# Anti-money laundering and counter-terrorist financing measures

# REPUBLIC OF HAITI

## 4th Enhanced Follow-up Report & Technical Compliance Re-Rating

Follow-up Report

July 2024



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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4th Round Follow Up Reports

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# REPUBLIC OF HAITI
# 4TH ENHANCED FOLLOW-UP REPORT

## I. INTRODUCTION

1. The Fourth Round Mutual Evaluation Report (MER) of the Republic of Haiti was adopted in May 2019, during the XLIX Caribbean Financial Action Task Force (CFATF) Plenary and Working Group Meetings held in Port-of-Spain, Trinidad and Tobago and published in July, 2019. Based on the MER results, the Republic of Haiti (Haiti) met the thresholds for the enhanced follow-up process, i.e., there were eight or more NC/PC ratings for technical compliance and a low or moderate level of effectiveness for seven (7) or more of the elven (11) effectiveness[1].

2. This Follow Up Report (FUR) analyses Haiti's progress in addressing the technical compliance requirements of the Recommendations being re-rated. Technical compliance re-ratings are given where sufficient progress has been demonstrated. Recommendations 2 and 15 were re-evaluated as those Recommendations changed since Haiti's on-site.

3. This FUR does not analyse any progress Haiti has made to improve its levels of effectiveness.

4. The assessment of Haiti's request for technical compliance re-ratings and the preparation of this report were undertaken by Mrs. Bonnielyn Adderley, Deputy Manager, Bank Supervision Department, The Bahamas (Financial Expert), Ms. Chantal Belmar, Supervisor of NRSPs & NPOs, Financial Intelligence Unit, St. Vincent and the Grenadines (Financial Expert), Ms. Chloé Quinn, AML/CFT Directorate, Ministry of Justice, Luxembourg (Legal Expert) and Mr. Garvin Farfan, Legal Officer, Financial Investigations Branch, Trinidad and Tobago Police Service (Law Enforcement Expert). The Experts were supported by Ms. Allison Mc Intyre (Financial Advisor) as well as Ms. Deena-Marie Patterson and Ms. Camille Renie (Legal Advisors) of the CFATF Secretariat.

5. Sections 4 and 5 of this FUR summarise the progress made to improve technical compliance and Section 6 contains the conclusion and a table illustrating Haiti's 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 traditional policy that deals with assessed countries with significant deficiencies (for technical compliance or effectiveness) in their AML/CFT systems and involves a more intensive process of follow up.

## II. TECHNICAL COMPLIANCE RATINGS IN THE MUTUAL EVALUATION REPORT

6. Haiti's 2019 MER ratings[2] are set out hereunder.

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

7. Given these results and the effectiveness ratings in the MER, Haiti was placed in enhanced follow-up.

## III. OVERVIEW OF PROGRESS TO IMPROVE COMPLIANCE

8. In keeping with the CFATF Procedures for the Fourth Round of AML/CFT Mutual Evaluations (CFATF MEVAL Procedures), this FUR considers progress made since the MER, up until November 21st, 2023, as Haiti did not seek re-ratings prior to this FUR. In line with the CFATF MEVAL Procedures and FATF Methodology, the Group of Experts' analysis 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.

[2] There are 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, Substantial or High.

9. Haiti sought re-ratings for 26 Recommendations[3] and 2 Recommendations (R. 2 and R. 15) changed since the on-site.

10. The following sections summarise the progress made by Haiti 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 changed since the MER was adopted.

# IV. PROGRESS TO ADDRESS TECHNICAL COMPLIANCE DEFICIENCIES IDENTIFIED IN THE MER

## 4.1. Recommendation 1 (originally rated NC)

11. In the 4th Round MER, Haiti was rated NC for Recommendation 1. The following deficiencies were cited: The country has not conducted any formal risk assessment that would enable it to identify and understand its ML/TF risks (c1.1); there are no documented measures designating the MJPS or the CNLBA to undertake the coordination functions as cited by the competent authorities (c1.2). There are no measures in place to address the requirements of criteria 1.3, 1.4, 1.5, 1.7, 1.10 (b), 1.10 (d). There is no need for the assessment of circumstances under which the CDD and verification measures may be reduced or simplified to be consistent with the country's risk assessment (c1.8). Absence of the requirement for all supervisors to ensure that FIs and DNFBPs are implementing the objectives as required by the recommendation (c1.9). The requirements to identify, assess, understand and document ML/TF risks are not applicable to all FIs and DNFBPs (c1.10). The requirement to document risk assessments does not extend to its TF risk (s.2.4, CECs Guidelines). Documentation of risk is not applicable to the other FIs and DNFBPs (c.1.10 (a)). Only CECs are required to update their risk assessments, which is mandated to be done on a yearly basis (c. 1.10 (c)). All FIs and DNFBPs are not required to have senior management approved policies to mitigate risk identified (c1.11 (a)). There is no requirement for FIs and DNFPBs to monitor the implementation controls and to enhance them (c1.11 (b)). Only banks, MVTS, CECs as FIs are required to apply EDD in circumstances where higher risks are identified. There are no measures requiring the DNFBP sector to adhere to the requirements of this criterion (c1.11(c)). FIs and DNFBPs are not required to take simplified measures to manage and mitigate risk, if lower risk is identified (c.1.12).

[3] R. 1, 3-5, 10-13, 16-23, 27, 29-35, 38 and 39

12. ***Criterion 1.1:*** Article 11 of the Decree Repressing Money Laundering, Terrorist Financing and Financing of Proliferation of Weapons of Mass Destruction (DSMLFTP) requires that the Committee for the fight against Money Laundering (CNLBA) take all appropriate measures to identify, assess, understand and mitigate the ML/TF risks. With the assistance of the World Bank, Haiti launched its National Risk Assessment (NRA) and established its Working Groups, with which there are scheduled meetings during 2024. Further, the UCREF (Haiti's FIU) continuously identifies trending (emerging and existing) ML/TF risks based on STRs/UTRs and CTRs received from reporting entities. The risks identified are then factored into UCREF's analysis as well as reports which the FIU shares. The ML/TF risks for the country are therefore being identified and assessed, to some extent.

13. ***Criterion 1.2:*** Article 11 of the DSMLFTP requires the CNLBA to take all appropriate measures to identify and assess the ML/TF risks. Additionally, Article 148 (d) makes the CNLBA responsible for monitoring the implementation, regular review and updating of the national risk assessment of ML/TF risks, in accordance with Article 11 of the foregoing law.

14. ***Criterion 1.3:*** Article 11 of the DSMFTP requires the CNLBA to take all appropriate measures to identify, assess, understand, and mitigate money laundering and terrorist financing risks, updating this assessment at least every five years.

15. ***Criterion 1.4:*** Article 11 of DSMLFTP requires the CNLBA to take appropriate measures to identify, assess, understand and mitigate the money laundering and terrorist financing risks to which Haiti is exposed, and update this assessment at least every five (5) years. Upon completion and subsequent updates, the National Risk Assessment Report will be transmitted to competent authorities, supervisory bodies, self-regulated entities, financial institutions, and DNFBPs. Additionally, Article 148 of Section 2 of the DSMLFTP: National Coordination and Cooperation Structure outlines the responsibilities of the CNLBA which include monitoring the implementation, regular review and updating of the national risk assessment of money laundering risks and terrorist financing risks, in accordance with Article 11 of the foregoing law (Article 148 (d). However, the deficiency in c.1.1 cascades into this criterion.

16. ***Criterion 1.5***: The deficiency in c.1.1 cascades into this criterion. There is no provision for the country to apply a risk-based approach to allocating resources and implementing measures to prevent or mitigate ML/TF.

17. ***Criterion 1.6*****:** There are no deficiencies, as all DNFBPs and FIs are mandated to apply the FATF standards.

18. ***Criterion 1.7:*** Articles 13 (c) and 63 of the DSMLFTP require that FIs and DNFBPs take enhanced measures to manage and mitigate the risk, in line with option (a) of the criterion.

19. ***Criterion 1.8:*** Article 62 of the DSMLFTP provides for simplified measures where the ML/TF risk is low and subject to fulfilling their obligations under Articles 12 and 13 of the Act. FIs and DNFBPs may, subject to the conditions provided for by the relevant regulations, proceed, only during the onset, to verify the identity of the customer and, where applicable, of the beneficial owner. However, there are no provisions that SDD be applied when this is consistent with the country's assessment of its ML/TF risks.

20. ***Criterion 1.9:*** Article 74(1) of the DSMLFTP provides that supervisory authorities shall ensure compliance by FIs and DNFBPs with the provisions of the DSMLFTP and shall take the necessary measures to that end. Article 75(1) of the DSMLFTP states that supervisory authorities are endowed with the powers to monitor and supervise FIs and DNFBPs to ensure that they comply with their AML/CFT obligations.

21. ***Criterion 1.10:***
    - **(a)** Article 12 of the DSMLFTP provides that FIs and DNFBPs must conduct an assessment of the ML/TF risks to which they are exposed, taking into account risk factors such as customers, countries or geographical areas, products, services, transactions or distribution channels. The risk assessment shall be documented, updated and made available to regulatory entities or self-regulated entities as appropriate.
    - **(b)** Article 12 (1) of the DSMLFTP provides that FIs and DNFBPs must conduct an assessment of the ML/TF risks to which they are exposed, taking into account risk factors such as customers, countries or geographical areas, products, services, transactions or distribution channels. Additionally, Article 12 (2) of the DSMLFTP states that FIs and DNFBPs shall develop a classification of ML/TF and proliferation risks based on the nature of the products or services that they offer. This classification must consider the conditions of the transaction that they propose, the distribution channels used, the characteristics of the customers, and the country or territory of origin or destination of the funds.
    - **(c)** Article 12 (3) of the DSMLFTP provides that the risk assessment must be documented, updated, and made available to regulatory entities or self-regulated entities, as appropriate.
    - **(d)** Article 12 (3) of the DSMLFTP provides that the risk assessment must be documented, updated, and made available to regulatory entities or self-regulated entities, as appropriate.

22. ***Criterion 1.11:***

**(a)** Article 13 (a) of the DSMLFTP requires FIs and DNFBPs to be governed by policies, procedures and controls approved by senior management to manage and mitigate ML and TF risks identified. This action enables FIs and DNFBPs to conduct their own risk assessment to manage and mitigate risks identified.

**(b)** Article 13 (b) of the DSMLFTP requires FIs and DNFBPs to monitor the implementation of controls and to enhance them, if necessary, based on the risks identified.

**(c)** Article 13(c) of the DSMLFTP requires both FIs and DNFBPs to enforce enhanced measures to manage and mitigate risks, when higher risks are identified.

23. ***Criterion 1.12:*** Article 62 of the DSMLFTP allows FIs and DNFBPs to take simplified measures, when it is demonstrated that the ML/TF risks is low and subject to their having fulfilled obligations under Articles 12 and 13 of the Act. They are also required to satisfy criteria 1.9 to 1.11. Simplified measures are not permitted whenever there is a suspicion of ML/TF.

***Weighting and Conclusion:***

24. Haiti has begun the process to understand its ML/TF risks and the updated legal framework in Haiti has allowed for compliance in certain aspects, such as the adoption of Articles 12 and 13 mandating ML/TF risk assessments for financial institutions (FIs) and designated non-financial businesses and professions (DNFBPs). Haiti has commenced a national risk assessment. Further, the jurisdiction, through the UCREF, has to some extent been identifying ML/TF risks utilizing, *inter alia*, STRs. There are moderate shortcomings in Haiti's AML/CFT framework. Specifically, the incompletion of an ML/TF risk assessment for the country has not allowed for or resulted in the development of provisions for a risk-based approach and the consistent application of simplified due diligence measures.

**Haiti is re-rated as Partially Compliant for Recommendation 1.**

## 4.2. Recommendation 3 (originally rated PC)

25. In the 4th Round MER, Haiti was rated PC for Recommendation 3. The following deficiencies were cited: Haiti has adequately addressed this core issue, but only in circumstances when the offence was committed by an organized criminal group (c3.1). Not all predicate offences for ML are covered (c3.2). There are no measures to address the requirements (c3.5 and c3.7). The ancillary offences of abetting and facilitating are missing from the law (c3.11).

26. ***Criterion 3.1:*** The MER noted that the material element of knowing that property is the proceeds of crime as prescribed by the Palermo Convention was absent from the Haitian legislation. Through the ratification of this Convention, Haiti addressed this core deficiency, but only in circumstances where the offence was committed by an organized criminal group. With the adoption of article 7 of the new DSMLFTP, Haiti introduced the material element of "knowing" that the "assets are the proceeds of criminal activity" into national legislation and thus has aligned the criminalization of ML with the Vienna Convention and the Palermo Convention. The term "proceeds of criminal activity" is defined in article 6 (22) of the DSMLFTP as any assets, regardless of value, derived directly or indirectly from the commission of an offence or obtained directly or indirectly from the commission of an offence. For the purposes of the application of the DSMLFTP, the origin of funds of assets is illicit when these result from the materialization of a crime connected with a list of predicate offences (article 2 of the DSMLFTP). Thus, the application of the material element of knowing has been extended to all predicate offences listed in article 2.

27. ***Criterion 3.2:*** Haiti has maintained its list of predicate offences, as set out in article 2 of the DSMLFTP. Following the MER, certain offences that were previously missing have been added, notably murder and grievous bodily harm, piracy, smuggling (including in relation to customs and excise duty and taxes), bribery (article 5 of the law on the prevention and punishment of corruption of 12 March 2013 provides that the term "corruption" covers bribery) and tax crimes (related to direct and indirect taxes). However, the following offences are not included in the list of predicate offences: piracy of products, forgery, and market manipulation. Haiti's list of predicate offences for ML thus covers the most serious offences, specifically those to which Haiti is most exposed (corruption, human trafficking, migrant smuggling, drug trafficking and smuggling). The MER placed significant weight on the absence of tax offences as predicate offences, which have since been added to the list of predicate offences. Taking this into account, together with Haiti's risk profile in relation to the missing predicate offences, the absence of a limited number of predicate offences from the list of designated categories of offences is considered to be a minor deficiency.

28. ***Criterion 3.3:*** The criterion was deemed not applicable in the MER as Haiti does not apply the threshold or combined approach. The status quo remains.

29. ***Criterion 3.4:*** This criterion was deemed met in the MER and the status quo remains. The ML offence, as provided for in article 7 of the DSMLFTP applies to "assets". The term "assets" is defined in article 6 (4) of the DSMLFTP and means "assets of every kind, whether corporeal or incorporeal, moveable or immoveable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in such assets". This definition is in line with the FATF Glossary.

30. **Criterion 3.5**: Article 6 (13) of the DSMLFTP states that it is not necessary for a person to be convicted of a predicate offence to prove that assets result from proceeds of criminal activity.

31. ***Criterion 3.6***: This criterion was deemed met in the MER and was re-assessed against the new law. Through article 3 of the DSMLFTP, offences of article 7, 8 and 9 of said law apply to all natural and legal persons and to any organization that is subject to litigation in Haiti, regardless of where the act occurs.

32. ***Criterion 3.7:*** Article 7 of the DSMLFTP states that the offence is imputable to any person who commits the predicate offence. A person involved in the commission of the predicate offence may also commit the offence; in this case, it is qualified as self-laundering.

33. ***Criterion 3.8:*** This criterion was deemed met in the MER and was re-assessed against the new law. The final paragraph of article 7 of the DSMLFTP states that "knowledge or intent, as elements of the above activities, can be inferred from objective factual circumstances".

34. ***Criterion 3.9:*** This criterion was deemed met in the MER and was re-assessed against the new law. Previously, a person convicted for the offence of ML was punished by imprisonment for a term of three to fifteen years imprisonment or a fine of Haitian Gourdes 500,000 to 100,000,000 depending on the seriousness of the crime. Article 118 (1) of the DSMLFTP stipulates that a person convicted for the offence of ML may be punished by imprisonment for a term of seven to ten years imprisonment or a fine of Haitian Gourdes 500,000 to 100,000,000 depending on the seriousness of the crime. While there has been no change to the fines that can be imposed, the length of imprisonment sentences has been changed: the minimum term has been raised from three years to seven years and the maximum sentence has been lowered from fifteen to ten years.

35. The same penalties are applicable to attempted ML or complicity in aiding, abetting, counselling or inciting participation in an association or conspiracy in the commission of ML offences (article 118 (2) of the DSMLFTP). More severe criminal penalties of 10 to 15 years' imprisonment and a fine of two million (2,000,000) to one hundred million (100,000,000) gourdes, depending on the seriousness of the case, are provided for in article 120 of the DSMLFTP and are applicable in cases of aggravating circumstances, for example to those who used a fake identity to commit the ML offence (point c) or to those who committed the ML offence as part of a criminal organization (point h). Furthermore, article 127 (1) of the DSMLFTP provides for the confiscation of proceeds, including income or other benefits derived from such proceeds or instrumentalities connected with the offences of ML, predicate offences or TF. Paragraph 2 of that same article provides that the

competent court may also order the payment of a pecuniary penalty by the convicted person representing the profit derived from the perpetration of the offence. Finally, article 123 of the DSMLFTP provides that no criminal penalty imposed for ML may be suspended. The sanctions thus remain proportionate and dissuasive.

36. ***Criterion 3.10:*** This criterion was deemed met in the MER and was re-assessed against the new law. Article 119 of the DSMLFTP provides for civil and administrative liability and sanctions that apply to legal persons. Legal persons are liable for a fine equal to five times that specified for natural persons, without having effect on any sentences given to the perpetrators or accomplices. Further penalties include prohibition from undertaking certain professional activities for a period of five years, closure (temporarily or permanent), dissolution when they were created to commit the offence and dissemination of the information to the press or by any means of communication. Sanctions for legal persons are proportionate and dissuasive.

37. ***Criterion 3.11:*** Article 118 (2) of the DSMLFTP provides that attempted ML or complicity in aiding, abetting, counselling or inciting participation in an association or conspiracy in commission of ML offences shall be punishable by the penalties outlined in paragraph 1 of the same article. Thus, the ancillary offence of abetting has been added under article 118 of the DSMLFTP. However, the ancillary offence of facilitating has not been incorporated into the law.

***Weighting and Conclusion:***

38. Haiti has made progress in addressing the deficiencies noted in the MER. The DSMLFTP has introduced many amendments regarding the criminalization of ML, such as (1) incorporating the material element of knowing that property is the proceeds of criminal activity into national legislation, (2) adding the requirement that, when proving that property is the proceeds of crime, it is not necessary that a person be convicted of a predicate offence and (3) explicitly stating that the ML offence applies to persons who commit the predicate offence. Furthermore, the list of predicate offences for ML has been extended to cover the high-risk offences and the ancillary offence of abetting has been captured by the new legislation. Certain minor deficiencies remain, with a limited number of offences missing from the list of predicate offences and the ancillary offence of facilitating has not been incorporated into the law.

**Haiti is re-rated as Largely Compliant for Recommendation 3.**

### 4.3. Recommendation 4 (originally rated PC)

39. In the 4th Round MER, Haiti was rated PC for Recommendation 4. The following deficiencies were cited: Confiscation proceedings are not applicable to the benefits derived from predicate offences

or the proceeds or instrumentalities of crime used/intended for use in in ML and associated predicate offences (c4.1(b)). Confiscation is not applicable to property intended or allocated to be used in TF, terrorist acts or terrorist organisations (c4.1(c)). Absence of provisions allowing competent authorities to identify, trace and evaluate property subject to confiscation (c. 4.2 (a)). There is no provision authorizing the freezing mechanisms to be conducted ex-parte or without prior notification to the owner. Further, the citations are limited to goods concerning the offence(s) being investigated by the magistrate at the time, ML and some predicate offences (property laundered) and not to benefits or property of correspondent value that can be realised to satisfy a confiscation order (c4.2 (b)). No measures to take steps that will prevent or void actions that will prejudice the jurisdiction's ability to freeze, seized or recover property subject to confiscation (c4.2 (c)). No measures to take appropriate investigative measures (c4.2 (d)).

40. ***Criterion 4.1:***

**(a)** This criterion was deemed met in the MER and was re-assessed against the new law. Article 127 of the DSMLFTP allows for criminal property to be confiscated upon conviction of ML, predicate offences and TF or for an attempt to commit any one of the mentioned offences. Given the deficiency that exists in c.3.2 (missing predicate offences-piracy of goods, forgery and market manipulation), it therefore means that confiscation requirements are not applicable to such offences. The Group of Experts considered this deficiency to be minor taking into consideration the factors of risk and context and most of the predicate offences are covered. Cognisant of the fact that the authorities have not conducted any type of ML/TF risk assessments, through the use of open sources of information, corruption and drug trafficking, which are the major ML threats at the time of conducting this analysis, represent the main ML risks.

**(b)** Article 127 (c) of the DSMLFTP makes provision for the proceeds, inclusive of funds and other assets or instrumentalities connected with the offences of ML, predicate offences or TF and any movable or immovable assets intended for or used in the commission of the offence to be seized. It also caters for persons convicted for attempting to commit any of the offences to also be subjected to confiscation. However, minor shortcomings remain where the following offences of piracy of products, forgery and market manipulation were excluded from the predicate offences list.

**(c)** Confiscation is applicable for the offence of TF (art. 127 of the DSMLFTP). Further, assets constituting the proceeds of, or used for, or intended to be used for TF, terrorist acts and terrorist organisations can be subject to confiscation proceedings (art. 127 (e) of the DSMLFTP).

**(d)** This criterion was deemed met in the MER and was re-assessed against the new law. Confiscation is applicable to assets of corresponding value held by the convicted person, where the assets which were the subject of the offence have been dissipated (article 127 (d) of the DSMLFTP).

41. **Criterion 4.2:**

**(a)** Art. 78 of the DSMLFTP authorizes the authorities to identify, trace and evaluate property subject to confiscation by utilizing, inter alia, surveillance of bank accounts, access to computer systems, networks and servers, communication or seizure of deeds, bank records, commercial documents, interception of communication and search of person and property.

**(b)** Art 6(6) of the DSMLFTP defines confiscation as the permanent dispossession of assets by decision having the force of res judicata of the competent court. Art. 6(4) of the DSMLFTP defines assets as all types of assets, tangible or intangible, moveable or immovable as well as legal instruments or instruments evidencing ownership of, or rights in such assets. Art. 89 of the DSMLFTP allows authorities (investigating judge) to carry out provisional measures ex parte, to seize funds and assets and freeze money and financial transactions related to assets in connection with ML, TF and predicate offences, which is subject to an investigation. However, the deficiency identified in c.4.1 (missing predicate offences) has a cascading impact on this criterion.

**(c)** Art. 90 of the DSMLFTP allows the territorially competent investigating judge to enforce conservatory measures on funds and any other assets in connection with offences under investigation for the purpose of preserving same, subject to confiscation. The Experts considered the conservatory measures implemented by the judge which can prevent actions that will prejudice the jurisdiction's ability to freeze, seize or recover property subject to confiscation.

**(d)** Art. 142 of the DSMLFTP allows the investigating judge, specialized in financial crimes, to issue useful warrants and use the investigative methods stated in Article 78 of the DSMLFTP (see analysis in Criterion 4.2(a))

42. **Criterion 4.3:** Art. 131 of the DSMLFTP states that confiscated funds and other assets shall devolve to the state, remaining encumbered to the extent of their value rights in rem lawfully constituted for the benefit of third parties. The article does not seem to protect the rights of third parties when funds or assets are seized prior to confiscation. Art 90 of the DSMLFTP mandates that the territorially competent investigating judge may enforce conservatory measures on funds and any other assets with the offence under investigation. The lifting of these measures may be ordered at any time at the request of the Prosecutor's office, at the request of the competent

administration or the owner of the funds or assets. Whilst it is not explicitly clear that Art. 90 provides for the bona fide rights of third parties, the Group of Experts gave consideration to the lifting of conservatory measures by the investigating judge which can be done based on a request by the owner of funds or assets and does provide some level of protection for bona fide third parties.

43. ***Criterion 4.4:*** Art. 131 directs that confiscated funds and other assets shall devolve to the State. They remain encumbered to the extent of their value rights in rem lawfully constituted for the benefit of third parties. In the event of confiscation in absentia, the confiscated funds and other assets shall devolve to the State and be liquidated in accordance with the relevant procedures. Art. 132 of the DSMLFTP establishes the "Office for the Management of Seized and Confiscated Assets (BUGASC)" with the responsibility of managing the seized and confiscated funds and assets. Article 133 of the DSMLFTP indicates that subsequent law will be enacted to determine the modalities of the BUGASC. Pending the law, seized cash will be deposited into a special account at the Bank of the Republic of Haiti and confiscated assets will be managed by the Haiti Tax Office. Further information on the management and disposal of assets by BUGASC is required.

***Weighting and Conclusion***:

44. Haiti has taken steps to address most of the deficiencies cited in the MER. The DSMLFTP introduced that proceeds derived from predicate offences are now subject to confiscation, clear provisions are now available to allow authorities to identify, trace and evaluate property subject to confiscation and property intended or allocated for use in TF is also subject to confiscation. The Group of Experts considered the deficiencies that exist within the confiscation and provisional measures regime, weighted same based on risk and context and deemed them to be minor. These deficiencies include confiscation and provisional measures not being applicable to the predicate offences of piracy of products, forgery and market manipulation, the requirement to protect the rights of bona fide third parties is not explicitly clear and the requirements for the management and disposal of assets by BUGASC are still pending.

**Haiti is re-rated as Largely Compliant for Recommendation 4.**

### 4.4. Recommendation 5 (originally rated PC)

45. In the 4th Round MER, Haiti was rated PC for Recommendation 5. The following deficiencies were cited: The criminalising of the offence of TF does not incorporate all the elements of the Terrorist Financing Convention (c5.1). TF offences do not apply to the financing of the travels of FTFs. (c5.2 *bis*). It is not an offence to organise or direct others to commit a TF offence or attempted offence. (c5.8(c)). It is not an offence to contribute to the commission of one or more TF offence(s) or attempted offence(s) by a group of persons acting with a common purpose. (c. 5.8 (d)). There is no provision authorizing the freezing mechanisms to be conducted ex-parte or without prior notification to the owner. Further, the citations are limited to goods concerning the offence(s) being investigated by the magistrate at the time, ML and some predicate offences (property laundered) and not to benefits or property of correspondent value that can be realised to satisfy a confiscation order (c4.2 (b)). No measures to take steps that will prevent or void actions that will prejudice the jurisdiction's ability to freeze, seized or recover property subject to confiscation (c4.2 (c)). No measures to take appropriate investigative measures (c4.2 (d)).

46. ***Criterion 5.1***: The definition of "terrorist act" in article 6 (1) of the DSMLFTP has been adapted to incorporate article 2 (1) b) of the Terrorist Financing Convention, which was missing at the time of the MER. As such, a terrorist act is an act which constitutes an offence within the scope of and as defined in one of the treaties listed and all acts intended to cause death or serious bodily injury to a civilian, or to any other person not actively taking part in the hostilities in a situation of armed conflict, if the purpose of the act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to commit or abstain from committing any act. This impacts the definition of the terrorist financing offence, as prescribed in article 8 (1) of the DSMLFTP. Pursuant to said article, terrorist financing means any act committed by a natural or legal person who, by any means, directly or indirectly, unlawfully and deliberately, provides or collects assets, funds and other lawful or illicit assets, with the illegal intention of their use, or knowing that they will be used, in whole or in part:
    a. with a view to commit one or more terrorist acts; or
    b. by a terrorist organization or by an individual, even in the absence of a link to a specific terrorist act(s);
    c. with the purpose of committing any other act intended to kill or seriously injure a civilian, or any other person not taking a direct part in hostilities intended to intimidate a population or to compel a Government or an international organization to do or abstain from doing any act; or
    d. to finance travel for foreign terrorist fighters.

47. ***Criterion 5.2:*** This criterion was deemed met in the MER and was re-assessed against the new law. Situation remains the same. Article 8 of the DSMLFTP, in line with criterion 5.2, states that TF means all acts committed by a natural or legal person, by any means whatsoever, who directly or indirectly, has illicitly and deliberately supplied or collected assets, funds and other assets, whether lawful or illicit, with the illegal intention of using same, or knowing that they will be used in whole or in part, a) with the view to commit one or several terrorist acts or b) by a terrorist organization or by an individual (even in the absence of a link to a specific terrorist act(s)).

48. ***Criterion 5.2 bis:*** Article 8 (1) d) of the DSMLFTP incorporates the financing of the travel for foreign terrorist fighters as part of the terrorist financing offence. Foreign terrorist fighter is defined in article 6 (5) of the same Decree as any person who travels to a State other than his/her State of residence or nationality for the purpose of committing, planning, preparing or participating in terrorist acts or providing or receiving training in terrorism.

49. ***Criterion 5.3:*** This criterion was deemed met in the MER and was re-assessed against the new law. Situation remains the same. See Article 8 of the DSMLFTP. Previously, TF was only applicable to funds and made no differentiation between legitimate and illegitimate sources. In line with article 8 of the DSMLFTP, TF now applies to assets, funds and other assets, whether lawful or illicit. "Assets" are defined in article 6(4) (please see analysis under Criterion 3.4) and "funds and other assets" are defined in article 6(10) of the DSMLFTP. Both definitions are in line with the FATF Glossary.

50. ***Criterion 5.4:*** This criterion was deemed met in the MER and was re-assessed against the new law. Article 8 of the DSMLFTP states that the offence is committed, whether or not the assets were used to commit that act and whether or not they are linked to a specific terrorist act.

51. ***Criterion 5.5:*** This criterion was deemed met in the MER and was re-assessed against the new law. Article 8 of the DSMLFTP, final paragraph, states that "knowledge or intent, as part of the above-mentioned activities, can be inferred from objective factual circumstances".

52. ***Criterion 5.6:*** This criterion was deemed met in the MER and was re-assessed against the new law. Previously, any person convicted of TF was punished by imprisonment for a term of 3 to 15 years and a fine of 500 to 100,000,000 Haitian Gourdes, depending on the seriousness of the case. The offence of TF now has specific penalties, different to those applicable to ML, under section 3 of Chapter 2, of Title IV of the DSMLFTP. Article 124 of the DSMLFTP provides that acts of terrorist financing are punishable by 15 to 20 years of imprisonment. The length of imprisonment sentences

has been changed: the minimum term has been raised from three years to fifteen years and the maximum sentence has been raised from fifteen to twenty years. No fines are applicable to TF offences.

53. ***Criterion 5.7:*** This criterion was deemed met in the MER and was re-assessed against the new law. Previously, legal persons were liable to a fine equal to five times that specified for individuals. This has been removed by article 125. Article 125 of the DSMLFTP states that the legal entity may be subject to prohibition to carry out certain professional activities permanently or for a period of five years, closure of premises permanently or for a period of five years, permanent shutting down or for a maximum period of five years of their establishments used to commit the offence and dissolution of the legal entity. Article 125 clarifies that these penalties apply notwithstanding the penalties to be imposed on the perpetrators or accomplices of the offence, i.e. the penalties of article 124 of the DSMLFTP. The removal of the possibility to impose criminal fines, while not required by Criterion 5.7, limits the ability to impose proportionate and dissuasive sanctions against legal persons. However, as other measures are available, this deficiency is minor.

54. ***Criterion 5.8:***

**(a)** and **(b)** These sub-criteria were deemed met in the MER and were re-assessed against the new law. Article 8 of the DSMLFTP classifies the act of attempting to commit a TF offence or aiding, abetting or assisting someone to commit such offence, or facilitating the commission of terrorism, as a TF offence. Article 124 of the DSMLFTP punishes attempted TF or complicity in aiding, assisting, counselling or incitement, participation in an association or conspiracy with a view to committing a TF act by 15 to 20 years of imprisonment.

**(c)** Article 8 (4) of the DSMLFTP states that any natural or legal person who participates as an accomplice, organizes or incites others to commit the acts listed in paragraph 1 of said article also commits the TF offence.

**(d)** Article 8 (4) of the DSMLFTP states that any natural or legal person who participates as an accomplice, organizes or incites others to commit the acts listed in paragraph 1 of said article also commits the TF offence. The criminal conduct of contributing to the commission of one or more offences by a group of persons acting with a common purpose remains absent.

55. ***Criterion 5.9:*** This criterion was deemed met in the MER and was re-assessed against the new law. The offence of TF is mentioned in the list of predicate offences under article 2 of the DSMLFTP.

56. ***Criterion 5.10:*** This criterion was deemed met in the MER and was re-assessed against the new law. Article 8 of the DSMLFTP states that "the offence is committed regardless of where the

terrorist acts have occurred or will occur and regardless of the State in which the terrorists or terrorist organizations are located".

***Weighting and Conclusion*:**

57. Haiti has made progress in addressing the deficiencies noted in the MER. Since the MER, Haiti has adapted the terrorist financing offence to be fully aligned with article 2 (1) of the Terrorist Financing Convention and has extended the offence to the financing of foreign terrorist fighters. Deficiencies relating to inclusion of specific criminal conduct (participating as an accomplice and organizing others to commit the offence) have been incorporated into national legislation, however other criminal conduct (contributing to the commission of one or more offences by a group of persons acting with a common purpose) remains absent. The removal of the possibility to impose criminal fines to legal persons affects the proportionality and dissuasive nature of sanctions applicable to legal persons, however, as other sanctions are available, constitutes a minor deficiency.

**Haiti is re-rated as Largely Compliant for Recommendation 5.**

### 4.5. Recommendation 10 (originally rated PC)

58. In the 4th Round MER, Haiti was rated PC for Recommendation 10. The following deficiencies were cited: Although some CDD measures apply to banks, CECs and funds transfer companies in several instances, the measures that exist do not apply to all FIs. (c10.1). There is a lack of a definition of the regulatory amount and therefore occasional transactions over the designated threshold of USD/EUR 15,000 are not subject to CDD measures (c10.2 *bis*). No mechanism for FIs to verify that an individual is authorized to act on behalf of the customer. Further, FIs are only mandated to obtain identification only in circumstances where there are uncertainties (c10.4). Measures are only applicable to banks, CEDs and funds transfer companies (c.10.6). Banks are only required to update and verify the identity of their customers when there is doubt surrounding the veracity of the information previously obtained and not in all circumstances, including for higher-risk customers. There is no requirement for other FIs in Haiti to comply with this requirement (c10.7 (b)). There is no provision for banks and CECs to understand the ownership structure for customers who are legal persons or legal arrangements. Banks are also not required to understand the nature of their customers' business. There are no provisions for FIs operating in Haiti to comply with the requirements of c.10.8. Banks and CECs are not required to identify names and relevant persons having senior management positions in legal persons. There is no requirement for all FIs to identify and verify customers who are legal arrangements through the measures set out at c.10.9. Apart from banks and CECs that have some measures in place though limited, other

FIs that are operational in Haiti do not have measures in place to address the requirements. (c10.9). Apart from those available for banks and CECs, there are no measures requiring other FIs operational in Haiti to identify who has controlling ownership interest in legal person (c. 10.10 (a)). There are no measures for alternative means of identifying and verifying BOs (c10 (b) and (c). There are no specific measures to identify and verify the identity of BOs of legal arrangements. (c10.11). No measures for addressing c10.12 and c10.13. Apart from those available to banks, fund transfer companies and CECs there is no indication as to when CDD measures should be applied when FIs are conducting a business relationship with customers or an occasional transaction (c10.14). Banks are required to have risk management procedures in place stipulating the conditions to conduct business prior verification but only in circumstances where the customer is not present and therefore does not fully conform with the requirement of c.10.15. No measures for the other FIs operating in Haiti to comply with this criterion (c10.15). No measure for FIs to include materiality as a factor for due diligence on existing account nor are they required to ensure that measures are applied at appropriate time, taking into consideration whether and when CDD measures have previously been undertaken and adequacy of the information obtained (c10.16). Apart from those imposed on banks, CECs and funds transfer companies there are no requirements for the other FIs operational in Haiti to perform EDD when ML/TF risk are higher (c10.17). Art. 26 of the LSMLTF 2013 allows for the BRH based on a risk assessment together with UCREF to define by ruling the circumstances under which simplified CDD measures can be applied. No such ruling has been issued by the authorities (c10.18). Apart from those available to banks and CECs there are no requirements mandating the other FIs operating in Haiti not to commence business relationship or the transaction when they are unable to perform CDD (c10.19 (a)). There is no requirement to terminate the business relations for not complying with all CDD measures (c10.19(b)). No provision permitting FIs when suspecting ML/TF is involved to cease the CDD process, due to reasonable belief that the process will tip-off the customer and instead file a STR (c10.20).

59. ***Criterion 10.1:*** Article 28 of the DSMLFTP prohibits financial institutions from maintaining "anonymous accounts or accounts under fictitious names".

60. ***Criterion 10.2:*** This criterion was deemed mostly met in the MER.

**(a)** FIs are required to undertake CDD requirements before entering into a business relationship with a customer. FIs shall collect and analyze the information necessary to know their customer, as well as the purpose and nature of the proposed business relationship, and to assess the risk of money laundering and terrorist financing posed by that customer (Article 25 of the DSMLFTP); during or before entering or assisting that customer in preparation or completion of a transaction. FIs shall

verify the customer and the beneficial owner upon presentation of reliable written documents. FIs shall identify occasional customers by the same means (Article 26 of the DSMLFTP); and throughout the duration of the business relationship FIs are required to collect and retain information that will allow FIs to assess the risk of money laundering and terrorist financing, and of monitoring commensurate with that risk (Article 27 of the DSMLFTP).

**(b)** Articles 25-30 and 35 of the DSMLFTP create legal provisions for FIs to adhere to the CDD measures to be taken under certain circumstances. However, Article 35's last paragraph mentions a 'designated threshold' but does not explicitly define a designated or regulatory threshold amount. Moreover, while specific circulars such as: MVTS (circular 107-3 section 1); Commercial banks (circular 99-4, section 2); and currency exchange bureaus (circular 128-1 section 1) cover CDD measures to be undertaken when occasional transactions are in excess of the 'regulatory threshold', or in the event of the repetition of separate transactions for an individual amount below the regulatory threshold, these requirements do not cover the full scope of FIs or provide a threshold amount.

**(c)** This criterion considers the shortcomings in Recommendation 16 as it relates to carrying out occasional transactions that involve electronic wire transfers.

**(d)** Article 35 (d – e) of the DSMLFTP requires financial institutions to identify their permanent or occasional customer, whether a natural, legal person or legal arrangement, and to verify the customer's identity by means of documents, data or information from reliable and independent sources in cases where there is a suspicion of money laundering and terrorist financing.

**(e)** Article 35 (c) of DSMLFTP states that financial institutions are required to identify their permanent or occasional customer, whether a natural, legal person or legal arrangement, and to verify the customer's identity by means of documents, data or information from reliable and independent sources in case of suspicions as to the veracity or relevance of the customer's identification data previously obtained, regardless of any exemption.

61. ***Criterion 10.3:*** This criterion was deemed met in the MER and was re-assessed against the new law. Article 35 of the DSMLFTP states that FIs are required to identify their permanent or occasional customer whether a natural, legal person or legal arrangement, and to verify the customer's identity by means of documents, data or information from reliable and independent sources: It provides the provisions and conditions for when this should be done: a) at the onset of the business relationship; and b) upon executing occasional transactions under the conditions set out in Article 39, requires FIs to identify their occasional customers and, where applicable, the

beneficial owner of the transaction and to verify the elements of their identification: a) when the amount of the transaction or related transactions exceeds the statutory threshold; b) in the event of a repetition of separate transactions for an individual amount below the threshold or when the lawful origin of the capital is not certain; and c) when the customer wishes to make a national or international funds transfer.

62. ***Criterion 10.4:*** Article 35(2) of the DSMLFTP stipulates that FIs shall also require that all persons purporting to act on behalf of the customer are correctly authorised to do so and must identify and verify the identity of that person.

63. ***Criterion 10.5:*** Article 26 of the DSMLFTP extended the measures to all categories of FIs. The requirement mandates that FIs, during or before entering into a business relationship with a customer or assisting that customer in the preparation or completion of a transaction, shall identify the customer and, where applicable, the beneficial owner by appropriate means, and verify these identifiers upon presentation of reliable written documents. They shall identify their occasional customers by the same means.

64. The last paragraph of Article 38 of the DSMLFTP states that financial institutions are required to take the necessary actions to verify the identity of beneficial owners, and to understand the control structure of a legal person or legal arrangement. The requirement to identify and verify BOs is seen in Articles 39, 40, 41, and 42 respectively. Haiti's law outlines the definition of beneficial owner in Article 6 (3): the natural person(s) who ultimately own or control a client and/or the natural person on whose behalf a transaction is performed. Also included in this definition are persons who ultimately exercise effective control over a legal person or legal arrangement: a) the term beneficial owner of the transaction also means the natural person(s) who either hold, directly or indirectly, more than ten percent (10%) of the capital or voting rights of the company, or exercise, by any other means, a power of control over the management, administrative or management entities of the company, or over the general meeting of its members; and b) where the client is acting under a trust or other comparable legal arrangement under foreign law, the beneficial owner of the transaction shall mean the natural person(s) who meet one of the following conditions as outlined under Article 6(3).

65. Furthermore, the revised circulars (in Section 2 and Section 4 of Circular 99-4 for Commercial Banks, Section 2 and 3 of Circulars governing Commercial Exchange Companies (CECs), Section 1 and 2 of Circular 107-3 pertaining to Money Transfer Companies, as well as Sections 2 and 3 for Microfinance Institutions (MFIs), Currency Exchange Bureaus) and Section 2 of the Guidelines for

FIs reinforce the requirement that the identification of customers must be undertaken through data sources or information that is independent and reliable.

66. Moreover, the revised circulars (in Section 2 and Section 4 of Circular 99-4 for Commercial Banks, Section 2 and 3 of Circulars governing Commercial Exchange Companies (CECs), Section 1 and 2 of Circular 107-3 pertaining to Money Transfer Companies, as well as Sections 2 and 3 for Microfinance Institutions (MFIs), Currency Exchange Bureaus) and Section 2 of the Guidelines for FIs reinforce the requirement that the identification of customers must be undertaken through data sources or information that is independent and reliable.

67. ***Criterion 10.6:*** Article 25 of the DSMLFTP stipulates that FIs, before entering into a business relationship with a customer, shall collect and analyze the information necessary to know their customer; as well as the purpose and nature of the proposed business relationship, and to assess the risk of ML/TF posed by that customer.

68. ***Criterion 10.7*****: (a)** This criterion was deemed met in the MER and was re-assessed against the new law. Article 28 of the DSMLFTP, along with Circular 99-4, requires FIs to exercise constant vigilance regarding any business relationship and must carefully examine the transactions carried out to ensure that they are consistent with what they know about their customers, their business activities, their risk profile and, where applicable, the source of their funds. **(b)** Article 27 of the DSMLFTP stipulates that throughout the duration of the business relationship, FIs shall collect, update, retain, and analyze information that promotes appropriate knowledge of their customers, assess the risk of money laundering and terrorist financing, and conduct monitoring commensurate with that risk. When FIs do business with each other, they must always be able to show supervisory authorities or self-regulated bodies that the due diligence steps they have taken to protect against money laundering and terrorist financing are sufficient.

69. ***Criterion 10.8*****:** Article 37 of the DSMLFTP requires that FIs must understand the nature of the activity of legal persons or legal arrangements and their ownership and control structure.

70. ***Criterion 10.9:*** **(a) - (c)** Article 38 of the DSMLFTP requires measures for legal persons or legal arrangements to obtain and verify information on: (a) the name and the proof of its legal constitution, namely the original, or even the dispatch or certified copy of any act or extract from the commercial register attesting in particular to its legal form; (b) identity and powers of directors or their equivalents under foreign law; and (c) address of the registered office. Additionally, Article 37 (2) of the DSMLFTP requires FIs to obtain information on the executives that govern and bind the legal person or legal arrangement, as well as the names of the relevant persons holding the

management functions in the legal person or arrangement. However, there is a minor deficiency for C.10.9 (c) as the legislation does not explicitly mention providing the 'principal place of business' when the registered office address differs.

71. ***Criterion 10.10*** **(a):** Article 41 of the DSMLFTP requires FIs to identify the beneficial owner of a legal person and to take reasonable measures to verify that beneficial owner's identity, using relevant information or data obtained from a reliable source, to have assurance that they know who the beneficial owner is. For the purposes of this Article, FIs must ensure that they obtain information on the identity of the natural person(s) who ultimately holds or holds a controlling interest in the legal person; (**b)** and **(c):** Article 41 of the DSMLFTP requires FIs to identify (b) the identity of the natural person(s) exercising control of the legal person by other means, in the event of doubt as to the person(s) having a controlling interest or when no natural person exercises control through a participation; or (c) the identity of the main manager, when no natural person is identified with regard to subparagraphs a) and b) of the article.

72. ***Criterion 10.11:*** Article 42 of DSMLFTP requires FIs to identify the BO of a legal arrangement, and to take reasonable measures to verify that BO's identity using relevant information or data obtained from a reliable source, and to have assurance that they know who the BO is. FIs must ensure that they obtain information on: **(a)** the identity of the organizer of the trust, of the trustee(s), of the protector, if any, of the beneficiaries or class of beneficiaries and of any other natural person ultimately exercising effective control over the trust, including through a chain of control/ownership, for trusts; and **(b)** the identity of persons occupying equivalent or similar positions, for other types of legal arrangements.

73. ***Criterion 10.12*****:** Article 45 of the DSMLFTP requires FIs to implement CDD measures for the beneficiaries of life insurance contracts and other investment products linked to insurance, as soon as these beneficiaries are identified or designated: **(a)** for the beneficiaries who are natural or legal persons or legal arrangements designated by name, noting the names of such persons; **(b)** for beneficiaries designated by characteristics or other ways to ensure satisfactory identification information is available at the time of the payment of benefits; and **(c)** for verification of the identity of the beneficiaries which must occur at the same time as the payment of the benefits.

74. ***Criterion 10.13:*** Article 45 of the DSMLFTP states that financial institutions must consider the beneficiary of a life insurance contract as a relevant risk factor when determining whether enhanced due diligence measures are applicable. If the financial institution determines that the beneficiary who is a legal person or a legal arrangement presents a higher risk, enhanced due diligence

measures to be taken must include reasonable measures to identify and verify the identity of the beneficial owner of the beneficiary at the time of payment of benefits.

75. ***Criterion 10.14*:** Article 26 of the DSMLFTP provides that for CDD obligations, during or before entering into a business relationship with a customer or assisting that customer in the preparation or completion of a transaction, FIs shall identify the customer and where applicable, the BO by appropriate means, and verify these identifiers upon presentation of reliable written documents. They shall identify their occasional customers by the same means. Article 40 of the DSMLFTP requires that when a financial institution verifies the identity of the customer and the beneficial owner at the onset of a business relationship or upon completing transactions for occasional customers, the verification may be completed 'after the establishment of the business relationship', provided that: a) it happens as soon as reasonably possible; b) it is essential not to interrupt the normal course of business; and c) risks of money laundering and terrorist financing are effectively managed.

76. ***Criterion 10.15***: Article 32(d) of the DSMLFTP requires FIs to adopt risk management procedures that align with the conditions under which a customer may benefit from the business relationship prior to the verification of his[their] identity.

77. ***Criterion 10.16:*** Article 28 (2) of the DSMLFTP requires FIs to apply due diligence procedures to their business relationship, not only to all new customers, but also to existing business relationships based on their risk assessment, and taking into account existing CDD procedures, or when relevant, elements of a customer's circumstances change. However, the provisions of Article 28 do not explicitly mention the consideration of "materiality" as a specific factor in determining the timing and adequacy of due diligence measures for existing customers.

78. ***Criterion 10.17:*** Article 63 of the DSMLFTP requires that FIs must reinforce the intensity of the due diligence measures established by the foregoing law when the ML/TF risk is high.

79. ***Criterion 10.18:*** Section 4 of the DSMLFTP states that Simplified Customer Due Diligence Obligations would be applied at onset of the customer or business relationship. The conditions will include factors such as: the types of products and services offered, low transaction volumes, and whether the customer or beneficial owner of the business relationship is a financial institution in Haiti or jurisdiction that imposes equivalent or stricter AML/CFT obligations. FIs must be able to demonstrate to the supervisory authority that the scope of the measures is commensurate with the risk identified (Article 62). Further, FIs are required to develop a classification of money laundering and terrorist financing and proliferation risks based on the nature of the products or services that

they offer. This classification must consider the conditions of the transaction that they propose, the distribution channels used, the characteristics of the customers, and the country or territory of origin or destination of the funds. (Article 12). Additionally, the policies, procedures, and controls must be commensurate with the risk, and with the customer's volume of activities (Article 13). Moreover, FIs are required to impose enhanced measures to manage and mitigate those risks where higher risks are identified and apply enhanced due diligence measures to such business relationships and transactions commensurate with the risks (Article 28).

80. ***Criterion 10.19:*** **(a)** Article 54 of the DSMLFTP requires that when a financial institution cannot comply with the CDD provisions, it can neither establish nor maintain a business relationship or carry out a transaction for the customer. **(b)** Article 54 of the DSMLFTP states that when a financial institution cannot comply with the provisions outlined in the foregoing chapter, it can neither establish or maintain a business relationship, nor carry out a transaction for the customer. It determines, in this case, whether it is necessary to submit a suspicious transaction report to the UCREF (FIU) or prepare an internal confidential report in accordance with Article 46 of the DSMLFTP.

81. ***Criterion 10.20*****:** Article 23 of the DSMLFTP requires that where a FI suspects that a transaction relates to ML/TF and may reasonably believe that in fulfilling its due diligence duty, it would alert the customer, it may choose not to complete this procedure, and transmit a suspicious transaction report to UCREF.

***Weighting and Conclusion*****:**

82. Haiti has made significant progress in achieving overall compliance with anti-money laundering and counter-terrorist financing standards. The majority of identified deficiencies have been effectively addressed through the enactment of specific legal provisions and Circulars, notably Articles 28, 35, 26, and 41. These provisions broaden the scope of FIs, mandate continuous vigilance, and specify requirements for customer identification, verification, and beneficial ownership disclosure. However, there persist certain shortcomings, such as the absence of a legal definition for the "regulatory threshold amount" in both legislation and circulars relative to occasional transactions. Furthermore, the Circulars do not encompass the full scope of FIs (criterion 10.2(b)); minor shortcomings in Recommendation 16 cascade into criterion 10.2(c) as it relates to carrying out occasional transactions that involve electronic wire transfers; legislation does not explicitly mandate providing the principal place of business when the registered office address differs (criterion 10.9(c)); and the provisions in Article 28 do not consider materiality as a specific

factor in determining the timing and adequacy of due diligence measures for existing customers (criterion 10.16).

**Haiti is re-rated as Largely Compliant for Recommendation 10.**

### 4.6. Recommendation 11 (originally rated PC)

83. In the 4th Round MER, Haiti was rated PC for Recommendation 11. The following deficiencies were cited: Art. 23 of the LSMLTF 2013 requires that FIs retain records on transactions carried out by customers for at least 5 years after completion of the transaction. This measure does not extend to all necessary records on transactions as required (c. 11.1). There are no measures requiring FIs to keep all records (records obtained through account opening, business correspondence and result of analysis undertaken). No requirement(s) for the retention of records following the termination of the business relationship or after the date of an occasional transaction. (c. 11.2). Apart from banks, CECs and money transfer companies, other FIs are not required to keep records obtained through account files, business correspondence but not of any result of any analysis undertaken (c. 11.3). No requirement(s) for documents including all CDD and transaction records to be provided swiftly to the authorities upon request (c. 11.4).

84. ***Criterion 11.1*:** Article 55 of the DSMLFTP require FIs to keep, for a period of five (5) years, from the closing of their accounts or the termination of their relations with their usual customers or occasional, documents obtained as part of customer due diligence measures. Financial institutions must retain all originator and beneficiary information collected during domestic and cross-border electronic funds transfers. They must also keep the records and documents relating to national and international transactions that customers have carried out, including account books and commercial correspondence, for a period of five (5) years after the execution of the transaction.

85. ***Criterion 11.2*:** Article 55 of the DSMLFTP require FIs to keep, for a period of five (5) years, from the closing of their accounts or the termination of their relations with their usual customers or occasional, documents obtained as part of customer due diligence measures. Financial institutions must retain all originator and beneficiary information collected during domestic and cross-border electronic funds transfers. They must also keep the records and documents relating to national and international transactions that customers have carried out, including account books and commercial correspondence, for a period of five (5) years after the execution of the transaction. However, there is no requirement to keep records relating to the results of any analysis undertaken.

86. ***Criterion 11.3*:** Article 55 of the DSMLFTP requires that transaction records should allow individual transactions to be reconstructed in order to provide evidence, if necessary, in the prosecution of criminal activity.

87. ***Criterion 11.4*:** Article 56 of the DSMLFTP requires that FIs' records and documents relating to the identification obligations provided for in the foregoing chapter, and the retention of which is foreseen by article 55, shall be communicated, at their request, to the judicial authorities, to the agents of the State responsible for the detection of ML/TF offences, acting under a judicial mandate, to the supervisory authorities as well as to UCREF. There is a minor deficiency as the provision does not address that information is to be provided to the authorities swiftly.

***Weighting and Conclusion***:

88. Articles 55 and 56 of the DSMLFTP demonstrate Haiti's progress in addressing the deficiencies previously identified. Most are addressed by requiring FIs to retain records for at least 5 years after the termination of the relationship for both usual and occasional customers. The provisions stipulate that the records are to include documents obtained during CDD, originator and beneficiary information for both domestic and cross-border transactions, documents relating to national and international transactions as well as commercial correspondences and account books. The provisions also provide that all records kept should facilitate transaction reconstruction for prosecutorial purposes and are to be made available to the competent authorities upon request. There are two minor deficiencies, firstly, the absence of the requirement to keep records resulting from any analysis undertaken by the FI and secondly, the absence of a response timeframe for FIs to provide requested records to competent authorities.

**Haiti is re-rated as Largely Compliant for Recommendation 11.**

## 4.7. Recommendation 12 (originally rated PC)

89. In the 4th Round MER, Haiti was rated PC for Recommendation 12. The following deficiencies were cited: There is no requirement for FIs to determine whether a BO is a PEP. (c. 12.1 (a)). Apart from provisions applicable to banks and CECs, there is no requirement for other FIs operating in Haiti to seek the approval of senior management to continue the business relationship with a customer who is identified as a PEP. (c. 12.1 (b)). Only banks under section 3.2 of circular 99-2 are required to identify the source of wealth of customers who have been identified as a PEP. Furthermore, there is no provision for FIs to identify the BO or their source of funds or wealth (apart from banks for the source of wealth) of individuals who are foreign PEPs (c. 12.1 (c)). There is no requirement for a FI to determine whether a beneficial owner is a domestic PEP or a person

entrusted with a prominent function by an international organisation. (c. 12.2 (a)). There is no requirement for a FI to adopt measures in criteria 12.1 (b) to (d) in relation to domestic PEPs or persons entrusted with a prominent function by an international organisation. (c. 12.2 (b)-(d)). No measures to take appropriate investigative measures (c4.2 (d)). The deficiencies identified criteria 12.1 and 12.2 above are also applicable to the family members and close associates of the different types of PEPs (c. 12.3). There are no provisions for addressing the requirements of c.12.4 relative to life insurance policies and PEPs.

90. ***Criterion 12.1:*** **(a)** Article 6 (20) of the DSMLFTP defines politically exposed persons (PEPs) in line with the FATF definition which includes foreign and domestic PEPs as well as family members and close associates of PEPs. In relation to foreign PEPs, FIs and DNFBPS are required to take additional measures besides CDD. In this context, FIs are required to: establish risk management systems to determine whether the customer or beneficial owner is a PEP (Article 30). **(b)** FIs are required to obtain senior management's approval before entering a business relationship or carrying out transactions with PEPs (Article 66 (2)). The requirements do not include obtaining such approval for continuing such business relationships. **(c)** All FIs, as defined by Article 4 of the DSMLFTP, when entering into business relations or carrying out transactions with PEPs, must implement appropriate measures to establish the origin of assets and funds of customers and beneficial owners identified as PEPs (Article 66 (3)). **(d)** The sub-criterion was deemed met in the MER. There are no changes to the AML/CFT regime in this regard.

91. ***Criterion 12.2*****: (a)** Articles 30 and 66 of the DSMLFTP require FIs to establish risk management systems to determine whether the customer or beneficial owner is a politically exposed person (see c. 12.1 above) and, where appropriate, to implement the specific measures referred to in the foregoing law. **(b)** All measures set out in criterion 12.1 above apply to domestic PEPs and well as PEPs of international organizations (Article 66 of the DSMLFTP).

92. ***Criterion 12.3*****:** The measures set out in c. 12.1 and 12.2 apply to all PEPs as defined by Article 6 (20) which include family members of PEPs (Article 6 (20) (x)) and persons known to be closely associated with PEPs (Article 6 (20) (xi)). The deficiencies identified in 12.1(b) cascade.

93. ***Criterion 12.4*****:** Article 67 of the DSMLFTP addresses the issue relative to life insurance policies. FIs must take reasonable measures to "determine whether the beneficiaries of the contract and/or where applicable, the beneficial owner of the contract are politically exposed persons (PEPs)". In instances where higher risks are identified, FIs must inform senior management prior to payment of capital. Additionally, they must conduct enhanced due diligence of the entire business

relationship with the contract holder and, if necessary, consider submitting a suspicious transaction report to UCREF.

***Weighting and Conclusion*:**

94. Haiti has established a comprehensive legal framework for addressing domestic and foreign politically exposed persons (PEPs). However, a minor deficiency remains in requiring senior management's approval for continuing existing relationships with PEPs.

**Haiti is re-rated as Largely Compliant for Recommendation 12.**

## 4.8. Recommendation 13 (originally rated PC)

95. In the 4th Round MER, Haiti was rated PC for Recommendation 13. The following deficiencies were cited: The legal requirement for FIs to "collect information on the nature of the client institution's activities" is lower than the required standard as the specific extent of information is not outlined to include information to understand fully the nature of the respondent's business. The measures in place do not fully allow for FIs to fully address the quality of supervision, including determining whether the respondent's institution is the subject of ML/TF investigation or regulatory action. (c. 13.1 (a)). No provision requiring FIs to clearly understand the respective AML/CFT responsibilities of each institution (c. 13.1 (d)). Although there is a requirement for the respondent bank to provide identification information with respect to "payable-through accounts", this does not fully conform with the requirement of criterion 13.2 (b) as CDD information is more detailed than identification information. FIs are prohibited from establishing correspondent banking relationships with shell banks however there is no prohibition against continuing such relationships with shell banks as required by the FATF standard. The measures in place are only limited to the establishing or maintaining of relationship correspondent relationship with banks that allow their accounts to be used by shell banks rather than to all respondent FIs as required by the FATF (c. 13.3).

96. ***Criterion 13.1:*** **(a)** As it relates to cross-border correspondent banking relationships and other similar relationships, the requirements for this criterion are detailed under Article 64 (b) of the DSMLFTP by requiring all FIs to perform the following in addition to normal CDD measures (a) to collect information on the nature of the activities of the client's institution. Article 64(c) of the DSMLFTP requires FIs to assess the client institution's reputation and the degree of scrutiny to which it is subject, based on publicly available information, and to determine whether it has been the subject of an investigation or by control authority in matters of ML/TF. Additionally, Article 65.(1) of the DSMLFTP requires that FIs who enter into an agreement to offer a correspondent

banking, or enter into a business relationship with a view to distribute financial instruments with cross-border correspondent institutions, financial institutions shall: 1. collect sufficient information on the co-contracting institution to know the nature of its activities and "to assess its reputation and the quality of the supervision" to which it is subject based on open-source and exploitable information. **(b)** and **(c)** These sub-criteria were deemed met in the MER and were re-assessed against the new law. Article 64 of the DSMLFTP, stipulates that all FIs' senior management must first authorize the establishment of a correspondent banking relationship. (d):Article 64(d) of the DSMLFTP requires FIs to clearly understand the respective responsibilities of each institution with regard to the fight against ML/TF.

97. ***Criterion 13.2:*** **(a)** This sub-criterion was deemed met in the MER and was re-assessed against the new law. Article 64(f) of the DSMLFTP mandates all FIs to ensure, for transit accounts, that the client institution enforces due diligence measures on clients with direct access to the accounts of the correspondent bank and can provide relevant identification data upon request. **(b)** Article 64(f) of the DSMLFTP mandates financial institutions to ensure, for transit accounts, that the client institution enforces due diligence measures on clients with direct access to the accounts of the correspondent bank and can provide relevant identification data "upon request".

98. ***Criterion 13.3:*** Article 58 of the DSMLFTP prohibits FIs from establishing correspondent banking relationship with a banking or financial institution constituted in a country where this institution has no physical presence and is not subject to supervision. They are required to take appropriate steps to ensure that they do not establish or maintain correspondent banking relations with a known bank to allow shell banks to use their accounts.

***Weighting and Conclusion:***

99. Haiti meets all the criteria of Recommendation 13.

**Haiti is re-rated as Compliant for Recommendation 13.**

### 4.9. Recommendation 16 (originally rated NC)

100. In the 4th Round MER, Haiti was rated NC for Recommendation 16. The following deficiencies were cited: Not all FIs are required to obtain all information of wire transfers of a particular amount. There is no provision detailing the information on the beneficiary that banks and other FIs are required to obtain (c. 16.1). There is no requirement for cross-border wire transfer in batch files to contain required originator and beneficiary information (c. 16.2). Section 6 of circular 99 – 2 requires banks to maintain all beneficiary information relative to wire transfers that are cross-border or national in nature. However, the circular does not specify the details of such information as

required under this sub-criterion (16.3). The provision for beneficiary information to be maintained is limited to banks and does not include all FIs that are operational in Haiti (c. 16.3 (b)). Although criteria 16.5 and 16.7 have been met, the obligations of criteria 16.1 - 16.4 are not fully required of FIs in executing a wire transfer. Additionally, the prohibition against a FI carrying out a wire transfer as set out in Art. 22 of the LSMLTF 2013 is only applicable to receiving a wire transfer and does not include sending a wire transfer as required by this criterion (c. 16.8). The legislative provision is only applicable to banks not all intermediary FIs and details of beneficiary information have not been specified in the circular in accordance with FATF Standards (c. 16.9). There are no measures to address c. 16.10-c.16.17. The deficiencies identified in R.6, primarily the inability to freeze without delay and without prior notification, are applicable to this recommendation (c. 16.18).

101. ***Criterion 16.1:*** **(a)** and **(b*)*** Haiti does not have a de minimis threshold. Article 47 of the DSMLFTP meets the requirement for both originator and beneficiary information. The legislation requires all FIs performing electronic funds transfers are required to obtain and verify (a) the full name, the account number, when such an account is used to carry out the transfer of funds, the complete address or, in the absence of an address, the national identification; and (b) the originator's financial institution must also require the name of the beneficiary, and the latter's account number, when such an account is used to make funds transfers. The above information must be included in the message or form that accompanies the funds transfer. If there is no account number, a unique reference number must accompany the transfer.

102. ***Criterion 16.2:*** Article 49 requires that in the event that several cross-border electronic transfers come from the same originator and are transmitted in batches to the beneficiaries, the batch must contain accurate and complete information on the originator and on the beneficiary. Additionally, the financial institution is required to include the originator's account number or unique transaction reference number. Furthermore, it specifies that the information must be traceable within the beneficiary's country, ensuring the ability to fully reconstruct the course of this information**.**

103. ***Criterion 16.3:*** Haiti does not apply a de minimis threshold therefore this criterion (16.3) is not applicable.

104. ***Criterion 16.4:*** The criterion was deemed met in the MER and remains met by virtue of Article 53 of the DSMLFTP.

105. ***Criterion 16.5:*** The criterion was deemed met in the MER and remains met by virtue of Article 47 of the DSMLFTP.

106. ***Criterion 16.6:*** The criterion was deemed met in the MER. There are no changes to the AML/CFT regime in this regard.

107. ***Criterion 16.7:*** The criterion was deemed met in the MER and remains met by virtue of Article 55 of the DSMLFTP.

108. ***Criterion 16.8:*** Article 53 of the DSMLFTP states that FIs must not execute electronic funds transfers if they do not comply with the provision of Articles 47 et seq. (includes Article 47 – 53) which apply to criteria 16.1 to 16.7, respectively.

109. ***Criterion 16.9:*** Article 51 of the DSMLFTP mandates that intermediary financial institutions ensure all originator and beneficiary details accompanying cross-border wire transfers remain attached to that transfer.

110. ***Criterion 16.10***: Article 51 of the DSMLFTP stipulates that FIs operating as intermediaries are obligated to ensure the retention of all accompanying information regarding the originator and the beneficiary of an electronic transfer. There are no exceptions in the case of technical limitations.

111. ***Criterion 16.11:*** Article 51 of the DSMLFTP requires intermediary financial institutions to adopt reasonable measures in line with end-to-end processing to identify cross-border electronic funds transfers that lack essential originator or beneficiary information.

112. ***Criterion 16.12:*** Article 51 of the DSMLFTP mandates that intermediary FIs develop risk-based policies and procedures for determining when to execute, reject, or suspend such wire transfers, that do not include the required originator or beneficiary information along with specifying the appropriate follow-up actions.

113. ***Criterion 16.13:*** Article 53 of the DSMLFTP outlines specific measures for financial institutions when receiving electronic funds transfers lacking complete information on the originator. It mandates FIs to take action to obtain the missing information from the issuing institution or beneficiary, perform checks, and refrain from executing the funds transfer, if necessary details are not obtained. Furthermore, there is a requirement to inform UCREF and comply with the provisions of Article 47 et seq.

114. ***Criterion 16.14:*** There is no specific requirement for beneficiary FIs to verify the identity of the beneficiary. However, Article 35 of the DSMLFTP creates a general requirement for all FIs to identify and verify the identity of permanent or occasional customer, whether a natural, legal person

or legal arrangement. Article 39(c) further creates specific requirements for customer identification and verification as it relates to national and international funds transfers. These requirements would include beneficiary FIs conducting wire transfer transactions whose customer would in this case be the beneficiary of the wire transfer transaction. Further, with regard to maintaining records, Article 55 requires all financial institutions to retain all originator and beneficiary information collected during domestic and cross-border electronic funds transfers. Moreover, Haiti does not apply a de minimis threshold for cross-border wire transfers and as such this applies to all transfers.

115. ***Criterion 16.15:*** There are no measures in place that require beneficiary FIs to implement risk-based policies and procedures for determining (a) when to execute, reject or suspend electronic funds transfers that do not include the required originator or beneficiary information; and (b) appropriate follow-up actions.

116. ***Criterion 16.16:*** Section 1 of the circular requires Money Transfer Companies (MTCs) to ensure that transfer orders contain all the required information on the principal, and on the beneficiary, and take appropriate measures should it not be the case, in accordance with Articles 47 through 54 of the Decree of April 30, 2023. The principal and the beneficiary may be one and same person. The transfer may be either transnational or cross-border. Additionally, when operating through a sub-agent, money transfer companies must also make sure that their sub-agents implement similar customer identification preventive measures, in accordance provisions of Circular 107-3.

117. ***Criterion 16.17:*** Article 52 of the DSMLFTP requires MTCs or any other category of financial institution that controls both the ordering and beneficiary sides of a wire transfer to **(a)** consider all information from both the originator and the beneficiary to determine the necessity of filing a suspicious transaction report (STR); and **(b)** submit an STR to the competent authorities in all relevant countries affected by the suspicious wire transfer, including the Financial Intelligence Unit (UCREF). Additionally, Article 56 requires that records and documents relating to the identification obligations shall be communicated, at their request, to the judicial authorities, to the agents of the State responsible for the detection of money laundering and terrorist financing offences, acting under a judicial mandate, to the supervisory authorities as well as to UCREF.

118. ***Criterion 16.18:*** Article 113 requires that financial institutions, receiving an order to transfer funds to either a person or entity subject to a freezing measure, or to a person or entity subject to a freezing measure, shall suspend the execution of the order, and inform UCREF without delay. Funds transfers suspended by order are frozen, unless the Ministry of Justice and Public Security authorizes the transfer. Article 113 of the DSMLFTP lacks the requirements for a beneficiary FI to screen and freeze without delay relative to the TFS.

***Weighting and Conclusion***

119. Haiti has a legislative framework for wire transfers with minor shortcomings. There are no measures in place that require beneficiary FIs to implement risk-based policies and procedures for determining when to execute, reject or suspend electronic funds transfers that do not include the required originator or beneficiary information; and to apply appropriate follow-up actions (16.15) and there are no requirements for beneficiary FIs to screen and freeze without delay relative to the terrorist finance sanctions (16.18).

**Haiti is re-rated as Largely Compliant for Recommendation 16.**

## 4.10. Recommendation 17 (originally rated NC)

120. In the 4th Round MER, Haiti was rated NC for Recommendation 17. The following deficiencies were cited: There is no requirement for FIs to immediately obtain information on the identification of the customer, identification of the beneficial owner and understanding of the nature of the customer's business from the third party (c. 17.1 (a)). Although there is a requirement for FIs to ensure that 3rd parties have due diligence records and record keeping procedures, these are not in compliance with the requirements of R.10 and R.11 (c. 17.1 (c)). No measures for addressing criteria 17.2 and 17.3.

121. ***Criterion 17.1:*** **(a)** Article 68 of the DSMLFTP details the provisions that FIs may use intermediaries or third parties for the performance of their obligations upon entering into a business relationship and the obligation of constant vigilance on all customer and customer transactions. Notwithstanding the final obligation remains with the FIs to ensure that the CDD requirements as set out in Recommendation 10 cover the elements (a-c): identification of the customer; identification of the beneficial owner; and understanding the nature of the business. These provisions apply to both legal persons and arrangements and BOs (Article 36 et seq. and Chapter 3: Customer Due Diligence of the DSMLFTP). Additionally, Article 69 (1) of the DSMLFTP requires financial institutions using third parties must ensure that the third party is able to provide upon request and immediately, copies of the identification data and other documents relating to the obligation of vigilance. **(b)** The sub-criterion was deemed met in the MER. There are no changes to the AML/CFT regime in this regard. **(c)** Article 69 of the DSMLFTP mandates that financial institutions using third parties must ensure that the third party is regulated, subject to control or monitoring, and has taken measures to comply with customer due diligence obligations and document retention requirements. While Article 69 partially addresses the identified deficiency related to non-compliance of third parties' due diligence records and record-keeping procedures

with the requirements of Recommendations 10 and 11, it lacks explicit language aligning the third party's measures with the requirements of Recommendations 10 and 11.

122. ***Criterion 17.2:*** There are no provisions to meet the requirement.

123. ***Criterion 17.3:*** This criterion was deemed not met in the MER. **(a) – (c)** Article 70 of the DSMLFTP aligns with the requirements of criterion 17.3 a-c, requiring supervisory authorities to consider the provisions when FIs engage third parties within the same financial group ensuring that: the group enforces customer due diligence measures and documents retention requirements and programs to combat money laundering and the terrorist financing; the implementation of such customer due diligence measures, record keeping requirements and anti-money laundering programs is monitored at group level by a competent authority; and any higher risk country risk is adequately mitigated by the group's anti-money laundering and anti-terrorist financing policies.

***Weighting and Conclusion:***

124. Haiti has made some progress in addressing the identified deficiencies pertaining to third-party relationships. However, the deficiencies are only partly addressed. Article 69 of the DSMLFTP introduces measures requiring FIs to ensure that third parties are regulated, subject to control or monitoring, and comply with due diligence and document retention obligations. However, there is a need for explicit specifications regarding the information required for identification and understanding of the customer's business. Additionally, Article 70 of the DSMLFTP, while outlining conditions for supervisory authorities in financial group scenarios, does not explicitly address the broader criterion of evaluating country risk when third parties are based in specific countries.

**Haiti is re-rated as Partially Compliant for Recommendation 17.**

## 4.11. Recommendation 18 (originally rated NC)

125. In the 4th Round MER, Haiti was rated NC for Recommendation 18. The following deficiencies were cited: No obligation for the compliance officer to be employed at the management level (c. 18.1(a)). No requirement for internal audit functions to be independent (c. 18.1(d)). The amended law is silent on whether these policies and procedures are required to be consistent with those prescribed under the obligations for R.18.1 and detailed at Art. 16 of the LSMLTF, 2013 (c. 18.2(a)). No provision for the sharing of information within the group relative to a STR, its underlying information or whether such was submitted to the competent authorities (c. 18.2(b)). No requirement for safeguards on the confidentiality and use of information exchanged (c. 18.2(c)). No obligation pertaining to the application of additional measures to manage ML/TF risks and

informing the home branch where it does not permit proper implementation of AML/CFT measures (c. 18.3).

126. ***Criterion 18.1:*** **(a)** Financial institutions are to be governed by policies, procedures and controls and effectively implement anti-money laundering and counter-terrorist financing programs, taking into account risks and business size, and specifically appoint a compliance officer at the management level (Article 13 of the DSMLFPT). The respective Circulars address compliance management arrangements with reporting obligations to the Board of Directors to include the appointment of a CO selected on the basis of competence, experience, probity and professional ethics, all categories of financial institutions such as: a) Banks (Circular 100-4 Section 3) requires CO designation as 'a senior official of the institution.', Money Transfer Companies, appoints the compliance officer as a 'senior officer' reporting directly to 'higher management'; (Circular 107-3 Section 8(c)); for Currency Exchange Bureaus (Circular 128-1 , Section 2.1) designates a Compliance Officer but does not specify the management level of this designation; Savings and loan cooperatives (Guidelines for CECs Section 1.3), designate the compliance officer as a senior employee reporting directly to the Board; and Guidelines to MFIs (Section 1(c)), designate the compliance officer at the central administration level; Additionally, the Guidelines for all FIs (Section 1.2) designate a compliance officer and the Head of Compliance at the 'central administration level'. **(b)** and **(c)** These sub-criteria were deemed met in the MER and remain met by virtue of Articles 31 (d) (training) and 32 (f) (staff recruitment). **(d)** Article 13 requires FIs to develop policies and procedures to include where appropriate, based on the size and nature of the activities, an independent audit function responsible for testing policies, procedures and controls.

127. ***Criterion 18.2:*** **(a)** Article 34 of the DSMLFPT creates a general requirement that mandates FIs to implement anti-money laundering and terrorist financing programmes at the group level, and includes requirements for them to implement the specific measures set out in c18.1 at the group wide level. Article 34 (a) also requires FIs to develop group level policies and procedures for sharing the information required for exercising customer due diligence, and for managing the money laundering and terrorist financing risk; **(b)** This deficiency is addressed. Article 34 (b): the provision at group-level compliance, audit, and/or AML/CFT functions, of customer, account, and transaction information from branches and subsidiaries when necessary for AML/CFT purposes. This should include information and analysis of transactions or activities which appear unusual (if such analysis was done). Similarly branches and subsidiaries should receive such information from these group-level functions when relevant and appropriate to risk management. **(c)** Article 34(c) mandates that financial institutions develop policies and procedures concerning the confidentiality and use of exchanged information, including measures to prevent disclosure of such information,

thus responding to the deficiency of lacking safeguards in this regard. Although the provision does not explicitly use the term 'tipping-off,' the prevention of disclosure aligns with the requirement.

128. ***Criterion 18.3:*** Article 34 of the DSMLFPT mandates that financial institutions ensure their foreign subsidiaries enforce anti-money laundering and anti-terrorist financing principles and measures consistent with the obligations specified in the DSMLFTP. However, this provision does not explicitly address the application of additional measures in situations where the host country's regulations do not permit proper implementation. It also does not explicitly state the requirement to inform the home branch under such circumstances. Therefore, the deficiency remains unaddressed.

***Weighting and Conclusion:***

129. Articles 31, 32 and 34 and the referenced Circulars generally meet the requirements for FIs to implement AML/CFT programmes at group-level. However, there are no explicit provisions to address the application of additional AML/CFT measures in situations where the host country's regulations do not permit proper implementation. It also does not explicitly state the requirement to inform the home branch under such circumstances.

**Haiti is re-rated as Largely Compliant for Recommendation 18.**

## 4.12. Recommendation 19 (originally rated NC)

130. In the 4th Round MER, Haiti was rated NC for Recommendation 19. The following deficiencies were cited: No requirement(s) for FIs to apply EDD, proportionate to the risk, to business relationships and transactions with legal and natural persons from countries for which this is called for by the FATF (c. 19.1). No provision for the application of countermeasures that are proportionate with risk identified either by a call from the FATF or independently of the FATF (c. 19.2). No measure(s) in place for ensuring that FIs are advised of concerns about the weakness(es) in the AML/CFT systems of other countries (c. 19.3).

131. ***Criterion 19.1:*** Article 28 of the DSMLFTP requires FIs to apply due diligence to both natural and legal persons that is commensurate to the risk posed and with due consideration to factors such as the nature of the business relationship and transactions, existing risk assessment data, customer information, source of funds and jurisdictional factors such as countries that do not enforce or insufficiently enforce international standards on AML/CFT. Although the requirement does not explicitly mention the FATF, the provision is sufficiently broad to capture calls by the FATF**.**

132. ***Criterion 19.2:*** While Article 28 of the DSMLFTP refers to the countermeasure of applying EDD to business relationships, there is no clarity as to what this would include or the actions to be applied by the FI. Haiti has not defined the specific countermeasures that are to be applied proportionate to the risks. The criterion is therefore only partly satisfied.

133. ***Criterion 19.3:*** Article 76 of the DSMLFTP requires supervisory authorities to provide FIs with information on countries that do not enforce or insufficiently enforce AML/CTF measures. It also requires the provision of information regarding concerns raised by deficiencies in the country's AML/CTF systems and appropriate EDD measures where necessary to be applied by the FI.

***Weighting and Conclusion*:**

134. The legislative amendments, by way of the DSMLFTP, have remedied some of the existing deficiencies in relation to R.19, however, the absence of clarity surrounding the countermeasures covered by the application of EDD remains outstanding. The shortcomings remaining are therefore moderate.

**Haiti is re-rated as Partially Compliant for Recommendation 19.**

## 4.13. Recommendation 20 (originally rated PC)

135. In the 4th Round MER, Haiti was rated PC for Recommendation 20. The following deficiencies were cited: Reporting of STRs is not mandatory for all categories of offences that are predicate to ML/TF. Therefore, FIs which suspect or have reasonable grounds to suspect that funds are the proceeds of those categories of offences are not mandated to file a STR with UCREF (c. 20.1). Provisions do not fully address the requirement to report attempted transactions (c. 20.2).

136. ***Recommendation 20.1:*** Article 19 of the DSMLFTP requires the filing of STRs for any amount once there is a suspicion or reasonable grounds to suspect that the sums are derived from a money laundering offence, terrorist financing or a predicate offence. Money laundering has the meaning prescribed in Art. 7 (a) to (d) and refers to assets which are the proceeds of criminal activity. Proceeds of criminal activity is defined in Art. 6 sub 22 and means "any assets, regardless of its value, derived directly or indirectly from the commission of an offence, or obtained directly or indirectly, through the commission of an offence". This therefore means that suspicious transactions reporting is applicable for funds which are suspected to be the proceeds of any offence captured under the laws of Haiti. However, as highlighted in c. 3.2 there are minor deficiencies due to the offences of piracy of products, forgery and market manipulation being excluded from the present legislative framework. Given Haiti's established risk and context, the absence of these offences would not extensively impair the reporting obligation.

137. ***Recommendation 20.2:*** Article 19 of the DSMLFTP requires FIs to file STRS for both completed and attempted transactions of any amount whatsoever.

***Weighting and Conclusion:***

138. The amendments facilitated by the DSMLFTP have addressed most deficiencies by expanding the categories of offences and including attempted transactions, however, the amendments have fallen short of capturing three minor offences, namely, piracy of products, forgery and market manipulation. The criteria are therefore deemed to be mostly met with only minor shortcomings.
**Haiti is re-rated as Largely Compliant for Recommendation 20.**

### 4.14. Recommendation 21 (originally rated PC)

139. In the 4th Round MER, Haiti was rated PC for Recommendation 21. The following deficiencies were cited: No protection for FIs against criminal, civil or administrative actions that have filed a STR/disclosure in good faith (c. 21.1). Tipping off provisions are not applicable to FIs, directors, officers and employees who disclose that a STR that has a nexus to criminal conduct outside of ML/TF has been filed or is being filed with the UCREF (c. 21.2).

140. ***Recommendation 21.1:*** Articles 84 and 85 of the DSMLFTP appropriately establish protected disclosure of information for FIs and their officers, servants and employees against criminal, civil or administrative actions. The term "servants" includes agents and attendants, and the term "officers" encapsulates directors. The noted shortcomings have therefore been addressed.

141. ***Recommendation 21.2:*** Article 87 of the DSMLFTP enables tipping off provisions to be applied to the FI and their officers, servants and employees who disclose that a STR has been filed with the UCREF and who disclose that a ML/TF investigation has been or is being conducted. Thereby, tipping-off provisions are applicable to all necessary parties**.** However, there remains a minor shortcoming as this obligation does not clearly extend to STRs emanating from predicate offences.

***Weighting and Conclusion:***

142. Haiti has made notable amendments in respect of R.21. However, the remaining minor shortcoming to be addressed is that while FIs and their directors, officers and employees are all subject to tipping-off provisions for STRs emanating from ML and TF, it does not clearly extend to STRs from other predicate offences.
**Haiti is re-rated as Largely Compliant for Recommendation 21.**

### 4.15. Recommendation 22 (originally rated NC)

143. In the 4th Round MER, Haiti was rated NC for Recommendation 22. The following deficiencies were cited: All CDD requirements (R.10) are not applicable to DNFBPs (c. 22.1). All CDD requirements (R.10) are not applicable to DNFBPs. There is no information as to when the five-year period for record keeping by casinos begins. The threshold that should be established by the Ministry of Finance and Economy has not been set. (c. 22.2). No measures for addressing c. 22.3 - c. 22.5.

144. ***Criterion 22.1:*** Article 59 of the DSMLFTP requires DNFBPs as set out in Article 5 to be subject to the CDD requirements set out in Recommendation 10 as follows:

**(a)** Casinos, lotteries, managers of borlettes and all other gambling establishments, when their clients perform financial transactions for amounts equal to or higher than fifty thousand gourdes (HTG50.000), or the equivalent in foreign currency are captured and therefore would be obligated to apply CDD procedures in accordance with Article 59.

**(b)** Real estate companies or physical persons conducting or controlling real estate transactions in favor of a client, when they provide advisory services regarding the purchase or sale of real estate. Additionally, Article 61 extends this applicability of the CDD measures to cover both buyers and sellers of real estate.

**(c)** Persons involved in the business of organizing the sale of precious stones and precious metals[4] when they perform a cash transaction with a client for an amount equal to or higher than two million five hundred thousand Gourdes (HTG2.500.000.00) (18,941.98 USD) or the equivalent in foreign currency as stipulated by Article 5(3).

**(d)** Attorneys-at-law, notaries, accountants and all other independent juridical professions when they prepare or perform transactions for their clients involving the following activities:

i) purchase or sale of real estate;

ii) management of capital, securities, or other assets of the client;

iii) management of bank accounts, savings accounts, or securities;

iv) organization of capital contribution for the creation, operation or management of companies; or

v) formation, operation or administration of legal entities or legal arrangements, and purchase and sale of business entities.

[4] In Haiti the sector is defined as "persons involved in the business of organizing the sale of precious stones, precious metals, antiques and works or arts". However, because antiques and works of art are not captured under the FATF standards for regulatory purposes, they have not been included in the title.

**(e)** Trusts and other companies when they prepare or conduct transactions for a client connected with the following activities:

i) they act in the capacity of agent for the formation of a legal entity;

ii) they act or take measures for another person to act in the capacity of manager or of secretary general of a capital company, joint owner of a partnership company, or holder of a similar function for all other types of legal entities;

iii) they provide a registered office, a business address or premises, an administrative or postal address to a capital company, a partnership company, or any other legal person or legal arrangement;

iv) they act or take measures for another person to act in the capacity of trustee of an express trust company or fulfilling equivalent duties for another form of legal arrangement; or

v) they act or take measures for another person to act in the capacity of shareholder in favor of another person.

There is a minor translation error in Article 5(5)(c) at the very end of the sentence which reads "for all other types of legal entitles". The original text of the legislation (French) uses the exact wording of c.22.1(e) of the French translation of the FATF Methodology. The translation would therefore correspond with the English FATF Methodology.

145. Considering the cascading impact of R.10, primarily the noted deficiencies established in C.10.2 and 10.9, it therefore means that a fully adequate CDD regime is not yet in place for DNFBPs and given the shortcomings highlighted regarding both Articles 5 and 59, there remain minor shortcomings to be addressed.

146. ***Recommendation 22.2:*** The provision referenced by Haiti appears to address one part of the deficiency, namely, the trigger event for the five (5) year record keeping provisions. Article 60(c) maintains that casinos and gaming establishments are required to keep records for at least (5) years from the date of the last recorded transaction. In applying the Haiti's response from C.22.1 it would appear that R.10 requirements are applicable to all DNFBPs by way of Articles 5, 59 - 61 DSMLFTP. As it relates to the record keeping provisions of R.11 being applicable to DNFBPS, the following is noted: (1) Article 5 maintains that the provisions of the Decree are to be enforceable on or legal persons and entities who conduct the DNFBP activities thereby extending the applicability of Article 55 which adequately creates record keeping provisions to both FIs and DNFBPS. The thresholds set by way of Articles 5 and 60 of the DSMLFTP are fifty thousand (500,000) HTG (3788.84USD) or the equivalent in foreign currency for casinos and two million five hundred thousand (2,500,000) HTG (18,941.98 USD) or the equivalent in foreign currency for dealers in precious metals and stones (DPMS). In relation to the DPMS, the amount is above the

prescribed threshold because of the conversion rate from gourde to US dollar. At the time of the drafting of the bill, the conversion rate was approximately 153 gourde/1US$. Today the rate is 133 gourde/1US$. With regard to casinos and other gaming entities, the rate is low based on risk and context. The gaming industry is assessed as being high risk. This therefore satisfies the threshold shortcoming previously highlighted.

147. ***Recommendation 22.3:*** Following the analysis of C.22.1 and examining Articles 5 and 59 of the DSMLFTP, this criterion is met by requiring all DNFBPs to comply with the PEP requirements. On the premise that there are no cascading deficiencies from R.12, this deficiency is addressed**.**

148. ***Recommendation 22.4:*** Considering the cascading impact of the deficiencies of C.15.1 and 15.2, the following should be noted: Article 33 (1) (a) & (b) of the DSMLFTP requires that FIs identify and assess the ML/TF risks which may result from: (a) the development of new products and business practices, including new distribution mechanisms; and (b) the use of new or developing technologies in connection with new or existing products. Further, Article 33 of the DSMLFTP requires the identification, assessment and understanding of both ML and TF risks associated with new technologies. By way of Articles 5 and 59, these Article 33 provisions extend to DNFBPs, however, two notable cascading deficiencies are that the provisions do not extend to the country itself and that Haiti has not yet identified and assessed its ML/TF risk that arising from the development of new products and business practices.

149. ***Recommendation 22.5:*** Article 59 of the DSMLFTP extends the obligations of FIs to those of DNFBPs, given that the provisions under section 6, specifically articles 68-70 address the requirements to be implemented in relation to reliance on third parties. However, there are cascading deficiencies in R.17, specifically R.17.1(c) and R.17.2.

***Weighting and Conclusion***:

150. Haiti has made legislative revisions to fill the deficiencies, however, there remain minor cascading shortcomings from R.10, R.15 and R.17.

**Haiti is re-rated as Largely Compliant for Recommendation 22.**

## 4.16. Recommendation 23 (originally rated NC)

151. In the 4th Round MER, Haiti was rated NC for Recommendation 23. The following deficiencies were cited: The definition of lawyers does not incorporate all aspects of the activities/definition of lawyers in the FATF glossary. Therefore, not all lawyers are required to file STRs with UCREF (c. 23.1(a)). There is no requirement for DNFBPs to file STRs relative to attempted transactions.

Further, not all criminal offences are predicate offences to ML(c. 23.1(c)). The measures for R. 18 in article 16 of LSMLTF are only applicable to FIs (c. 23.2). There are no requirements for DNFBPs to apply either EDD or other countermeasures that are proportionate to risk when called upon to do so by the FATF or independent of such call. No measure(s) for advising DNFBPs of concerns and weaknesses in the AML/CFT systems of other countries. (c. 23.3). Tipping off legislation is limited to STRs relative to ML/TF and does not include those that may be related to proceeds of criminal activities. Protection against criminal, civil and administrative sanctions are not applicable to the institutions themselves (c. 23.4).

152. ***Criterion 23.1:*** **(a)** The revised definition now covers attorneys-at-law, notaries and all other independent judicial professions and accountants when conducting the specified activities. The deficiency is therefore addressed. **(b)** The sub-criterion was deemed met in the MER. There are no changes to the AML/CFT regime in this regard. **(c)** As highlighted in R.20, this deficiency has been remedied by requiring both FIs and DNFBPs to file STRs for both completed and attempted transactions in accordance with Article 19 of the DSMLFTP. The predicate offences have also been remedied to capture all prescribed offences.

153. ***Criterion 23.2:*** DNFBPs are required to comply with the internal controls requirements set out at c. 18.1(a) (Art. 13(a) of the DSMLFTP) and c.18.1(d) (Art. 13(b) of the DSMLFTP). However, DNFBPs are not required to comply with the other requirements set out in R.18. Art. 59 of the DSMLFTP only subjects DNFBPs to the same obligations as FIs in relation to identifying and verifying client identity, identifying and verifying the identity of the beneficial owner, understanding and obtaining information on the purpose and intended nature of the business relationship and implementing simplified or enhanced due diligence measures on the basis of risk.

154. ***Criterion 23.3:*** Article 63 of the DSMLFTP speaks to the application of EDD by DNFBPs and FIs, where instances of high risk have been identified. Article 28 provides further clarity and maintains that DNFBPs are to apply due diligence measures in line with risks identified with special attention to factors such as business relationships and transactions with natural or legal persons, including financial institutions, from countries that do not enforce or insufficiently enforce international standards on combating money laundering and terrorist financing, and apply enhanced due diligence measures to such business relationships and transactions that are commensurate to the risks once identified. On this premise it can be concluded that there are provisions for DNFBPs to apply EDD proportionate to risk, independent of a call from the FATF and where a request is made, the powers exist to facilitate this application for the proportionate action to be taken. The amendments made by way of Article 76 adequately cover this deficiency by requiring supervisory

authorities to provide DNFBPs with information on countries that do not enforce or insufficiently enforce AML/CTF measures. It also requires the provision of information regarding concerns raised by deficiencies in the country's AML/CTF systems and appropriate EDD measures where necessary to be applied by the DNFBP. Notwithstanding these progressive amendments facilitating the application of EDD, there is no specific mention of the actual countermeasures to be applied. Therefore, there are moderate cascading shortcomings from R.19.2.

155. ***Criterion 23.4:*** Article 19 of the DSMLFTP addressed the requirement to file STRs with the UCREF for either completed or incomplete transactions which is suspected to be or where there are reasonable grounds to suspect that the sum is derived from a money laundering offence, terrorist financing or a predicate offence. Additionally, Articles 84 - 87 of the DSMLFTP establish a framework to ensure protected disclosure for institutions and their employees and reinforce that disclosures are to remain confidential. These articles thereby address the deficiency as STRs are confidentially filed in relation to all ML/TF and predicate offences. However, there is one minor cascading deficiency emanating from c. 21.2, as the tipping-off provisions do not clearly extend to STRs emanating from predicate offences.

***Weighting and Conclusion:***

156. Haiti has made the necessary amendments for the inclusion of DNFBPs in its AML/CFT regime. There however remain moderate shortcomings in relation to criterion 23.2 where the applicability of provisions to establish internal controls and foreign branches and subsidiaries is still in question, c. 23.3 where there is no specific mention of the countermeasures to be applied and 23.4 where tipping-off provisions do not clearly extend to STRs emanating from predicate offences.

**Haiti is re-rated as Partially Compliant for Recommendation 23.**

## 4.17. Recommendation 27 (originally rated PC)

157. In the 4th Round MER, Haiti was rated PC for Recommendation 27. The report identified a scope gap in the supervisory framework, which did not cover insurance companies, pension funds, and microfinance institutions.

158. ***Criterion 27.1***: Art. 75 (1) of the DSMLFTP provides the supervisors with the powers to monitor and supervise FIs to ensure that they comply with their AML/CFT obligations. The BRH is responsible for ensuring FIs comply with the legislative and regulatory provisions that are applicable to them, inclusive of AML/CFT obligations (Art. 98 of the Law governing Banks and other FIs). However, at the time of the MER, the Law governing Banks and other FIs excluded insurance companies, microfinance institutions and pension funds from its scope. There are

currently no pension funds in Haiti apart from the national pension fund for public servants which is managed by the State. Art. 4 of the DSMLFTP identifies the categories of FIs to be supervised inclusive of microfinance institutions and insurance companies but does not explicitly identify the BRH as the supervisor for FIs. The Guidance for Microfinance Institutions, 2023 identifies the BRH as the supervisor for microfinance institutions. The insurance sector which is not an important sector based on Haiti's risk and context, is supervised by the BRH for prudential matters. However an AML/CFT supervisory body is yet to be established specifically for insurance companies. The scope gap in the supervisory framework, which did not cover insurance companies, pension funds, and microfinance institutions has been mostly addressed.

159. ***Criterion 27.2***: Art. 75 (2) of the DSMLFTP grants supervisory authorities the necessary powers to conduct inspections. However, the deficiency identified in c. 27.1 cascades here.

160. ***Criterion 27.3***: Art. 75(3) of the DSMLFTP empowers the supervisory authorities to compel the production of all relevant information to monitor compliance with AML/CFT obligations. However, the deficiency identified in c. 27.1 cascades here.

161. ***Criterion 27.4***: Art. 75(4) of the DSMLFTP empowers the supervisory authorities to impose sanctions for non-compliance with AML/CFT obligations which include financial and disciplinary sanctions such as limitation, suspension, and withdrawal of the authorization to operate. Sanctions are available to the BRH under various circulars as demonstrated in the table below. These include fines, revocation and withdrawal of the authorisation to operate in the most serious cases. In accordance with R. 35 and in Haiti's context, these sanctions are proportionate and dissuasive. However, the deficiency identified in c. 27.1 cascades here.

| Breach | Law/Guidance | BRH Sanctioning power |
|---|---|---|
| Failure to complete transaction report forms | Circular 95-4 | HTG. 150,000.00 per day of violation. The penalty period extends from the day on which a transaction should have been declared to the UCREF to the day on which the BRH detects the violation. |
| Non-transmission of a duly completed declaration transaction form | Circular 95-4 | HTG 175,000.00 per day of violation. The penalty period extends from the day the form should have been sent to the day the BRH detects the violation. |
| Late transmission of a declaration transaction form | Circular 95-4 | HTG 90.000.00 per day of violation. The penalty period extends from the day the form should have been sent to UCREF to the day the UCREF receives said form |
| AML/CFT breaches related to designation of a compliance officer, risk assessment, continuous training, internal | Circular 100-4 | The BRH reserves the right to impose all administrative sanctions ranging from a warning to the withdrawal of the authorization to operate |

| Breach | Law/Guidance | BRH Sanctioning power |
|---|---|---|
| control systems, independent testing and processing of suspicious transactions | | in the most serious cases, notwithstanding sanctions provided for by law. |
| Failure to exercise due diligence on the part of money transfer companies | Circular 107-3 | BRH reserves the right to impose all administrative sanctions ranging from a warning to the withdrawal of the authorization to operate in the most severe cases, and/or to impose a Five hundred thousand Gourdes (HTG500.000.00) per violation found. |
| Failure to comply with corrective measures demanded by BRH | Circular 107-3 | Three hundred thousand Gourdes (HTG300.000.00) per day of violation, as of the date on which the violation is notified to that money transfer company by BRH, not to exceed thirty (30) days. |
| AML/CFT breaches related to designation of a compliance officer, risk assessment, continuous training, internal control systems, independent testing and processing of suspicious transactions (currency-exchange) | Circular 128-1 | BRH reserves the right to enforce all administrative sanctions ranging from a warning to the withdrawal of authorization to operate in the most serious cases, and/or to apply a fine of two hundred thousand gourdes (HTG 200,000.00) per violation found |
| Failure of a currency-exchange to comply with the corrective actions required by BRH | Circular 128-1 | BRH, shall make the currency-exchange bureau subject to a penalty of one hundred and fifty thousand gourdes (HTG 150,000.00) per day of violation, from the date on which the violation is notified to that currency-exchange bureau by BRH, without exceeding thirty (30) days. |
| CDD breaches | Circular 99-4 | BRH reserves itself the right to enforce all administrative sanctions ranging from a warning to the removal of the operating license in most serious cases, and/or to impose a Five hundred thousand Gourdes (G500.000.00) penalty per violated found |
| Failure to comply with the corrective actions required by BRH | Circular 99-4 | Three hundred thousand Gourdes (G 300.000.00) penalty per day of violation as of the date on which the violation is notified to that bank by BRH, without exceeding thirty (30) days |
| Breach of AML/CFT obligations | Art. 75(4) DSMLFTP | Limitation, suspension, and withdrawal of the authorization to operate |

***Weighting and Conclusion:***

162. Art. 75 of the DSMLFTP grants supervisory authorities in Haiti expanded powers for compliance oversight, inspections, and enforcement of AML/CFT obligations. The BRH is the AML/CFT supervisor for most FIs. However, one minor deficiency relating to the supervision of insurance companies remains. The insurance sector is not considered a material sector considering Haiti's risk and context.

**Haiti is re-rated Largely Compliant with Recommendation 27**

### 4.18. Recommendation 29 (originally rated PC)

163. In the 4th Round MER, Haiti was rated PC for Recommendation 29. The following deficiencies were cited: No provision authorising UCREF to disseminate the result of its analysis that involves suspicion of predicate offences. UCREF is allowed to disseminate in cases involving serious evidence of ML/TF which is greater threshold than the requirement to disseminate on the basis of suspicion. (c. 29.1). UCREF is not mandated to receive STRs that may have a nexus to the missing associated predicate offences that are identified in R. 3. (c. 29.2(a)). UCREF does not have the authority to access non-public and commercial databases (c. 29.3(b)). There is no requirement for UCREF to disseminate information and its analysis spontaneously or upon request, except for cases of ML/TF. There are no dedicated or protected channels for the dissemination of information (c. 29.5). There is no procedure in place for the handling, storing and dissemination of information (c. 29.6(a)). There are no procedures in place to ensure that UCREF employees have the necessary security clearance and understand their responsibilities in the handling of information (c. 29.6(b)). The overarching powers of the board of directors can have implications on the ability of UCREF to conduct its functions independently (c. 29.7 (a)). UCREF is not permitted to enter into agreements and arrangements with all domestic competent authorities. UCREF can only share ML/TF information with foreign counterparts (c. 29.7(b)). There is no provision for UCREF to deploy its resources freely from undue influence in an effort to conduct its functions (c. 29.7(d)). UCREF has not submitted an unconditional application for membership into the Egmont Group, neither is there any evidence of the organisation being fully engaged in the application process (c. 29.8).

164. ***Criterion 29.1***: Article 4 of the new UCREF Law allows UCREF to disseminate reports, to combat ML, associated predicate offences, TF and proliferation of weapons of mass destruction. Article 4(2) of the UCREF Law imposes on UCREF a general obligation to disseminate reports to combat ML, associated predicate offences, TF and proliferation of weapons of mass destruction. Considering the general nature of this obligation, reports based on suspicion are not precluded and can be disseminated.

165. ***Criterion 29.2:*** **(a)** Money laundering has the meaning prescribed in Art. 7 (a) to (d) and refers to assets which are the proceeds of criminal activity. Proceeds of criminal activity is defined in Art. 6 sub 22 and means "any assets, regardless of its value, derived directly or indirectly from the commission of an offence, or obtained directly or indirectly, through the commission of an offence". This therefore means that suspicious transactions reporting is applicable for funds which are suspected to be the proceeds of any offence within Haiti's legislation. It should be noted that

the offences of piracy of products, forgery and market manipulation were excluded from the list of predicate offences. Considering the risk and context of Haiti, the exclusion of the aforementioned offences would not be detrimental to UCREF's reporting obligations. **(b)** The sub-criterion was deemed met in the MER. There are no changes to the AML/CFT regime in this regard.

166. ***Criterion 29.3***: **(a)** The sub-criterion was deemed met in the MER. There are no changes to the AML/CFT regime in this regard. **(b)** Article 4(4) of the new UCREF law authorizes UCREF to obtain and use additional information from FIs and DNFBPs to conduct its proper analysis. Additionally, the 2nd paragraph of Art 30 of the new UCREF law allows UCREF access to the databases of public institutions.

167. **Criterion 29.4**: **(a)** and **(b)** The sub-criteria were deemed met in the MER. There are no changes to the AML/CFT regime in this regard.

168. ***Criterion 29.5:*** Article 4(2) of the UCREF Law authorizes UCREF to disseminate the results of its analysis, spontaneously or upon request. Subject to the provisos contained in Article 31, UCREF is empowered to respond to substantiated requests for information from judicial authorities and the competent administrations in the fight against ML, associated predicate offences and against the fight of terrorism. Article 33 allows UCREF to exchange information with foreign services, subject to reciprocity. Article 34 directs that UCREF is authorized to exchange all information that must be accessible, or likely to be obtained directly or indirectly by UCREF as well as other information relating to ML, associated predicate offences, TF and financing of PF or any information that UCREF has the power to obtain or which it can access, directly or indirectly. Article 4(2) of the new UCREF Law stipulates that UCREF is to disseminate the results of its analysis, spontaneously or upon request, using secured and protected methods.

169. ***Criterion 29.6:*** **(a)** This deficiency was not addressed. Article 27 of the UCREF Law requires UCREF to protect its information and issue regulations relating to the security and confidentiality of information, including procedures for the management, retention, dissemination, protection of and access to information. The regulations in this regard have not been issued. **(b)** Article 20 of the UCREF Law mandates that an employee cannot be recruited by UCREF unless a prior investigation has been conducted into the applicant's integrity and morality. It further states that all UCREF staff members must have obtained the necessary clearance levels and received benefit statutory training bearing on the management and dissemination of sensitive and confidential information. Additionally, Article 21 stipulates that all staff members are subject to professional secrecy. Article 22 requires staff to sign a declaration not to disclose UCREF's operations or provide information

on its operations. **(c)** The sub-criterion was deemed met in the MER. There are no changes to the AML/CFT regime in this regard.

170. **Criterion 29.7: (a)** Article 7 of the new UCREF Law incorporates the Board of Directors within the organization to ensure that it is autonomous. Art 8 of the new UCREF law indicates that members of the board of directors are appointed with constitutional and legislative provisions. Art 14 of the new UCREF Law states that the Director General is answerable to the Board of Directors. Article 3 of the new UCREF Law indicates that UCREF enjoys operational independence. **(b)** Article 4(9) of the new UCREF Law allows UCREF to enter into agreements independently to collaborate with domestic competent authorities or foreign counterparts to exchange information relative to ML, TF and proliferation of weapons of mass destruction. **(c)** The sub-criterion was deemed met in the MER. There are no changes to the AML/CFT regime in this regard. **(d)** Article 24 of the new UCREF Law states that UCREF operates with an annual budget provided by the Public Treasury which enables it to fulfill its mission. The budget is voted by in Parliament and is specifically established by the Finance Law and registers as an autonomous budget. Art 19 allows the Director General to recruit staff members for UCREF. Art 14 states that the Director General is answerable to the Board of Directors. UCREF is legislatively empowered to have independent operational authority (Article 3) and to deploy the necessary human resources needed to carry out its functions (Article 4).

171. ***Criterion 29.8***: While Haiti has submitted its unconditional application (Expression of Interest) to EGMONT, the jurisdiction has not demonstrated that it has fully engaged itself in the application.

***Weighting and Conclusion:***

172. Haiti has made progress in addressing the deficiencies noted in the MER through a new UCREF Law, allowing for greater operational scope and autonomy, for instance, since the MER, UCREF has access to non – public and commercial databases, with dedicated and protected methods for dissemination. Further, UCREF is authorized to enter into agreements with domestic and foreign competent authorities. However, UCREF is still not a member of the Egmont Group and the jurisdiction has not demonstrated that it has fully engaged itself in its application (Expression of Interest) to Egmont. While there is the mandate for UCREF to use secure and protected channels for the disseminations, regulations have not yet been made.

**Haiti is re-rated as Largely Compliant for Recommendation 29.**

### 4.19. Recommendation 30 (originally rated PC)

173. In the 4th Round MER, Haiti was rated PC for Recommendation 30. The following deficiencies were cited: No measures were cited that allow for BAFE to conduct investigations into ML/TF (c. 30.1). There is no indication that other investigative agencies can conduct ML investigations or refer such cases to another agency upon their discovery during a parallel financial investigation (c. 30.2). Preventive measures imposed by the investigating magistrate are not applicable to benefits or property of corresponding value that can be used to satisfy or enforce a confiscation order. Further, protective measures are only applicable to ML and not all associated predicate offences and TF. The authorities did not provide any time-period for freezing, therefore, the assessment team is unable to state whether this can be done expeditiously. (c. 30.3). There are no measures for ensuring that LEAs and anti-corruption officials can identify, trace and freeze property that can be confiscated or are the proceeds of crime in an expeditious manner. Deficiencies that exist in c.30.3 have a cascading effect on c. 30.5.

174. ***Criterion 30.1:*** The LEA with the specific responsibility for investigating ML related offences is the Office of Financial and Economic Crime (BAFE). Article 137 of the DSMLFTP allows for the appointment of Prosecutors specialised in financial crimes to the courts. Article 140 of the DSMLFTP allows for an investigating Judge specialised in financial crimes to be appointed to the courts.

175. ***Criterion 30.2***: Article 78 of the DSMLFTP outlines the investigative methodology to obtain evidence of ML, TF, other predicate offences and the tracing of proceeds of crime. It does not mention if an agency investigating a predicate offence can continue with a ML/TF investigation identified during a parallel investigation or which agency can be referred to continue with the investigation.

176. ***Criterion 30.3:*** Article 89 of the DSMLFTP allows authorities to carry out provisional measures ex parte, to seize funds, assets and freeze money and financial transactions related to assets in connection with ML, TF and predicate offences, which is subject to an investigation and likewise all elements likely to identify said offence, as well as the freezing of money and financial transactions relating to assets involved in the case. Art 90 of the DSMLFTP states that the competent investigating judge may enforce conservatory measures on funds and other assets in connection with offences under investigation.

177. ***Criterion 30.4:*** The criterion was deemed met in the MER. There are no changes to the AML/CFT regime in this regard.

178. ***Criterion 30.5:*** The Decree of September 8, 2004 established the administrative entity called "Unite de Lutte contre la Corruption" - Anti-Corruption Unit and the Director General of this entity is a member of the CNLBA and therefore is subject to the operational requirements to share information with other competent authorities. Article 89 of the DSMLFTP allows authorities to carry out provisional measures ex parte, to seize funds, assets and freeze money and financial transactions related to assets in connection with ML, TF and predicate offences, which is subject to an investigation and likewise all elements likely to identify said offence, as well as the freezing of money and financial transactions relating to assets involved in the case. Art 90 of the DSMLFTP states that the competent investigating judge may enforce conservatory measures on funds and other assets in connection with offences under investigation.

***Weighting and Conclusion:***

179. Haiti has LEAs with the responsibility to investigate ML, TF and predicate offences. LEAs can also identify, evaluate and seize funds and assets connected to ML, TF and predicate offences. However, no clarity was provided to address whether certain LEAs investigating predicate offences during parallel investigation can continue with ML/TF investigation when identified or refer same to an agency to continue with the investigation.

**Haiti is re-rated as Largely Compliant for Recommendation 30.**

## 4.20. Recommendation 31 (originally rated NC)

180. In the 4th Round MER, Haiti was rated NC for Recommendation 31. The following deficiencies were cited: The provision for the production of records does not apply to all records that may be needed for investigations and prosecutions and it does not apply to associated predicate offences. Further, the requirement does not apply to DNFBPs in all instances, neither does it apply to natural and legal persons (c. 31.1(a). There are no provisions for the search of persons and premises (c. 31.1(b)). There are no provisions for the taking of witness statements (c. 31.1(c)). There are no provisions for seizing and obtaining evidence (c. 31.1(d)). There are no provisions for LEAs to conduct undercover operations (c. 31.2(a)). The order of a Judge for audio and video recording along with photographs, is not applicable when investigating associated predicate offences (c. 31.2(b)). The order of a Judge for access to networks and servers is not applicable when investigating associated predicate offences (c. 31.2(c)). There are no provisions authorising LEAs to conduct controlled delivery (c. 31.2(d)). There are no measures authorising LEAs to identify within a timely manner whether natural or legal persons control accounts (c. 31.3(a)). There are no provision(s) to identify assets without prior notification of the owner (c. 31.3(b)). There are no

provisions authorising competent authorities investigating ML, associated predicate offences and TF to request all information held by UCREF (c. 31.4).

181. ***Criterion 31.1***: **(a)** The investigative methods described in Article 78 of the DSMLFTP allow for the production of records held by financial institutions, DNFBPs and other natural and legal persons in the investigation of ML, TF and other predicate offences. Art 78 (b) allows for access to computer systems, networks and servers used or likely to be used by persons against whom there are serious indications of participation in the original offence or offences. Art. 78(h) treats with access to the search of premises and Art. 78 (i) the search of persons. **(b)** Article 78(h) and 78(i) of the DSMLFTP allows for the search of premises and persons respectively. **(c)** Article 78(d) of the DSMLFTP allows for the summoning of witnesses and the taking of oral and written depositions. **(d)** Article 78 of the DSMLFTP allows for the obtaining of evidence for the offence of ML, TF and other predicate offences. The investigating judge may order the use of various methods mentioned from a - j to obtain same. (see Criterion 4:2(a))

182. ***Criterion 31.2***: (a) Article 78(j) of the DSMLFTP allows for controlled delivery and undercover transactions. **(b)** Article 78 of the DSMLFTP addresses obtaining evidence for ML, TF and any other predicate offence. Article 78(b) caters for access to computer systems, networks and servers used, while Article 78(f) addresses audio or video recording or photographing of acts and actions or conversations. **(c)** Article 78 of the DSMLFTP addresses obtaining evidence for ML, TF and any other predicate offence. Article 78(b) caters for access to computer systems, networks and servers used. **(d)** Article 78(j) of the DSMLFTP allows for controlled delivery and undercover transactions.

183. ***Criterion 31.3:*** **(a)** Article 78(a) of the DSMLFTP allows for the surveillance of bank accounts and accounts treated as bank accounts where there are serious indications that said accounts are being used or likely to be used for transactions related to ML, TF and predicate offences. **(b)** Article 78 of the DSMLFTP allows for the obtaining of evidence for the offence of ML, TF and other predicate offences, and for the tracing of instrumentalities and proceeds of crime. The investigating judge may order the use of various methods without notifying the person under investigation or against whom such order is issued.

184. ***Criterion 31.4***: Article 88 of the DSMLFTP indicates that a UCREF officer's professional secrecy is not enforceable against the judicial authority. Article 31 of the new UCREF law allows UCREF to respond to reasoned requests for information made by the judicial authorities and the competent administrations responsible for investigating ML, associated predicate offences and TF. UCREF

may not, however, disclose information, if doing so would have a negative impact on an active investigation or disclosure would be manifestly disproportionate to the legitimate interest of a natural person or legal entity.

***Weighting and Conclusion:***

185. All criteria are met.

**Haiti is re-rated as Compliant for Recommendation 31.**

## 4.21. Recommendation 32 (originally rated NC)

186. In the 4th Round MER, Haiti was rated NC for Recommendation 32. The following deficiencies were cited: The declaration system is not applicable to cross-border transportation of cash through mail and cargo neither is it applicable to BNIs (c. 32.1). The threshold amount for declaration has not been established by the BRH (c. 32.2). There is no measure for a traveller to give truthful information and provide information to AGD officials upon request regarding the origin and intended purpose the currency or BNIs (c. 32.4). There are no sanctions for persons who make a false declaration or disclosure (c. 32.5). The process for transmission of declaration of cash and BNIs to UCREF is unknown (c. 32.6). There is no measure(s) for ensuring domestic cooperation and coordination among AGD, immigration and other authorities regarding the implementation of R.32 (c. 32.7). There is no measure(s) authorising the seizure of BNI when that are connected to ML/TF. Further, there is no measure authorising the seizure of cash and BNI that have a nexus to predicate offences. No timeframe for the retention of cash seized (c. 32.8). No measures for addressing criteria 32.9-32.11).

187. ***Criterion 32.1***: Article 91 of the DSMLFTP states that the declaration of cash and monetary instruments must be signed and dated by the reporting person. The General Customs Administration ensures that the declarant makes a declaration for the international transport of currencies. However, it does not indicate that a declaration or disclosure is required for the cross-border transportation of cash through mail or cargo. The sections identified by the country do not address the criterion, as those sections are applicable to the seizure of cash and BNI by the general Customs Administration. However, Art 14 of the DSMLFTP is applicable. See analysis in c. 32.2.

188. ***Criterion 32.2:*** Art. 14 of the DSMLFTP places a requirement on all persons at the time of entering or exiting to complete a declaration of cash and BNI if transporting an amount of value equal to or greater than a regulated threshold set by the Ministry of Economy and Finance. However, the regulated amount has not been set.

189. ***Criterion 32.3:*** The criterion was deemed not applicable in the MER as Haiti has a Declaration System and not a Disclosure System. There are no changes to the AML/CFT regime in this regard.

190. ***Criterion 32.4***: Art. 15 of the DSMLFTP allows the General Customs Administration, if necessary, to require additional information on the origin and destination of the cash or BNI of equal value or greater than the threshold referred in Article 14. Persons making false statements or communication shall be liable to penalties. However, the regulated threshold amount is not known.

191. ***Criterion 32.5:*** Art. 95 of the DSMLFTP allows the General Customs Administration to seize all the cash and BNI in the event of non-declaration, false declaration or incomplete declaration or if there is suspicion of ML or TF. Despite the presence of sanctions, no threshold for declarations has been set by the authorities as required by c. 32.2, therefore sanctions cannot be applied for false declarations.

192. ***Criterion 32.6:*** Art. 96 of the DSMLFTP requires the General Customs Administration to inform UCREF (FIU) without delay of any suspicious incident of cross-border transport and of the temporary detention of cash or BNIs. Whilst the declaration system exists, the threshold on the amount that should be declared has not been set by the authorities.

193. ***Criterion 32.7***: Article 148 of the DSMLFTP sets out the functions of the National Anti-Money Laundering Committee (CNLBA) and Article 150 lists the composition of the CNLBA which comprises multiple stakeholders including Customs and the FIU. Whilst the functions of the DSMLFTP under Article 148 do not explicitly make reference to the implementation of measures related to R.32, they are sufficiently broad in scope to include such interpretation. For example: c) ensuring the coordination of the various actions at the national level with all actors concerned with the fight against money laundering, terrorist financing and financing of the proliferation of weapons of mass destruction; d) monitoring the implementation, regular review and updating of the national risk assessments; and g), recommending to competent authorities, legislative, regulatory and administrative mechanisms, standards and procedures for the prevention and investigation of ML, TF and PF. Neither the Immigration Department nor the Ministry that has oversight of the department is a part of the CNLBA. Nevertheless, the Group of Experts did not consider this to be a deficiency taking into consideration that the CNLBA has the authority to appoint State entities or any other entities deemed relevant as observers to its meeting (Article 151) and ensure the coordination of the various actions at the national level with all actors concerned with the fight against money laundering, terrorist financing and financing of the proliferation of weapons of mass destruction. There is therefore the power to include and collaborate with Immigration, which is a State entity.

194. ***Criterion 32.8***: Art. 89 of the DSMLFTP makes provision for the seizure of funds and assets in connection with ML, TF and predicate offences subject to an investigation. Art 95 of the DSMLFTP allows the General Customs Administration to detain cash and BNIs in the event of non-declaration, false declaration or incomplete declaration or if there is suspicion of ML or TF. Art. 96 of the DSMLFTP states that the General Customs Administrations shall terminate detention of cash or BNIs within 5 days having notified UCREF that there is no nexus to ML or TF in the event there is evidence of ML or TF the funds shall be seized and surrendered to the competent authority.

195. ***Criterion 32.9:*** Art. 14 of the DSMLFTP places a requirement on all persons at the time of entering or exiting to complete a declaration of cash and BNI if transporting an amount of value equal to or greater than a regulated threshold set by the Ministry of Economy and Finance. Art. 15 of the DSMLFTP allows the General Customs Administration if necessary to require additional information on the origin and destination of the cash or BNI of equal value or greater than the threshold referred to in Article 14. Persons making false statements or communications shall be liable to penalties. Art 184 of the DSMLFTP states that supervisory authorities can communicate information, to which they have access, with supervisory authorities in other states for the purpose of combating ML, TF and PF. Supervisory authorities must ensure that foreign counterparts are subject to professional secrecy. The legislation provides for safeguards to ensure proper use of information collected, without restricting trade payments between countries for goods and services or freedom of capital movement. However, the regulated threshold amount is not known.

196. ***Criterion 32.10:*** Art 183 of the DSMLFTP states that UCREF, at its request or on its own accord, can communicate to foreign FIUs information in its possession relative to laundering of the proceeds of criminal activity, terrorist financing or financing of proliferation, subject to reciprocity, provided the following conditions are adhered to: (i) a foreign FIU is subject to at least equivalent confidentiality obligations; (ii) processing of the information communicated guarantees protection of privacy, fundamental rights and freedoms of individuals; and (iii) the information shared is solely for intelligence purposes and subject to the purposes stated in the request by the foreign FIU. There are however no provisions applicable to the Customs Administration which is responsible for collecting information through the declaration system and ensuring its proper use.

197. ***Criterion 32.11***: Article 95 of the DSMLFTP allows the General Customs Administration to seize all the cash and BNI in the event of non-declaration, false declaration or incomplete declaration or if there is suspicion of ML or TF. Art. 96 of the DSMLFTP states that the General Customs Administration, if there is evidence of ML or TF, shall seize and surrender the fundsto the competent authority. The surrender of the funds to the relevant competent authority can result in

the institution of confiscation proceedings as required by R.4. Article 128 of the DSMLFTP allows for a judge to order the confiscation of seized assets: if it is proven that the assets constitute the proceeds of criminal activity or are connected with such activity.

***Weighting and Conclusion:***

198. Haiti has a declaration system for incoming and outgoing cross border transportation of cash and BNI. There exists the ability to seize currency to ascertain whether evidence of ML/TF or other predicate offences is present. There are penalties in place for persons who make false declarations. However, some deficiencies remain: (1) there is no requirement for a declaration where there is the cross-border transportation of cash through mail or cargo; (2) there are no safeguards to ensure adequate use of information collected and disseminated to foreign jurisdictions, without restricting trade payments between countries for goods and services or freedom of capital movement; (3) there are no measures for international cooperation on matters involving the cross border movement of cash and BNIs; (4) there are no measures for the retention of records; and (5) there is no quantification of the regulated threshold amount that is required for declaration.

**Haiti is re-rated as Partially Compliant for Recommendation 32.**

## 4.22. Recommendation 33 (originally rated NC)

199. In the 4th Round MER, Haiti was rated NC for Recommendation 33. The following deficiencies were cited: Competent authorities are not maintaining comprehensive statistics on ML investigations, prosecutions and convictions; property frozen; seized and confiscated; and mutual legal assistance, extradition and other requests for international cooperation made and received by supervisors and LEAs (c. 33.1 (b) – (d)).

200. ***Criterion 33.1***: The criterion was deemed met in the MER. (a) remains met by virtue of Article 35 of the UCREF Law which requires the UCREF to establish an annual activity report including statistics concerning the number of suspicious transaction reports and follow-up given to these reports.

201. ***Criterion 33.1:*** **(b)-(d)** were deemed not met in the MER. (b) is met by the provisions detailed in Article 82 of the DSMLFTP as it requires competent authorities to keep comprehensive and up to date statistics on ML/TF investigations, prosecutions, and convictions. (c) is met by the provisions detailed in Article 136 of the DSMLFTP as it requires the relevant competent authority, namely the Ministry of Justice and Public Security, to maintain complete and up to date statistics on frozen, seized, or confiscated assets. (d) is met by the provisions detailed in Article 167 as it requires the relevant competent authority, namely the Ministry of Justice and Public Security, to maintain

complete and up to date statistics on mutual legal assistance or other international requests for cooperation requested and obtained.

***Weighting and Conclusion:***

202. The enactment of the DSMLFTP and the provisions in the new UCREF Law addressed the requirements of C.33.1

**Haiti is re-rated as Compliant for Recommendation 33.**

## 4.23. Recommendation 34 (originally rated PC)

203. In the 4th Round MER, Haiti was rated PC for Recommendation 34. The following deficiencies were cited: Not all FIs are provided with guidelines. The DNFBP sector, despite its vulnerability to ML, has not been provided with any guidelines. No measures for UCREF to provide feedback and no indication that such is provided to FIs and DNFBPs.

204. ***Criterion 34.1***: Article 74 (e) of the DSMLFTP. states that Supervisory Authorities must establish guidelines and provide feedback to assist FIs and DNFBPs in the enforcement of anti-money laundering and countering the terrorist financing measures, in detecting and reporting suspicious transactions. Article 4(5) of the UCREF Law gives UCREF the authority to provide feedback to FIs, DNFBPs and other competent authorities on the conclusion of the reports and other information it receives. Article 28 of the UCREF Law requires UCREF to provide feedback to reporting individuals and legal entities on the relevance of suspicious transaction reports and on certain specific information received, and the follow-up. There is no evidence however that competent authorities have provided feedback to FIs and DNFBPs to assist them in applying national AML/CFT obligations and in particular, detecting and reporting suspicious transactions.

***Weighting and Conclusion:***

205. Haiti has a legislative framework to establish guidelines and provide feedback to all FIs and DNFBPs. Additionally, under the UCREF Law, it explicitly provides UCREF with the authority to provide feedback to FIs, DNFBPs and other competent authorities on the conclusion of the reports and other information it receives. Notwithstanding the legislative framework, Haiti has not demonstrated that competent authorities provide feedback to reporting entities.

**Haiti is re-rated as Partially Compliant for Recommendation 34**.

### 4.24. Recommendation 35 (originally rated PC)

206. In the 4th Round MER, Haiti was rated PC with Recommendation 35. The following deficiencies were cited: There are no criminal and administrative sanctions available for breaches to R.6, 8, 9 and 19. Sanctions are not applicable to all breaches committed by the DNFBPs and FIs (c. 35.1). Directors and Managers of some FIs, DNFBPs and NPOs are not subjected to sanctions (c. 35.2).

207. ***Criterion 35.1***: On the basis that Haiti has entirely new legislation, the criteria for R. 35 were assessed as new, considering all components including the noted deficiencies from the MER. Articles 116 and 117 (DSMLFTP) have sought to establish a basis for administrative sanctions, however, there are no specific sanctions/penalties stated within the legislative provision. Specific sanctions were provided by way of Circulars 99-4,128-1 and 107-3, but these restricted penalties for breaches to some aspects of R.10,13,15 and 16 and further restricted its application to banks, foreign exchange bureaus and remittance companies (therefore not applicable to all DNFBPs and FIs). Additionally, the criminal sanctions identified were only partially applicable to R.20 and 21 by way of Articles 120(a), (d) and (g). There remain no sanctions for R.6, 8, 9, 12, 14, 17, 18, 19 and 22.

208. ***Criterion 35.2:*** Article 120 of the DSMLFTP makes explicit reference to managers, or employees, the institution themselves and legal persons as it relates to DNFBPs and FIs. However, given the narrow application of this Article to only R.20 and 21 and the cascading impact from c.35.1, not all DNFBPs and FIs are subject to Haiti's sanctions regime and NPOs are wholly excluded. Therefore, their directors, senior management and employees are not able to do the same for the remaining Recommendations, namely, R.6, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19 and 22.

***Weighting and Conclusion:***

209. The legislative amendments and Circulars provided have sought to establish a basis for a sanctions regime. However, the shortcomings with the applicable provisions are that in respect of the administrative component there are no specific sanctions/penalties stated and when stated by way of Circular, their applicability is limited to some financial institutions. Further, in instances where sanctions are established, they do not fully capture the requirements of R.35 and only penalize some breaches in respect of R. 10,13,15 16, 20, and 21. Therefore, there is insufficient corresponding action to ensure that there is a wide range of sanctions that are applicable to all FIs, DNFBPs, NPOs and their employees/actors/directors/managers. There remain moderate shortcomings to be addressed.

**Haiti is re-rated as Partially Compliant for Recommendation 35.**

### 4.25. Recommendation 38 (originally rated PC)

210. In the 4th Round MER, Haiti was rated PC with Recommendation 38. The following deficiencies were cited: Some offences are not predicates for ML (See R.3/R.4). Further, there is no information to suggest the process/actions to be taken are expeditious. (c. 38.1). Haiti's law does allow for rendering of MLA in all instances of confiscation including non-conviction based (c. 38.2). No measures for arranging and coordinating seizure and confiscation with other countries (c. 38.3(a)). There exist no measures for the management of assets frozen as a result of MLA requests (c. 38.3(b)). There are no asset sharing provisions (c. 38.4).

211. ***Criterion 38.1:*** Art. 156 of the DSMLFTP allows the country to act in response to a foreign country's request for identification, freezing, seizing and confiscation of the proceeds of ML, associated predicate offences and TF. Haiti's list of predicate offences for ML consists of most serious offences including corruption, drug trafficking, human trafficking and tax crimes. However, the Group of Experts found that piracy of products, forgery and market manipulation are not predicate offences for ML and are therefore not subject to confiscation requirements (see analysis of R. 3 and R. 4). Although the absence of those offences may not be harmful for the country based on the country's risk, the absence of those offences can affect the country's ability to identify, freeze, seize or confiscate criminal property obtained from piracy of products, forgery and market manipulation in foreign jurisdictions and those assets that are traced to Haiti. The Group of Experts considered this deficiency to be minor, given that major offences such as drug trafficking and corruption (based on open-source information) are covered.

212. ***Criterion 38.2:*** Art. 159 of the DSMLFTP caters for MLA aimed at issuing a confiscation order. The confiscation order must bear on assets constituting the proceeds or instruments, or assets of corresponding value, of one of the offences referred to in the legislation. Art 131 of the DSMLFTP allows for confiscation in absentia, in which case, the confiscated funds and other assets shall devolve to the State and be liquidated in accordance with the relevant procedures. The Group of Experts interpreted the provision to confiscate in absentia allows the authorities to take action in circumstances where the perpetrator is unavailable by reason of death, flight or the perpetrator is unknown. The deficiency in c. 38.1 has a cascading impact on this criterion and is treated as a minor deficiency.

213. ***Criterion 38.3: (a)*** Haiti has measures in place to facilitate the co-ordination of seizure and confiscation of assets. Competent authorities are required to take action to, inter alia, freeze and seize the proceeds of crime and communicate the results thereof to the competent authority in the requesting State. Further, the competent authority, at the behest of the competent authority from

the requesting State, is required to take all appropriate measures to prevent the negotiation, transfer or disposal of the asset(s) concerned following the final decision of a competent court in the requesting State (Art.156, DSMLFTP). The Group of Experts considered the foregoing requirements, when taken in their entirety, as sufficiently broad in scope to address the requirement. Further, Art. 160 of the DSMLFTP allows the domestic competent authority to give effect to any court order for seizure or confiscation issued by a court of a Member State. However, no clarity is given as to the definition of Member State (CARICOM only or all foreign countries). The deficiency identified in c.38.1 has a cascading impact on this sub-criterion, as the measures identified above would not be applicable to the missing predicate offences.

214. **(b)** Art 132 of the DSMLFTP establishes the 'Office for the Management of Seized and Confiscated Assets (BUGASC)' for the administration, management and conservation of seized and confiscated funds and assets. Art 133 of the DSMLFTP states that a law shall determine the modalities for the BUGASC. Pending the adoption of law establishing BUGASC, seized cash is deposited in a special account domiciled at the Bank of the Republic of Haiti and seized or confiscated assets are managed by the Haiti Tax Office. Art 161 of the DSMLFTP allows Haiti the power to dispose of assets confiscated on its territory by petition of foreign authorities. Further, a competent authority at the behest of the competent authority from the requesting State is required to take all appropriate measures to prevent the negotiation, transfer or disposal of the asset(s) concerned following the final decision of a competent court in the requesting State (Art.156 of the DSMLFTP). The Group of Experts considered this section to be sufficiently broad in scope to address the requirement of this criterion, including assets frozen. Article 158 of DSMLFTP, referenced by Haiti, does not apply to this criterion, as it focuses on the court's ability to seize and issue such measures requested in accordance with enforceable legislation. It therefore does not address the mechanisms for managing, and when necessary, disposing of property frozen, seized or confiscated as a result of MLA requests.

215. ***Criterion 38.4:*** Article 161 of the DSMLFTP gives Haiti the power to dispose of confiscated assets on its territory by petition of foreign jurisdictions, in the case of a ruling issued abroad, unless an agreement concluded with the petitioning state provides otherwise.

***Weighting and Conclusion:***

216. Haiti has implemented measures to freeze, seize and confiscate assets, inclusive of instrumentalities intended for use in criminal conduct and adequate management and disposal of confiscated assets are available. However, there remain some shortcomings to address, which are the creation of policy relative to sharing confiscated property with foreign jurisdictions. Also, the absence of

piracy of products, forgery and market manipulation may not be harmful for the country based on the country's risk. The absence of those offences can affect the country's ability to identify, freeze, seize or confiscate criminal property obtained from those offences in foreign jurisdictions and those assets are traced to Haiti.

**Haiti is re-rated as Largely Compliant for Recommendation 38.**

### 4.26. Recommendation 39 (originally rated PC)

217. In the 4th Round MER, Haiti was rated PC with Recommendation 39. The following deficiencies were cited: There is no documented case management system for extradition (c. 39.1 (b)). Some of the measures for rendering extradition are seemingly unduly restrictive, whilst others are not provided for in the legislation (c. 39.1 (c)). Compliance with this criterion does not extend to all predicate offences and TF. There is no indication that cases where extradition requests were not granted can be submitted to the relevant competent authorities for action without delay (c. 39.2 (b)). Extradition is not possible in all cases where dual criminality is missing (See R.3- e.g. tax evasion not criminalised) (c. 39.3). Simplified measures are not applicable to predicate offences and TF (c. 39.4).

218. ***Criterion 39.1:*** **(a)** The criterion was deemed met in the MER. There are no changes to the AML/CFT regime in this regard. **(b)** The measure cited by the Haitian authorities does not address the requirements of this criterion. The Haitian authorities have not provided any information regarding a case management system for extradition requests. **(c)** Article 168 of the DSMLFTP provides that extradition requests shall be executed for the offences of the DSMLFTP in accordance with the provisions of the enforceable laws, and subject to the conditions established by the enforceable extradition treaty between the petitioning State and the Republic of Haiti. It should be noted that the enforceable laws applicable to extradition requests are, amongst others, the Penal Code, the Code of Criminal Procedure and the Constitution. However, not all of these were provided for analysis. Article 174 of the DSMLFTP requires extradition requests, as well as their annexes, to be accompanied by a translation into Creole or French, certified by a sworn translator and which constitutes an authentic reference document and article 175 of the DSMLFTP sets out the formal requirements of extradition requests. These do not appear to be unreasonable or unduly restrictive. Article 170 lists the reasons for which extradition will not be granted. The list of reasons for refusing an extradition request are contained in article 171 of the DSMLFTP. The MER noted that some of the conditions placed on extradition appear to be unduly restrictive, notably the refusal reasons listed in article 170 (d) and article 171 (a). Indeed, with regard to article 170 (d) ("if the person whose extradition is requested can no longer be prosecuted or punished under the laws of

either country because of statutory limitations, or of amnesty or any other reason"), it is unclear what would constitute "any other reason". With regard to article 171(a) ("if the competent Haitian authorities decide not to prosecute the person concerned for the offence for which extradition is requested, or to terminate proceedings against that person in respect of the said offence"), it is not clear under what circumstances it would be used. No further clarification regarding these refusal reasons was provided by the Haitian authorities, thus the deficiencies remain.

219. ***Criterion 39.2:*** **(a)** The sub-criterion was deemed not applicable in the MER as Haiti cannot extradite its own nationals, therefore c. 39.2 (b) applies. There are no changes to the AML/CFT regime in this regard. **(b)** Articles 170 and 171 of the DSMLFTP list the reasons for which extradition requests will not be granted and the reasons for which extradition requests will be refused. These articles do not provide for the refusal of an extradition request on the grounds of nationality. However, Haiti does not extradite its own nationals (article 41 of the Constitution). Article 172 of the DSMLFTP states that if the Haitian authorities refuse extradition on a ground referred to in article 171, subparagraphs f or g, they must submit the case, upon petition of the requesting State, to the competent authorities so that proceedings may be instituted against the person concerned on the charge of the offence for which the request was made. There is no indication that cases where extradition requests were not granted on the ground of nationality can be submitted to the relevant competent authorities for action without delay. Nevertheless, by virtue of ratifying the United Nations Convention against Corruption (Merida Convention) and the United Nations Convention against Transnational Organized Crime (Palermo Convention) and the Haitian Constitution (Article 276-2) allowing for treaties and agreements ratified in accordance with the Constitution to become legislation in the country, Haiti must, at the request of the country seeking extradition, submit the case without undue delay to its competent authorities for the purpose of prosecution. This is however limited to offences linked to corruption and organised crime.

220. ***Criterion 39.3***: In line with article 169 of the DSMLFTP, extradition is granted only if the offence referred to or a similar offence is foregoing in the legislation of the petitioning State and that of the Republic of Haiti. The MER noted that extradition was only applicable to ML offences and not associated predicate offences and TF. With the adoption of the new article 168 of the DSMLFTP, extradition requests are executed for the offences of the DSMLFTP. These include ML, TF and a number of associate predicate offences, including tax evasion. Thus, the deficiency has been addressed. The dual criminality requirement is thus satisfied regardless of whether both countries place the offence within the same category of offence, or denominate the offence by the same terminology, provided that both countries criminalise the conduct underlying the offence.

221. ***Criterion 39.4***: The measure cited (article 168 of the DSMLFTP) does not address the cited deficiency. Indeed, the measure cited does not provide for simplified measures for extradition.

***Weighting and Conclusion:***

222. The Haitian authorities have taken steps to address the deficiencies relating to extradition, notably by extending the scope of extradition requests to all offences of the DSMLFTP. However, deficiencies remain. The Haitian authorities did not provide any information on a case management system for extradition requests, nor any information on simplified measures applicable to extradition requests. Where the Haitian authorities refuse an extradition request on the grounds of nationality, they are only required to submit the case to the competent authorities for prosecution for offences linked to corruption and organised crime. Finally, competent authorities did not provide any evidence to show that they do not place unreasonable or unduly restrictive conditions on the execution of extradition requests.

**Haiti is re-rated as Partially Compliant for Recommendation 39.**

# V. PROGRESS ON RECOMMENDATIONS WHICH HAVE CHANGED SINCE THE ADOPTION OF THE MER

## 5.1. Recommendation 2 (originally rated PC)

223. Since the adoption of Haiti's MER, R. 2 has been amended to reflect the October 2018 amendments to the FATF Standards which clarify the need for compatibility of AML/CFT requirements and data protection and privacy rules.

224. ***Criterion 2.1:*** While there are legislative provisions which mandate the establishment of effective mechanisms for co-operation and co-ordination among various authorities at the national level (Art. 145 DSMLFTP), Haiti has not yet identified its risks and consequently does not have national AML/CFT policies informed by risks identified.

225. ***Criterion 2.2:*** The CNLBA is the designated authority in Haiti responsible for co-ordination of national AML/CFT policies (Art.148 DSMLFTP). The CNLBA comprises members from key public and private sector entities.

226. ***Criterion 2.3***: Haiti has legislative mechanisms in place to enable information exchange between competent authorities to co-operate, co-ordinate and exchange information. Arts. 150 – 151 of the DSMLFTP expand the membership of the CNLBA to include the UCREF and LEAs, and create

the ability for the CNLBA to appoint additional participants for quarterly meetings as the need arises. Arts. 145, 146, 148 and 152 of the DSMLFTP provide the mechanism for co-ordination, monitoring, participation, and co-operation on both a policymaking and operational level.

227. ***Criterion 2.4:*** Haiti's legislative framework mandates co-ordination and co-operation among competent authorities in relation to PF (Art. 145 DSMLFTP). Competent authorities have similar co-operation and co-ordination mechanisms to combat the financing of proliferation of weapons of mass destruction through the CNLBA (Art.148 of the DSMLFTP).

228. ***Criterion 2.5***: Haiti does not have legislation governing data protection and privacy. Consequently, there is no designated data protection authority to bring within the co-operation and co-ordination framework to ensure the compatibility of AML/CFT and data protection and privacy rules or other similar provisions.

***Weighting and Conclusion***:

229. Haiti has a legislative framework in place for national co-operation and co-ordination. One moderate shortcoming remains: Haiti is yet to identify its risks and develop national policies in line with those identified risks.

**Recommendation 2 is re-rated as Partially Compliant**.

## 5.2 Recommendation 15 (originally rated PC)

230. Since the adoption of Haiti's MER, R. 15 has been amended to reflect the amendments to the FATF Standards which extend a range of AML/CFT requirements related to virtual assets (VAs) and virtual asset service providers (VASPs).

231. ***Criterion 15.1***: Article 11 of the DSMLFTP requires that the CNLBA take all appropriate measures to identify, assess, understand and mitigate the ML/TF risks. However, Haiti has not fully taken measures to identify, assess and understand the risks posed in the jurisdiction. Article 33 (1) (a) & (b) of the DSMLFTP requires that FIs identify and assess the ML/TF risks which may result from: (a) the development of new products and business practices, including new distribution mechanisms; (b) the use of new or developing technologies in connection with new or existing products. Haiti has not identified and assessed its ML/TF risks arising from the development of new products and business practices. Article 33 DSMLFTP also requires the identification, assessment and understanding of both ML and TF risks associated with new technologies. However, it is applicable only to FIs, so the Article does not extend the requirement to the country itself.

232. ***Criterion 15.2:*** Article 33 of the DSMLFTP requires **(a)** that a risk assessment must be conducted by FIs prior to launching new products or new business practices, and prior to using new or developing technologies. **(b)** The Article further mandates that financial institutions must act appropriately to manage and mitigate these risks.

233. ***Criterion 15.3: (a)*** There is no requirement to identify and assess the ML/TF risks emerging from VAs and VASPs; **(b)** There is no requirement to apply a risk-based approach for preventive measures based on the understanding of the ML/TF risks emerging from VAs and VASPs; **(c)** There are no provisions for VASPs to take appropriate steps to identify, assess, manage and mitigate their money laundering and terrorist financing risks, as required in criteria 1.10 and 1.11.

234. ***Criterion 15.4:*** **(a)(i)** There are no provisions for VASPs to be licensed. **(a)(ii)** There are no provisions requiring VASPs to be licensed or registered when the VASP is a natural person, in the jurisdiction where its place of business is located. **(b)** There are no provisions to ensure that competent authorities take the necessary legal or regulatory measures to prevent criminals or their associates from holding, or being the beneficial owner of, a significant or controlling interest, or holding a management function in a VASP.

235. ***Criterion 15.5:*** There are no provisions to identify natural or legal persons that carry out VASP activities without the requisite license or registration and apply appropriate sanctions to them.

236. **Criteria 15.6 -*15.11:*** There are no provisions to meet these criteria.

### *Weighting and Conclusion:*

237. The overall conclusion of the assessment indicates that while Haiti has made efforts to address deficiencies related to ML/TF risks associated with new technologies and virtual assets, there are shortcomings remaining in the regulatory framework. The deficiencies in addressing the risks from VASPs and virtual assets, particularly in terms of licensing, oversight, and sanctions and international cooperation, remain unaddressed. As a result, the jurisdiction's compliance status is not fully aligned with the FATF standards.

**Recommendation 15 is re-rated as Partially Compliant.**

## VI. CONCLUSION

238. Overall, Haiti has made significant progress addressing the technical compliance deficiencies identified in Recommendations 1, 3-5, 10-13, 16-23, 27, 29- 33 and 38.

239. Haiti has 20 Recommendations rated C/LC. Haiti will remain in enhanced follow-up based on technical compliance and effectiveness ratings.

240. The status of all technical compliance ratings is set out ***at Annex A*** and a summary table detailing the underlying deficiencies for the Recommendations assessed in this Report is included at ***Annex B***.

**ANNEX A**

Status of Technical Compliance Ratings

| R. | Rating | R. | Rating |
|---|---|---|---|
| 1 | NC (MER 2019) ↑ PC (FUR 2024) | 21 | PC (MER 2019) ↑ LC (FUR 2024) |
| 2 | PC (MER 2019) PC (FUR 2024) | 22 | NC (MER 2019) ↑ LC (FUR 2024) |
| 3 | PC (MER 2019) ↑ LC (FUR 2024) | 23 | NC (MER 2019) ↑ PC (FUR 2024) |
| 4 | PC (MER 2019) ↑ LC (FUR 2024) | 24 | NC (MER 2019) |
| 5 | PC (MER 2019) ↑ LC (FUR 2024) | 25 | NC (MER 2019) |
| 6 | NC (MER 2019) | 26 | NC (MER 2019) |
| 7 | NC (MER 2019) | 27 | PC (MER 2019) ↑ LC (FUR 2024) |
| 8 | NC (MER 2019) | 28 | NC (MER 2019) |
| 9 | LC (MER 2019) | 29 | PC (MER 2019) ↑ LC (FUR 2024) |
| 10 | PC (MER 2019) ↑ LC (FUR 2024) | 30 | PC (MER 2019) ↑ LC (FUR 2024) |
| 11 | PC (MER 2019) ↑ LC (FUR 2024) | 31 | NC (MER 2019) ↑ C (FUR 2024) |
| 12 | PC (MER 2019) ↑ LC (FUR 2024) | 32 | NC (MER 2019) ↑ PC (FUR 2024) |
| 13 | PC (MER 2019) ↑ C (FUR 2024) | 33 | NC (MER 2019) ↑ C (FUR 2024) |
| 14 | PC (MER 2019) | 34 | PC (MER 2019) PC (FUR 2024) |
| 15 | PC (MER 2019) PC (FUR 2024) | 35 | PC (MER 2019) PC (FUR 2024) |
| 16 | NC (MER 2019) ↑ LC (FUR 2024) | 36 | LC (MER 2019) |
| 17 | NC (MER 2019) ↑ PC (FUR 2024) | 37 | PC (MER 2019) |
| 18 | NC (MER 2019) ↑ LC (FUR 2024) | 38 | PC (MER 2019) ↑ LC (FUR 2024) |
| 19 | NC (MER 2019) ↑ PC (FUR 2024) | 39 | PC (MER 2019) PC (FUR 2024) |
| 20 | PC (MER 2019) ↑ LC (FUR 2024) | 40 | NC (MER 2019) |

**ANNEX B**

## Summary of Technical Compliance-Deficiencies underlying the ratings[5]

| Compliance with FATF Recommendations | | |
|---|---|---|
| **Recommendation** | **Rating** | **Factor(s) underlying the rating** |
| R. 1 | NC (MER 2019)<br>PC (FUR 2024) | • Incomplete ML/TF Risk Assessment.<br>• Inadequate identification, assessment, and comprehension of the ML/TF risks for FIs and DNFPs.<br>• The absence of provisions for a risk-based approach and the consistent application of simplified due diligence further undermine the framework. |
| R. 2 | PC (MER 2019)<br>PC (FUR 2024) | • Haiti is yet to identify its risks and develop national policies in line with those identified risks. |
| R.3 | PC (MER 2019)<br>LC (FUR 2024) | • Limited number of offences missing from the list of predicate offences.<br>• The ancillary offence of facilitating has not been incorporated into the law. |
| R.4 | PC (MER 2019)<br>LC (FUR 2024) | • Confiscation and provisional measures are not applicable to the predicate offences of piracy of products, forgery and market manipulation.<br>• The requirement to protect the rights of *bona fide* third parties is not explicitly clear.<br>• The requirements for the management and disposal of assets by BUGASC are still pending. |
| R.5 | PC (MER 2019)<br>LC (FUR 2024) | • Other criminal conduct (contributing to the commission of one or more offences by a group of persons acting with a common purpose) remains absent.<br>• The removal of the possibility to impose criminal fines on legal persons affects the proportionality and dissuasive nature of sanctions applicable to legal persons, |
| R.10 | PC (MER 2019)<br>LC (FUR 2024) | • Absence of a legal definition for the "regulatory threshold amount" in both legislation and circulars relative to occasional transactions.<br>• Circulars do not encompass the full scope of FIs (criterion 10.2(b)). |

[5] Ratings and factors underlying the ratings are only included for those Recommendations under review in this FUR.

| Compliance with FATF Recommendations | | |
|---|---|---|
| | | • Minor shortcomings in Recommendation 16 cascade into criterion 10.2(c) as it relates to carrying out occasional transactions that involve electronic wire transfers.<br>• Legislation does not explicitly mandate providing the principal place of business when the registered office address differs (criterion 10.9(c)).<br>• The provisions in Article 28 do not consider materiality as a specific factor in determining the timing and adequacy of due diligence measures for existing customers (criterion 10.16). |
| R.11 | PC (MER 2019)<br>LC (FUR 2024) | • Absence of the requirement to keep records resulting from any analysis undertaken by the FI.<br>• Absence of a response timeframe for FIs to provide requested records to competent authorities. |
| R.12 | PC (MER 2019)<br>LC (FUR 2024) | • Absence of the requirement for senior management's approval for continuing existing relationships with PEPs. |
| R.13 | PC (MER 2019)<br>C (FUR 2024) | All criteria are met. |
| R.15 | PC (MER 2019)<br>PC (FUR 2024) | • Haiti and FIs have not identified and assessed the ML/TF risks arising from the development of new products and business practices.<br>• Requirements for addressing the risks from Virtual Asset Service Providers (VASPs) and virtual assets, particularly in terms of licensing, oversight, sanctions and international cooperation, remain unaddressed**.** |
| R.16 | NC (MER 2019)<br>LC (FUR 2024) | • There are no measures in place that require beneficiary FIs to implement risk-based policies and procedures for determining when to execute, reject or suspend electronic funds transfers that do not include the required originator or beneficiary information; and to apply appropriate follow-up actions.<br>• There are no requirements for beneficiary FIs to screen and freeze without delay relative to the terrorist finance sanctions |
| R.17 | NC (MER 2019)<br>PC (FUR 2024) | • There are no explicit specifications regarding the information required for identification and understanding of the customer's business. |

| Compliance with FATF Recommendations | | |
|---|---|---|
| | | • There are no provisions that explicitly address the broader requirement to evaluate country risk when third parties are based in specific countries. |
| R.18 | NC (MER 2019)<br>LC (FUR 2024) | • There are no explicit provisions to address the application of additional AML/CFT measures in situations where the host country's regulations do not permit proper implementation. |
| R.19 | NC (MER 2019)<br>PC (FUR 2024) | • Haiti has not identified the specific countermeasures that are to be applied proportionate to the risks |
| R.20 | PC (MER 2019)<br>LC (FUR 2024) | • The amendments have fallen short of capturing three minor offences, namely, piracy of products, forgery and market manipulation**.** |
| R.21 | PC (MER 2019)<br>LC (FUR 2024) | • While FIs and their directors, officers and employees are all subject to tipping-off provisions for STRs emanating from ML and TF, the obligation does not clearly extend to STRs from other predicate offences. |
| R.22 | NC (MER 2019)<br>LC (FUR 2024) | • Minor cascading shortcomings from R.10, R.15 and R.17. |
| R.23 | NC (MER 2019)<br>PC (FUR 2024) | • DNFBPs are not required to establish internal controls and foreign branches.<br>• There is no specific mention of the countermeasures to be applied.<br>• Tipping-off provisions do not clearly extend to STRs emanating from predicate offences. |
| R.27 | PC (MER 2019)<br>LC (FUR 2024) | • Insurance companies are not supervised for AML/CFT. |
| R.29 | PC (MER 2019)<br>LC (FUR 2024) | • UCREF is still not a member of the Egmont Group, and the jurisdiction has not demonstrated that it has fully engaged itself in its application (Expression of Interest) to Egmont.<br>• While there is the mandate for UCREF to use secure and protected channels for the disseminations, relevant regulations have not yet been made. |
| R.30 | PC (MER 2019)<br>LC (FUR 2024) | • No clarity was provided to address whether certain LEAs investigating predicate offences during parallel investigation can continue with ML/TF investigation when identified or refer same to an agency to continue with the investigation. |
| R.31 | NC (MER 2019)<br>C (FUR 2024) | All criteria are met. |

| Compliance with FATF Recommendations | | |
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| R.32 | NC (MER 2019)<br>PC (FUR 2024) | • There is no requirement for a declaration where there is the cross-border transportation of cash through mail or cargo.<br>• There are no safeguards to ensure adequate use of information collected and disseminated to foreign jurisdictions, without restricting trade payments between countries for goods and services or freedom of capital movement.<br>• There are no measures for international cooperation on matters involving the cross-border movement of cash and BNIs.<br>• There are no measures for the retention of records.<br>• There is no quantification of the regulated threshold amount that is required for declaration. |
| R.33 | NC (MER 2019)<br>C (FUR 2024) | All criteria are met. |
| R.34 | PC (MER 2019)<br>PC (FUR 2024) | • There is no evidence that feedback is given to FIs and DNFBPs. |
| R.35 | PC (MER 2019)<br>PC (FUR 2024) | • No specific sanctions/ penalties stated and when stated by way of Circular, their applicability is limited to some financial institutions.<br>• Sanctions do not fully capture the requirements of R.35 and only penalize some breaches in respect of R. 10,13,15 16, 20, and 21.<br>• Insufficient corresponding action to ensure that there is a wide range of sanctions that are applicable to all FIs, DNFBPs, NPOs and their employees/actors/directors/managers. |
| R.38 | PC (MER 2019)<br>LC (FUR 2024) | • No policy relative to sharing confiscated property with foreign jurisdictions.<br>• The absence of ML predicate offences such as piracy of products, forgery and market manipulation can affect the country's ability to identify, freeze, seize or confiscate criminal property obtained from those offences in foreign jurisdictions and those assets that are traced to Haiti. |
| R.39 | PC (MER 2019)<br>PC (FUR 2024) | • No information on a case management system for extradition requests.<br>• No information on simplified measures applicable to extradition requests.<br>• Where the Haitian authorities refuse an extradition request on the grounds of nationality, they are only required to submit the case to the competent authorities for |

| Compliance with FATF Recommendations | | |
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| | | prosecution of offences linked to corruption and organised crime.<br>• No evidence to show that competent authorities do not place unreasonable or unduly restrictive conditions on the execution of extradition requests**.** |

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July 2024

Follow-up Report

Anti-money laundering and counter-terrorist financing measures in **THE REPUBLIC OF HAITI**

## 4th Enhanced Follow-up Report & Technical Compliance Re-Rating

This Report analyses the Republic of Haiti's progress in addressing the technical compliance deficiencies identified in the 2019 CFATF assessment report on the Republic of Haiti's measures to combat money laundering and terrorist financing.

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