Anti-money laundering and counter-terrorist financing measures

Turks and Caicos Islands

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

Follow-up Report

December 2022





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

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

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Turks and Caicos Islands Third Enhanced Follow-Up Report – December 2022

1. INTRODUCTION

1. The mutual evaluation report (MER) of Turks and Caicos Islands was adopted in November 2019 during the L Caribbean Financial Action Task Force (CFATF) Plenary held in Antigua and Barbuda and published on January 20th, 2020. Since it met the thresholds of having eight (8) or more NC/PC ratings for technical compliance and a low or moderate level of effectiveness for seven (7) or more of the eleven (11) effectiveness outcomes, the Turks and Caicos Islands was placed under the enhanced follow-up process[1].

2. This FUR analyses the progress of Turks and Caicos Islands in addressing the technical compliance requirements of the recommendations being re-rated. Technical compliance re-ratings are given where sufficient progress has been demonstrated. This report also analyses progress made in implementing new requirements relating to FATF Recommendations which have changed since the MER was adopted: Recommendation 2, 15, & 18.

3. This report does not analyse any progress Turks and Caicos Islands has made to improve its effectiveness.

4. The assessment of Turks and Caicos Islands' request for technical compliance re-ratings and the preparation of this report was undertaken by the Group of Experts consisting of, Ms. Faryal George (Financial Expert), Senior Compliance Examiner, Financial Investigation Agency, British Virgin Islands and Mr. Austin Smith (Financial Expert), Deputy Manager – Risk Analytics and Examinations, Securities Commission of The Bahamas with the support from Mr. Kerry Lucio of the CFATF Secretariat.

5. Section 4 of this report summarises the progress made to improve technical compliance. Section 5 contains the conclusion and a table illustrating Turks and Caicos Islands' current technical compliance ratings.

[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. FINDINGS OF THE MUTUAL EVALUATION REPORT & FOLLOW-UP

6. Turks and Caicos Islands' MER ratings[2][3] are as follows:

R.	Rating
1	PC (MER 2019)
2	LC (MER 2019)
3	C (MER 2019)
4	C (MER 2019)
5	C (MER 2019)
6	LC (MER 2019)
7	LC (MER 2019)
8	PC (MER 2019)
9	C (MER 2019)
10	PC (MER 2019)
11	C (MER 2019)
12	C (MER 2019)
13	PC (MER 2019)
14	PC (MER 2019)
15	PC (MER 2019)
16	PC (MER 2019)
17	PC (MER 2019)
18	C (MER 2019)
19	PC (MER 2019)
20	C (MER 2019)

R.	Rating
21	C (MER 2019)
22	PC (MER 2019)
23	PC (MER 2019)
24	LC (MER 2019)
25	C (MER 2019)
26	PC (MER 2019)
27	C (MER 2019)
28	PC (MER 2019)
29	C (MER 2019)
30	C (MER 2019)
31	LC (MER 2019)
32	C (MER 2019)
33	LC (MER 2019)
34	PC (MER 2019)
35	LC (MER 2019)
36	PC (MER 2019)
37	LC (MER 2019)
38	LC (MER 2019)
39	C (MER 2019)
40	PC (MER 2019)

7. Given these results and the effectiveness ratings in the MER, Turks and Caicos Islands was on enhanced 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] Turks and Caicos Islands' did not seek re-ratings prior to this FUR. Current ratings are indicated based on the original MER.

3. OVERVIEW OF PROGRESS TO IMPROVE TECHNICAL COMPLIANCE

8. In keeping with the CFATF Mutual Evaluation Procedures, this FUR considers progress made up until 27 May 2022. In line with the ME Procedures and FATF Methodology, the Group of Experts' analysis has considered progress to address the deficiencies identified in the MER and the entirety (all criteria) of each Recommendation under review, noting that this is cursory where the legal, institutional or operational framework is unchanged since the MER or previous FUR.

9. This section summarises the progress made by Turks and Caicos Islands to improve its technical compliance by:
    a) addressing the technical compliance deficiencies identified in the MER, and
    b) implementing new requirements where the FATF Recommendations have changed since the MER was adopted.

4. PROGRESS TO ADDRESS TECHNICAL COMPLIANCE DEFICIENCIES IDENTIFIED IN THE MER

4.1.1 Recommendation 8 (originally rated PC)

10. In its 4th round MER, Turks and Caicos Islands was rated PC with R.8. The technical deficiencies were *inter alia*: the regime does not outline the periodic reassessment of risks posed to the sector, nor measures to encourage NPOs to conduct transactions via regulated financial channels; the sanction regime particularly in relation to unlawful operation of NPOs that should be registered is not sufficiently dissuasive; and, the mechanisms to report NPOs under c.8.5(d) is not appropriate and is limited.

11. ***Criterion 8.1(a):*** Turks and Caicos Islands undertook a TF risk assessment of the NPO sector in 2021. The exercise involved extensive engagement across the NPO sector through a supervisory questionnaire and interviews and included an analysis of NPOs' financial statements. Information from the FIA and DPP were also gathered relative to associated SARs/STRs and prosecutions. The risk factors considered were based on risk factors identified in the FATF Standards. TCI took into consideration factors such as types of NPO activities; geographical locations where funds were raised and disbursed as well as the amount of income generated. A report on the findings was published in May 2022. TCI adequately considered all relevant information in arriving at a reasonable TF risk rating. TCI identified where gaps existed in the data and took action to gather such information for forthcoming risk assessments while assigning a higher risk rating in those limited instances. The exercise was comprehensive and assisted the authorities to identify which organisations fall within the FATF definition of NPOs and identify the features and types of NPOs are likely to be at risk for TF abuse.

12. ***Criterion 8.1(b):*** TCI published the NPO Terrorist Financing Sectoral Risk Assessment Report in May 2022, which identified the features and types of NPOs which may be at risk of TF abuse, as well as any threats to the TCI in relation to the same.

13. ***Criterion 8.1(c):*** No deficiency cited in the MER and there are no changes to the AML/CFT framework in this regard. An assessment of the NPO Sector has been used to make recommendations for legislative changes. The assessment has identified measures to address each risk category identified.

14. ***Criterion 8.1(d):*** Legal Notice 136 of 2021, the Non-Profit Organisations (Amendment) Regulations 2021 amended Regulation 4(d) of the principal Regulations. Regulation 4(d) now

contains specific wording outlining that the functions of the NPO supervisor are to undertake periodic reviews of the NPO sector.

15. ***Criterion 8.2(a)&(b):*** No deficiency cited and there are no changes to the AML/CFT framework in this regard. TCI has clear policies regarding the administration and management of NPOS (see the 2020 MER, c.8.2(a). TCI has also sustained outreach to NPOs and the donor community as required (see the 2020 MER, c.8.2(b).

16. ***Criterion 8.2(c):*** The NPO Supervisor undertook work with the NPO Sector between August 2021 and May 2022 and the very comprehensive NPO Registration Guidelines was one result of this engagement. During this period the NPO Supervisor met with 27 NPOs to get their feedback on terrorist financing risks and provided guidance relative to registration. Whilst work was undertaken with NPOs, to understand the TF vulnerabilities, as well as tighten controls around registration, the above measures do not include any developments and refinement of best practices to address TF risk and vulnerabilities.

17. ***Criterion 8.2(d):*** While the NPO Regulations do not specifically require NPOs to establish a bank account, the NPO Supervisor, in order to register an NPO, requires that NPOs have a bank account or commit to establishing same in a period of time. The NPO Registration Guidelines issued by the NPO Supervisor specifically state that NPOs are required to provide evidence of a bank account upon registration and newer NPOs are given 30 days from registration to provide this information upon registration. The Non-Profit Organisations (Amendment) Regulations 2021 inserted Regulations 15A and 15B into the principal Regulations, which allows the NPO Supervisor to request any information from an NPO, which is required by the Supervisor to fulfil its functions. Taken together, TCI has measures to encourage NPOs to conduct their transactions through regulated financial channels.

18. ***Criterion 8.3:*** TCI applies risk-based measures to NPOs at risk of TF abuse (see the 2020 MER, c.8.3). No deficiency cited and there are no changes to the AML/CFT framework in this regard.

19. ***Criterion 8.4(a):*** No deficiency cited in the MER and there are no changes to the AML/CFT framework in this regard. The NPO supervisor monitors compliance with requirements of the NPOR and with the FATF Recommendations which contains the application of risk-based measures

20. ***Criterion 8.4(b):*** Legal Notice 136 of 2021, the Non-Profit Organisations (Amendment) Regulations 2021 increased the fine applicable to NPOs operating without registration from a $50,000 fine to a $100,000. The conviction, along with the fine of $100,000 is considered a dissuasive and proportionate sanction for violations by NPOs. However, these sanctions do not extend to persons acting on behalf of the NPOs.

21. ***Criterion 8.5(d):*** The Proceeds of Crime (Amendment) Ordinance 2021 specifically refers to knowledge or suspicion of TF abuse within an NPO and requires a person who may have such knowledge or suspicion in relation to an NPO to promptly disclose the matter to his/her MLRO or directly to the Financial Investigation Agency (Section 127(1)).

22. ***Criterion 8.6:*** Ratings for both criteria remain as in the MER. No deficiency cited.

Weighting and Conclusion

23. Measures have been put in place to encourage NPOs to conduct transactions through regulated financial channels and sanctions for unlawfully operated NPOs have been made sufficiently dissuasive. The POCO now requires prompt action to be taken if a person has knowledge or suspicion of TF abuse within an NPO.

24. A comprehensive NPO TF Sectoral Risk Assessment was published in May 2022. Detailed NPO Registration Guidelines were also published to advise the sector on their registration obligations.

However, whilst TCI worked with NPOs, the measures do not include any development and refinement of best practices to address TF risks and vulnerabilities. Also, sanctions do not extend to persons acting on behalf of the NPOs. Given the low risk of NPO abuse for TF, an overall low risk of TF and appropriate NPO supervision, the deficiencies are considered minor.

25. Turks and Caicos Islands is re-rated Largely Compliant with R.8.

4.1.2. Recommendation 10 (originally rated PC)

26. In its 4th round MER, Turks and Caicos Islands was rated PC with R.10. The technical deficiencies included: (i) The absence of the requirement for proof of existence and powers regulating and binding the legal person or arrangement, (ii) a beneficial owner does not include a natural person on whose behalf a transaction is being conducted, (iii) Legal arrangements are not required to provide the powers that regulate and bind them for CDD measures, (iv) there are no measures addressing the likelihood of the CDD process tipping off a customer, and (v) the absence of a requirement for FIs to apply CDD measures to existing customers on the basis of materiality.

27. ***Criteria 10.1, 10.2, 10.3***: No deficiency cited in the MER and there are no changes to the AML/CFT framework in this regard. Regulation 16(2) AMLR prohibits setting up or maintaining a numbered account, an anonymous account or an account in a name which it knows or has reasonable grounds to suspect is suspicious. FIs are required to apply CDD measures in all circumstances consistent with the criterion (see the 2020 MER, c.10.2). FIs are required to identify and verify the customer's identity (see the 2020 MER, c.10.3).

28. ***Criterion 10.4***: The previously existing restriction limited the application of CDD measures to when the person purporting to act is a legal person. Legal Notice 134 of 2021- the AML/PTF (Amendment) Regulations 2021, amended Regulation 5 and now requires measures for verifying that a person, be it natural or legal, purporting to act on behalf of a customer, is properly authorised, and identified and that identity verified.

    Criterion 10.5: The amendments made to Regulation 3 via the AML/PTF (Amendment) Regulations 2021 fully aligns the definition of beneficial owner in the AML/PTF Regulations with that of the FATF Standards.

29. ***Criteria 10.6, 10.7***: No deficiency cited in the MER and there are no changes to the AML/CFT framework in this regard. A financial business is required to understand the circumstances and business of a customer (para (iv) & (f) Guidance Notes to the AML Code). Also, mandated FIs' CDD measures include ongoing monitoring defined in accordance with the criterion requirements.

30. ***Criterion 10.8***: Although the criterion was rated as met, a deficiency was cited in the Summary of TC deficiencies table. Required CDD measures specified that reasonable measures be taken to understand the ownership and control structure of a legal person, partnership, trust or similar arrangement (Regulation 5(1)(f) AMLR). Paragraph (xv) of the Guidance Notes to the AML/PTF Code on page 15 requires FIs to obtain any relationship information necessary to understand the nature of a customer's business. The Guidance Note was issued under the powers given through and S.118(9) of the POCO. This Guidance is enforceable. This is evidenced further by the fact that under POCO S.177(5), to determine if a person has committed an offence under the regulations made under the ordinance, a court shall consider whether the person followed any guidance issued under section 118(9).

31. ***Criterion 10.9(a)***: Section 19 of the AML/PTF Code outlines the information required to be obtained by financial businesses when identifying trusts. The amendments made to Reg. 19(1) of the AML/PFT Code deleted the previous paragraph (a) and substituted the following (a) the full name, legal form and proof of existence of the trust;". (as it relates to the documents that are required for verification).

32. Regarding partnerships or other entities created between parties which lack separate legal personality, amendments to the AML/PTF Code via Legal Notice 39 of 2022 brought into force Regulation 2(1) of the AML Code, which re-defined a legal entity to include a partnership or any unincorporated body of persons or other legal arrangement. Legal Notice 137 of 2021 amended Reg 16(2)(a) of the AML/PTF Code. The amended regulation requires financial businesses to obtain "(a) the full name of the legal entity and any trading names it uses, legal form and proof of existence".

33. ***Criterion 10.9(b)***: Legal Notice 137 of 2021 amended regulation 16 of the AML/PTF Code. Regulation 16(2)(k)[4] of the AML Code now requires FIs to obtain the constitutional documents that regulate and bind the legal entity, as well as the names of persons occupying a senior management position in the legal entity.

34. AML/PTF (Amendment) Code 2021 amendment to Reg. 16(2)(k) states that "the constitutional documents that regulate and bind the legal entity, as well as the names of persons occupying a senior management position in the legal entity". This addresses the deficiency for the constitutional documents required for legal entities by making it a standard requirement and no longer only in the cases of low risks. This now captures legal arrangements outsides of trusts with the definition amendment noted in the AML/PFT (Amendment) (No.3) Code 2022 Regulation 2(1) which states " "legal entity" includes a company, a foundation, a partnership, whether limited or general, an association or any unincorporated body of persons or other legal arrangement, but does not include a trust;".

35. The AML/PTF Amendment 2022, Regulation 2(1) has redefined legal entities to include companies, a foundation, a partnership, whether limited or general, an association or any unincorporated body of persons or other legal arrangement excluding a trust. Section 19 of the AML/PTF Code outlines the information required to be obtained by financial businesses when identifying trusts. S.19(5) of the Code states that the identification information required to be obtained on any person under this section shall be obtained in accordance with section 16 of this Code if the person is a legal entity. The amendments to Reg.16 applies equally to trusts. Therefore, all forms of legal arrangements are required to provide the powers that regulate and bind them for CDD measures.

36. ***Criterion 10.9(c)***: Section 16(1)(f) of the AML/PTF Code requires that FIs obtain the mailing address of the legal entity. Legal Notice 39 of 2022 amended the AML/PTF Code by re-defining a "legal entity" to include a company, a foundation, a partnership, whether limited or general, an association or any unincorporated body of persons or other legal arrangement. The requirement of the Code to obtain the mailing address now extends to partnerships or other entities created between parties which lack separate legal personality.

37. ***Criterion 10.10(a)***: No deficiency cited in the MER and there are no changes to the AML/CFT framework in this regard. The CDD measures which FIs are required to apply are defined by Regulation 5(2)(b) AMLR. These measures include determining who are the natural persons that ultimately own or control the customer that is not an individual. If there is doubt or extensive of diversification of ownership interests that there are no natural persons, additional measures contained in the new Reg. 5(2A) would apply.

38. ***Criterion 10.10(b)***: The AML/PTF (Amendment) Regulations 2021 has introduced required measures/steps for the identification of the natural persons exercising power if there is doubt of the beneficial owner through the amendment to Regulation 5 to now include subsection 2A. Subsection

[4] Please note that the FUR is written in a way that is more accurate and in keeping with the legal documents in TCI. As such, while the MER referred to the component parts of the AML/PTF Code as paragraph numbers, the FUR is written referencing them as regulation numbers.

2A places a requirement for further measures for identifying a natural person exercising control over an entity when there is doubt surrounding the beneficial owners. Regulation 5(2A)(a) requires a financial business, where customers are legal persons, to (a) identify the identity of the natural person, if any, who is the beneficial owner. Subsection (b) speaks to identifying the natural person exercising control of the customer (legal person or arrangement) through "other means" when there is doubt as to whether the person controlling ownership interest is the beneficial owner or where no natural person exerts control through ownership interests. Subsection (c) addresses the issue of no natural person being identified under procedures (a) and (b) by requiring the identification of the relevant senior managing official. These measures are in line with the FATF Standards.

39. Additionally, the amendment to the AML/PTF Code by virtue of LN 137 of 2021 inserted Regulation 16(2)(ja) which requires FIs to the extent that there is doubt as to whether the person with the controlling ownership interest is the beneficial owner or where no natural person exerts control through ownership interests, the identity of the natural person exercising control of the legal entity through other means."

40. ***Criterion 10.10(c)***: No deficiency cited in the MER and there are no changes to the AML/CFT framework in this regard. Paragraph 17(1)(a) AML/PTF Code outlines measures, which would allow for the identification of the relevant natural person exercising control in the entity.

41. ***Criterion 10.11(a)***: 19 (1) (a)(ix) of the AML/PTF Code previously applied only to high-risk trusts, but now it applies to all trusts due to the deletion of Regulation 20(2)(a)). Further, the amendment to AML/PTF Regulations through the AML/PTF (Amendment) Regulations 2021 has added Regulation 5(2B) that requires FIs to verify the identities of the settlor, trustee(s), the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust (including through a chain of control or ownership) as it relates to trusts or the identities of persons in equivalent or similar positions for other types of legal arrangements

42. ***Criterion 10.11(b)***: Legal arrangements, as per the AML/PTF (amendment) Regulations 2021 is defined at Regulation 2 to mean a trust, partnership, or other entity created between parties, which lacks a separate legal personality. The amendments made via the AML/PTF (Amendment) Regulations 2021 at Regulation 5, inserted sub-regulation (2B)(b) which satisfies the deficiency surrounding the verification of persons in positions equivalent or similar to trusts for other types of legal arrangements by making it a requirement for CDD and ongoing monitoring.

43. ***Criterion 10.12((a) & (b):*** No deficiency cited in the MER and there are no changes to the AML/CFT framework in this regard (see the 2020 MER, c.10.12).

44. ***Criterion 10.12(c):*** Although the criterion was rated as met, a deficiency was cited in the summary of key TC deficiencies table in the MER. FIs that carry on insurance business are required to have measures for identifying each beneficiary under any long term or investment linked policy and to verify the identity of each beneficiary (Regulation 5(2)(c) AMLR). Additionally, Regulation 11(6B) requires a financial business to determine if there exists any beneficial owner of the beneficiary at the time of pay-out and identify the beneficial owner of the beneficiary at the time of pay-out. Further, paragraph 12A AML/PTF Code replicates in verbatim the requirements of (a), (b) and (c) of the criteria

45. ***Criterion 10.13 – 10.15:*** No deficiency cited in the MER and there are no changes to the AML/CFT framework in this regard. Regulation 13 (2A) and (2B) of the AMLR requires a financial business to include the beneficiary of a life insurance policy as a relevant risk factor (see the 2020 MER, c.10.13). Regarding the timing of verification, Regulations 11(1)(a), 11(4)(5) and 11(6A) of the AMLR satisfies the requirements (see the 2020 MER, c.10.13 – 10.15).

46. ***Criterion 10.16***: The deficiency is addressed by Legal Notice 134 of 2021-AML/PTF (Amendment) Regulations 2021. The amended Regulation 11(c) now requires FIs to review the CDD of existing customers based on the materiality and risks of accounts taking into consideration whether and when CDD measures were completed and the adequacy of data obtained from previous CDD procedures performed.

47. ***Criterion 10.17***: No deficiency cited in the MER and there are no changes to the AML/CFT framework in this regard. FIs are required to apply EDD measures for specific listed situations and for any other circumstance which can present a higher risk of ML/TF: Regulation 13(2) AMLR.

48. ***Criterion 10.18***: No deficiency cited in the MER and there are no changes to the AML/CFT framework in this regard. There are no provisions which allow FIs to apply simplified CDD measures.

49. ***Criterion 10.19***: No deficiency cited in the MER and there are no changes to the AML/CFT framework in this regard. Whether there is a failure to satisfactorily complete CDD FIs shall not establish the business relationship or carry out the occasional transaction or terminate the business relationship and consider making a STR.

50. ***Criterion 10.20***: Although the criterion was rated as met, a deficiency was cited in the Summary of TC deficiencies table in the MER. Paragraph 32A of the AML Code, inserted by legal notice 54 of 2018, requires that a financial business not pursue CDD where the MLRO have a suspicion of ML/TF and believe performing CDD will tip-off the customer. Under such circumstances a suspicious activity report is required to be made to the FIA.

Weighting and Conclusion

51. TCI has addressed all the deficiencies via amendments to the AML/PTF Code and Regulations, which, inter alia re-defined the term "legal entity" to capture a larger body of legal structure types, such as partnerships and other legal arrangements that lack separate legal personality and addressed the CDD deficiencies. The CDD provisions now apply to trusts thus remedying previously existing deficiencies.

52. **Turks and Caicos Islands is re-rated Compliant with R.10.**

4.1.3. Recommendation 14 (originally rated PC)

53. Turks and Caicos Islands was rated PC with R.14 in its 4th round MER. The technical deficiencies included: (i) The lack of pro-active measures which are taken to identify natural or legal persons which carry on MVTS business without a licence (ii) limitations in the scope of the activities regulated under the MTO which do not include all of those captured in the FATF Standards

54. ***Criterion 14.1***: the Money Transmitters (Amendment) Ordinance 2021 amends Section 2 of the Money Transmitters Ordinance and now defines money transmission more broadly and includes the payment of a corresponding sum in any other form to a beneficiary by means of a communication, message, transfer or through a clearing network to which the MVTS provider belongs.

55. ***Criterion 14.2:*** It is an offence to carry on a MSB without a Licence (Section 4(1) & (2) of the Money Transmitters Ordinance). A person who commits an offence under subsection 4(1) is liable on summary conviction to a fine of $10,000 and to a term of imprisonment of one year and, in the case of a continuing offence, to a fine of $1,000 for each day during which the offence continues. The Financial Services Commission Ordinance (FSCO) empowers the Financial Services Commission (FSC) to identify and investigate persons carrying out money service business without a licence. There has been no instance where the FSC has had reason to utilise these powers.

56. Additionally, S.35 of the FSCO empowers the FSC to appoint an examiner to conduct an examination on its behalf where there are reasonable grounds that any person is carrying on, or has carried on, unauthorised financial services business. The FSC is also empowered by section 39(2) of the FSCO to issue public statements where it is in the public interest in respect of any person carrying on, intends to carry on, or likely to carry on, unauthorised financial services business.

57. The FSC has an agreement with the Business Licencing Unit (BLU), whereby the BLU notifies the FSC of any persons attempting to licence any MVTS businesses. A list of MVTS licensees is available on the FSC's website.

58. Criteria 14.3 – 14.5: No deficiency cited in the MER and there are no changes to the AML/CFT framework in this regard. MVTS providers (MSBs in TCI) are contained in the definition of FIs and are therefore subject to AML/CFT monitoring. All MSBs are licensed by the FSC and agents are required to be included in the MSBs AML/CFT programme and monitored for compliance.

Weighting and Conclusion

59. The TCI has updated its legislation to include definitions for money transmission and value transfer services, which are now clearly outlined in the Money Transmission Ordinance. The TCI is also provided information on the measures it has in place to identify persons which carry on MVTS activity without a licence as well as the measures it can take once those persons are identified.

60. **Turks and Caicos Islands is therefore re-rated as Compliant for R.14.**

4.1.4. Recommendation 16 (originally rated PC)

61. Turks and Caicos Islands was rated PC with R.16 in its 4th round MER. The technical deficiencies that existed included: (i) PSPs do not seemingly meet the definition of FIs as they are not included in the list of FIs and DNFBPs in the Regulation. Therefore, the requirements under this Recommendation that applies to PSPs do not apply to all FIs. (ii) No obligation for FIs to ensure that all cross-border wire transfer over USD/Euro 1000.00 is accompanied by required beneficiary information. (iii) No requirement for batch file to contain full beneficiary information that is fully traceable with the beneficiary country, (iv) PSPs are not required to determine all information from both the beneficiary and originator side in order to make a determination whether a STR should be filed.

62. Criteria 16.1(a)&(b): Legal Notice 137 of 2021, amended Regulation 44 of the AML/PTF Code to include a revised definition of payment service providers to include any financial business and/or any persons "whose business includes the provision of transfer of funds services". Although PSPs are not included in the list of FIs and DNFBPs contained within the legislation, the change to Regulation 44 of the AML/PTF Code brings all financial businesses engaged in wire transfer activity under the definition of PSPs, thereby, applying the relevant AML provisions to all FIs where their business includes the provision of transfer of funds services.

63. ***Criterion 16.1(b):*** Legal Notice 137 of 2021 (AML/PTF (Amendment) Code), came into operation on 25 October 2021 and amended Regulation 47(c) of the AML/PTF Code. Regulation 47(c) now includes a requirement for all payment service providers to collect beneficiary and payee information on transactions of $1,000 or more.

64. ***Criterion 16.2:*** Legal Notice 137 of 2021 amended paragraph (a) of Regulation 47(2) of the AML/PTF Code. Regulation 47(2) appears to say that where a batch transfer file contains complete and accurate information of the payer and full beneficiary information that is fully traceable within the beneficiary country, then sub-section 1 which requires only full originator payer information does not apply. In the event this information is not present, batch file transfers are still permissible under Reg. 47(1) which only requires full originator information. TCI has advised that batch file transfers are governed by Reg.47(2), however, due to the ambiguity in the legislation there is a

concern that batch file transactions can still occur under 47(1) which only mentions originator's information.

65. ***Criteria 16.3(a)&(b):*** Legal Notice 137 of 2021 (AML/PTF (Amendment) Code), came into operation on 25 October 2021 and deleted Regulations 46(3) and 46(4) from the AML/PTF Code, thereby removing the de minimis threshold. As the de minimis threshold has been removed c16.3 is not applicable.

66. ***Criterion 16.4:*** Regulation 44 of the AML/PTF Code was amended in Legal Notice 137 of 2021 and includes a revised definition of PSPs. PSPs includes a "financial business or any person whose business includes the provision of transfer of funds services". The requirements to verify customer information where there is a suspicion of ML or TF thus applies to all financial businesses.

67. ***Criteria 16.5 – 16.7:*** The deficiencies associated with these criteria stemmed from the cascading effect of the deficiency in c16.1. This was remedied by an amendment to Regulation 44 of the AML/PTF Code made via Legal Notice 137 of 2021. The revised definition of PSPs includes a "financial business or any person whose business includes the provision of transfer of funds services" thereby applying the relevant AML provisions to all FIs where their business includes the provision of transfer of funds services.

68. ***Criterion 16.8:*** The deficiencies under 16.1 are addressed as the relevant legislation has been changed with a revised definition of PSPs and the requirements of 16.3 are no longer applicable with the removal of the de minimis threshold. Criteria 16.4 – 16.7 are all *met*. However, the deficiency under Recommendation 16.2 is not addressed and remains *partly met*. This has a cascading effect on c16.8. Considering the extent of TCI's compliance with the above-mentioned criteria, and the fact that all other transfers are required to have the relevant information, c16.8 was assessed as *mostly met*.

69. ***Criteria 16.9 – 16.10:*** The revised definition of PSPs is a "financial business or any person whose business includes the provision of transfer of funds services" (Regulation 44 of the AML/PTF Code). The are no longer cascading deficiencies.

70. ***Criterion 16.11:*** Legal Notice 137 of 2021 amended Regulation 49(2A) of the AML/PTF Code to include the requirement for all intermediary PSPs to take reasonable measures, which are consistent with straight through processing, for the purposes of identifying cross border wire transfers where originator or beneficiary information is lacking. As per criterion 16.1 above, the revised definition of PSPs now includes all financial business whose business includes the provision of transfer of funds services.

71. ***Criteria 16.12 – 16.15:*** The deficiencies associated with these criteria stemmed from the cascading effect of the deficiency in c16.1. This was remedied by an amendment to Regulation 44 of the AML/PTF Code made via Legal Notice 137 of 2021. The revised definition of PSPs includes a "financial business or any person whose business includes the provision of transfer of funds services" thereby applying the relevant AML provisions to all FIs where their business includes the provision of transfer of funds services.

72. ***Criterion 16.16:*** Paragraph 50 (1) AML/PTF Code requires a person who carries on money or value transfer services and its agents to comply with the relevant AML/CFT requirements relating to its business, including wire transfer arrangements in all countries in which it operates either directly or through their agents. However, Legal Notice 137 of 2021 amended the Code by inserting the definition of a money or value transfer service which accords with the FATF Standards.

73. ***Criterion 16.17(a):*** Regulation 51 of the AML/PTF Code was inserted into legislation in October 2021, and now makes provisions at paragraph (a) for MVTS providers to take into account all the

information from both the ordering and beneficiary sides in order to determine whether a suspicious activity report has to be filed. Regulation 51 includes the exact wording of c16.17(a).

74. ***Criterion 16.17(b):*** Legal Notice 137 of 2021 inserted Regulation 51 to the AML/PTF Code which and now makes provisions at paragraph (b) for MVTS providers to file a SAR in any country affected by the suspicious wire transfer. Regulation 51 includes the exact wording of Recommendation 16.17(b).

75. Additionally, the same requirement has also been inserted for PSPs by way of Regulation 48(4B) AML/PTF Code. The payment service provider who controls the ordering and the beneficiary side of a wire transfer shall take into account all information from both the ordering and the beneficiary side of a wire transfer in order to determine whether to file a suspicious activity report; and shall file such SAR in any country affected by the suspicious wire transfer, and make the relevant transaction information available to the Financial Intelligence Agency.".

76. ***Criterion 16.18:*** No deficiency cited in the MER and there are no changes to the AML/CFT framework in this regard. The Terrorist Asset-Freezing Act 2010 (Overseas Territories) Order 2011 extends to TCI contains the required provisions.

Weighting and Conclusion

77. The AML/PTF Code was amended to include a revised definition of payment service providers which now includes financial businesses and/or any person whose business includes the provision of transfer of funds services. This update to the definition brings all financial businesses engaged in wire transfer activity under the definition of PSPs, thereby, applying the relevant AML provisions to all FIs where their business includes the provision of transfer of funds services. As a result of this change, the majority of the deficiencies under this Recommendation were addressed.

78. However, as it relates to the requirements of criterion 16.2, the provisions made at Regulation 47(2) pursuant to Legal Notice 137 of 2021 results in ambiguity and does not meet the FATF Standard.

79. **Turks and Caicos Islands is therefore re-rated Largely Compliant for R.16**

4.1.5. Recommendation 17 (originally rated PC)

80. Turks and Caicos Islands was rated PC with R.17 in its 4th round MER. The deficiencies noted relate to the requirements for reliance of third party for CDD is not fully satisfied given the deficiencies in TCI's laws on recordkeeping and CDD rules, which third parties are required to satisfy under TCI laws.

81. ***Criterion 17.1(a)&(b)***: No deficiency cited in the MER and there are no changes to the AML/CFT framework in this regard. The FI relying on the third party is required to obtain immediately the necessary CDD information and take steps to satisfy itself that relevant CDD documentation will be made available upon request without delay (see the 2020 MER, c.17.1(a)&(b)).

82. ***Criterion 17.1(c)***: The provision in Reg. 27 of the AML/PTF Code, as amended by Legal Notice 137 of 2021, satisfies the requirement specifically requiring the relying FI to satisfy itself that the third party has in places measures for compliance with CDD and recordkeeping requirements**.** CDD and record keeping requirements are in line with R.10 and R.11.

83. ***Criterion 17.2***: No deficiency cited in the MER and there are no changes to the AML/CFT framework in this regard. Country risk factors are included for consideration by FIs. (para 13(3) AML/PTF Code) and S.14(2A) AMLR.

84. ***Criterion 17.3***: No deficiency cited in the MER and there are no changes to the AML/CFT framework in this regard. TCI does not have specific rules governing a FIs reliance on third parties that are a part of the same financial group to which the FI belongs.

Weighting and Conclusion

85. TCI requires that relying FIs satisfy itself that the third parties have measures for compliance with CDD and recordkeeping requirements.

86. **Turks and Caicos Islands is therefore re-rated Compliant for R.17**

4.1.6. Recommendation 19 (originally rated PC)

87. Turks and Caicos Islands was rated PC with R.19 in its 4th round MER. The deficiencies noted relate to: (i) The ability to apply countermeasures pursuant to a call by the FATF is discretionary; (ii) There is no requirement that countermeasures be proportionate to the risk, and (iii) The country does not have the ability to apply countermeasures independent of any calls to do so by FATF.

88. ***Criterion 19.1:*** No deficiency cited in the MER and there are no changes to the AML/CFT framework in this regard. A financial business shall, on a risk sensitive basis, apply enhanced due diligence measures and undertake enhanced ongoing monitoring to business relationships and transactions with natural and legal persons from countries for which this is called for by the FATF, EU or the UN: Regulation 13 AMLR.

89. ***Criterion 19.2(a)&(b)***: Pursuant to s.121A(1) of the POCO, as amended, the governor is empowered to designate a jurisdiction as one which has serious deficiencies in its compliance with recognised international standards for combating money laundering and the financing of terrorism and, as a result of that, require the application of countermeasures proportionate to the risk posed by that jurisdiction. Pursuant to s.121A(3) of the POCO, as amended, the governor is empowered to issue an order requiring the application of countermeasures proportionate to the risks posed by jurisdictions on the recommendation of either the **(a)** Financial Action Task Force or **(b)** independent of any calls by the FATF through a recommendation by the Anti-Money Laundering Committee.

90. *Section 121(A)*(2) lists the countermeasures under subsection (1) which may include that dealings shall not be conducted with that jurisdiction or that enhanced due diligence be applied to— (a) transactions involving certain entities or class of entities; or (b) certain transactions or class of transactions. Additional countermeasures are available under Sections 35, 36, 37 and 39 of the FSCO and Section 166 of the POCO, which provides the FSC with the power to issue legally enforceable directions to an FI or DNFBP to prevent ML and TF. Moreover, the TCI AML Regulations, Proceeds of Crime Ordinance (POCO) and Financial Services Commission Ordinance (FSCO) enable the TCI to also apply countermeasures (f) to (g) of the INR 19 which have the effect of mitigating risks and matching risks with proportional measures. This is achieved through the following means: (f) Prohibiting financial institutions from relying on third parties located in the country concerned to conduct elements of the CDD process: Through directives issued under the POCO or the FSCO; and (g) Requiring financial institutions to review and amend, or if necessary, terminate, correspondent relationships with financial institutions in the country concerned: through directives issued under the POCO or the FSCO.

91. ***Criterion 19.3***: No deficiency cited in the MER and there are no changes to the AML/CFT framework in this regard. The AMLC advises FIs about weaknesses in the AML/CFT systems of countries.

Weighting and Conclusion

92. TCI has provisions to independently designate a higher-risk country and, through this designation, enforce EDD and other proportionate countermeasures with local FIs that do business with individuals, whether natural or legal, from those designated jurisdictions. The TCI is also able to apply countermeasures proportionate to risks when called upon to do so by the FATF.

93. **Turks and Caicos Islands is therefore re-rated Compliant for R.19**

4.1.7. Recommendation 22 (originally rated PC)

94. Turks and Caicos Islands was rated PC with R.22 in its 4th round MER. The deficiencies noted relate to: (i) Casinos are only required to conduct CDD measures for a single transaction of USD 3,000 or more, which is not in keeping with the broader requirement for such due diligence to be conducted with respect to multiple transactions; (ii) There is also no express requirement for real estate agents to apply CDD as regard both the purchasers and vendors of property, and; (iii) The deficiencies noted in R.10, 15 and 17 are applicable to DNFBPs.

95. ***Criterion 22.1***: TCI is re-rated as Compliant with all the requirements of R.10.

96. ***Criterion 22.1(a)***: Legal Notice 137 of 2021-AML/PTF (Amendment) Code 2021 inserted into the principal AML Code Regulation 12B which specifically requires the identification customers conducting of transactions with a value of $3,000 or above, whether a single transaction or over the course of multiple linked transactions.

97. ***Criterion 22.1(b)***: Notwithstanding the definition of realtor activities, which includes the providing realtor services to both the purchaser and vendor of a property, which was inserted into the AML/PTF Regulations, there remains no express requirement for agents to undertake CDD on both the buyer and seller. The only requirement is for CDD on the customer, which is not defined to make it clear that the customer is both the vendor and the purchaser.

98. ***Criterion 22.1(c)-(e)***: The previously cascading deficiencies in Recommendation 10 were addressed by way of updates made to the AML/PTF Code and AML/PTF Regulations.

99. ***Criteria 22.2 & 22.3***: No deficiency cited in the MER and there are no changes to the AML/CFT framework in this regard (see the 2020 MER, c.22.2 & 22.3).

100. ***Criterion 22.4***: As it relates to DNFBPs the applicable Recommendation 15 criteria are 15.1 and 15.2. Concerning c.15.1, DNFBPs, just as FIs, are required to comply with the provisions of Regulation 4 of the AML/PFT Code which states that a financial business shall identify and assess ML/TF risks to the business as well as regularly review and update the risk assessment if there are any material changes. Regulation 4 also requires financial businesses (FIs and DNFBPs) to undertake risk assessments prior to the launch or use of new products, practices and technologies. The deficiency cited in c.15.1 applies to the country given that there is no similar provision for the country as there is for financial businesses. Given that c.15.2 was assessed as Met and TCI having satisfied the requirements applied to DNFBPs under c15.1, there is no outstanding deficiency cascading from R.15 for DNFBPs in situations set out in c22.1.

101. ***Criterion 22.5***: The previously cascading deficiencies in **R.17** were addressed by way of updates made to the AML/PTF Regulations. See analysis above.

Weighting and Conclusion

102. TCI addressed all of the cascading deficiencies as it related to R.10 and R.17. The TCI has met all of the new technologies requirements of R.15 which apply to DNFBPs. TCI's continuing deficiencies relative to c.15.1 do not affect DNFBPs. Finally, there is no express requirement for realtors to apply CDD to both the purchasers and vendors of a property. The real estate sector was assessed in the NRA as having a Medium ML risk level. Some of these risks are mitigated by TCI's compliance with all other requirements of R.22.

103. **Turks and Caicos Islands is therefore re-rated Largely Compliant for R.22**

4.1.8. Recommendation 23 (originally rated PC)

104. Turks and Caicos Islands was rated PC with R.23 in its 4th round MER. The sole deficiency related to the deficiencies noted in R.19 that were applicable to DNFBPs.

105. ***Criterion 23.1:*** No deficiency cited in the MER and there are no changes to the AML/CFT framework in this regard. DNFBPs are required to report suspicious transactions.

106. ***Criterion 23.2***: No deficiency cited in the MER and there are no changes to the AML/CFT framework in this regard. Requirements of R.18 are fully satisfied and also applies to DNFBPs.

107. ***Criterion 23.3***: The previously cascading deficiencies in **R.19** were addressed by way of updates made to the POCO, specifically the insertion of S.121A. See analysis above.

108. ***Criterion 23.4:*** No deficiency cited in the MER and there are no changes to the AML/CFT framework in this regard. Requirements of R.18 are fully satisfied and also applies to DNFBPs.

Weighting and Conclusion

109. TCI addressed the sole deficiency regarding compliance with the requirements for higher-risk counties under R.19.

110. **Turks and Caicos Islands is therefore re-rated Compliant for R.23.**

4.1.9. Recommendation 26 (originally rated PC)

111. Turks and Caicos Islands was rated PC with R.26 in its 4th round MER. The deficiencies noted relate to: (i) Measures for ensuring that criminals or their associates do not own, control or manage FIs are not consistent for all types of FIs and do not cover all relevant parties; (ii) lack of evidence that AML/CFT supervision and regulation of FIs is in keeping with the core principles, and (iii) the absence of AML/CFT monitoring of DNFBPs.

112. ***Criteria 26.1:*** No deficiency cited in the MER and there are no changes to the AML/CFT framework in this regard. The supervisory framework for FIs remains as set out in the 2020 MER (see the 2020 MER, c.26.1).

113. ***Criterion 26.2***: No deficiency cited in the MER and there are no changes to the AML/CFT framework in this regard. All Core Principles FIs are required to be licensed.

114. ***Criterion 26.3***: Revised beneficial owner definitions and updated requirements for approvals by the FSC for shareholders, beneficial owners, and senior management have been updated across most of the relevant legislations, including those governing the higher risk sectors such as banks, trusts and CSPs. The FSC has released fit and proper guidelines that are required for all FIs. Persons that are to be assessed are the BOs, shareholders, BODs, all key employees, the CO/MLCO/MLRO, auditors, actuaries, principals, or persons to whom regulatory functions are outsourced. Regarding Investment Dealers however, there is no requirement for approval by the FSC for subsequent changes in the directors, beneficial owners, managers and shareholders of a company or partners in a partnership formed pursuant to the Investment Dealers (Licensing) Ordinance.

115. ***Criterion 26.4(a)***: The FSCO (S9, 10, and 31), Mutual Fund Ordinance (S14 and 15), The Investment Dealer (Licensing) Ordinance (S7) and Regulation (S4, 7 and 12), the AML Code (S6) and Regulation (S17, 19 and 21) and the Fit and Proper guidelines contains provisions consistent with all the IOSCO principles.

116. Regarding, IAIS principles, the provisions in the Insurance Ordinance (S4 and 5) and Insurance Regulations (S13, 15), the FSCO (S4, 28, 29, 31-38, 41, 43, and 45), and the guidelines published in relation to Fit and Proper, Risk Management and Internal Controls and Corporate Governance

partly met the requirements and satisfy 8 of the 14 principles to a level of mostly met or above. Similarly, supervision in line with BCBS principles were also partly met having satisfied 8 of 15 principles with a rating of mostly met or above. The laws and guidelines primarily used to address the principles are the Banking Ordinance (S3, 4, 8), and its regulations (S10), the FSCO (S4-7, 11, 16, 28, 29, 32 – 34, 43, 45, 50, 51, 54) and the guidelines published surrounding Internal Control and Audit and the Fit and Proper Guidelines. principles. The FSC in the Statement on Consolidated Supervisions and the FSC's Role as a Host Supervisory has put in place measures to comply with the relevant BCBS principles on consolidated group supervision.

117. The deficiencies relative to supervision of the banking sector were given more weight consistent with the ML/TF risk and materiality of the sector while the Insurance sector were rated as less significant.

118. ***Criterion 26.4(b)***: No deficiency cited in the MER and there are no changes to the AML/CFT framework in this regard. All other FIs are subject to monitoring of their compliance with AML/CFT obligations by the FSC. Regulation 22A AMLR requires an RBA to the supervision of financial businesses.

119. ***Criteria 26.5 & 26.6*** : No deficiency cited in the MER and there are no changes to the AML/CFT framework in this regard. The required factors which determine the frequency and intensity of AML/CFT supervision are contained in Reg. 22A(1) (AMLR). Reg. 22A(2) address the requirements concerning periodic review of FIs assessment of its ML/TF risk profile and other triggers of review such as major events or developments in the FIs management and operations

Weighting and Conclusion

120. TCI has a robust legal framework to prevent criminals or their associates from owning, controlling, or managing FIs. The existing deficiencies in this regard are considered minor as they concern only Investment Dealers which are is less significant for risk and importance weighting and is less material to the financial system.

121. TCI has also established laws and guidelines that address all of the core IOSCO principles and the majority of the BCBS and IAIS principles. The deficiencies relative to the outstanding BCBS principles were weighted more significant due to the risks and materiality of the sector. However, risk is mitigated by the fact that three (3) of the six (6) banks are foreign subsidiaries of Canadian banks and are subject to BCBS supervision by their home country. The deficiencies relative to the outstanding IAIS principles were given less weight. Life insurance business in the TCI is extremely small contributing 1.4% of sector assets as a percentage of GDP annually.

122. **Turks and Caicos Islands is therefore re-rated Largely Compliant for R.26**

4.1.10. Recommendation 34 (originally rated PC)

123. Turks and Caicos Islands was rated PC with R.34 in its 4th round MER. The deficiencies noted relate to: (i) The Gaming Inspectorate did not provide any guidance or feedback to licensees; (ii) No guidance was issued on TF and TFS.

124. ***Criterion 34.1***: The Gaming Control Commission issued very comprehensive AML/CFT Guidance to the Gaming Industry in May 2022**.** There is ongoing monitoring by and feedback provided to the GCC. The FSC has issued TF Guidance for DNFBPs and TFS Guidance for all Financial Businesses, i.e. both FIs and DNFBPs, in May 2022.

125. Guidance has been issued by the FSC and the GCC to their respective licensees. Guidance by the GCC includes general requirements for compliance, and detailed guidance on how to apply a risk-based approach for the gaming sector, how to conduct business risk assessments, risk based customer due diligence, when to apply enhanced due diligence (PEPs and other "higher risk"

patrons, and ongoing monitoring, when gaming establishment may rely on third parties ("qualified professionals") to conduct elements of CDD on its behalf and the required instalment/appointment of an MLRO and MLCO. Both the FSC and GCC also speak to their licensees about Targeted Financial Sanctions (TFS), the purpose thereof, listing and delisting procedures and penalties for breaching the sanction related legislation, however, there has been a lack of guidance surrounding TF for the DNFBPs under the FSC's remit.

Weighting and Conclusion

126. TCI has not issued any guidance to DNFBPs under the remit of the FSC. Though the law firms and the real estate industry are of a significant risk and weight, the immaterial amount contributed to the GDP gives it a lesser importance in the overall review.

127. **Turks and Caicos Islands is therefore re-rated Largely Compliant for R.34**

4.1.11. Recommendation 40 (originally rated PC)

128. Turks and Caicos Islands was rated PC with R.40 in its 4th round MER. The deficiencies noted relate to: (i) The lack of provisions to prevent some competent authorities from disclosing the information in circumstances where confidentiality cannot be guaranteed; (ii) There was no indication that the Police is required to maintain confidentiality for any request for cooperation and information exchanged that is consistent with parties' obligation concerning privacy and data protection; (iii) There were no provisions to address the requirement for the requesting financial supervisor to promptly inform the requested authority that the requesting financial supervisor is under a legal obligation to disclose or report the information, and; (iv) There were no mechanisms authorising some competent authorities to provide indirect international cooperation to non-counterparts.

129. ***Criterion 40.1:*** All competent authorities can provide a wide range of international cooperation spontaneously and upon request (POCO, Sec. 151A).

130. ***Criterion 40.2(a)***: The Proceeds of Crime Ordinance was amended on 16 October 2021. Section 151A provides the legal basis for all competent authorities, inclusive of the FCU and the Customs Department, to provide cooperation to the competent authorities of other jurisdictions.

131. ***Criterion 40.2(b):*** No deficiency cited in the MER and there are no changes to the AML/CFT framework in this regard. Nothing prevents the competent authorities from utilising the most efficient means to co-operate. Specifically, the FSCO provides that the FSC shall use the most appropriate and efficient means of co-operation (s.28(3))

132. ***Criterion 40.2 (c):*** As a security mechanism, the FSC has placed restrictions on the persons are involved in the receipt and dissemination of information exchanged. The number of persons involved in the process of receiving, transmitting, and executing international cooperation requests in limited to Legal Advisor who is the single designated contact point. The FSC transmits international cooperation information via secured email. The email system uses "encryption in transit" which ensures that emails remain secured throughout the dissemination. The FSC also uses two – factor authentication and has an anti-threat protection for its devices and emails. All public facing servers are hosted in a demilitarization zone (DMZ) within a firewall.

133. ***Criterion 40.2(d)*****:** TCI has published Guidelines which covers requests for Mutual Legal Assistance and requests for intelligence and information. These guidelines pertain to requests under a wide range of international cooperation mechanisms and requests for intelligence and information as it relates to the FIA, police and IC. Requesting authorities are advised to indicate in the request statutory and/or custody time limits, pre-trial court appearances or trial dates to assist in prioritizing requests. The prioritization process, as described in the section titled Timescales in Executing a Request, also considers additional input of updated information from

the requesting state which may re-order the allocation of resources to requests. The Guidelines identify the criteria for requests according to the legislation the information is being sought under and advises that the request may be returned for additional details which hampers timely execution. To facilitate the timely execution of requests, the TCI takes the following initial actions: acknowledging receipt of the request; providing the requesting authority with the name of the executing authority, the contact person in that authority and their contact details.

134. Additionally, the FIA is guided by the processes and adheres to the Egmont Group's "Principles for Information Exchange" and "Best practices for the improvement of Exchange of Information Between FIUs." Clause 9 and 13 of the FIA SOP also addresses the prioritization of requests and sets out the procedure to be followed by the FIA when dealing with a request for assistance. The SOP specifies that all requests for assistance should be replied to between 5-20 days but this may be longer depending on the magnitude and complexity of the request and the information requested. The FSC's Regulatory Cooperation Handbook also contains processes for the prioritization and timely execution of requests. It details the steps to be taken once a request is received. If a request is deemed urgent by the requesting authority, the procedure allows the FSC to accept a request for assistance or information effected by means of communication other than that required as stated in the guidance.

135. ***Criterion 40.2(e):*** No deficiency cited in the MER and there are no changes to the AML/CFT framework in this regard. All competent authorities have clear processes for safeguarding the information received.

136. ***Criterion 40.3:*** The Integrity Commission (IC) has a legal basis to cooperate by virtue of the Integrity Commission Ordinance. According to Section 15(3), the IC may disclose to a law enforcement agency, including a foreign law enforcement agency; upon request as well as spontaneously, any information disclosed to the IC.

137. Nevertheless, the IC is also able to enter into written agreements arrangements or memoranda of understanding with a law enforcement agency, including a foreign law enforcement agency, as the IC considers necessary or desirable for the discharge or performance of its functions.

138. The IC has demonstrated that it can engage in international cooperation. Between 2019 and 2021 the IC has exchanged information with the UK Metropolitan Police Service, the US DEA and USDOJ, Switzerland's Basel Institute of Good Governance and the Hong Kong Independent Commission Against Corruption. Regionally, the IC has also cooperated with Jamaica, Cayman Islands, BVI and Trinidad and Tobago. The IC is a member of Commonwealth Caribbean Association of Integrity Commissions and Anticorruption Bodies (CCAICAB) and can share information through that body. The IC also became a member to the UK National Crime Agency International Anti-Corruption Coordination Centre, which assists with international engagement in other countries.

139. ***Criterion 40.4:*** The POCO was amended by in October 2021 and inserted Section 151A on International Cooperation. Section 151A(4) states that competent authority shall provide feedback in a timely manner to a competent authority of other country from which it has received assistance, on the use and usefulness of any information obtained.

140. ***Criterion 40.5:*** The Proceeds of Crime (Amendment) Ordinance 2021 inserted Section 151A into the POCO. Sub-section 5 outlines that a competent authority shall not refuse a request for assistance on that grounds that – a) the request is also considered to involve fiscal matters; b) laws require financial businesses to maintain secrecy or confidentiality (except where the relevant information that is sought is held in circumstances where legal professional privilege or legal professional secrecy applies); c) there is an inquiry, investigation or proceeding underway in the Islands, unless the assistance would impede that inquiry, investigation or proceeding; or d) the

nature or status (civil, administrative, law enforcement, etc.) of the requesting competent authority is different from competent authority in the Islands. This requirement applies to all competent authorities.

141. ***Criterion-40.6:*** No deficiency cited in the MER and there are no changes to the AML/CFT framework in this regard. TCI has established controls and safeguards regarding the use of information exchanged unless prior authorisation was issued.

Criterion 40.7: The deficiency regarding the FCU and RTCIPF has been rectified through the Oct 2021 POCA amendment. The POCO was also amended by inserting Section 151A. Subsection (6) states that a competent authority (includes all relevant public bodies) may refuse to provide information to the competent authority of another country if the requesting competent authority cannot protect the information effectively. Additionally, the Police Force Ordinance, Section 53, which relates to disciplinary offences confirms that a police officer shall be guilty of a disciplinary breach if they commit an offence highlighted within the Police Disciplinary Code. The Police Disciplinary Code then specifically outlines breaches of confidentiality and divulging/communication information without having the proper authority as disciplinary offences.

142. ***Criterion 40.8:*** The Integrity Commission Ordinance at Section 15(5) enables the IC to conduct inquiries on the behalf of foreign authorities. Section 5 was added to the Ordinance by virtue of an October 2021 amendment and also states that all information obtainable by the IC for a domestic investigation can be exchanged with a foreign law enforcement agency.

143. ***Criterion 40.9:*** No deficiency cited in the MER. TCI make a change to the framework by an amendment to the POCO. The POCO was amended on 16 October 2021 and specifies that competent authorities within the TCI shall provide cooperation to the competent authorities of other jurisdictions. It further stipulates that the cooperation may be done spontaneously or upon request, directly or indirectly. This change however does not impact the legal basis established in the MER but further supports it. There is no restriction on the FIA to share or provide any cooperation to competent authorities regardless of their type.

144. ***Criterion 40.10:*** No deficiency cited in the MER. While the POCO was amended by in October 2021 and inserted Section 151A which addresses the requirement to provide feedback, it does not remove the obligations of the FIA under the FIAO. Section 151A(4) states that competent authority shall provide feedback in a timely manner to a competent authority of other country from which it has received assistance, on the use and usefulness of any information obtained. The FIA, as part of its functions (s.5 (1) (c) (i) FIAO) is required to provide feedback on the information provided by any foreign financial intelligence authority. Both provisions meet the requirements.

145. ***Criterion 40.11:*** No deficiency cited in the MER and there are no changes to the AML/CFT framework in this regard. The FIA can exchange all information required by the criterion.

146. ***Criterion 40.12:*** No deficiency cited in the MER. TCI make a change to the framework by an amendment to the POCO. The POCO was amended on 16 October 2021 and specifies that competent authorities within the TCI shall provide cooperation to the competent authorities of other jurisdictions. It further stipulates that the cooperation may be done spontaneously or upon request, directly or indirectly. This change however does not impact the legal basis established in the MER but further supports it.

147. ***Criterion 40.13:*** No deficiency cited in the MER and there are no changes to the AML/CFT framework in this regard**.** The FSC can exchange all information required by the criterion.

148. ***Criterion 40.14:*** No deficiency cited in the MER and there are no changes to the AML/CFT framework in this regard. All the categories of information can be exchanged.

149. ***Criterion 40.15:*** No deficiency cited in the MER and there are no changes to the AML/CFT framework in this regard. The FSC can conduct compliance visits upon the request of a foreign authority and can also permit a foreign regulator to participate in a compliance visit undertaken by the FSC.

150. ***Criterion 40.16:*** The amended FSC Ordinance remedies the deficiency as it now requires requesting financial supervisors to promptly inform the requested financial supervisor where there is a legal obligation on the part of the requesting financial supervisor to disclose or report the requested information. The FSC Ordinance also specifies that protected information shall not be disclosed, unless consent is received from the person who disclosed it. Protected information is defined to include statistics and other information from which identity cannot be deduced. This definition is not contrary to the requirement.

151. ***Criteria 40.17- 40.18:*** No deficiency cited in the MER and there are no changes to the AML/CFT framework in this regard. All LEAs are able to exchange domestically available information with foreign counterparts. LEAs can sue their powers to conduct enquiries on behalf of foreign counterparts.

152. ***Criterion 40.19:*** The TCI is able to form joint investigative teams to conduct investigations with any jurisdiction. TCI have also established bilateral and multilateral arrangements to enable such joint investigations. The demonstrated ability to form JITs together with the stated MLA procedure and mechanisms within the Tax Information Order 2014 and TCI/Bahamas Shiprider Agreement (2021) sufficiently demonstrates that TCI is able to form JITs.

153. ***Criterion 40.20:*** All competent authorities are permitted to exchange information [provide international cooperation] indirectly with non-counterparts (POCO, Sec. 151A). TCI has mechanisms to ensure all relevant competent authorities that requests information indirectly always makes it clear for what purpose and on whose behalf the request is made.

Weighting and conclusion

154. There are provisions in place to allow the competent authorities to exchange information with other jurisdictions and there are adequate provisions for protecting the confidentiality of information. Adequate processes are in place at CAs to prioritize requests and facilitate timely execution. TCI is able to form JITs.

155. Turks and Caicos Islands is therefore re-rated to Compliant for R.40.

4.2 PROGRESS ON RECOMMENDATIONS WHICH HAVE CHANGED SINCE ADOPTION OF THE MER

4.2.1 Recommendation 2 (Originally rated LC)

157. Since the adoption of the Turks and Caicos' MER, Rec. 2 has been amended to reflect the February 2018 amendments to the FATF Standards which clarify the need for compatibility of AML/CFT requirements and data protection and privacy rules and build on the conclusions of RTMG's report on interagency CF/CFT information sharing.

158. ***Criterion 2.1:*** The National AML/CFT Strategy is utilized by the TCI as the country's national AML/CFT policy. To ensure the Strategy is informed by the risks identified in the NRA and the subsequent NPO sectoral risk assessment, TCI has developed a revised national AML/CFT/CPF strategy for the period covering 2021-2023. The revised plan takes into account the deficiencies noted in the TCI's MER as well as their AML Strategic Plan for the period. The TCI has also put

in place measures for the ongoing review and monitoring of the competent authorities on their progress with the goals set out in the National Strategy.

159. The TCI's National Strategy document for 2021-2023 sets out the following eight (8) goals, which the country is targeting: Implement AML/CFT/CPF Measures, Improve Investigations and Prosecutions, Enhance Border Control Measures, Strengthen Oversight and Supervision, Improve Data Collection and Information Sharing, Enhance Domestic Coordination and International Cooperation, Public Sector Training and Awareness, and Enhance Outreach and Guidance. However, it is noted that that the revised National Strategy does not address how certain specific higher risk sectors should be dealt with such as how the higher ML risk to the banking and legal professional sector should be addressed.

160. Although the TCI has a strategic plan that sets out the strategic goals/objectives, which is used as the national policy, the deficiency remains the lack of AML/CFT policies which guide routine operations and practices of respective authorities to meet those goals. It is noted that the ODPP and the Police have put in place policies to meet the objectives set out within the National Strategy Document. The same information was not provided for the other agencies.

161. ***Criterion 2.2:*** The ratings remain as was in the MER. No deficiencies cited in the MER. No changes to the AML/CFT framework.

162. ***(Revised) Criterion 2.3:*** The TCI has several mechanisms in place to enable competent authorities to co-operate, co-ordinate and exchange information domestically concerning the development and implementation of AML/CFT policies and activities. These include, inter alia, meetings of the AMLC and its various sub-working groups such as the Counter-Terrorism/Proliferation Financing (CT/PF) Focus Group. The CTPF mandate is wide and is written in its Terms of Reference which was approved on the 24 June 2021. The mandate includes working with LEAs and other competent authorities to raise awareness, undertake training, and review legislative changes to enhance the CT/PF framework.

163. The CT/PF Focus Group is instrumental in driving policies, procedures and providing training and other matters relating to PF in the TCI. Sanitized copies of the minutes of the meetings demonstrated the range group's work includes policymaking and operational matters. As of May 19, 2022, the CT/PF Focus Group has had fourteen (14) meetings. It is required to meet once a month and reports back to the AML Committee. The FIA also has various MOUs in place with other competent authorities to enable it to co-operate, and where appropriate, co-ordinate and exchange information with those authorities.

164. ***Criterion 2.4:*** The CT/PF Focus Group is a mechanism which provides for cooperation and coordination among authorities to combat PF. The group sub-set of the national AML Committee and is formed of various competent authorities inclusive of senior representatives from AGC, ODPP, Immigration, Customs, FSC, FIA, FCU, Detective Inspector in charge of Criminal Investigation Division, and National Security Secretariat, As of May 19, 2022, the Group has had fourteen (14) meetings. It is required to meet once a month and reports back to the AML Committee. The CT/PF Focus Group is instrumental in driving policies, procedures and providing training and other matters relating to PF in the TCI.

165. ***(New) Criterion 2.5:*** There are no laws in place which would inhibit the ability of competent authorities to access and share information in relation to their respective functions and activities as data protection and privacy rules are compatible with AML/CFT requirements. Data protection rules are covered by the Confidential Relationships Ordinance (CRO) and within MOUs among all AML/CFT CAs. The CRO imposes a duty of non-divulgence of information imparted in respect of business or professional confidence and applies to any public officer or government employee. S.3(2) specifically permits the sharing of information for all AML/CFT related matters.

166. Each CA is responsible for data protection. The various MOUs make provisions for data protection. TCI has cooperation and coordination mechanisms in place to ensure AML/CFT compatibility with their current data protection and privacy rules framework. Cooperation and coordination on the compatibility of AML/CFT requirements with data protection rules occurs at the strategic and operational levels via the AMLC and the structured Focus Groups or Sub-Committees which reports to the AMLC.

Weighting and conclusion

167. TCI has developed a 2021-2023 national AML/CFT/CPF strategy which outlines the country's revised goals. It identifies the key issues TCI wishes to focus on, as well as which goals were specific for which competent authority. Nevertheless, the requirement that the National Strategy address the risks identified from the NRA is not fully met. While progress was made, The TCI needs to undertake further work on setting out its AML/CFT policies that guide routine operations and practices of its respective authorities.

168. As it relates to cooperation, coordination and exchange of information on AML/CFT development, there are mechanisms at both the policy-making and operational level. The TCI has undertaken a substantial amount of work to combat PF. The Counter-Terrorism/Proliferation Financing Focus Group, as a subset of the AML Committee, leads the charge on this. The CTPF's work includes working with LEAs and other competent authorities to raise awareness, undertaking training and reviewing legislative changes to enhance the TCI's CT/PF framework. MOUs between competent authorities were provided and contained relevant information. There are no Data Protection/Privacy laws in place which would inhibit the ability of competent authorities to access and share information in relation to their respective functions and activities.

169. **Turks and Caicos Islands maintains a rating of Largely Compliant for R.2**

4.2.2 Recommendation 15 (Originally rated PC)

170. Since the adoption of Turks and Caicos Islands' MER, Rec. 15 has been amended to extend a range of AML/CFT requirements related to virtual assets (VAs) and virtual asset service providers (VASPs).

171. ***Criterion 15.1(a):*** S.4 of the AML/PTF Code requires FIs to assess their ML/TF risks soon after the start of business, and in conducting such assessments to give particular consideration to the development of new products and services, new business practices, delivery mechanisms, technologies new or developing technologies for new and pre-existing products. A financial business is required to regularly review and update the risk assessment if there are material changes to any of these matters. There are no similar provisions applicable to the country and is therefore noted as a deficiency.

172. ***Criterion 15.2:*** The ratings remain as was in the MER. No deficiencies cited in the MER. No changes to the AML/CFT framework.

173. ***Criteria* 15.3 – 15.11*:*** TCI did not provide any information relative to the requirements of the revised R.15.

Weighting and conclusion

174. Since TCI's onsite evaluation, the FATF updated Recommendation 15 extensively. TCI has not yet addressed any of the updated requirements (sub-criterion 15.3-15.11). This gap is significant and outweighs the ratings in the criteria of 15.1 and 15.2. No information was provided to assess the updated recommendation. TCI to have not met at least 9 of 11 criteria for this recommendation

overall. As no information has been provided for the substantial updates to Recommendation 15 is re-rated non-compliant.

175. **Turks and Caicos Islands is rated Non-compliant for R.15**

4.2.3 Recommendation 18 (Originally rated C)

176. Since the adoption of the Turks and Caicos' MER, Rec. 18 has been amended to reflect the November 2017 amendments to the FATF Standards (INR.18) which clarified the requirements on sharing of information related to unusual or suspicious transactions within financial groups, and the interaction of these requirements with tipping-off provisions.

177. ***Criterion 18.1:*** The ratings remain as was in the MER. No deficiencies cited in the MER. No changes to the AML/CFT framework.

178. ***Criterion 18.2(a):*** The ratings remain as was in the MER. No deficiencies cited in the MER. No changes to the AML/CFT framework.

179. ***(Revised) Criteria 18.2(b) & (c):*** Regulation 6A of AML/PTF Code (inserted in 2018 requires financial groups or persons carrying on financial business through financial group arrangements required to implement group wide programmes against ML/TF. Additionally, further amendments were made to the AML/PFT Code via Legal Notice 38 of 2022 which brough TCI into full compliance with the requirement. Reg. 6A was amended by substituting the previous paragraph (c) and (d) with a new paragraph (c) and (d) which matches exactly the wording of the requirement of c18.2(b) & (c).

Weighting and conclusion

180. The TCI amended its AML/PFT Code in 2022. The provisions to meet the revised standards in Rec. 18.2(b) and (c).

181. **Turks and Caicos Islands is rated Compliant for R.18**

5. CONCLUSION

182. Overall, Turks and Caicos Islands has made significant progress in addressing the technical compliance deficiencies identified in R. 8, 16, 22, 26, 34 and only minor deficiencies remain. Turks and Caicos Islands has been re-rated C on R 10, 14, 17, 18, 19, 23 and 40. Turks and Caicos Islands remains Largely compliant with R.2 and has been downgraded to Non-compliant for R.15.

183. A summary table setting out the underlying deficiencies for the Recommendations assessed in this report is included at ***Annex A***.

184. Overall, in light of the progress made by The Turks and Caicos Islands since its MER was adopted, its technical compliance with the FATF Recommendations is as follows as of December 2022:

R.	Rating
1	PC (MER 2019)
2	LC (MER 2019) **LC (FUR 2022)**
3	C (MER 2019)
4	C (MER 2019)
5	C (MER 2019)
6	LC (MER 2019)
7	LC (MER 2019)
8	PC (MER 2019) ↑ **LC (FUR 2022)**
9	C (MER 2019)
10	PC (MER 2019) ↑ **C (FUR 2022)**
11	C (MER 2019)
12	C (MER 2019)
13	PC (MER 2019)
14	PC (MER 2019) ↑ **C (FUR 2022)**
15	PC (MER 2019) ↓ **NC (FUR 2022)**
16	PC (MER 2019) ↑ **LC (FUR 2022)**
17	PC (MER 2019) ↑ **C (FUR 2022)**
18	C (MER 2019) **C (FUR 2022)**
19	PC (MER 2019) ↑ **C (FUR 2022)**
20	C (MER 2019)

R.	Rating
21	C (MER 2019)
22	PC (MER 2019) ↑ **LC (FUR 2022)**
23	PC (MER 2019) ↑ **C (FUR 2022)**
24	LC (MER 2019)
25	C (MER 2019)
26	PC (MER 2019) ↑ **LC (FUR 2022)**
27	C (MER 2019)
28	PC (MER 2019)
29	C (MER 2019)
30	C (MER 2019)
31	LC (MER 2019)
32	C (MER 2019)
33	LC (MER 2019)
34	PC (MER 2019) ↑ L**C (FUR 2022)**
35	LC (MER 2019)
36	PC (MER 2019)
37	LC (MER 2019)
38	LC (MER 2019)
39	C (MER 2019)
40	PC (MER 2019) ↑ **C (FUR 2022)**

185. Turks and Caicos Islands has 35 Recommendations rated C/LC. Turks and Caicos Islands will remain in enhanced follow-up based on effectiveness ratings. Turks and Caicos Islands' next enhanced follow-up report is due November 2023.

5.1. Annex A: Summary of Technical Compliance –Deficiencies underlying the ratings [5]

Compliance with FATF Recommendations		
Recommendation	**Rating**	**Factor(s) underlying the rating[6]**
R.2	LC (MER) LC (FUR 2022)	• The National AML/CFT Strategy is utilised by the TCI as the country's national AML/CFT policy. The National Strategy does not address several key risks identified by the NRA. • Though it informs the development of AML/CFT by the authorities, the National Strategy does not serve as AML/CFT policies that guide routine operations and practices of respective authorities.
R.8	PC (MER) LC (FUR 2022)	• No evidence of work being undertaken with NPOs to develop and refine best practices to address TF risk and vulnerabilities. • *Sanctions do not extend to persons acting on behalf of the NPOs.
R.10	PC (MER) C (FUR 2022)	• All criteria are met.
R.14	PC (MER) C (FUR 2022)	• All criteria are met.
R.15	PC (MER) NC (FUR 2022)	• The requirements of c.15.1 do not apply to the country. • No information was provided regarding measures to comply with criteria 15.3 – 15.11.
R.16	PC (MER) LC (FUR 2022)	• No requirement for the batch file to contain full beneficiary information that is fully traceable with the beneficiary country.
R.17	PC (MER) C (FUR 2022)	• All criteria are met.
R.18	C (MER) C (FUR 2022)	• All criteria are met.
R.19	PC (MER) C (FUR 2022)	• All criteria are met.

[5] 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.

R.22	PC (MER) LC (FUR 2022)	• No express requirement for real estate agents to apply CDD as regard both the purchasers and vendors of property.
R.23	PC (MER) C (FUR 2022)	• All criteria are met.
R.26	PC (MER) LC (FUR 2022)	• Measures for ensuring that criminals or their associates do not own, control or manage FIs are not consistent for all types of FIs and do not cover all relevant parties.
R.34	PC (MER) LC (FUR 2022)	• No guidance issued on TF to DNFBPs supervised by the FSC.
R.40	PC (MER) C (FUR 2022)	• All criteria are met.

*Deficiency identified in the 3rd Enhanced FUR.

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December 2022



Anti-money laundering and counter-terrorist financing measures – Turks and Caicos Islands

Follow-up Report & Technical Compliance Re-Rating

This report analyses Turks and Caicos Islands' progress in addressing the technical compliance deficiencies identified in the CFATF assessment of their measures to combat money laundering and terrorist financing of January 2020.

The report also looks at whether Turks and Caicos Islands 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