

# Anti-money laundering and counter-terrorist financing measures

## Isle of Man

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

November 2022

Follow-up report



**The Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism - MONEYVAL** is a permanent monitoring body of the Council of Europe entrusted with the task of assessing compliance with the principal international standards to counter money laundering and the financing of terrorism and the effectiveness of their implementation, as well as with the task of making recommendations to national authorities in respect of necessary improvements to their systems. Through a dynamic process of mutual evaluations, peer review and regular follow-up of its reports, MONEYVAL aims to improve the capacities of national authorities to fight money laundering and the financing of terrorism more effectively.

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The 4<sup>th</sup> Enhanced Follow-up Report and Compliance Re-Rating on Isle of Man was adopted by the MONEYVAL Committee through written procedure (19 September – 31 October 2022).

## *Isle of Man: Fourth Enhanced Follow-up Report*

### 1. INTRODUCTION

1. The mutual evaluation report (MER) of the Isle of Man was adopted in December 2016 and its third Enhanced Follow-up Report (FUR) in September 2020. This FUR analyses the progress of the Isle of Man in addressing the technical compliance (TC) deficiencies identified in its MER. Re-ratings are given where sufficient progress has been made. Overall, the expectation is that countries will have addressed most if not all TC deficiencies by the end of the third year from the adoption of their MER.

### 2. FINDINGS OF THE MUTUAL EVALUATION REPORT AND SUBSEQUENT FURS

2. The MER and subsequent FURs rated the Isle of Man as follows for technical compliance:

**Table 1. Technical compliance ratings, September 2020**

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

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

*Source:* [Third enhanced follow-up report, September 2020.](#)

3. Given the results of the MER, the Isle of Man was placed in enhanced follow-up<sup>1</sup>. The first enhanced FUR submitted by the Isle of Man was discussed at the 56th Plenary meeting in July 2018. As a result of this discussion, the Isle of Man was re-rated C or LC with eight FATF Recommendations (R.5, R.6, R.16, R.24, R.29, R.32, R.33 and R.35) – all upgrades. The second enhanced FUR submitted by the Isle of Man was discussed at the 58th Plenary meeting in July 2019. The Isle of Man was re-rated C or LC with four FATF Recommendations (R.11, R.12, R.17 and R.25) - all upgrades. Following a revision to R.5 since the on-site visit, the Isle of Man was also rated C with R.2 (no change). A third enhanced FUR was considered via written procedure in September 2020. As a result of this discussion, R.21 was re-rated as C (upgrade), and following a revision to R.15 since the on-site visit, the Isle of Man was rated LC with R.15 (previously C). Discussion of R.23 was deferred pending a review of this Recommendation by the FATF. At the 61<sup>st</sup> Plenary, the Isle of Man was invited to submit a fourth enhanced follow-up report in April 2024. Following a change to the Interpretative Note to R.23, the 63<sup>rd</sup> Plenary agreed that this fourth enhanced FUR should be considered instead via written procedure.

4. The assessment of the Isle of Man request for a technical compliance re-rating and the preparation of this report were undertaken by the following Rapporteur team (together with the MONEYVAL Secretariat):

- San Marino

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<sup>1</sup> Regular follow-up is the default monitoring mechanism for all countries. Enhanced follow-up involves a more intensive process of follow-up.

5. Section 3 of this FUR summarises the Isle of Man'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**

6. This section summarises the progress made by the Isle of Man to improve its technical compliance by addressing the technical compliance deficiencies identified in the MER for which the authorities have requested a re-rating (R.23).

7. This report takes into consideration only relevant laws, regulations or other AML/CFT measures that are in force and effect at the time that the Isle of Man submitted its country update report – at least six months before the FUR is due to be considered by MONEYVAL<sup>2</sup>.

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

8. Whilst the Isle of Man has made progress to address the technical compliance deficiencies identified in the MER, it has not been re-rated on R.23.

##### ***Recommendation 23 (Originally rated PC – no re-rating)***

9. In its third enhanced FUR, the Isle of Man was rated PC with R.23, based on there being: (i) no specific requirement in the AML/CFT Code or Gambling Code in relation to having an independent audit function; and (ii) no specific requirement in the AML/CFT Code for groups to have group-wide programmes against ML/TF.

10. Paragraph 30(1) of the AML Code and paragraph 25(1) of the Gambling Code deal with both compliance management arrangements (arrangements for managing risk) and testing of the system (monitoring operational performance of arrangements). However, the capacity in which “testing” is to be conducted is not clearly expressed and appears closer to the type of monitoring that is carried out as part of a compliance role rather than to establish the effectiveness of overall AML/CFT policies and processes and the quality of risk management (objective of an independent audit).

11. Responsibility for compliance management and testing rests with the same person at management level – pointing to testing having a compliance rather than audit focus. This is because the same person cannot be responsible for both putting compliance arrangements in place and then testing/auditing their effectiveness. This compliance focus is clearest under the Gambling Code, where paragraph 25(3) states that these functions shall be performed by the “AML/CFT Compliance Officer”.

12. This need for a separate audit function is recognised for TCSPs. Like financial institutions, they are subject also to the Financial Services Rule Book. Rule 8.6(4)(a)(iv) requires licence holders to establish appropriate independent audit procedures to test adherence to regulatory requirements. This additional requirement is not in place for other types of DNFBP.

13. Accordingly, this deficiency (c.23.2 implementing c.18.1(d)) has been addressed for TCSPs, but not addressed for other DNFBPs.

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<sup>2</sup> This rule may be relaxed in the exceptional case where legislation is not yet in force at the six-month deadline, but the text will not change and will be in force by the time that written comments are due. In other words, the legislation has been enacted, but it is awaiting the expiry of an implementation or transitional period before it is enforceable. In all other cases the procedural deadlines should be strictly followed to ensure that experts have sufficient time to do their analysis.

14. In October 2021, the FATF adopted minor changes to the Interpretative Note to R.23 to clarify how existing requirements in R.18 (to implement group-wide AML/CFT programmes) apply to DNFBPs. These minor changes clarify that: (i) the requirements of R.18 on group-wide programmes apply to DNFBPs operating under the same structures as financial groups<sup>3</sup> (conventional groups) (whereas this was not clear before); and (ii) countries should also consider applying the requirement for group-wide programmes to other DNFBP structures (unconventional structures). The summary for the FATF October 2021 Plenary that adopted the changes records that application of this clarification: (i) would apply in the next round of assessments; and (ii) could be taken into account in the current round (particularly for conventional DNFBP groups) where warranted by risk and context.

15. Whilst no DNFBP groups (conventional or unconventional) are controlled from the Isle of Man (and so the absence of a requirement to design and roll-out group programmes has had only a limited effect), one third of the 105 TCSPs that are licenced there are a part of a conventional TCSP group and so should be required to “take” programmes. The main effect of the deficiency noted in the MER is that there is no clear statutory gateway to ensure that: (i) information can be shared by branches and subsidiaries that are TCSPs in the Isle of Man for the purposes of group CDD and ML/TF risk management (c.18.2(a)); and (ii) customer, account and transaction information necessary for AML/CFT purposes (including transactions and activity that appear unusual) can be provided by branches and subsidiaries that are TCSPs in the Isle of Man to group-level compliance, audit and/or AML/CFT functions (c.18.2(b)).

16. Notwithstanding this, the authorities consider that it is common practice in the Isle of Man for there to be data sharing agreements in place between TCSPs and their customers to allow data, including personal data, to be exchanged throughout the TCSP group, in line with data protection legislation and consistent with an exemption to the duty of confidentiality that would otherwise apply. The effect of such agreements would be to allow data to be shared in order to manage group ML/TF risk.

17. In the time available, it was not possible for the Isle of Man to demonstrate the extent to which: (i) this practice is followed amongst the 35 TCSPs identified as being part of a TCSP group; or (ii) such agreements cover all of the data elements of c.18.2.

18. Recognising: (i) the summary record of the FATF October 2021 Plenary; and (ii) statement in chapter 1 of the MER that the TCSP sector is considered by the authorities to be a significant sector (third after banking and insurance/pensions) and to present the highest ML risk (medium-high), it is considered appropriate to assess compliance with c.18.2 (through c.23.2) under the current evaluation round, and to conclude that the deficiency has not been addressed.

19. This means that two deficiencies under R.23 remain outstanding: (i) the requirement to have an independent audit function to test systems in place in DNFBPs, except for TCSPs; and (ii) the requirement for DNFBP groups to implement group AML/CFT programmes, i.e. to design and roll-out such programmes for conventional groups controlled from the Isle of Man, and “take” such programmes for subsidiaries and branches in the Isle of Man that are parts of foreign controlled groups.

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<sup>3</sup> A conventional group operates under the same structure as a financial group (i.e., parent/subsidiary-branch structure). Non-conventional groups do not operate like conventional groups, but they share common ownership, management, or compliance control.

20. In considering the effect that the first deficiency has on the rating for R.23, it is noted that there is already a requirement for testing compliance (with AML/CFT legislation), but the objective of this function appears to be compliance focussed. Whilst it is noted that this gap applies to the Isle of Man's largest non-financial sector (gambling), this sector has been assessed by the authorities as presenting a medium ML risk (due to the risk that casinos may be owned and/or controlled by criminals rather than because of criminal activity by customers) and a low TF risk. Other DNFBP sectors for which the deficiency remains are not considered to be material. In considering the effect that the second deficiency has on the rating for R.23, it is noted that the authorities have not demonstrated that Isle of Man branches and subsidiaries of TCSP groups would be able to share data in line with c.18.2 in order to manage group ML/TF risk, notwithstanding the jurisdiction's assessment of risk in this particular sector (medium-high risk).

21. Accordingly, R.23 remains **partially compliant**.

#### 4. CONCLUSION

22. Overall, whilst the Isle of Man has made progress in addressing the TC deficiencies identified in its 5<sup>th</sup> Round MER, it has not been re-rated on R.23.

23. Steps have been taken to improve compliance with R.23, but gaps remain. The Isle of Man is encouraged to continue its efforts to address the remaining deficiencies.

24. Overall, in light of the progress made by the Isle of Man since its third FUR was adopted, its technical compliance with the FATF Recommendations has not been re-rated and remains as follows:

**Table 2. Technical compliance with re-ratings, November 2022**

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

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

25. According to Rule 21, paragraph 8 of MONEYVAL's Rules of Procedure for the 5th round of mutual evaluations, the general expectation is for countries to address most if not all of the technical compliance deficiencies by the end of the 3rd year after the adoption of the MER.

26. The Isle of Man's 5th round MER was adopted in December 2016. In line with of Rule 21, paragraph 8 it was expected that the Isle of Man address most, if not all, of its technical compliance deficiencies by December 2019. As it has done so, the length of follow-up reporting intervals should be increased.

27. The Isle of Man will remain in enhanced follow-up and will continue to report back to MONEYVAL on progress to strengthen its implementation of AML/CFT measures. The Isle of Man is expected to report back in three years' time.

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

This report analyses Isle of Man's progress in addressing the technical compliance deficiencies identified in the Mutual Evaluation Report of December 2016 and subsequent Follow-Up Reports.