



Anti-money laundering and counter-terrorist financing measures

JAMAICA

6th Follow-up Report &
Technical Compliance Re-Rating

December 2023

Follow-up Report





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

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Jamaica’s Sixth Enhanced Follow-Up Report 2023

1. INTRODUCTION

1. The mutual evaluation report (MER) of Jamaica was adopted in November, 2016, during the XLIV Caribbean Financial Action Task Force (CFATF) Plenary held in the Turks and Caicos Islands and published in January 2017. Since it met the thresholds of having eight or more NC/PC ratings for technical compliance and a low or moderate level of effectiveness for seven (7) or more of the eleven (11) effectiveness outcomes, Jamaica was placed under the enhanced follow-up process¹.
2. This FUR analyses the progress of Jamaica in addressing the technical compliance requirements of the recommendations being re-rated. Technical compliance re-ratings are given where sufficient progress has been demonstrated.
3. This report does not analyse any progress Jamaica has made to improve its effectiveness.
4. The assessment of Jamaica’s request for technical compliance re-ratings and the preparation of this report were undertaken by the Group of Experts consisting of Mr. Paul Innis (Legal Expert), Head of Compliance, General Registry, Ministry of Finance and Commerce, The Cayman Islands and Ms. Tevince Cooker (Financial Expert), Deputy Director, Financial Services Regulatory Commission (St. Kitts Branch), St. Kitts and Nevis with support from Mr. Pedro Harry, Law Enforcement Advisor of the CFATF Secretariat.
5. Section IV of this report summarises the progress made to improve technical compliance. Section V contains the conclusion and a table illustrating Jamaica’s current technical compliance ratings.

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

6. Jamaica’s MER ratings² and updated ratings based on its earlier FUR³ are as follows:

| R. | Rating | R. | Rating |
|----|---|----|-------------------------------|
| 1 | PC (MER 2016) PC (FUR 2021) LC (FUR 2022) | 21 | PC (MER 2016) ↑ C (FUR 2021) |
| 2 | PC (MER 2016) ↑ LC (FUR 2021) | 22 | PC (MER 2016) PC (FUR 2021) |
| 3 | LC (MER 2016) | 23 | PC (MER 2016) PC (FUR 2021) |
| 4 | LC (MER 2016) | 24 | PC (MER 2016) PC (FUR 2021) |
| 5 | LC (MER 2016) ↑ LC (FUR 2021) | 25 | PC (MER 2016) ↑ C (FUR 2022) |
| 6 | NC (MER 2016) ↑ LC (FUR 2021) | 26 | PC (MER 2016) ↑ LC (FUR 2022) |

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.

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

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

| | |
|-----------|-------------------------------|
| 7 | PC (MER 2016) PC (FUR 2021) |
| 8 | NC (MER 2016) ↑ PC (FUR 2021) |
| 9 | C (MER 2016) |
| 10 | PC (MER 2016) ↑ LC (FUR 2021) |
| 11 | PC (MER 2016) ↑ LC (FUR 2021) |
| 12 | PC (MER 2016) ↑ C (FUR 2021) |
| 13 | C (MER 2016) |
| 14 | PC (MER 2016) ↑ LC (FUR 2021) |
| 15 | LC (MER 2016) ↓ PC (FUR 2021) |
| 16 | LC (MER 2016) |
| R. | Rating |
| 17 | PC (MER 2016) ↑ LC (FUR 2021) |
| 18 | PC (MER 2016) ↑ LC (FUR 2021) |
| 19 | PC (MER 2016) ↑ LC (FUR 2021) |
| 20 | C (MER 2016) |

| | |
|-----------|-------------------------------|
| 27 | PC (MER 2016) ↑ LC (FUR 2022) |
| 28 | PC (MER 2016) |
| 29 | LC (MER 2016) |
| 30 | LC (MER 2016) |
| 31 | LC (MER 2016) |
| 32 | LC (MER 2016) |
| 33 | PC (MER 2016) ↑ LC (FUR 2021) |
| 34 | LC (MER 2016) |
| 35 | PC (MER 2016) ↑ LC (FUR 2022) |
| 36 | LC (MER 2016) |
| R. | Rating |
| 37 | LC (MER 2016) |
| 38 | LC (MER 2016) |
| 39 | LC (MER 2016) |
| 40 | PC (MER 2016) ↑ LC (FUR 2022) |

7. Given these results and the effectiveness ratings in the MER, Jamaica was on enhanced follow-up as of the last FUR⁴.

3. OVERVIEW OF PROGRESS TO IMPROVE TECHNICAL COMPLIANCE

8. In keeping with the CFATF Mutual Evaluation Procedures, this FUR considers progress made up until 1 January 2022. In line with the CFATF Mutual Evaluation Procedures and FATF Methodology, the Group of Experts' analysis has considered progress to address the deficiencies identified in the MER and the entirety (all criteria) of each Recommendation under review, noting that this is cursory where the legal, institutional or operational framework is unchanged since the MER or previous FUR.

9. This section summarises the progress made by Jamaica to improve its technical compliance by implementing new requirements where the FATF Recommendations have changed since the MER was adopted.

4. Progress on Recommendations which have changed since adoption of the MER and FURs⁵

4.1. Recommendation 22 (originally rated PC)

10. In its 4th Round MER, Jamaica was rated PC with R.22. Jamaica applied for re-rating for R.22 as part of its [3rd Enhanced FUR with Technical Compliance \(TC\) re-rating](#). Whilst the technical compliance requirements were in place at the time of the re-rating and most DNFBPs were

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

⁵ [Third](#) and [Fifth](#) FURs

required to comply with them, the jurisdiction nevertheless maintained a rating of PC largely due to the technical compliance requirements were not applicable to Attorneys at law as a result of the constitutional challenge by the Jamaica Bar Association against the AML/CFT requirements of the POCA applicable to the sector. The challenge by the Jamaica Bar Association was successful at the Court of Appeal in Jamaica. Subsequently, the Government of Jamaica (The Attorney General) and the General and Legal Council (AML/CFT Supervisor) appealed the decision of the Jamaica Court of Appeal to the United Kingdom Judicial Committee of the Privy Council (JCPC) (Jamaica's final Appellate Court) where the decision was favourable to the Appellants.

Introduction

11. The requirements in the analysis are applicable to all DNFBPs in Jamaica, as required by the FATF Methodology with the exception of Dealers in Precious Metals and Stones (DPMS) given that operators in the sector are prohibited from engaging in activities specified in c.22.1 (c) of the Methodology of c.22.1 (see explanation in paragraph 13). The analysis of this Recommendation addresses the outstanding deficiencies that were identified in the analysis relative to R.22 as identified in [Jamaica's 3rd Enhanced FUR with TC re-rating](#). The analysis of R.22 in this report should be read in conjunction with the analysis of R.22 in the approved and published Jamaica's 3rd Enhanced FUR with TC re-rating. The legal and institutional frameworks remain the same since the 3rd FUR with TC re-rating and are applicable.
12. DPMS are not considered as DNFBPs as they are prohibited from engaging in cash transactions with customers equal to or above USD/EUR15,000.00 (s.101A of the POCA)⁶. Jamaica has appropriately identified all sectors that are identified as DNFBPs based on the definition in the FATF Glossary and has applied the applicable FATF requirements to them.
13. **Criterion 22.1:** Jamaica was re-rated to LC for R.10 in its [3rd Enhanced FUR with TC re-rating report](#). The CDD requirements as outlined in R.10 are applicable to all regulated businesses including Designated Financial Businesses and Professions (DNFBPs). Attorneys at law were not required to comply with the requirements given the challenge by the Jamaica Bar Association against the provision of the POCA (see analysis in paragraphs 72-79 of the 3rd Enhanced Follow-Up Report). Attorneys at law are now required to comply with the CDD requirements of R.10 when engaged in transactions specified in c.22.1 (d) given the ruling by the United Kingdom Judicial Council of the Privy Council (JCPC) in the case [Attorney General and the General Legal Council \(Appellants\) v The Jamaica Bar Association](#) (Respondent). The CDD requirements include, in circumstances where DNFBPs form a suspicion of ML and they reasonably believe that performing the CDD process will tip off the customer and therefore they should not pursue the CDD process and instead file an STR (Reg 6(d) of the Proceeds of Crime (POC) (ML) Regulations, 2019). The outstanding deficiency in R.10 following the re-rating is . no requirement to forego the CDD process and file an STR where there is a suspicion of TF and this is also applicable to all DNFBPs. Having considered and weighted the deficiency that exists, the Group of Experts considered this deficiency to be minor (consistent with the conclusion arrived at in R.10 and given that there is no change in the TF risk), taking into consideration that risk associated with TF in Jamaica is low based on the findings in the NRA. .
14. **Criterion 22.2:** Jamaica was rated LC for R.11 in its [3rd Enhanced FUR with Technical Compliance \(TC\) re-rating report](#). The record-keeping requirements identified in R.11 are also applicable to DNFBPs. DNFBPs are required to, *inter alia*, maintain business correspondence and results of analysis taken relative to each transaction and business relationship and account files and submit such information to the competent authorities within no later than seven-days (Reg 14(4)(a)(i) and 14(4)(b) of the Proceeds of Crime (POC)(ML)). In Jamaica's context, The

⁶ See analysis in the approved and published Jamaica's 5th FUR with TC re-rating: Paragraph 19.

Group of Experts in the context of Jamaica considered the seven day time period for submission of information to competent authorities to be reasonable. Similar record-keeping mechanism exists in the Terrorist Prevention Act (TPA) including at s.13A(c)(i)). The requirements in the TPA mandate that the information be provided based on a notice from the competent authorities. The TPA nevertheless does not provide a timeline for the submission of the information similar to the provision in POC (ML) Regulations and this was noted as a deficiency by the Group of Experts. Nevertheless, similarly to the analysis in R.11, the Jamaican authorities have advised that the notice to reporting entities including DNFBPs to provide information contains the timeframe for the submission of the information. This explanation was considered and accepted by the Group of Experts. The deficiency was nevertheless noted given that the requirement is not legislated. Having considered that the most important essential elements of the criterion are addressed, given the risk of TF in Jamaica is low⁷ and consistent with the analysis of R.11, the Group of Experts considered this to be a minor deficiency.

15. **Criterion 22.3:** Jamaica was rated C for R.12 in its [3rd Enhanced FUR with Technical Compliance \(TC\) re-rating report](#). The requirements applicable to Politically Exposed Persons (PEPs) as required by R.12 including those specified at c.12.4 are applicable to DNFBPs, including Attorneys- at law based on the provisions of Regs 13(1)(c)(i), 13(1)(c)(iii) and 7 of the POC (ML) Regulations, 2019 and Reg 13 of the TP Regulations, 2019.
16. **Criterion 22.4:** Jamaica was rated compliant for R.15 in its MER⁸. The absence of requirements for DNFBPs to identify and assess their TF risk that may arise in the development of new products, new business practices including new delivery mechanisms and the use of new or developing technologies for both new and pre-existing products was cited in the MER as a deficiency (see para 187, page 135). (C.15.1) DNFBPs are required to establish risk profiles regarding their operations, generally having regard to, for example, their distribution channels, their products offered and the national, regional and international environment in which they operate (Reg 6A(5B) of the TP Regulations, 2019). The requirements of Reg 6A(5B) of the TPA Regulations implicitly mandate DNFBPs to conduct risk assessments and make reference to non-exhaustive factors for consideration in conducting the risk assessment despite not reproducing verbatim the requirement in the criterion. The requirement in the Regulation was considered and accepted by the Experts to be broad in scope and sufficient to address the requirement of the sub-criterion. (c.15.2(a)): The measure nevertheless does not require the assessment of TF risk prior to the launch of new products, practices and technologies. In assessing the requirements of the criterion, the Group of Experts considered and weighted the deficiency taking into consideration TF risk is rated as low and the context in which entities in Jamaica's DNFBP sector operate (i.e. business and activities cater for more domestic clients) and therefore considered the foregoing deficiency to be minor. (C.15.2 (b)) Reg 6A(5B) (b)(i)(ii) of the TP Regulations, 2019 requires DNFBPs to implement proper control to mitigate the identified risk.
17. **Criterion 22.5:** Jamaica was rated LC for R.17 in its [3rd Enhanced FUR with Technical Compliance \(TC\) re-rating report](#). The requirements of R.17 are also applicable to all reporting entities which by definition in the legal framework includes DNFBPs. The requirements are addressed by virtue of the provisions of Regs 2, 6 7,11 and 12A of the POC (ML) Regulations,

⁷ NRA Cap 5 – Section 5.1.1 – Page 57 - In considering all of the available evidence, the level of risk in relation to the extent to which Jamaica is engaged in funding domestic or international terrorism, or is considered a transit point for the latter, the level of terrorism financing vulnerability has been assessed as **LOW**. Similarly, in the absence of either intelligence or evidence, the assessment of the terrorism financing threat has been determined as **LOW**.

⁸ The revised R.15 including measures to address VAs and VASPs was assessed in the 3rd FUR for technical compliance re-rating report in which Jamaica was re-rated PC. Criteria 15.1 and 15.2 had no impact on the downgrade. This was largely due to the absence of measures to address VAs and VASPs (c.15.3-15.11).

2019 (see paragraphs 62-66 of the 3rd Enhanced FUR with TC re-rating). The deficiencies which were identified in R.17 and applicable to this criterion, include, whilst DNFBPs that are part of a financial group are required to share information for the purpose of customer identification, transaction verification and risk management for ML purposes, the foregoing is not applicable for TF. Taking into consideration the TF is rated as low based on the findings of the 2021 NRA, the context in which DNFBPs operate and consistent with the rating assigned to R.17, the Group of Experts considered this deficiency to be minor.

Weighting and Conclusion

18. Jamaica has substantially addressed the deficiencies that were identified in its 2017 MER and remained outstanding in its 3rd Enhanced FUR relative to R.22. Most of the measures in place are captured in the POC (ML) Act and ML/TF Regulations and are applicable to ML and to a lesser extent TF. The remaining deficiencies include, deficiencies identified in R.10 and 17 have a cascading impact on the Recommendation; no timeline in the TPA for the provision of information (as required by R.11) and no requirement to conduct TF risk assessment prior to the launch of new products, practices and technology. The Group of Experts considered and weighted the deficiencies that exist on the basis of risk (TF risk low) and considered same to be minor, taking into consideration that risk associated with TF is considered to be low based on the findings of the NRA. In weighting the deficiencies, the Group of Experts also considered the context in which DNFBPs in Jamaica operate and the most important elements of the requirements are addressed. **Jamaica is re-rated as Largely Compliant with R 22.**

4.1.1. Recommendation 23 (originally rated PC)

19. In its 4th round MER, Jamaica was rated PC with R.23. Jamaica applied for re-rating for R.23 as part of its [3rd Enhanced FUR with Technical Compliance re-rating](#) and maintained a rating a rating of PC. This rating of PC was maintained as a result of the technical compliance requirements not being applicable to Attorneys at law as a result of the constitutional challenge by the Jamaica Bar Association against the AML/CFT requirements of the POCA that are applicable to the sector and TCSPs not designated by the Minister to submit TF related STRs.

Introduction

20. The analysis represented in R.23 is applicable to all DNFBPs in Jamaica as required by the FATF Methodology with the exception of DPMS given that operators in the sector are prohibited from engaging in activities specified in c.22.1 (c) of the Methodology (see explanation in paragraph 13). The analysis addresses the outstanding gaps identified in the 3rd FUR for re-rating for re-rating relative to R.23. The analysis of R.23 in this report should be read in conjunction with the analysis of R.23 in the approved and published Jamaica's 3rd Enhanced FUR with TC re-rating.
21. **Criterion 23.1:** Jamaica was rated compliant in its MER for R.20. The legislative provisions are applicable to all reporting entities (FIs and DNFBPs). In its 3rd Enhanced FUR with TC re-rating the deficiencies were TCSPs were not required to file TF-related STRs and Attorneys at law were not required to comply with the obligations given the challenge by the Jamaica Bar Association. Given the successful outcome of the ruling by the UK JCPC relative to Attorney at law and the designation order signed by the Minister in 2022 relative to TCSPs, all DNFBPs in Jamaica including Attorneys at law and TCSPs are required to comply with the requirements of R.20. Jamaica has designated TCSPs as reporting entities pursuant to the Terrorism Prevention (Designated Reporting Entity) (Trust and Corporate Services Providers) Order, 2022 which was signed by the Minister. As a result of the Order, the deficiency highlighted in the [3rd Enhanced FUR for TC re-rating](#) (see para 81) is addressed and makes it obligation for TCSPs to file STRs relative to TF. Further, TCSPs are required to be licensed pursuant International

Corporate and Trust Services Providers (Change of Name and Amendment) Act, 2021 and the Trust and Corporate Services Providers (Licensing and Operations) Regulations, 2022 and are now considered regulated businesses that are subjected to the requirements of the TP Act and Regulations. Attorneys at law are required to comply with the existing requirements in the law (see paragraph 81 of the 3rd FUR with TC re-rating) and submit STRs to the FIU that are linked to ML and TF, regardless of the amount and inclusive of attempted transactions given the ruling by the JCPC in the case of [Attorney General and the General Legal Council \(Appellants\) v The Jamaica Bar Association](#). Submission of STRs by Attorneys at law is not required if the relevant information was obtained in circumstances where Attorneys at law are subject to legal professional privilege as per footnote 67 of the FATF Methodology. This addresses the deficiencies highlighted in paragraph 81 (final sentence) in the [3rd Enhanced FUR with TC re-rating](#).

22. **Criterion 23.2:** Jamaica was re-rated to LC for R.18 in its [3rd Enhanced Follow-Up Report and Technical Compliance Re-rating Report](#). All DNFbps in Jamaica including Attorneys at law (given the ruling by the JCPC) are required to comply with the requirements specified in the analysis of R.18. DNFbps including Attorneys at law that are members of a group are also permitted to share information not protected from disclosure subject to policies and regulations governing confidentiality governing the use of the information (Reg 4 of the POC (ML) Regulations, 2019). The deficiencies in R.18 as identified in the [3rd Enhanced FUR with TC re-rating](#) are applicable to this analysis, including the requirement of Reg 4 not being applicable to TF. These deficiencies were considered as minor in the analysis of R.18 and also applicable in this regard taking into consideration that the DNFbp sector is a less material sector and is less at risk for ML/TF in comparison to the financial sector and consistent with the findings in the [3rd Enhanced FUR with TC re-rating](#).
23. **Criterion 23.3:** Jamaica was re-rated to LC for R.19 in its [3rd Enhanced Follow-Up Report and Technical Compliance Re-rating Report](#). The requirements of R.19 (specifically for c.19.1 and 19.2 that are applicable to FIs are also applicable to DNFbps in Jamaica as these are considered as reporting entities (see paragraph 83 and of the 3rd FUR with TC re-rating). Regarding the requirement of c. 19.3 which was cited as a deficiency in the 3rd FUR with TC re-rating (see paragraph 85), Jamaica publishes Gazettes which would list the Specified Territories which have been deemed a greater associated risk of ML and TF. The information in the Gazette outlines what the designation means, the nature of the FATF call for action and the regulated entities' obligation to apply EDD or other counter-measures.
24. **Criterion 23.4:** Jamaica was re-rated to Compliant for R.21 in its [3rd Enhanced Follow-Up Report and Technical Compliance Re-rating Report \(see paragraphs 148-152\)](#). All DNFbps in Jamaica are required to comply with the obligations specified in R.21 including Attorneys at Law which was flagged as deficiency at paragraph 86 of the 3rd Enhanced Follow-Up Report with TC Re-rating. Given the ruling by the UK JCPC in the case of [The Attorney General and the General Legal Council \(Appellants\) v The Jamaican Bar Association \(Respondent\) \[2023\] UK PC 6](#), which was delivered on 9 February, 2023, Attorneys at law are required to comply with all of the existing AML/CFT measures that are applicable to the sector including tipping off provisions.

Weighting and Conclusion.

25. Jamaica has substantially addressed the deficiencies that exist in the MER. These deficiencies were largely addressed due to the ruling by the UK JCPC in the case of "[The Attorney General and the General Legal Council v The Jamaican Bar Association \(2023\) UK, PC 6](#)" in which the State was successful. The deficiencies that exist in c.23.2 were appropriately considered and weighted by the Group of Experts, taking into consideration context (most DNFbps are not part

of a group). Having considered and weighted this deficiency, the Group of Experts considered the deficiencies to be minor. **R.22 is re-rated to LC**

4.1.2.Recommendation 24 (originally rated PC)

26. In its 4th round MER, Jamaica was rated PC with R.24. The deficiencies identified were, *inter alia*, no ML/TF risk assessment relative to legal persons, no requirement to obtain and hold up-to-date and accurate BO information and no international co-operation with regards to BO. Given the substantial changes that were made to the legal framework governing transparency and BO of legal persons since the publication of the MER in 2017, a decision was taken to re-assess R.24 in its entirety.
27. **Criterion 24.1:** (a) Various sections including ss.3-14 and 25 of the Companies Act 2004, as amended, contain provisions to identify and describe the different types (including limited by shares, companies limited by guarantees and unlimited companies, form and basic features of legal persons created in the country. Further information identifying and describing the different types and forms of legal persons is publicly also available on the [Companies Office of Jamaica \(COJ\)](#) website (Guide to Legal Persons). (b) The Guide to Legal Persons sets out, *inter alia*, the process for the creation of legal persons as well as obtaining and recording basic and BO information. The information (Guide) is publicly available.
28. **Criterion 24.2:** Through its [2021 ML/TF NRA](#), Jamaica assessed the ML/TF risks associated with all types of legal persons created in the country. The risk assessment was robust and included a wide range of stakeholders, including the COJ.
29. **Criterion 24.3:** Companies, including overseas companies operating in Jamaica, are required to be registered with the COJ. Companies incorporated in Jamaica, are required to provide the Registrar with all required information including company name, proof of address, proof of incorporation, legal form and status, the address of the registered office, basic regulating powers and list of directors are required to be submitted to the COJ which is required to maintain this information (ss.3,8,11,12, 15 and 363 of the Companies Act, 2004 as amended). Pursuant to section 363(1) of the CA, companies incorporated outside Jamaica, have an additional obligation to inform the Registrar of the name and address of the person authorised in Jamaica to accept on behalf of the company service of process. Under section 12 of the CA, the registration of a company and issuance of the certificate (by virtue of section 13 of the CA) is conclusive evidence that the company is duly registered The foregoing information is publicly available on the [COJ website](#) via the search bar.
30. **Criterion 24.4:** Section 390A mandates that companies are required to keep such documents as may be prescribed. Section 183 requires that companies maintain a register of directors to be kept at the company registered office (which must be located in Jamaica⁹). Companies are required to keep the required information as specified in c.24.3 including a register of its members containing information relative to, *inter alia*, the number of shares and category of shares and the voting rights held by each member, the names, nationality, addresses and occupations of the members (s.109 (1) of the Companies Act, 2004) With respect to members who are legal persons, companies are required to provide the name, date of incorporation, country, state or jurisdiction of incorporation or registration, registered address or principle place of business, the tax information, the share capital and a statement of the shares held by the member Companies are also required to prepare and file annual returns (to contain the company name, its TRN equivalent tax identification number) The requirement in the Companies Act, implicitly requires companies to maintain information on the articles of incorporation (which contains, *inter alia*, the basic regulating powers and basic information in 24.3) as they are

⁹ Pursuant to s.8 of the Companies Act as amended, the registered office of a company must be located in Jamaica.

mandated to give copies of the articles of incorporation to any member who request such (s.22). Failure to comply with the obligations of s.22 constitute an offence. Pursuant to section 363A of the CA, Companies are required to maintain the Registrar of members in Jamaica, keep the register updated with the most current information and notify the Registrar of any change to the location where such Register is kept (s.109(3) of the Companies Act, 2004, as amended). Companies incorporated outside of Jamaica but have nevertheless established a place of business within Jamaica are required to comply with the requirements of s.109 of the Companies Act, 2004, as amended (s.363A of the Companies Act, 2004, as amended). Pursuant to s.118 (1) of the Companies Act, 2004, as amended, companies having share capital which carry on a business in any country outside of Jamaica may cause to be kept in that register of members (branch register). The company is nevertheless required to give the registrar notice of where the branch register is kept and any change in its situation within 14 days of the opening of the office or change in situation.(s.18(2) of the Companies Act, 2004, as amended)

31. **Criterion 24.5:** Companies are required to ensure that the information required to be maintained pursuant to c.24.3 and 24.4 is accurate and updated on a timely basis (s.109 (3)(b) and (5)(b) of the Companies Act, 2004 as amended). Further, companies are required to file annual returns containing, *inter alia*, the names, address, and occupations of past and present members prior to the first anniversary of the company's incorporation (s.122(1) of the Companies Act, 2004, as amended). The Registrar also has the authority to request information from the company to determine whether the information held in the company register of members is accurate, adequate and up to date (s.113F of the Companies Act, 2004, as amended).
32. **Criterion 24.6:** The definition of BO in the Companies Act of Jamaica fully complies with the definition of BO in the FATF Glossary. Jamaica utilised a multi-pronged approach to ensure that company BO information is available within the country. The company registry and company themselves nevertheless remains the main sources of BO information for the purposes of R.24.

Companies: Along with the company registry, this represents one of the main mechanisms for the maintenance of BO information in Jamaica Companies are required to obtain and hold accurate, adequate and up-to-date information on their BO (s.109 and 363A (a) of the Companies Act, 2004, as amended). Further, in accordance with s.377S, the company has an obligation to obtain BO information including in circumstances where the company has notice of a change in BO information or of any changes in the particulars of any such BO. The company has an obligation to verify the BO information and appoint an officer to conduct such verification (s.377T of the Companies Act, 2004 as amended). Companies are obligated to notify the Registrar of any changes in the BO of the company and changes to the particulars of a BO (s.377W of the Companies Act, 2004, as amended). Competent authorities can determine in a timely manner the BO as companies are required to maintain a register of members which also includes BO at the registered office of the company which must be located in Jamaica (s.109 (1) and (2) of the Companies Act. Further, notice must be sent to the Registrar indicating where the register of members is kept and of any changes to the register (s.109 (3) of the Companies Act, as amended).

Company Registry: The COJ which is a competent authority in Jamaica maintains an [online registry](#) with BO information. A company or intended company is mandatory required to deliver a BO return to the Registrar, annually, made up to a date not later than the date which is from time to time the company's return and within 14 days after any change in BO information occurs before the next annual filing (s.377A of the Companies Act, 2004, as amended). The Registrar is required to establish and maintain accurate, adequate and up-to-date BO information (s.377J of the Companies Act 2004, as amended). The power to ensure that the BO is accurate, adequate and up to date is set out at ss.113a and 377E of the Companies Act, 2004, as amended. Note

that section 352(1C) and (1D) of the Companies Act, 2004 as amended permits the direct and unrestricted access to BO information in the registry of the COJ.

FIs and DNFBPs: For CDD purposes (c.10.10 and 22.1), FIs and DNFBPs are required to maintain BO information (Regs 13 and 7(d) of the POC (ML) and TP (RE) Regulations, respectively. This is an additional step (not the main mechanism) in the maintenance of BO information.

33. **Criterion 24.7:** Companies and the Company Registry are required to ensure that BO information is accurate and up-to-date pursuant to ss.109, 113A 377E, 377T, 377W of the Companies Act, 2004 as amended. Where there is a change in BO or any changes in particulars of the BO, companies are required to update the Registrar within 14 days after any changes in BO or changes in the particulars of the BO (s.377J of the Companies Act, 2004, as amended). Additionally, companies are also required to update the information within the time frame specified in the notification to the member, at least once per year, or as directed by the Registrar (s.377S of the Companies Act, 2004 as amended).w. The 14-day timeline, the mandatory obligation, and the legislative powers afforded to the Registrar to request updated information allows the Registrar to verify the BO information upon submission by the person and Company whether annually or more regularly. The Group of Experts are of the view that this is sufficient to ensure that BO information recorded in the Company Registry is up-to-date as soon as possible.
34. **Criterion 24.8:** (a) and (b) A person (interpreted by the Group of Experts to mean natural person) or body corporate is required to co-operate with the Registrar in the exercise of the functions conferred on the Registrar by the Act (s.377O of the Companies Act, as amended). The functions of the Registrar are significantly broad and include ensuring that all basic and BO information is submitted by companies. Further. it is the duty of all officers, employees and agents (past and present) of the company and auditors (past and present) to furnish upon request by the Registrar a copy its registrar of members (s.113A and 113C). Pursuant to ss.11, 377A and 377W of the Companies Act, 2004, as amended, companies are required to co-operate with competent authorities to the fullest extent possible in an effort to determine the BO and submit basic information including via the annual returns. All relevant persons are accountable to the competent authority (company registrar) given failure to co-operate constitute an offence. .
35. An officer, employee or agent of the company is required to answer any questions put by the Registrar to them concerning the BO of a company or provide such information in writing (s.377AC of the Companies Act, 2004 as amended). Pursuant to s.163 of the Companies Act, as amended, all officers and agents of a body corporate whose affairs are being investigated are required to produce all books and documents relating to the company as the case may be.
36. Through its regulatory powers, the Financial Services Commission (FSC) (as the supervisor of TCSPs) is authorised to request basic and BO information (s. s,30, 31, 32,33,34 and 35 of the TCSPA and Reg 11 of the TCSP, Regulations). LEAs also have the necessary investigative powers such as production orders to obtain such information from FIs and DNFBPs (s.115 of the POCA). A full analysis regarding the foregoing is found at paragraph 33 in the 5th Enhanced Follow-Up Report.
37. Pursuant to the CA any failure to submit the BO return; filing false information; hindering or obstructing the Registrar from inspecting the Register of Members and BOs, failure to verify the beneficial ownership information, appoint an officer or such officers with responsibility for conducting verifications, hindering or obstructing the examination of a company by the Registrar or not answering questions posed by the Registrar can result in the Company being prosecuted, and, in some cases can also result in the company being struck from the register e.g. (in the case of non-compliance with BO returns obligations). Additionally, proportionate, and

dissuasive sanctions (\$5 million on a company and \$3 million on an individual) (section 377A, 377W,377AC) can be applied to the company and each officer for failure to maintain/ obtain a register of members and beneficial owners, failure to deliver a BO return or failure to notify the Registrar within 14 days of any change to the BO information.

38. **Criterion 24.9:** Every company is required to keep documents as may be prescribed for not less than seven years or for such period as may be prescribed (s.390A and 377R of the Companies Act, 2004, as amended). Further, pursuant to s.390B of the Companies Act, 2004 as amended, companies have an obligation to maintain information and records related to, *inter alia*, basic regulating powers and BO for a minimum of seven years after the company is wound up or struck from the register, maintain the BO information and records of measures used for verifying and substantiating the accuracy of the BO information. For record-keeping purposes under R.12 and 22 FIs and DNFBBs (including company formation agents, attorneys at law and accountants) are required to keep records for a period of seven years pursuant to s.4 of the POCA.
39. The COJ is charged with the responsibility of registering and maintaining company records for the life of a company. Sections 337(6) and 377H(3) (applicable to outstanding BO information) of the Companies Act, 2004, as amended, allows a company to restore itself to the Register of Companies within 20 years from the date it was removed. Consequently, once the company is struck off the COJ retains the records of the company for a period of 20 from the date of dissolution. Upon expiration of the 20-year period, where a company that has been struck off does not seek to have its name restored to the register of companies, the COJ will destroy is authorised to destroy company records and documents pursuant to the Archives (Official Records) Regulations, 1988.
40. **Criterion 24.10:** Competent authorities and in particular law enforcement authorities are authorised to obtain in a timely manner basic and BO information held by relevant parties (s.352 (IB)(IC) as amended by s.19, 352(1D) and 352(1C)(c) of the Companies Act, 2004, as amended). The COJ BO registry is available online and accessible to the different competent authorities, including law enforcement authorities.
41. **Criterion 24.11:** Bearer shares and share warrants and coupons are prohibited (s.83 of the Companies Act, 2004 as amended). Share warrants that existed prior to the amendment are required to be converted into registered shares (s.396 of the Companies Act, 2004, as amended). Section 396 of the Companies Act provides for measures to be taken to address bearer shares and share warrants that existed prior to the prohibition. These measures are robust and include (i) making the bearer of the share the owner of the share and a member of the company, (ii) making it incapable to transfer of ownership of the shares specified in the share warrant from the bearer thereof to any other person, (iii) withdraw the share warrant, converting bearer shares and share warrants into registered shares, (iv) making the share warrant null and void and (iv) companies to amend articles of incorporation to remove any authorisation to issue share warrants or prohibit the issuing of share warrants as the case may require.
42. **Criterion 24.12:** The use of nominee shareholders and directors is prohibited (ss. 23A, 172 (1A) and 363B of the Companies Act, 2004 as amended).
43. **Criterion 24.13:** There is a wide range of sanctions for various breaches to the Companies Act. The sanctioning regime is comprehensive and applies to a wide range of breaches including different aspects of the BO regime. Sanctions are based on the seriousness of the breaches and in some instances range from JMD 500,000.00 (USD3,260.00) to JMD 5 million (USD32,366.00). Sanctions also include a prison term of a year, striking off from the companies register for non-compliance and fixed penalty regime (s.386A of the Companies Act, 2004 as amended). Sanctions are also applicable to the officers of the company in some instances. The

sanctions that are available are proportionate and dissuasive. Examples of some of the sanctions are captured below in the table. All sanctions where fines are applicable in Jamaica are applied in the local currency (Jamaican dollars). In considering whether the sanctions are proportionate and dissuasive, the Experts took into consideration fines for similar breaches (legal arrangements penalties) and the socio-economic impact circumstances of Jamaica.

| Offence (Non-Exhaustive) | Penalties (JMD)- Pursuant to the Companies Act |
|---|--|
| Failure to file Annual returns | JMD Five Million (USD32,366.00) (s.121(3)) |
| Failure to keep register of Members | JMD (USD32,366.00) and a fine for each officer of up to JMD Three Million (USD19,372.00) (s,377A) |
| Failure to deliver BO returns | JMD Five Million (USD32,366.00) (s.377A) |
| Failure to deliver or inaccurate BO return | Company may be struck off the register and dissolved. (s.377F) |
| Failure to deliver outstanding BO information | Strike-off (S.377h(1)) |
| Use of share warrants | A fine not exceeding JMD Three Million (USD19,372.00) or imprisonment of a term not exceeding one year (applicable to the company and every officer) (s83) |
| Failure of the agent of the company to comply with BO obligation | Fine up to JMD Three Million (USD19,372.00) (s.113). |
| Failure to record verification measures and substantiating documents (BO) | Fine up to JMD Five Million (USD32,366.00) and a fine for each officer up to JMD Three Million (USD19,372.00) (s.377R (2)). |
| Failure to keep records | JMD500,000 (USD3.228) based on summary conviction (s.390A) |
| Failure give notice of change in Directorship (within 14 days) | JMD2000.00 (US\$13) late fee penalty (pursuant to fifteenth schedule and up to JMD50,000 (USD324.00) (s.384) |
| Failure to provide give notice of its Registered Office | JMD50,000 (324.00) (s.106 (3)) |
| Failure to file annual returns (which includes basic information) | a) JMD2000.00 (USD13) late filing penalty (pursuant to the fifteen schedule) and a fine of up to JMD |

| | |
|--|---|
| | Five Million (USD32,3666.00) (s.121) |
|--|---|

44. **Criterion 24.14:** The international cooperation mechanisms that are set out at R.37-40 for which Jamaica received ratings of LC permit the authorities to exchange basic and BO information utilising formal and other forms of cooperation including through the use of investigative powers in accordance with domestic laws. Basic information is publicly available and can be directly accessed by foreign authorities.
45. The Company Registrar is permitted to enter into MOUs with foreign authorities to facilitate the exchange of basic and BO information (s.377O of the Companies Act, 2004, as amended). Pursuant to s.352 (IB) and (1C)(b) of the Companies Act, the Registrar, following a request shall, *inter alia*, permit an officer authorised by the authority which makes the request to inspect documents kept by the Registrar and provide copies certified by the Registrar any copy or extract of any document or any part of any document requested. An authority in a foreign state or country carrying out functions analogous to the function of a competent authority (for example law enforcement) is authorised to make a request of the Registrar.
46. **Criterion 24.15:** Jamaica has advised where requests are made, the COJ will determine the quality of the assistance/information provided to ascertain/verify the relevant BO information in line with its SOPs. The FIU has in place a feedback mechanism, this is used to monitor the quality of the assistance it receives from other countries in response to basic and BO information or a request for assistance in locating BO residing abroad.

Weighting and Conclusion

47. **Recommendation 24 is re-rated as Compliant.**

4.1.3.Recommendation 28 (originally rated PC)

48. Jamaica was rated PC with R.28 in its 4th Round MER. The technical deficiencies included, with the exception of real estate, accountants and gaming machine operators, no designated authorities identified for other DNFBS for monitoring compliance, no mechanism allowing the authorities to monitor compliance of, and issue guidelines related to CFT, not all DNFBS are subject to monitoring given that there is designated authority for some sectors, sanctions under the POCA are not dissuasive and no documented or legislative mechanism that speaks to the frequency and intensity of AML/CFT supervision of DNFBS on the basis of understanding of ML/TF risks and taking into consideration the characteristics of the DNFBS.
49. Dealers in Precious Metals and Stones (DPMS) in Jamaica does not fall within the definition of DNFBS given that they are prohibited from conducting cash transactions with customers equal to or above USD/EUR15,000.00(s.101A of the POCA)¹⁰.
50. **Criterion 28.1:** No deficiency cited in the MER. The legislative and institutional framework remain as was in the MER.
51. **Criterion 28.2:** Pursuant to the designation made by the Minister in accordance with s.91(1)(g) of the POCA, the Real Estate Board (REB), Public Accountant Board (PAB), Betting, Gaming and Lotteries Commission, FSC and General Legal Council (GLC) are the designated competent authorities tasked with the responsibility of monitoring and ensuring compliance by DNFBS with the AML/CFT requirements.

| | |
|----------------------------|---------------------|
| DNFBPs/ Obligated entities | Competent Authority |
|----------------------------|---------------------|

¹⁰ See analysis in Jamaica's 5th FUR: Paragraph 19

| | |
|--------------------------------|---------------------------------------|
| Real Estate Dealers and Agents | Real Estate Board |
| Public Accountants | Public Accountant Board |
| Gaming Machine Operators | Betting Gaming & Lotteries Commission |
| Casinos | Casino Gaming Commission |
| TCSPs | Financial Services Commission |
| Attorneys | General Legal Council |

52. **Criterion 28.3:** Section 18 of the Terrorist Prevention Act (TPA), 2019 mirrors the provision in s.91(1)(g) of the Proceeds Of Crime Act (POCA) which provides the relevant designated competent authorities with the power and responsibility to monitor compliance of, and issue guidelines in relation to AML/CFT. All DNFBPs are subject to monitoring.
53. **Criterion 28.4:** (a) No deficiency is cited in the MER and there are no changes in the legal and institutional framework. (b) The Legal Profession Act, Casino Gaming Act (s.15), Real Estate Act (ss.14 and 20) and the Public Accountancy Act there are mechanisms to prevent criminal and their associates from being professionally accredited and holding or controlling interest or management functions in DNFBPs. Persons operating with these sectors must have the requisite professional and technical qualifications. The authorities have advised that the BO registry to which supervisors have timely access will be consulted to determine the BO of the company following application for licensing and the necessary checks including (criminal) background will be conducted. (c) The sanctions established in the POCA are proportionate and dissuasive. Supervisors are authorised to administer fixed penalties for AML breaches to the POC (ML) Regulations (s.139 of the POCA, 2019), however, no similar requirement is found relative to breaches to TF Regulations or the TPA. Suspension and revocation under the TPA are conditional upon the conviction of an offence by the reporting entity of TF regulatory measures (s.18A(6) of the TPA). Taking into account the risk rating relative to TF (low) in Jamaica, the Group of Experts considered and weighted the deficiency and considered same to be minor in the context of c.28.4 and R.28.
54. **Criterion 28.5:** (a) The FSC SOP, REB Examination Manuals, PAB Operations Manual and the Gaming Sector Methodology make provisions for the supervision of the sectors under their respective regime to be done on a risk-sensitive and giving consideration to frequency and intensity of AML/CFT supervision. No such mechanism exists for the GLC. (b) The Guidelines for the Betting, Gaming and Lotteries Commission, REB Examination manual and the PAB Operational manual require the respective supervisors to ensure that inspections are influenced by the ML/TF risk profile of the institution. The foregoing nevertheless does not apply to the Guidelines and Guidance issued by the Casino Gaming Commission and the GLC. Given that there are no casinos registered and operational in Jamaica and given the risk associated with Attorneys at law (medium risk- based on the findings of the NRA), the Group of Experts considered the deficiency that exists to be minor.

Weighting and Conclusion

55. Jamaica has substantially addressed the deficiencies that exist in the MER as a result of the designation of the various Competent Authorities to the regulated businesses in the DNFBP sector. The deficiency largely relates to the absence of mechanisms that speak to the intensity and frequency of supervision for the GLC and dissuasiveness of the sanctions under the TPA as revocation of license is only conditional upon conviction for a regulatory offence. Taking into consideration the factors of ML/TF risk (Attorney risk rated as medium), materiality (no casinos

operational in Jamaica) and context (no casinos operational in Jamaica), the Group of Experts considers this deficiency to be minor. **R.28 is re-rated to LC.**

5. CONCLUSION

56. Overall, Jamaica has made significant progress in addressing the technical compliance deficiencies identified in R. 22, 23 and 28 with only minor deficiencies remaining and has been re-rated to largely compliant with the foregoing Recommendations. Jamaica has fully addressed the deficiencies of R.24 and has been re-rated to compliant.
57. A summary table setting out the underlying deficiencies for the Recommendation assessed in this report is included in Annex A.
58. Overall, in light of the progress made by Jamaica since its MER was adopted, its technical compliance with the FATF Recommendations is as follows as of September 2023:

Table 1 Technical Compliance Ratings, November 2023

| R. | Rating | R. | Rating |
|----|---|----|---|
| 1 | PC (MER 2016) PC (FUR 2021) ↑ LC (FUR 2022) | 21 | PC (MER 2016) ↑ C (FUR 2021) |
| 2 | PC (MER 2016) LC (FUR 2021) | 22 | PC (MER 2016) PC (FUR 2021) ↑ LC (FUR 2023) |
| 3 | LC (MER 2016) | 23 | PC (MER 2016) PC (FUR 2021) ↑ LC (FUR 2023) |
| 4 | LC (MER 2016) | 24 | PC (MER 2016) PC (FUR 2021) ↑ C (FUR 2023) |
| 5 | LC (MER 2016) ↑ LC (FUR 2021) | 25 | PC (MER 2016) ↑ C (FUR 2022) |
| 6 | NC (MER 2016) ↑ LC (FUR 2021) | 26 | PC (MER 2016) ↑ LC (FUR 2022) |
| 7 | PC (MER 2016) ↑ PC (FUR 2021) | 27 | PC (MER 2016) ↑ LC (FUR 2022) |
| 8 | NC (MER 2016) PC (FUR 2021) | 28 | PC (MER 2016) ↑ LC (FUR 2023) |
| 9 | C (MER 2016) | 29 | LC (MER 2016) |
| 10 | PC (MER 2016) ↑ LC (FUR 2021) | 30 | LC (MER 2016) |
| 11 | PC (MER 2016) ↑ LC (FUR 2021) | 31 | LC (MER 2016) |
| 12 | PC (MER 2016) ↑ C (FUR 2021) | 32 | LC (MER 2016) |
| 13 | C (MER 2016) | 33 | PC (MER 2016) ↑ LC (FUR 2021) |
| 14 | PC (MER 2016) ↑ LC (FUR 2021) | 34 | LC (MER 2016) |
| 15 | LC (MER 2016) ↓ PC (FUR 2021) | 35 | PC (MER 2016) ↑ LC (FUR 2022) |
| 16 | LC (MER 2016) | 36 | LC (MER 2016) |
| 17 | PC (MER 2016) ↑ LC (FUR 2021) | 37 | LC (MER 2016) |
| 18 | PC (MER 2016) ↑ LC (FUR 2021) | 38 | LC (MER 2016) |

| | |
|----|-----------------------------|
| 19 | PC (MER 2016) LC (FUR 2021) |
| 20 | C (MER 2016) |

| | |
|----|-------------------------------|
| 39 | LC (MER 2016) |
| 40 | PC (MER 2016) ↑ LC (FUR 2022) |

59. Jamaica has 37 Recommendations rated C/LC. Jamaica will remain in enhanced follow-up. Jamaica will cease to report back to the Plenary in keeping with the mechanism for the ending of the 4th Round Follow-Up reporting cycles for Members in Enhanced Follow-Up, approved at the May 2023 Plenary.

Annex A: Summary of Technical Compliance –Deficiencies underlying the ratings ¹¹

| Compliance with FATF Recommendations | | |
|--------------------------------------|--|---|
| Recommendation | Rating | Factor(s) underlying the rating ⁶ |
| R.22 | PC (MER) PC (FUR-2021) LC (FUR 2023) | <ul style="list-style-type: none"> The deficiencies in R.10 (re-rated to LC in Jamaica’s third FUR) applies to DNFBPs. This include no requirement to not pursue CDD and file an STR in circumstances involving suspicion of TF when DNFBPs/DNFIs reasonably believe that performing CDD will tip-off the customer. The deficiencies in R.11 (re-rated to LC in Jamaica’s third FUR) applies to DNFBPs. The identified deficiency is the requirement in the TPA does not make provision for the DNFBPs to make available CDD information and transaction records “swiftly” available to domestic competent authorities. There are no requirements for DNFBPs to undertake TF risk assessments prior to the launch of products, services and technologies. The deficiencies in R.17 (re-rated to LC in Jamaica’s third FUR) applies to DNFBPs. |
| R.23 | PC (MER) PC (FUR 2021) LC (FUR 2023) | <ul style="list-style-type: none"> The deficiencies in R.18 (re-rated to LC in Jamaica’s third FUR) applies to DNFBPs. |
| R.24 | PC (MER) PC (FUR-2021) LC (FUR 2023) | <ul style="list-style-type: none"> All criteria are met |
| R.28 | PC (MER) LC (FUR-2023) | <ul style="list-style-type: none"> Unlike the requirement under the Proceeds of Crime (ML) for breaches under Terrorist Prevention Act is conditional on a conviction for an offence by the entity. |

¹¹ Ratings and factors underlying the ratings are only include for those recommendations under review in this FUR. ⁶ Deficiencies listed are those identified in the MER unless marked as having been identified in a subsequent FUR.

| | | |
|--|--|---|
| | | <ul style="list-style-type: none">• There are no documented mechanism in place that speaks the frequency and intensity of AML/CFT supervision of Attorneys-at Law on the basis of supervisors' understanding of ML/TF risks.• The Casino Gaming Commission Guidelines and Guidance along with the General Legal Council (GLC) Guidelines do not address the requirement of c.28.5 (b). |
|--|--|---|



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December 2023

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

Follow-up Report & Technical Compliance Re-Rating

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

Follow-up Report