3. Given these results and Jamaica's level of effectiveness, the CFATF placed Jamaica in enhanced follow-up.¹ The following experts assessed Jamaica's request for technical

¹ 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.



compliance re-rating with support from Law Enforcement Advisor, Pedro Harry and the CFATF Secretariat's Mutual Evaluation Team.

- Casandra Seetahal (Legal Expert), Legal Counsel II, Anti-Terrorism Unit, Office of the Attorney General and Ministry of Legal Affairs, Trinidad and Tobago.
 - Eugeline Cicilia (Financial Expert), Senior Insurance Examiner, Central Bank of Curaçao and Sint Maarten.
4. Section 3 of this report summarises Jamaica's progress made in improving technical compliance. Section 4 sets out the conclusion and a table showing which Recommendations have been re-rated.

3. OVERVIEW OF PROGRESS TO IMPROVE TECHNICAL COMPLIANCE

5. This section summarises Jamaica's progress to improve its technical compliance by:
- a) addressing certain technical compliance deficiencies identified in the MER, and
 - b) implementing new requirements where the FATF Recommendations have changed since Jamaica's assessment (R. 2, 5, 7, 15, 8, 18 and 21).

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

6. Jamaica has made progress to address the technical compliance deficiencies identified in the MER and requested a re-rating (including the revised standards) in relation to the following Recommendations:
- R. 6 and 8 which were rated NC;
 - R. 1, 2, 7, 10, 11, 12, 14, 17, 18, 19, 21, 22, 23, 24 and 33 which were rated PC;
 - R. 5, which was rated LC; and
 - R. 15 which was rated C
7. As a result of this progress, Jamaica has been re-rated on Recommendations 2, 6, 10, 11, 12, 14, 17, 19 and 33. Based on the revisions to Recommendations 5, 8, 15, 18 and 21, re-ratings have also been granted and for Recommendations 1, 7, 22, 23 and 24 the ratings remain. The CFATF welcomes the steps that Jamaica has taken to improve its technical compliance with Recommendations 1, 7, 22 and 23; however, insufficient progress and the judgement by the Jamaica's Court of Appeal (Re: Attorneys at Law) could not justify a re-rating of these Recommendations.

3.1.1. Recommendation 1 (originally rated PC)

8. In its 4th Round MER, Jamaica was rated PC with R.1. The technical deficiencies primarily related to the de minimis threshold of US\$250.00 not being based on any established criteria.



9. A business operating in the regulated sector (Financial Institutions (FIs) and Designated Non-Financial Businesses and Professions (DNFBPs)) is required to conduct its ML/TF risk assessment to determine whether simplified due diligence measures should be applied on the basis of the level of risk they have identified (Reg 7 of the Proceeds of Crime (POC) Regulations 2019). In applying the de minimis approach, a business operating in the regulated sector is required to ensure there is no knowledge, belief or suspicion that ML or TF is involved. Given the requirements of R.1, specifically those relating to criterion 1.8, the application of simplified measures by FIs and DNFBPs should be consistent with the country's assessment of risk. There is no evidence that the application of the de minimis threshold in Jamaica is based on any assessment of ML/TF risks at the country level. Therefore, the deficiency remains.

10. On this basis, Jamaica maintains a rating of Partially Compliant with R.1

3.1.2. Recommendation 6 (originally rated NC)

11. In its 4th round MER, Jamaica was rated NC with R.6. The technical deficiencies included: (i) No measures to propose designation of persons or entities to the 1267/1989 Committee or the 1988 Committee to the United Nation (UN), (ii) No mechanism for giving effect to requests from other countries, (iii) Designation requirement under the legislation only applies to entities and not individuals, (iv) No mechanism to collect or solicit information to identify persons and entities on the basis of reasonable grounds or reasonable basis when the suspect meets the criteria for designation, (v) implementation targeted financial sanctions (TFS) without delay is absence, (vi) The legislation does not make provision for freezing of funds or other assets of designated persons and entities without delay, (vii) Legislation does not provide any procedures for the submission of de-listing request to relevant UN Sanctions Committee, (viii) No procedures with regards to de-listing petitions through the office of the Ombudsman and (ix) No established procedures to authorise the access to funds frozen in accordance with UNSCR 1452.
12. The Minister of Foreign Affairs of Jamaica is the competent authority charged with the responsibility of proposing persons or entities to the UN 1267/1989 Committee or the 1988 Committee of the UN (s.8 of the Terrorist Prevention Act (TPA), 2019).
13. The Ministers of Foreign Affairs and National Security once satisfied, on written recommendation from the Director of the Financial Investigation Division (FID) and the Director of Public Prosecution (DPP) shall make a request to the United Nation Security Council (UNSC) for the listing of entity on the list of entities designated as terrorist entities by the UNSCR (s.14B of the TPA, 2019). The provision is expansive and does not prohibit the Ministers from considering requests from other jurisdictions and giving effect to such requests in accordance with the criteria set forth in UNSCR 1373. The foregoing mentioned Ministers are responsible for ensuring that all requests for listing meet the criteria as set out by the relevant UNSC, including the submission of case information (s.14B(2) of the TPA).
14. The term "Entity" is adequately defined in the TPA. The definition includes persons, group, trust partnership or fund or an incorporated association or organisation (s.2 of the TPA, 2019). Therefore, persons can be designated under the TPA.



15. Jamaica can give consideration to designation from countries as there is nothing that prevents the Ministers from doing so. Criterion 6.2 does not differentiate between the standard of reasonable grounds when a request is made of a country's own motion and when it is made upon a request by another jurisdiction, nor does it state that there must be different competent authorities in this regard. Notably, the various requirements under C.6.2 are applicable to designations via both routes. Section 14(1) of the TPA identifies the DPP as the competent authority having responsibility for making applications to a Judge of the Supreme Court for designating persons or entities that meet the specific criteria for designation; whether the designation is made of the country's own motion or pursuant to a request from another jurisdiction.
16. The Mutual Legal Assistance, Financial Crimes & Financial Services Commission Unit of the DPP's Office is the Unit responsible for receiving requests from foreign jurisdictions to carry out the obligations under the TPA. Once the Ministry with responsibility for Foreign Affairs or any other entity in Jamaica, receives a request, it is immediately forwarded to the DPP's Office. All the key entities in Jamaica have been notified of the DPP's jurisdiction on designations under the TPA to allow timely consideration to be given to these matters.
17. There is no documented measure in place for the authorities to make a prompt determination when receiving request from other countries despite the authorities communicating the mechanism and the timeline for designation to the Experts. However, the relevant authorities have been notified of the role of the DPP in respect of designations and the urgency of those matters. Additionally, a number of entities have developed SOPs to clearly establish a mechanism for working closely with the DPP.
18. Section 14(2) of the TPA establishes the legal authority upon which the DPP can make such investigation as he considers necessary prior to making an application to the Court. The DPP works in conjunction with different Law Enforcement Agencies (LEAs) and other intelligence agencies in Jamaica to obtain the information required for designation. LEAs are equipped with the relevant investigative tools under R.31 (rated LC) to conduct investigations into TF and other associated predicate offences including terrorism. The measure in place is nevertheless not documented. Targets for designation are identified through different mechanisms, such as, investigations into suspected TF activities by the different LEAs in Jamaica, intelligence and information received by the intelligence agencies and LEAs and through the analysis of suspicious transactions reports (STRs) by the FID. The DPP works closely with the Counter-Terrorism (CT) Forum, a multi-disciplinary taskforce comprising of LEAs and Intelligence Officers that are responsible for cooperating and coordinating on criminal matters such as terrorism and TF. Through the CT Forum potential targets for designation can be identified.
19. Jamaica has never requested another country to take action or to give effect under the freezing mechanism. The jurisdiction does not have a documented regime in place outlining the process for requesting another country to take action. Nevertheless, the authorities effectively communicated to the Experts the actions that will be taken should the need arise. Further, the authorities provided information to demonstrate that they can request another country to take a certain course of action relative to civil matters despite this not being present in the TPA or otherwise documented. According to the authorities where no treaty or legislation covers such



cooperation, requests of foreign jurisdictions are made in the exercise of Jamaica's sovereign prerogative and based on comity. A request for freezing can be facilitated through the foreign ministry to the competent authorities of another jurisdiction, should the need arise. Due to the fact that the TFS-TF designations are civil in nature, there are no impediments that prevent the jurisdiction from sharing copies of the designation orders and all other related information, including, the statement of case, reason for designation and supporting document where possible. Further, Jamaica has various means of obtaining additional information and sharing it within the law. For example, in accordance with s.18A (c) of the TPA, the competent authority has the power to request, examine and take away records. This information can share that information with the foreign jurisdiction for which the request is being sought. Despite there are no impediments that prevent Jamaica from taking actions as specified by c.6.2 (e), the process is not documented.

20. Regarding the implementation of TFS-TF without delay, including the freezing of funds without delay, the TPA sets out the provisions to address the freezing and designation requirements. Regarding, the implementation of freezing and designation without delay, an order granted by the Court is automatically instituted in accordance with Rule 42.8 of the Civil Procedure Rules of the Supreme Court of Jamaica. The Rule mandates that a judgement or order is required to take effect from the day it was given or made unless the court specifies otherwise. This therefore ensures that the order takes immediate effect. Jamaican authorities indicated that the order is then immediately served upon the competent authorities and FIs and DNFBSs to ensure that targeted financial sanctions takes effect without delay. The various procedures, including the SOPs of the different competent authorities responsible for TFS-TF such as the Bank of Jamaica (BOJ), Financial Services Commission (FSC) and the DPP contains information setting out the process of ensuring that TFS-TF is implemented within a 24 hours' time period, thereby ensuring that the requirement of without delay is addressed. Further, to demonstrate that the regime in place allows for TFS-TF without delay, the Experts were provided a timeline which captures the receipt of the official notification for designation request from the Permanent Mission in New York to proceeding to obtaining an Order from the Court and communicating same with the regulators for transmission to the reporting entities. The Orders are emailed to the entities to ensure that assets and funds can be identified without delay. The entire process was achieved within a twenty-four hour time-period.
21. The SOPs and Guidance Notes together with the fact that the relevant entities work closely with each other, notifying each other of possible applications for designation prior to making same, pushing out emails in advance of the receipt of the Court Order and continuous communication throughout the process, from consideration of an application for designation until the order is granted and finally to the implementation of the asset freeze, following which there are several means of publication of the order, demonstrates Jamaica's ability to continuously implement TFS without delay using the processes established.
22. The Office of the DPP, BOJ and the FSC have developed Standard Operating Procedures (SOP) to ensure that TFS-TF takes place without delay. The SOP from Office of DPP does not address the implementation of TFS without delay relative to UNSCR 1373 designations. Nevertheless, Guidance published by the jurisdiction addresses and sets out the process for the implementation TFS-TF without delay relative to UNSCR 1373. No measure was provided by



Jamaica for receipt of requests for designation from foreign jurisdictions to ensure that they can be dealt with promptly.

23. TFS-TF applies to all categories of funds and assets in Jamaica. Section 6 of the TPA in conjunction with s.14(A) makes provision for the freezing of property of a listed entity and individual. Section 2 of the TPA defines property as including money and all other property, real or personal including things in action and other intangible and incorporeal property. Further, Jamaica has demonstrated that the requirement to prohibit is inserted into the order obtained from the Court and acts as a freezing mechanism. The prohibition under s. 6 of the TPA applies to (i) property owned and controlled by the designated person and entity, directly or indirectly, (ii) property owned or controlled directly or indirectly by the designated person or entity and all individuals and entities facilitating or carrying out terrorist acts, (iii) property derived or generated from property owned or controlled directly or indirectly by the designated person or entity, (iv) entering into or facilitating any transactions in relation to any of the foregoing (above), (v) provision of financial or other related services and (vi) conversion of property.
24. Jamaica has measure in place to prohibit its nationals or any persons and entities within the jurisdiction from making funds and other resources as is specified by the requirement of c.6.5 (c) to a designated person or entity. The prohibition and asset freezing mechanisms established pursuant to s.6 and s.14(4A) of the TPA applies to persons inside and outside of Jamaica, unless permitted to do so by exemptions under s.14 (4B) of the TPA.
25. Regarding the rights for protection of bonafide third parties, the prohibition applicable under the TPA provides for some exemptions as set out in the order obtained under s. 14(4B). Further, s.6(3) provides that a person shall not be liable in any civil action for any act or omission in respect of property subject to prohibitions or asset freeze under section 6 where that person took reasonable steps to ascertain that the property was subject to a freeze or prohibition. However, the safeguards do not extend to protection against criminal prosecution.
26. Regarding deficiency that the order of the DPP did not meet the requirement of sub-criterion 6.5 (d), Jamaica has taken measures to ensure that this is addressed. In addition to measures set out in s.14(4A) and the publication of the order pursuant to s.14 (4D) and 14 (5) of the TPA and the provision for filing and service of orders issued by the Court, Jamaica authorities have developed additional SOPs and Guidance and have also revised existing SOPs to ensure that the requirement of c.6.5(d) is addressed. Further orders obtained are emailed directly to the reporting entities to ensure that communication is done immediately. This ensures the communication of designations to the financial sector and the DNFBPs immediately upon taking such action and providing clear guidance to financial institutions and other persons or entities, including DNFBPs, that may be holding targeted funds or other assets, on their obligations in taking action under freezing mechanisms.
27. Sections 14 (6), 14 (11) and 14 (10) of the TPA make provisions for measures to unfreeze funds and other assets of persons and entities that no longer meets the designation criteria pursuant to UNSCR 1373. The courts and the DPP are the entities that are responsible for ensuring that unfreezing can be done.



28. Section 14A of the TPA establishes measures for application to be made to the relevant authority of the UNSC for review of an entity or individual included on a list of entities designated as terrorist entities. The TPA makes specific reference to the UNSC 1730 and 1904 which are related to the 1988 Committee and therefore addresses the deficiency cited at c.6.6(f) in the MER.
29. Regarding the deficiency cited at c.6.6 (f) in the MER that speaks to mechanism to unfreeze funds or other assets of persons and entities with the same or similar name of the designated person or entity who were affected, s.14 (6) of the TPA allows a designated person to apply to the Court for a review of an Order granted pursuant to s.14(4) of the TPA. However, the cited provision in the law does not explicitly speaks to persons or entities that were unintentionally affected by the order. Jamaica nevertheless presented precedent to demonstrate that where a person is directly affected by an Order of the Court and is not served with such order, the court in its discretion and in an attempt to be fair and just may vary the order or take other actions as deemed necessary. Whilst the Court has the discretion to allow applications made by persons affected by a s.14 Order that was granted pursuant to the TPA, there is no absolute certainty as to the recourse relative to false positives. Further, there are no publicly known procedures to unfreeze the funds or assets of false positives.
30. Section 14 of the TPA makes provision for delisting of entities which have been designated. The TPA provides for two methods of delisting, namely via the UN Office of the Ombudsman or the Minister of Foreign Affairs. To supplement the provision in the legislation, the authorities have also published guidance to the public. The guidance includes the steps to be taken to submit delisting petitions to the office of the UN Ombudsman and makes reference to the relevant websites and address to which the petition should be sent.
31. There is provision for authorised access to funds that have been frozen in accordance with UNSCR 1452 (s.14 (4B) of the TPA).
32. **On this basis, Jamaica was re-rated to Largely Compliant for R.6.**

3.1.3. Recommendation 10 (originally rated PC)

33. Jamaica was rated PC with R.10, in the 4th round MER. The technical deficiencies that existed include; (i) No requirement to identify and verify identity of beneficial owner to the extent that there is doubt or where no person exerts control through ownership interest, (ii) There are no requirements which provide for customer due diligence (CDD) to be undertaken for beneficiaries of life insurance policies, (iii) No requirement to conduct verification of the identity of person purporting to act on behalf of a customer, (iv) The requirement for adoption of risk management procedures concerning the conditions under which a customer may utilise a business relationship prior to verification is not addressed, (v) Inability to not pursue the CDD requirements where the FIs forms a suspicion of ML/TF and reasonably believe that performing the CDD process will tip off the customer, (vi) Verification of customer information using an independent source is not present in the Terrorist Prevention Act (TPA), (vii) Verification of customer information using reliable identification data source is missing, (viii) conflicting requirements in the Regulation regarding body corporates listed on a



recognise stock exchange, (ix) De minimis level of US\$250 is not based on any adequate analysis of risk by country or FIs and (x) Legislation is limited to only where FIs are unable to identify customer as opposed to complying with relevant CDD measures as required by 10.19.

34. A business operating in the regulated sector is required to identify and verify the identity of the person exercising effective ultimate effective control of a legal person. This process includes identifying and verifying the individual who holds ten percent or more in the ownership structure of the legal person or the person exercising effective control. Where the foregoing is not possible, the Regulations make provisions for the identification and verification of the senior manager who makes and implements decisions (Regs 13 and 7 of the POC and the Terrorism Prevention (TP) (Reporting Entities) Regulations, 2019 respectively).
35. Insurance companies are captured in the definition of a business operating in the regulated sector. Insurance companies and any other businesses operating in the regulated sector are required to take reasonable measures to identify and verify the beneficiaries of life insurance policies (Reg 11 of the POC Regulations, 2019). However, the requirement does not specify at which point the identification and verification should occur. Identification and verification are part of the CDD process and also apply to the beneficiary in cases where the transaction involves a legal arrangement, or the beneficiary is designated by factors such as reference of character or class. In circumstances where the transaction involves a legal arrangement or the beneficiary is designated by reference of character or class, the identification and verification of the beneficiary are required to be done at the time of pay-out (Regs 13(1)(c) (i) (C) and 13(1)(c)(iii)(D)(i) (ii) of the POC Regulations, 2019). A business operating in the regulated sector is required to establish risk profiles regarding all aspects of the business relationship and one-off transaction (including the beneficiary) to determine whether same is high risk and in such cases, they are required to apply enhanced due diligence (EDD) measures (Regs 7A and 4 of the POC and the TP (RE) Regulations, 2019 respectively and 6A of the TPA).
36. A regulated business is required to take reasonable measures to identify and verify the identity of a person or an agent who is acting on behalf of another person or on behalf of a body corporate or other legal arrangements (Regs 11(3)(a) and 6 of the POC and TP (RE) Regulations, 2019 respectively).
37. A business operating in the regulated sector is required to establish a risk profile regarding all its business relationships and one-off transactions with a view of determining the level of risk and applying measures that are commensurate with the level of risk identified (Regs 7 and 4 of the POC and TP (RE) Regulations, 2019 respectively). The requirement to establish a risk profile of the business relationship and one-off transaction requires the regulated business to consider all information regarding the customer inclusive of the nature of the customer's business and its ownership and control structure. To further address the issue of ownership and control, a regulated business is required to identify and verify the identity of individuals who holds ten percent or more of the ownership of that person and the individual who exercise ultimate effective control of that person (See paragraph 23 above)
38. A customer is allowed to utilise a business relationship in circumstances where the relationship or one-off transaction is deemed to be low risk and simplified due diligence can be conducted (Regs 7 and 4 of the POC and TP (RE) Regulations). Verification requirements are not



necessary for these types of business relationship. The conditions that regulated businesses are required to follow prior to the application of CDD measures are captured in the Regulations and include the conduct of a proper risk assessments, documentation of risks and implementation of appropriate risk mitigation measures.

39. A regulated business that suspects that a business relationship or one-off transaction constitutes or could be related to ML and believes that conducting due diligence may lead to the tipping off of the customer, shall instead of performing CDD, file an STR (Regulation 6 (d) of the POC Regulations). The foregoing does not apply in circumstances where there is a suspicion of TF.
40. Regulation 3 of the TP (RE) Regulations, 2019 stipulates that evidence of the identity of a customer is satisfactory if it is reliable evidence of the identity of the customer from an independent source.
41. Verification of customer information using reliable identification data source is now a requirement. The definition of “customer information” now includes any other information used to verify the applicant’s identity, nature of the applicant’s business, trade, profession and source of funds. Further, the definition of “satisfactory evidence” has been amended to include reliable evidence as to the identity from a source independent to the regulated business (Reg 7(5)(b) of the POC Regulations).
42. There is now consistency and clarity with respect to the requirements regarding body corporate listed on a recognised stock exchange. Regulation 13 (e) of the POC Regulation, 2019 removed the phrase “other than a body corporate listed on the stock exchange” that was previously captured at Regulation 13 (1)(c)(iii) of the principal Regulations. The requirement now applies to all body corporate, inclusive of those listed on the stock exchange.
43. To address the deficiency that exists at c.10.14, Jamaica amended the POC Regulations. The Regulations mandate that a regulated business is required to ensure that risk management measures are applied to conditions under which the business relationship or one-off transaction is dealt with, while identification procedures to verify the applicant’s identity are being carried out (Reg 6 (a) (i) of the POC Regulations, 2019).

Despite the existence of the requirement that allows for the application of de minimis threshold, the Regulations mandate that a regulated business is required to take measures such as establish a risk profile relative to its operations (Regs 7 and 4 of the POC and TP (RE) Regulations). The establishment of a risk profile can only be done following an assessment of risk. In accordance with the cited Regulations above, the established risk profile is applicable to all business relationships and one-off transactions with a view of determining the level of risk and applying measures that are commensurate with those risks. A reporting entity is prohibited from applying the de minimis approach where there is knowledge, belief or suspicion that ML or TF is involved. A reporting entity is also prohibited from applying simplified due diligence measures in high-risk situations (Regs 7 and 4 and of the POC and TP (RE) Regulations, 2019 respectively). To further addressed the issue, the authorities have informed FIs that the de minimis approach does not absolve them from extending risk assessments to these types of transactions and have been provided with Guidance on how the de minimis approach interacts with the CDD obligations in the Regulations. In accordance with paragraph 156 of the BOJ



Guidance notes, FIs are duly informed that there is no exemption from applying risk assessment to transaction of a de minimis nature and the requirement in the laws do not absolve them from conducting their own risk assessment in relation to such transaction. Additionally, given the requirements which apply to the onboarding of customers and to undertake ongoing CDD and updating of information, the de minimis provision is in effect, applicable only to ‘one off’ transactions.

44. Where a regulated business is not satisfied with the outcome of any due diligence in respect of any business relationship and one-off transaction and there are reasonable grounds to suspect that the relationship or one-off transaction is related to ML, the regulated business is required to take certain actions including not proceeding with the transaction or making an assessment as to whether a suspicious transaction report (STR) should be filed (Reg 7 of the POC Regulations). The foregoing does not address circumstances where there is a suspicion of TF.
45. Jamaica has taken substantial measures to address the deficiencies identified in the MER. Some of the measures implemented do not apply to TF. Nevertheless, the deficiencies were considered to be minor in nature given that ML represents a greater risk to the jurisdiction.
46. **Jamaica is re-rated to Largely Compliant with R.10.**

3.1.4. Recommendation 11 (originally rated PC)

47. Jamaica was rated PC with R.11 in its 4th round MER. The technical deficiencies included: (i) record keeping provision did not specifically include account files, business correspondence and results of analysis and (ii) regulations do not specify swift provision of information to the designated authority.
48. Regulated businesses are required to keep and retain all correspondence, account files and analysis related to each transaction and business relationship (Regs 14 (4)(a)(ii) and 14(4)(b) of the POC Regulations). Reporting entities upon request, are required to submit to the designated competent authority the information that has been retained, no later than seven days after the request (Reg (14) (4) (a) of the POC Regulation). The Regulation does not preclude a demand by the authorities from requesting and receiving the information within a shorter time period as has been the experience of some competent authorities.
49. Further, section 13 of the Terrorist Prevention Act (TPA), 2019 mandates that a regulated business should provide the information to the competent authority as is specified in the notice. The TPA is silent on the timeframe in which the information should be submitted by the regulated business.
50. **Jamaica is therefore re-rated as Largely Compliant with R.11.**

3.1.5. Recommendation 12 (originally rated PC)

51. Jamaica was rated PC with R.12 in its 4th round MER. The technical deficiencies that existed included: (i) FIs are required to apply either source of funds or source of wealth verification but not both, (ii) the specific Politically Exposed Persons (PEPs) requirements for beneficiaries of life insurance policies were not addressed, (iii) no requirement for senior management



approval or EDD where higher risks relating to insurance policies are identified, and (iv) established risk profile do not take into account risk assessment of beneficial owner.

52. Jamaica has addressed identified deficiencies in the MER, through amendment to the POC Regulations, 2019 and the TP (RE) Regulations, 2019.
53. Verification of source of funds and wealth are components of the EDD procedures that regulated businesses must perform in circumstances where the business relationship or a one-off transaction is considered to be high risk (Regs 7 and 4 of the POC and TP (RE) Regulations). All categories of PEPs are classified as high-risk in Jamaica (paragraph 120- TC Annex, Jamaica Mutual Evaluation Report). Further, in accordance with Regulation 7A of the POC Regulations, 2013 one of the activities that is automatically subject to EDD measures is a business relationship or one-off transaction with persons who hold specific positions in Jamaica, internationally or with regional organisations (PEPs).
54. A regulated business is required to identify and verify the identity of beneficiaries in cases involving insurance contracts, including in cases of legal arrangements involving insurance contract (Regs 13 and 13(c)(iii)(D)(ii) of the POC Regulations and Reg 7 of the TP (RE) Regulations). The foregoing requirements apply to all beneficiaries including those classified as PEPs.
55. All categories of PEPs are automatically subject to EDD requirements as they are classified as high risk. One of the requirements of EDD is the approval of senior management to commence and continue the business relationship or one off-transaction (Regulation 7A (2) (4) (5) (a) and 6A of the POC and TP (RE) Regulations respectively).
56. A regulated business is required to establish a risk profile regarding its business relationship and one-off transaction with the view of determining the level of ML/TF risks; and employ measures that are commensurate with the identified risk (Reg 7 and 4 of the POC and TP (RE) Regulations respectively). Further, where the applicant is different to the beneficial owner, the business relationship or one-off transaction is automatically treated as a high-risk activity. A risk profile is considered to be the product of a risk assessment and should consider all aspects of the business relationship or one-off transaction including the beneficial owner. Further, Jamaica has classified all categories of PEPs as high-risk which requires more scrutiny of all aspects of the business relationship or transaction.
57. **Jamaica is therefore re-rated to Compliant for R.12**

3.1.6. Recommendation 14 (originally rated PC)

58. Jamaica was rated PC with R.14 in its 4th MER. The deficiencies noted were as follows: (i) the legislation did not provide remit or powers to sanction unlicensed Money or value transfer services (MVTs) and (ii) no active identification of MVTs.
59. The Director of Public Prosecution (DPP) is provided with the powers to institute criminal proceedings before the Court against an unlicensed MVTs (s.22D (3) of the Bank of Jamaica Act). Sanctions exist following a conviction at the summary or indictable levels. The penalty for summary conviction is JMD50,000.00 (US\$352) or imprisonment for a period not exceeding one year or both fine and conviction. The penalty for indictable convictions is



JMD100,000.00 (US\$705) or to a term not exceeding five years or both the said fine and imprisonment. In cases involving foreign currency or instruments, the court can order that same be forfeited or a larger fine not exceeding three times the value of the currency or instrument may be imposed. The financial penalties that can be administered by the court in certain circumstances are not proportionate and dissuasive. Further, only criminal sanctions are available in the jurisdiction and the Bank of Jamaica (BOJ) as a supervisor does not have any sanctioning power as was cited as a deficiency in the MER.

60. Jamaica has taken proactive measures to actively identify unregistered and unlicensed MVTS providers. The measures taken include media communication strategies such as radio programs regarding MVTS and their operations and advising persons who have information regarding illegally operated MVTS to notify law enforcement to ensure that actions can be taken against such entities. The BOJ as the supervisor for MVTS has also embarked on a communication and outreach initiative which is designed to improve financial literacy and awareness. The public initiative includes sharing of information with the public on the importance of conducting business with financial institutions, such as (banks and MSBs (cambios and MVTs)) who are required to obtain a licence to legitimately undertake business in Jamaica.
61. **Jamaica is therefore re-rated to Largely Compliant for R.14.**

3.1.7. Recommendation 17 (originally rated PC)

62. Jamaica was rated PC for R.17 in its 4th round MER. The technical deficiencies were as follows: (i) the use of the phrase “as soon as reasonably practicable” in the Regulation does not convey immediacy as is required by the FATF Recommendation, (ii) The meaning of “group” in the Regulations is unclear and lack of clarity as to whether the TPA and its Regulations apply to members of financial group, (iii) no provision which permits the sharing of information by each company to companies within a group, (iv) lack of full implementation of consolidated supervision due to the non-enactment of the Banking Supervision Act (BSA).
63. Subject to paragraph 2 of the Principal POC Regulations where- (a) There are reasonable grounds for believing that the applicant for business in a regulated business; or (b) any one-off transaction carried out with or for a third party pursuant to an introduction affected by a person who identifies the third party and has provided an assurance in accordance with paragraph 2. Where the requirements of this paragraph apply, Regulations 7 and 11 (CDD measures) shall be construed as entitling the regulated business to rely on steps taken by the person giving the assurance in paragraph 2, as carrying out the identification procedures required under those Regulations, if the information required is obtained pursuant to the procedure is transmitted by that person to the regulated business as soon as practicable after the introduction and in any event, within 15 days after the introduction (Regulation 12 of the POC Regulations, 2019). The amendment to the Regulation provides a more definitive and practical time period in which the information should be provided (Reg 12 of the POC Regulations, 2019), and does not limit the primary obligation to provide the information as fast as possible. Further, based on the requirements and the Experts’ interpretation of such, regulated businesses are not permitted to rely on CDD measures conducted by the third party, unless the information is provided within the stipulated time period. Moreover, taking into consideration the factors of



context and materiality in Jamaica’s situation, introduced business represents a small fraction of business activity in Jamaica. Based on the regulatory interactions between supervisors and FIs, FIs have demonstrated that they rarely rely on CDD measures conducted by third parties and have instead utilised and relied on their own internal processes and procedures to conduct their on CDD measures during the establishment or continuation of a business relationship or one off-transaction.

64. The definition of a group is adequately captured in accordance with the Regulation 2 of the POC Regulations, 2019. “Group” in relation to a regulated business that is a company means that company and (a) any other company that is its holding company; (b) any other company that is a subsidiary of the holding company; (c) any company that directly or indirectly controls or is controlled, directly or indirectly by any company referred to in paragraph (a) or (b); (d) any company that effectively controls or is effectively controlled by any company referred to in paragraph (a) or (b); and (e) any company that is controlled by a person who directly or indirectly controls a company referred to in paragraph (a), (b) or (c). This therefore means that the Regulations are applicable to members of a financial group where the term appears. There is no definition of group in the TPA. Nevertheless, Jamaica’s authorities, specifically supervisors, are applying the measures in the TPA to financial institutions that are a part of a financial group in accordance with the Banking Supervision Act. Under the Banking Services Act, secrecy and confidentiality is not applicable in circumstances where the sharing of information takes place among members of a financial group (s.134 of the Banking Services Act (BSA)). Despite the deficiency that still exists in the TP Regulations, due to the fact that the authorities are in practice applying the AML/CFT measures to members of a financial group, the deficiency was not considered to be egregious.
65. Companies that are part of financial group are allowed to share information for the purpose of customer identification, transaction verification and risk management (Reg 4 of the POC Regulations). The provision does not apply for the detection of TF.
66. The Banking Supervision Act was gazetted on September 30, 2015 through Jamaica Gazette No. 121A and is now law. The law fully implements the requirements for consolidated supervision.
67. **Jamaica is therefore re-rated as Largely Compliant for R.17**

3.1.8. Recommendation 19 (originally rated PC)

68. Jamaica was rated PC for R.19 in the 4th MER. The technical deficiencies identified include: (i) no provision in the TPA to apply EDD to business relationships and transactions from countries called for by the FATF and (ii) no provision for the application of countermeasures proportionate to risks when called for by the FATF.
69. A regulated business is required to apply EDD procedures in respect of its business relationships and transactions with customers domicile, resident or incorporated in specified territories² (s.10 of the TPA, 2019). Although there is no explicit reference to FATF within the

² A specified territory is defined in the legislation as any territory specified in a list, published by gazette by a designated authority as being a territory in respect of which there is a greater risk associated with ML or TF.



legislation, the definition of specified territories is sufficiently broad to capture jurisdictions listed by the FATF and independent of calls from the FATF based on the Minister's minutes that was taken to Parliament to guide the discussion of the debate on the Regulations that were adopted. The intent of Jamaica's parliament and legislation does capture the requirements of the criterion. The Experts' interpretation and analysis of the term "specified territories" are similar to that of the assessment team's interpretation and was not cited as an issue in Jamaica's MER.

70. A regulated business is required to apply enhanced countermeasures in respect of any business relationship and transaction established or conducted with any class and category of persons or applicants for business which are resident or domiciled or in the case of a body corporate, incorporated in a specified territory (Reg 8 of the POC Regulations). Similar provisions exist in Regulation 5 of the TP Regulations. The measures do not require that the application of countermeasures be proportionate with risk. Nevertheless, this was not considered to be a serious deficiency that had a significant impact on the rating assigned.

71. On this basis, Jamaica is re-rated as Largely Compliant for R.19.

3.1.9. Recommendation 22 (originally rated PC)

72. Jamaica was rated PC with R.22 in its 4th MER. The technical deficiencies identified in the MER include: (i) identification and verification measures do not require the verification of the identity of the Beneficial Owner (BO), (ii) EDD measures only require entities to obtain source of funds or source of wealth information and not both, (iii) for simplified CDD, there is no indication that this based on risk analysis but rather on the application of a de minimis approach, tipping off requirements with regards to CDD do not apply to Designated Non-Financial Institutions (DNFIs), (iv) Pending legal matter that impedes the application of AML/CFT measures to lawyers.

73. The definition of a regulated business in Jamaica captures activities of those entities that are classified as FIs and Designated Non-Financial Businesses and Professions (DNFBPs). Therefore, the measures that apply to FIs in most instances apply to DNFBPs. Similarly, where deficiencies exist in those measures that apply to FIs, they also apply to DNFBPs.

74. A regulated business is required to identify and verify the identity of the BO. This can be done by identifying the individuals who holds ten percent or more of the ownership and the individual who exercises ultimate effective control. Where the foregoing measures were applied and the BO cannot be verified and identified, the Regulations mandate that the regulated business should take measures to identify and verify the senior manager who makes and implements decisions with respect to the activities of the person (Regs 13 and 7 of the POC and TP Regulations, 2019 respectively).

75. The verification of source of funds and wealth is a mandatory requirement that regulated businesses are required to perform when conducting EDD in circumstances where a business relationship or one-off transaction is determined to be high-risk (Regs 7 and 4 (c) of the POC and TP Regulations respectively).

76. A regulated business is required to establish a risk profile and apply measures that are commensurate with and which adequately mitigates its identified risk. A regulated business is



prohibited from applying simplified CDD measures in high-risk situations (Regs 7 and 4 of the POC and the TP Regulations respectively). The provisions clearly state that the de minimis threshold should not be applied in high-risk situations. Further, a regulated business should not apply the de minimis approach in circumstances when ML/TF is suspected (see analysis in R.10).

77. In circumstances where a regulated business has reasonable grounds to suspect that that a business relationship or one-off transaction constitutes or could be related to ML and conducting the necessary due diligence will alert the person that a suspicion has been formed, the regulated business is required to suspend the due diligence and file a STR (Reg 6 (d) of the POC Regulations). There is no measure to available to address cases where is a suspicion of TF.
78. The Jamaica Court of Appeal has ruled that the General Legal Council (GLC) is the competent authority responsible for the supervision of Attorneys at Law. Most of the Jamaica's AML/CFT obligations are still applicable to the sector (see R.23 below for the exceptions). The Court of Appeal ruling has negatively impacted the GLC powers to conduct AML/CFT inspections to ensure that Attorneys at law are complying with the AML/CFT requirements and the Council's ability to apply sanctions for breaches.
79. **On this basis, Jamaica maintains a rating of Partially Compliant with R.22.**

3.1.10. Recommendation 23 (originally rated PC)

80. Jamaica was rated PC with R.23 in its 4th round MER. The technical deficiencies included: (i) DNFIs are not required to report STRs related to TF, (ii) The provisions do not specify that policies should have regards to ML risks and the size and nature of the business, (iii) there are no measures to apply EDD to countries where this called for by the FATF, (iv) no requirement to apply countermeasures appropriate to risk when called for by the FATF or at the country's own initiative and (v) tipping off provision does not apply at the point of filing a STR.

81. Most DNFBPs are now required to file TF related STR. In accordance with s. 15 (2) of the TPA, 2005 the Minister by order subject to affirmative resolution can designate an entity to which the section of law shall apply. Designations were done in November 2017 and took effect in May 2018 in relation to Accountants, Casinos and the gaming sector, and Real Estate Dealers. Attorneys were subsequently similarly designated in 2019. In accordance with s. 16 of the TPA, 2005 a reporting entity referred to s.15 (2) is required to pay special attention to all complex transactions, unusual large transactions or unusual pattern of transactions, whether completed or not, which appears to be inconsistent with normal transactions carried out by the customer or the entity. Having identified such transactions that have no apparent economic and visible lawful purpose, the reporting entity is mandated to report same to the designated authority. The above Orders made by the Minister pursuant to s. 15 (2) of the TPA had the effect of subjecting the persons in these orders to all CFT obligations that apply to reporting entities including the mandate to file STRs relating to TF. The Orders do not apply to Trust and Company Services Providers (TCSPs) and Dealers in precious stones. Nevertheless, trust and company formation services are largely carried out by entities that are supervised and regulated by the FSC. Dealers in precious metals is a relatively small sector in Jamaica (table



5-page 27). Further, the MER indicated that Dealers in precious metals and stones are excluded from the AML/CFT regime as they are prohibited from dealing with cash transactions exceeding US\$8,645.00 which is below the FATF requirement (page 29 of the MER). Although Attorneys at law are required to submit STRs in accordance with the requirements set out in the law, the Court of Appeal ruled in relation to the POC regime that the requirement was unconstitutional, null and void and is of no legal effect.

82. A regulated business (including DNFBPs) is required to establish a risk profile regarding its operations, including the environment in which operates, products offered and its distribution channels. The regulated business policy on the foregoing should take into consideration the size and nature of its operations (Regs 7 and 4 of the POC and TP (RE) Regulations, 2019 respectively). The Regulations also stipulate that the ML/TF risks should also be taken into consideration.
83. A regulated business (including DNFBPs) is required to apply EDD when conducting business or transactions with persons or companies from a specified territory (interpreted to also include when called upon by the FATF and independent of call from the FATF) (s.5 and 10 of the POCA, 2019 and the TPA, 2019 respectively) (see analysis in R. 19).
84. Regulations 8 and 5 of the POC and TP Regulations mandate that a regulated business is required to apply countermeasures. There is no requirement for the application of countermeasures to be proportionate to the level of risk (see analysis in R.19).
85. Although the provisions relative to R.19 are applicable to DNFBPs, there is no indication that there are measures in place to ensure that DNFBPs are advised of concerns about weaknesses in the AML/CFT system of other countries, unlike FIs.
86. Tipping off provisions are applicable in all circumstances to DNFBPs operating in Jamaica, including in cases where protected disclosure is to be made. A person who knows or has reasonable grounds that a protected disclosure is to be made and discloses such information commits an offence (s.6 and s.11 of the POCA and the TPA respectively). Nevertheless, for the purpose of risk management, members of a group are required to share information which can include some underlying information relative to an STR (see analysis under R.18). Due to the fact that Attorneys at law are not required to submit STRs, this provision automatically does not apply to that sector.
87. **On this basis, Jamaica maintains a rating of Partially Compliant with R. 23.**

3.1.11. Recommendation 24 (originally rated PC)

88. Jamaica was rated PC for R.24 in its 4th round MER. The technical deficiencies included: (i) lack of ML/TF risk assessment with regards to all forms of legal persons, (ii) no requirement to obtain and maintain up-to-date and accurate BO information, (iii) DNFBPs that provide services in relation to company formation are not obligated to obtain and maintain information on the ownership of companies, (iv) there is no obligation for a person resident in Jamaica to assist competent authorities with providing beneficial ownership information in respect to companies that were incorporated outside of Jamaica and have applied to establish a place of business within Jamaica, (v) no provision of the maintenance of information and records for



least five years and (vi) no measures for the reduction of risk that may arise from the issuance of bearer shares and nominee shareholders and directors.

89. Jamaica is in the process of undertaking its second NRA which would also include assessing the risk that is associated with the different types of legal persons. Whilst Jamaica's actions are noted, the deficiency still remains that there is no ML/TF risk assessment conducted with regards to the different types of legal persons.
90. Companies are required to maintain a register for the collection of information on companies BO at the registered office of the company. The Companies Act provides for the particulars of the BO information that should be maintained and mandates that every company file a notice with the Registrar regarding the location where the register of its members is kept and any change in that place (s.109 of the Companies Act). Further companies are required to keep and provide information on its BO in keeping with their obligations to file annual returns (s.122 of the Companies Act). Sections 109 and 122 of the companies Act all applicable to all companies including partnerships.
91. Lawyers and accountants are required to comply with their obligations under the POCA and the TPA. However, there are no explicit provisions mandating these two entities to maintain information on the BO of companies. Further, other DNFI's that are often engaged in formation of companies in Jamaica, such as Trust and Corporate Service Providers are not covered.
92. External Companies that have established a place of business in Jamaica are required to maintain a register of its members which is referred to as the "overseas branch register". This register should contain the names, nationalities, addresses and occupation of the BOs. Further, the register should also contain the date at which each individual was entered in the register as a BO and the date at which any person ceased to be a member or BO (s.363A of the Companies Act).
93. Companies are mandated to keep records for not less than seven years or for such other period as may be prescribed (s.390A of the companies Act). The provision is limited and does not place a direct obligation on companies to maintain the information and records on BO for a minimum of five years after the dissolution and cessation of operation of the company.
94. Jamaica has prohibited the use of bearer shares. No company is allowed enter on its register of members a share warrant. The provision is subject to terms laid out in s. 396³ of the Company Act.
95. Jamaica can share BO information relative to legal persons for investigation and prosecutions via formal mechanisms under R. 37 and other forms of cooperation, such as those specified under R.40. Additionally, BO information is accessible to the public. BO information is also shared by other competent authorities such as Bank of Jamaica (BOJ) the Financial Services Commission (FSC) and the FID.
96. Despite the actions taken by Jamaica, a significant amount of the deficiencies identified in the MER remains outstanding and is still reflective of regime with moderate shortcomings.

³ Section 396 mandates that action be taken in respect of existing bearer share warrants within the specific timeline timeframes of the date of commencement of the Companies (Amendment) Act, 2017).



97. **On this basis, Jamaica maintains a rating of Partially Compliant with R.24.**

3.1.12. Recommendation 33 (originally rated PC)

98. Jamaica was rated PC for R.33 in its 4th round MER. The technical deficiency was the jurisdiction did not maintain comprehensive statistics that reflects the overall effectiveness and efficiency of its AML/CFT systems, particularly those relative to investigations, prosecutions and confiscation.

99. Section 10 of the Proceeds of Crime (Amendment) Act, 2019 requires that supervisory and competent or designated authorities maintain statistical records on matters relevant to the effectiveness and efficiency of ML investigations, prosecutions and convictions. Similar provisions exist at s.18B of the TPA that makes provision for the keeping of statistics to allow for the measurement of the overall effectiveness of procedures under the law. Jamaica also has an institutional framework in place to ensure that the relevant statistics are maintained.

100. **On this basis, Jamaica is re-rated as Compliant for R. 33.**

3.2. Progress on Recommendations which have changed since Jamaica's Mutual Evaluation Report

101. Since the adoption of Jamaica's MER, the FATF has amended Recommendations 2, 5, 7, 8, 15, 18 and 21. This section considers Jamaica's compliance with the new requirements and how the country is addressing the deficiencies included in the MER.

3.2.1. Recommendation 2 (originally rated PC)

102. R.2 was revised in October 2018, to require countries to have a cooperation and coordination mechanism to ensure that compatibility of anti-money laundering (AML) and counter-terrorism financing (CFT) requirement with Data Protection and Privacy rules

103. In its 4th Round MER, Jamaica was rated as PC for R.2. The technical deficiencies related primarily to the absence of any national policies ; the prioritised action plan was assessed as being informed by any comprehensive national risk assessment and no policies or mechanism were in place to cooperate and coordinate with regards to combatting proliferation financing (PF) of weapons of mass destruction.

104. Jamaica has implemented a priority action plan based on the recommended actions that were outlined in the MER. The jurisdiction has signaled its intention to develop national strategies following the completion of its NRA. Despite the actions taken by Jamaica, the measures do not sufficiently address this deficiency in the MER as the strategies have not been developed.

105. In accordance with the Terms of Reference of the Counter- Terrorism (CT) Forum, competent authorities are mandated to take actions to cooperate, coordinate and exchange intelligence on matters relative to the proliferation financing of weapons of mass destruction. The CT forum comprises of persons from the intelligence community, law enforcement, FID and the Ministry of National Security. Representatives from these agencies are also a part of the National Anti-Money Laundering Committee (NAMLC)



106. Cooperation and coordination between relevant authorities are compatible with Jamaica's data protection law. Jamaica's Data Protection Act makes provision for exemptions for data standard and disclosure of data requirements. Data protection and privacy rules do not apply in cases involving national security, law enforcement, taxation and regulatory activities (Part V- s. 32- 42).

107. **On this basis, Jamaica is re-rated to Largely Compliant with R.2.**

3.2.2. Recommendation 5 (originally rated LC)

108. In February 2016, a new obligation was added to the Recommendation, requiring countries to criminalise the financing of foreign terrorist fighters (FTFs). In its 4th Round MER, Jamaica was rated as LC for R.5. The technical deficiency related primarily to sanctions in respect to legal persons are not effective, proportionate and dissuasive.

109. Pursuant to s. 4 to 12 of the Terrorist Prevention Act (TPA), the court can impose a financial penalty in respect of breaches committed by a body corporate. Judicial officers are endowed with the powers as to the fine that should be applied and are guided by sentencing guidelines, precedent and principles established by case law. The law does not state what is the maximum or minimum sentence and this is left up to the Court. In light of precedent and principles established via case law and other guiding documents such as the Sentencing Handbook, it is evident that Judicial Officers of the Courts are guided by specific considerations when calculating penalties. Although this may not suffice to establish effectiveness, from a technical standpoint, the principles to be applied by the Court during sentencing supports the conclusion that the trial judge should apply proportionate and dissuasive sanctions.

110. In Jamaica, facilitating a terrorist act includes providing any financial or other services to facilitate a person leaving or attempting to leave Jamaica in order to carry out a terrorist offence (s.3 of the TPA). Further, the definition of terrorism offence captures the provision of or receipt of training. It also captures conspiracy, attempt to commit, aiding or abetting, procuring or counselling (s.2 of the TPA).

111. **On this basis, Jamaica maintained a rating of Largely Compliant with R.5**

3.2.3. Recommendation 7 (originally rated PC)

112. In November 2017, the Recommendation was revised to reflect the relevant United Nations Security Council Resolutions (UNSCRs) on proliferation since the issuance of the FATF Standards were issued in February 2012.

113. Jamaica was rated PC for R.7. The deficiencies related to the following; (i) The need for clarity on a direct and without delay freezing obligation, (ii) No need to provide for 3rd party rights protection and delisting obligation, (iii) No regulation setting out the reporting requirement to be observed by financial institutions (FIs) and Designated Non-Businesses and Professions (DNFBPs), (iv) No issuance of guidance to FIs and DNFBPs outlining the procedures for implementation of TFS-PF and (v) The obligation to comply with the Regulations under the legislation does not extend to lawyers.



114. In accordance with s.3 of the United Nation Security Council Resolutions Implementation Act (UNSCRIA) the Minister is granted powers to make regulations to give effect to the decisions by the UNSC. Reporting entities are obligated to submit reports in respect of persons or entities that have been designated in accordance with s. 5 (2) of the UNSCRIA. Section 3(2) which allows for the Minister to make regulation also gives rise to the freezing of assets of entities and persons designated. Thus far, the Regulation made by the Minister is only applicable to Democratic Republic of Korea (DPRK) and does not apply to Iran. The UNSCRIA which was amended by Act No.15 of 2019 makes provision for the Minister to make regulation no later than 30 days or as soon as possible thereafter. The term as soon as possible has the potential to negate the 30-day implementation period.
115. The DPP has the power to apply to the Court for an order to declare a person or entity as a designated entity or person (s.3A of the UNSCRIA.) Section 8 of the UNSCRIA prohibits persons from dealing the assets of a designated entity or person. An application made by the DPP to designate an entity is subject to Part 11 of the Civil Procedure Rules. The Order will therefore contain provision for prohibiting the entity and any other person from dealing with the asset as per the requirements of the TPA and UNSCRIA. Nevertheless, the foregoing measures do not fully address the requirement to implement freezing without delay.
116. A person or entity proscribed/designated under the UNSCRIA can submit delisting requests to the competent authority or directly to the focal point established for delisting under the UNSCR 1730 (s.3 of the UNSCRIA, 2019). Whilst the law makes provision for the delisting, it is limited and does not provide detail guidance, such as to the procedure that should be followed for delisting. Further, although Jamaica has public delisting procedures, however, there are no provisions in the UNSCRIA or the guidance which speak to false positives or the consideration of 3rd party rights relative to delistings.
117. The rights of bonafide third parties who act in good faith in dealing with assets is protected (s.3 (2) (fa) of the UNSCRIA, 2019). The foregoing is limited and does not address bonafide third parties in all instances, for example, in cases where an injunction was order under s.7 of the UNSCRIA.
118. FIs and DNFBPs are required to determine whether they have in their possession or control assets owned or controlled by or on behalf of a designated person or entity (s. 5 (2) of the UNSCRIA, 2019). Section 5 (3A) of the UNSCRIA, 2019 mandates that FIs and DNFBPs are required to submit reports to the competent authority
119. Jamaica has provided guidance to FIs and DNFBPs outlining the procedures for implementing TFS (Para 50 to 56 of the BOJ Guidance and Para 1015 to 1019 of the FSC Guidance).
120. The obligation to comply with Regulations under the UNSCRIA applies to Attorneys at law as this was not impacted by the Court of Appeal ruling- FIs and DNFBPs are required to carry out their obligations in respect of designated entities. However, some obligations only apply to entities designated at s.3 and not s.3A of the UNSCRIA. Further, the Regulations made under s.3 only applies to the DPRK and do not extend to Iran.
121. Despite the actions taken by Jamaica to address the requirements of the Recommendation, several deficiencies cited in the MER still remain outstanding or were only



partially addressed. The existing framework for TFS-PF in Jamaica still remains reflective of a regime with moderate shortcomings.

122. **On this basis, Jamaica maintained a rating of Partially Compliant with R.7.**

3.2.4. Recommendation 8 (originally rated NC)

123. Jamaica was rated NC for R.8. Recommendation 8 was substantially revised in October 2016 subsequent to the completion of the onsite visit. The revision was to align the methodology for R.8 with the revised R.8 and the interpretive note to R.8.

124. Charitable organisations (NPOs) as defined in the legislation captures the FATF definition of NPOs as per the definition of NPOs by the FATF. This has essentially caused Jamaica to identify the sub-set of NPOs that should be subject to regulation and supervision. Jamaica has not conducted any risk assessment of NPOs to identify the nature of the threat posed by terrorist entities to NPOs which are at risk as well as how terrorist actors abuse these NPOs. As a result of not properly addressing c.8.1 (b), this has cascading impact on c.8.1 (c) and (d) which were not addressed by Jamaica.

125. NPOs are required promote accountability, integrity and public confidence in the administration and management of NPOs (s.5 of the Charities Act). Outreach and educational programmes have been also been conducted with NPOs by Jamaican authorities. Nevertheless, there is no evidence of work conducted with NPOs to develop and redefine best practices to address TF risks and vulnerabilities. NPOs are required to keep financial records and are encouraged to conduct transactions via regulated financial channels (s.27 of the Charities Act).

126. The Charities' Authority established in accordance with s.6 of the Charities Act is responsible for the effective monitoring of NPOs. However, there is no evidence to demonstrate that risk-based measures are applied to NPOs at risk for TF abuse. Monitoring of NPO is done via oversight and inspection of records, accounts and securities and other assets of the entities. The Charities Authority can refuse, suspend and revoke registration for any possible violation (s.19, 21 and 22 of the Charities Act). However, the sanctions in place are not proportionate and dissuasive.

127. The Charities' Authority is authorised to cooperate and share information with public bodies and investigative authorities with respect to fulfilment of its function under the Act (s.8 and 9 of the Charities Act). The Charities Act confers investigative powers on the Charities Authority (s.9). The Charities Authority is equipped to carry out its function in accordance with c.8.4 (c) (s.27,28 and 29 of the Charities Act). The authority can share information with an investigative authority but there is no requirement for this information to be shared promptly when there is suspicion of TF or any of the activities identified in c.8.4 (d) (s.9(4) of the Charities Act).

128. The Charities' Authority is responsible for rendering international cooperation (s.9 (5) of the Charities Act).

129. **On this basis, Jamaica is re-rated as Partially Compliant with R.8**



3.2.5. Recommendation 15 (Originally rated C)

130. In October 2019, a significant revision was made to the methodology to reflect amendments to the FATF Standards relative to virtual assets and virtual assets (VAs) Service Providers (VASPs).
131. Jamaica was rated C for R. 15 in its 4th round MER. As a result of the revisions made to the methodology following the conclusion of the onsite visit and adoption of Jamaica's MER, the CFATF procedures mandate that Jamaica be assessed in accordance with the revision.
132. In assessing this Recommendation and arriving at a suitable rating, the Experts placed significant weight to factors such as context, materiality and ML/TF risks. Due to the recentness of the amendments, Jamaica has not sufficiently addressed most of the requirements of the Recommendation.
133. Jamaica does not prohibit the operation of VAs and VASPs, therefore, the Experts were required to consider all of the criteria of the Recommendation in this assessment and arriving at the rating assigned. Nevertheless, the Jamaican authorities have not granted any licensed or registered any VAs and VASPs to operate in the jurisdiction as there is no licensing regime or supervisory regime currently in place. The authorities have taken some actions to identify natural and legal persons carrying out VASPs activities unlawfully. These measures include conducting checks of open sources on the internet and reviewing newspapers and other publications, conducting checks of its STR database and requesting information from the public on persons and entities who are conducting VASPs operations. Taken into consideration that there is no evidence of VASPs operating in Jamaica, the experts gave significant weighting to this in determining the overall rating that should be assigned for Recommendation 15.
134. Jamaica's authorities have not conducted any ML/TF risks assessment associated with VAs and VASPs and this remains one of the most significant deficiencies that have an impact on the rating.
135. Jamaica has a comprehensive legal framework that allows for the rendering of international cooperation. Jamaica was rated largely compliant for R 37-39 and partially compliant for R.40. The existing mechanisms for rendering cooperation are also applicable for rendering cooperation relative to VAs and VASPs. This is based on the fact that the authorities are permitted to render assistance in relation to any criminal property and conduct. The definition of "Property" is found in the Interpretation Act and includes tangible and intangible, corporeal or incorporeal matters. Under the Mutual Legal Assistance Treaty (MLAT), criminal matters pertaining to proper restraint, confiscation and forfeiture and the authorities can render cooperation in relation to all criminal matters involving criminal properties including VAs and acts by VASPs. In accordance with Recommendation 40 the FID and other LEAs such as the Police can render cooperation on issues relative to VAs and VASPs in accordance with their different multi-lateral and bilateral agreements such as MOUs. Further, LEAs and the FIU can share information relative to VAs and VASPs via different organisations such as the Egmont Group, Interpol and the Asset Recovery Network of the Caribbean (ARIN-CARIB) should the need ever arise. Due to the fact that VAs and VASPs are currently not supervised and regulated in Jamaica, there is no supervisory authority for the sharing of information relative to these



types of activities. Nevertheless, the Jamaican authorities envisioned that the Financial Service Commission will be the designated competent authority to supervise VASPs in the future. Once designated, the FSC will be equipped with the relevant powers to render international cooperation under several existing pieces of legislation including the FSC Act (s16), the POCA (S.91A) and the TPA (S.18A)

136. Despite the efforts taken by Jamaica to address the requirement of Recommendation 15, deficiencies remain outstanding relative to VASPs and VAs, principal among them being the requirement to conduct a ML/TF risk assessment of the activity.

137. **On this basis, Jamaica is re-rated to Partially Compliant with R.15.**

3.2.6. Recommendation 18 (originally rated PC)

138. Recommendation 18 was revised in February 2018 to reflect the November 2017 amendment to the FATF Standards (INR.18) which clarified the requirement on sharing of information and analysis related to unusual or suspicious transactions within financial groups and the interaction of these requirements with the provisions of R.21.

139. Jamaica was rated PC for 18 in its 4th round MER. The deficiencies identified were as follows: (i) compliance programs did not require FIs to consider the size of the business, (ii) legislation does not explicitly provide for group AML/CFT policies for implementation of adequate safeguards on confidentiality and use of information exchanged and (iii) no requirement for financial group to apply appropriate measures to manage ML/TF risk and inform home supervisors where the host country does not permit proper measures.

140. Jamaica has made significant strides to address the deficiencies cited in the MER through amendments to the Proceeds of Crime (ML) (Amendment) Regulations, 2019 and the Terrorism Prevention (Reporting Entities) (Amendment) Regulations.

141. A regulated business is required to establish and implement program, procedures, policies and controls as may be necessary, taking into consideration the size of the business (Reg 4 of the POC Regulations, 2019). A similar requirement exists at Regulation 6A (1) of the TP Regulation, 2019.

142. The deficiency in the MER cited at c.18.2 remains outstanding.

143. Regulated businesses that are members of a group are required to ensure that there are policies that permit the sharing of information not protected from disclosure within the group. Additionally, the Regulations mandate that policies should be implemented for safeguarding the confidentiality and governing the use of, the information shared (Regulation 4 of the POC Regulations, 2019). This measure nevertheless does not apply for TF purposes.

144. Members of a financial group are permitted to share information for the purpose of risk management (Reg 4 of the POC Regulations, 2019). The Regulations require such entities to implement proper risk management systems, which facilitate the sharing of the underlying information on customers deemed as high risk and whose information may have been captured in an STR filed. The sharing of information for the purpose of risk management does not apply to TF.

145. Where a regulated business becomes aware of any instances in which the overseas branches or subsidiaries are unable to conform with the requirements relative the management of AML/CFT risks and the implementation of policies etc, the regulated entity is required to undertake specific measures. These measures include; (a) the branch or subsidiary advising of such inability, and applies appropriate measures to mitigate the risk of ML posed to the regulated business and (b) the regulated business informing the competent authority concerned of its inability and measures taken to mitigate the risk (Regulation 15 of the POC Regulations, 2019). Similar measures exist at Regulation 8 of the TP Regulations

146. Despite the fact that there are still some gaps relative to addressing TF, given the risk and context of Jamaica, where ML presents a greater risk, the deficiencies were considered to be minor therefore an upgrade to the rating was concluded as appropriate.

147. **On this basis, Jamaica is re-rated as Largely Compliant with R.18.**

3.2.7. Recommendation 21 (originally rated PC)

148. R.21 was revised in February 2018 to clarify that measures to prevent tipping off are not intended to inhibit the sharing of information under R.18.

149. Jamaica was rated PC with R.21 in its 4th MER. The technical deficiencies included: (i) measures prohibiting tipping-off are limited to situations where an investigation is either prejudiced or where information is disclosed on an on-going or pending ML investigation and (ii) tipping-off provision does not apply to STRs or related information that is in the process of being filed with the FIU.

150. A person commits the offence of tipping-off, if he knows or have reasonable grounds to believe that a protected disclosure has been made or is to be made and that person discloses to another person any information or any other matter relating to that disclosure (s.6 of the Proceeds of Crime Act (POCA) (Amendment) 2019). Similar provision exists at s.11 of the Terrorist Prevention Act (TPA),2019.

151. Tipping-off provision does not inhibit the sharing of information under R.18 as members of financial group can share information for the purpose of risk management, despite the fact that an STR is treated as a protected disclosure.

152. **On this basis, Jamaica is re-rated to Compliant with R.21**

3.3. Brief overview of progress on other Recommendations rated NC/PC

153. Jamaica has not reported progress in the other Recommendations rated NC/PC.

4. CONCLUSION

154. Overall, Jamaica has made noteworthy progress in addressing the technical compliance deficiencies identified in its MER and has been re-rated on thirteen (13) Recommendations.



155. Five Recommendations remain rated PC (1,7, 22, 23 and 24), whilst Jamaica fully addressed the deficiencies in Recommendations 12, 21 and 33 which are re-rated as C. Jamaica has also addressed most of the technical compliance deficiencies identified on Recommendations 2, 6, 10, 11, 14, 17, 18 and 19 such that only minor shortcomings remain, and these Recommendations are re-rated as LC. Recommendation 5 maintained a rating of LC. Recommendation 8 is upgraded to PC and Recommendation 15 was downgraded from C to PC.

156. In light of Jamaica’s progress since its MER was adopted, its technical compliance with the FATF Recommendations has been re-rated as follows:

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

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

157. Jamaica will remain in enhanced follow-up on the basis that it has eight and more PC ratings for technical compliance (13 in total) and has a low or moderate level of effectiveness for seven or more of the 11 effectiveness outcomes (10 in total) (CFATF Procedures, para. 83(a)). According to the enhanced follow-up process, Jamaica will continue to report back to the CFATF on progress to strengthen its implementation of AML/CFT measures.



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Anti- money laundering and counter-terrorism measures in Jamaica

3rd Enhanced Follow- up Report and 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.