

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE
OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information
on Request

JAMAICA

2017 (Second Round)



Global Forum on Transparency and Exchange of Information for Tax Purposes: Jamaica 2017 (Second Round)

PEER REVIEW REPORT ON THE EXCHANGE
OF INFORMATION ON REQUEST

August 2017
(reflecting the legal and regulatory framework
as at May 2017)

This work is published on the responsibility of the Secretary-General of the OECD. The opinions expressed and arguments employed herein do not necessarily reflect the official views of the OECD or of the governments of its member countries or those of the Global Forum on Transparency and Exchange of Information for Tax Purposes.

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

Please cite this publication as:

OECD (2017), *Global Forum on Transparency and Exchange of Information for Tax Purposes: Jamaica 2017 (Second Round): Peer Review Report on the Exchange of Information on Request*, OECD Publishing, Paris.

<http://dx.doi.org/10.1787/9789264280281-en>

ISBN 978-92-64-28023-6 (print)

ISBN 978-92-64-28028-1 (PDF)

Series: Global Forum on Transparency and Exchange of Information for Tax Purposes

ISSN 2219-4681 (print)

ISSN 2219-469X (online)

Photo credits: Cover © Pykha, inspired by an image © Syda Productions/Shutterstock.com.

Corrigenda to OECD publications may be found on line at: www.oecd.org/about/publishing/corrigenda.htm.

© OECD 2017

You can copy, download or print OECD content for your own use, and you can include excerpts from OECD publications, databases and multimedia products in your own documents, presentations, blogs, websites and teaching materials, provided that suitable acknowledgement of OECD as source and copyright owner is given. All requests for public or commercial use and translation rights should be submitted to rights@oecd.org. Requests for permission to photocopy portions of this material for public or commercial use shall be addressed directly to the Copyright Clearance Center (CCC) at info@copyright.com or the Centre français d'exploitation du droit de copie (CFC) at contact@cfcopies.com.

Table of contents

About the Global Forum	5
Abbreviations and acronyms	7
Executive summary	9
Preface	17
Overview of Jamaica	21
Part A: Availability of information	27
A.1. Legal and beneficial ownership and identity information	27
A.2. Accounting records	49
A.3. Banking information	55
Part B: Access to information	63
B.1. Competent authority’s ability to obtain and provide information	63
B.2. Notification requirements, rights and safeguards	70
Part C: Exchanging information	75
C.1. Exchange of information mechanisms	75
C.2. Exchange of information mechanisms with all relevant partners	82
C.3. Confidentiality	83
C.4. Rights and safeguards of taxpayers and third parties	88
C.5. Requesting and providing information in an effective manner	89
Annex 1: Jurisdiction’s response to the review report	97
Annex 2: List of Jurisdiction’s EOI mechanisms	98

Annex 3: List of laws, regulations and other material received	106
Annex 4: Authorities interviewed during on-site visit	108
Annex 5: List of in-text recommendations	109

About the Global Forum

The Global Forum on Transparency and Exchange of Information for Tax Purposes is a multilateral framework for tax transparency and information sharing, within which over 140 jurisdictions participate on an equal footing.

The Global Forum monitors and peer reviews the implementation of international standard of exchange of information on request (EOIR) and automatic exchange of information. The EOIR provides for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. All Global Forum members have agreed to have their implementation of the EOIR standard be assessed by peer review. In addition, non-members that are relevant to the Global Forum's work are also subject to review. The legal and regulatory framework of each jurisdiction is assessed as is the implementation of the EOIR framework in practice. The final result is a rating for each of the essential elements and an overall rating.

The first round of reviews was conducted from 2010 to 2016. The Global Forum has agreed that all members and relevant non-members should be subject to a second round of review starting in 2016, to ensure continued compliance with and implementation of the EOIR standard. Whereas the first round of reviews was generally conducted as separate reviews for Phase 1 (review of the legal framework) and Phase 2 (review of EOIR in practice), the EOIR reviews commencing in 2016 combine both Phase 1 and Phase 2 aspects into one review. Final review reports are published and reviewed jurisdictions are expected to follow up on any recommendations made. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, please visit www.oecd.org/tax/transparency.

Abbreviations and acronyms

General terms

2010 Terms of Reference	Terms of Reference related to EOIR, as approved by the Global Forum in 2009.
2016 Assessment Criteria Note	Assessment Criteria Note, as approved by the Global Forum on 29-30 October 2015.
2016 Methodology	2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum on 29-30 October 2015.
2016 Terms of Reference	Terms of Reference related to EOIR, as approved by the Global Forum on 29-30 October 2015.
AML	Anti-Money Laundering
AML/CFT	Anti-Money Laundering/Countering the Financing of Terrorism
CAA	Competent Authority Agreement
CDD	Customer Due Diligence
DNFBP	Designated Non-Financial Business Professional
DTC	Double Tax Convention
EOIR	Exchange of information on request
FATF	Financial Action Task Force
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes
KYC	Know Your Customer
Multilateral Convention (MAAC)	Convention on Mutual Administrative Assistance in Tax Matters, as amended in 2010

PRG	Peer Review Group of the Global Forum
TCSP	Trust Company Service Provider
TIEA	Tax Information Exchange Agreement
VAT	Value Added Tax

Terms specific to Jamaica

BOJ	Bank of Jamaica
CARICOM	Caribbean Community
COJ	Companies Office Jamaica
FSC	Financial Services Commission
GLC	General Legal Council
ITA	Income Tax Act
JMD	Jamaican Dollar
PAB	Public Accountancy Board
POCA	Proceeds of Crime Act
TAJ	Tax Administration Jamaica
RAA	Revenue Administration Act

Executive summary

1. During the first round of reviews, the Global Forum evaluated Jamaica against the 2010 Terms of Reference through two assessments: the 2010 Phase 1 Report and the 2013 Phase 2 Report (the 2013 Report). The 2013 Report assigned an overall rating of Largely Compliant to Jamaica. This report analyses the implementation of the EOIR standard as set out in the 2016 Terms of Reference by Jamaica in respect of its legal and regulatory framework and the practical application of that framework, including by reference to EOI requests processed during the period of 1 July 2013-30 June 2016. This report concludes that Jamaica is rated Partially Compliant overall.

2. The following table shows the comparison with the results from Jamaica’s most recent peer review report:

**Comparison of ratings for First Round Report and
Second Round Report**

Element	Phase 2 Report (2013)	EOIR Report (2017)
A.1 Availability of ownership and identity information	PC	NC
A.2 Availability of accounting information	LC	LC
A.3 Availability of banking information	C	PC
B.1 Access to information	LC	C
B.2 Rights and Safeguards	LC	C
C.1 EOIR Mechanisms	LC	C
C.2 Network of EOIR Mechanisms	LC	C
C.3 Confidentiality	C	C
C.4 Rights and Safeguards	C	C
C.5 Quality and timeliness of requests and responses	LC	C
OVERALL RATING	LC	PC

C = Compliant; LC = Largely Compliant; PC = Partially Compliant; NC = Non-Compliant

Progress made since previous review

3. The 2013 Report made recommendations in respect of seven essential elements: A.1, A.2, B.1, B.2, C.1, C.2 and C.5.
4. Under element A.1, the 2013 Report contained recommendations concerning Jamaica's legal framework on the availability of ownership and identity information for foreign companies, nominee shareholders and owners of share warrants to bearer issued by public companies. The 2013 Report also contained recommendations concerning the practical implementation of A.1's legal framework, namely on penalties and enforcement actions under the commercial laws, mechanisms to ensure that identity of partners in a limited partnership and mechanisms to ensure that the settlors and beneficiaries of a trust is available. Under element A.2, Jamaica was recommended to: (i) review the adequacy of the penalties under the commercial laws to ensure that accounting information is available for all relevant entities and arrangements; (ii) monitor the effectiveness of the obligations introduced to keep underlying documentation
5. Under elements B.1, B.2 and C.1, Jamaica was recommended to put in place appropriate procedures to implement new legislation brought into force in 2013 and monitor its effectiveness. Under element C.2, Jamaica was recommended to respond to all requests to negotiate EOI agreements in a timely manner. Finally, under element C.5, Jamaica was recommended to monitor the functioning of the EOI Unit established in 2012 to ensure that EOI requests were dealt with expeditiously and provide status updates when the EOI Unit was unable to provide a complete response in 90 days.
6. Jamaica has addressed the recommendations under elements B.1, B.2, C.1, C.2 and C.5 but not the recommendations under element A.1. Jamaica has partially addressed the recommendations under element A.2., namely the recommendation on monitoring the effectiveness of the obligation to keep underlying documentation.

Key recommendation(s)

7. Since the 2013 Report, Jamaica has not addressed any of the recommendations under elements A.1. Consequently, all of these recommendations remain applicable. In respect of the new aspects of the 2016 ToR, Jamaica's main deficiencies relate to the new requirements on beneficial ownership. Beneficial ownership information is available to some extent in Jamaica through the concepts of "customer identification" and "evidence of identity" in the AML Regulations. However, in the case of companies and partnerships, these concepts cannot ensure that the bank will have to satisfy identifying the beneficial owner in accordance with the international standard. In addition, beneficial ownership information of companies, partnerships and trusts is only available

for those entities or arrangements with a bank account or engaging in business with a regulated entity. Accordingly, Jamaica should take appropriate measures to ensure that beneficial ownership information is available in line with the standard for all relevant entities and arrangements and for all account-holders.

8. Under element A.2 Jamaica did not address the recommendation in the 2013 Report on reviewing the (i) adequacy of the penalties provided under commercial law to ensure that they were effective in deterring non-compliance; and (ii) procedures for exercising their enforcement powers to ensure compliance with filing and reporting obligations by all relevant entities and arrangements. This recommendation remains applicable but has been rephrased to reflect that Jamaican authorities should review its internal procedures for carrying out the enforcement actions to ensure the availability of accounting information of all relevant entities and arrangements.

Overall rating

9. Elements B.1, B.2, C.1, C.2, C.3, C.4 and C.5 are rated compliant, whereas element A.1 is rated non-compliant, elements A.2 largely compliant and element A.3 partially compliant. Given the serious issues that remain with respect to availability of ownership and identity information, including beneficial ownership of entities and arrangements and bank accounts, Jamaica's overall rating is partially compliant. A follow up report on the steps undertaken by Jamaica to address the recommendations made in this report should be provided to the PRG no later than 30 June 2018 and thereafter in accordance with the procedure set out under the 2016 Methodology. The table below reproduces the recommendations made in this report.

Summary of determinations, ratings and recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information, including information on legal and beneficial owners, for all relevant entities and arrangements is available to their competent authorities (<i>ToR A.1</i>)		
Legal and regulatory framework determination: The element is not in place.	Information is not required to be maintained by a company nor is it otherwise available to the competent authority that identifies the persons in an ownership chain where a legal owner in a public company acts on behalf of other person as a nominee or under similar arrangement.	Jamaica should establish a requirement that information is maintained indicating the person on whose behalf any legal owner holds his interest or shares in the public company or body corporate.

Determination	Factors underlying recommendations	Recommendations
<p>Legal and regulatory framework determination: The element is not in place. (continued)</p>	<p>There are insufficient mechanisms in place to ensure the availability of information identifying the owners of share warrants to bearer that may have been issued by a public company.</p>	<p>Jamaica should take necessary measures to ensure that robust mechanisms are in place to identify the owners of these share warrants to bearer.</p>
	<p>Companies incorporated outside of Jamaica but having their central management and control in Jamaica are not required to provide information identifying their owners as a part of registration requirements and foreign companies are not required to compulsorily keep a share register in Jamaica. Therefore, the information that identifies the owners of foreign companies is not available.</p>	<p>Jamaica is recommended to ensure that ownership and identity information on foreign companies with sufficient nexus in Jamaica is available in all cases.</p>
	<p>Beneficial ownership information is available to some extent in Jamaica through the concepts of “customer identification” and “evidence of identity” in the AML Regulations. However, in the case of companies and partnerships, these concepts cannot ensure that the bank will have to satisfy identifying the beneficial owner in accordance with the international standard. In addition, beneficial ownership information of companies, partnerships and trusts is only available for those entities or arrangements with a bank account or engaging in business with a regulated entity.</p>	<p>Jamaica should take appropriate measures to ensure that beneficial ownership information is available in line with the standard for all relevant entities and arrangements.</p>

Determination	Factors underlying recommendations	Recommendations
EOIR rating: Non-compliant	<p>During the 2009-12 period of review, the penalties provided under the relevant tax laws and commercial laws appear to be insufficient in providing an effective deterrence against non-compliance. The enforcement actions undertaken by Jamaican authorities also do not appear to be adequate or effective in ensuring the compliance with the filing and reporting obligations under the relevant laws. The situation continues to be very similar, even though the penalties in the ITA were updated.</p>	<p>The Jamaican authorities should review its internal procedures for carrying out the enforcement actions to ensure the availability of identity information of all relevant entities and arrangements.</p>
	<p>Information identifying partners of a limited partnership, which does not carry on a business in Jamaica or liable to tax in Jamaica, is not consistently available with the Public Record Office in practice.</p>	<p>Jamaica should put in place proper mechanisms to ensure that information identifying partners of a limited partnership can be made fully available regardless of whether the limited partnership is carrying on a business in Jamaica or liable to tax in Jamaica.</p>
	<p>It is not clear whether the mechanisms that are in place to ensure that information identifying the settlor(s) and beneficiaries of a trust is available with the relevant authorities are effective in practice.</p>	<p>Jamaica should put in place proper and robust mechanisms to ensure that information identifying the settlor(s) and beneficiaries of a trust is fully available with either the relevant authorities or the trustee.</p>
<p>Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements (<i>ToR A.2</i>)</p>		
Legal and regulatory framework determination: The element is in place.		

Determination	Factors underlying recommendations	Recommendations
EOIR rating: Largely Compliant	<p>Jamaica has not addressed the recommendation from the 2013 Report to review the adequacy of the penalties under the relevant commercial laws to ensure that they are effective in providing deterrence against non-compliance. In addition, during the current review period the COJ did not supervise effectively the filing and reporting obligations under the Companies Act. The availability of accounting information was supervised by the TAJ through their regular audit program and filing of annual tax returns. Although the tax filing compliance rates are low, it appears that TAJ's audit programme is comprehensive and ensures to a large extent the availability of accounting information for all relevant entities and arrangements subject to supervision by the TAJ.</p>	<p>Jamaica should put in place a comprehensive oversight programme to ensure that the filing and reporting obligations are complied with to ensure the availability of accounting information for all relevant entities and arrangements in all cases.</p>
Banking information and beneficial ownership information should be available for all account-holders (<i>ToR A.3</i>)		
Legal and regulatory framework determination: The element is in place in place, but certain aspects of the legal implementation of the element need improvement.	<p>The concept of beneficial ownership information is not defined for CDD purposes. However, beneficial ownership information is available to some extent through the concepts of “customer identification” and “evidence of identity” in the AML regulations. These concepts cannot ensure that the bank will have to satisfy identifying the individual that exercises ultimate effective control before identifying the senior managing official.</p>	<p>Jamaica should take appropriate measures to ensure that beneficial ownership information is available in line with the standard for all account-holders.</p>
EOIR rating: Partially compliant		

Determination	Factors underlying recommendations	Recommendations
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) (<i>ToR B.1</i>)		
Legal and regulatory framework determination: The element is in place.		
EOIR rating: Compliant		
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information (<i>ToR B.2</i>)		
Legal and regulatory framework determination: The element is in place.		
EOIR rating: Compliant		
Exchange of information mechanisms should provide for effective exchange of information (<i>ToR C.1</i>)		
Legal and regulatory framework determination: The element is in place.		
EOIR rating: Compliant		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners (<i>ToR C.2</i>)		
Legal and regulatory framework determination: The element is in place.		
EOIR rating: Compliant		

Determination	Factors underlying recommendations	Recommendations
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received (<i>ToR C.3</i>)		
Legal and regulatory framework determination: The element is in place.		
EOIR rating: Compliant		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties (<i>ToR C.4</i>)		
Legal and regulatory framework determination: The element is in place.		
EOIR rating: Compliant		
The jurisdiction should request and provide information under its network of agreements in an effective manner (<i>ToR C.5</i>)		
Legal and regulatory framework determination:	The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the implementation of EOIR in practice.	
EOIR rating: Compliant		

Preface

10. This report is the third review of Jamaica conducted by the Global Forum. Jamaica previously underwent an EOIR review through two assessments during the first round of reviews: the 2010 Phase 1 Report and the 2013 Phase 2 Report.

11. Jamaica’s two assessments during the first round of reviews were conducted according to the terms of reference approved by the Global Forum in February 2010 (2010 ToR) and the Methodology used in the first round of reviews. Jamaica’s 2013 Phase 2 Report was republished in October 2013 with ratings for each element and an overall rating for Jamaica. Information on the previous reviews is listed in the table below.

Summary of reviews

Review	Assessment team	Period under review	Legal framework as of	Date of adoption by Global Forum
Phase 1 report	Ms. Maria Dolores Gil Esnal from the Federal Administration of Public Revenue, Argentina; Ms. Alexandra Storckmeijer from the Federal Tax Administration, Switzerland; and Mr. Sanjeev Sharma from the Global Forum Secretariat.	N/A	May 2010	September 2010
Phase 2 report	Ms. Cintia Mariel De Angelis from the Federal Administration of Public Revenue, Argentina; Ms. Alexandra Storckmeijer Sansonetti from the Federal Department of Finance, Switzerland and Mr. Robin Ng and Mr. Sanjeev Sharma from the Global Forum Secretariat.	1 July 2009 to 30 June 2012	August 2013	October 2013
EOIR report	Ms. Ann Andréasson, Deputy Head of the Competent Authority, Swedish Tax Agency; Ms. Yean Tze Wai, Director of International Tax Affairs and Relations Division – Exchange of Information Branch, Inland Revenue Authority of Singapore; and Ms. Ana Rodriguez-Calderon and Ms. Renata Teixeira from the Global Forum Secretariat.	1 July 2013 to 30 June 2016	May 2017	[August 2017]

12. This evaluation is based on the 2016 ToR, and has been prepared using the 2016 Methodology. The evaluation is based on information available to the assessment team including the exchange of information arrangements signed, laws and regulations in force or effective as at 26 May 2017, Jamaica's EOIR practice in respect of EOI requests made and received during the three year period from 1 July 2013 to 30 June 2016, Jamaica's responses to the EOIR questionnaire, information supplied by partner jurisdictions, as well as information provided by Jamaica's authorities during the on-site visit that took place from 18-20 January 2017 in Kingston, Jamaica.

13. The evaluation was conducted by an assessment team consisting of two expert assessors and one representative of the Global Forum Secretariat: Ms. Ann Andréasson, Deputy Head of the Competent Authority, Swedish Tax Agency; Ms. Yean Tze Wai, Director of International Tax Affairs and Relations Division – Exchange of Information Branch, Inland Revenue Authority of Singapore; and Ms. Ana Rodriguez-Calderon and Ms. Renata Teixeira from the Global Forum Secretariat.

14. The report was approved by the PRG at its meeting on 17-21 July 2017 and was adopted by the Global Forum on 18 August 2017.

15. For the sake of brevity, on those topics where there has not been any material change in the situation in Jamaica or in the requirements of the Global Forum's ToR since the 2013 Report, this evaluation does not repeat the analysis conducted in the previous evaluation, but summarises the conclusions and includes a cross-reference to the detailed analysis in the previous reports.

Brief on 2016 ToR and methodology

16. The 2016 ToR were adopted by the Global Forum in October 2015. The 2016 ToR break down the standard of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchanging information. This review assesses Jamaica's legal and regulatory framework and the implementation and effectiveness in practice of this framework against these elements and each of the enumerated aspects.

17. In respect of each essential element (except element C.5 *Exchanging Information*, which uniquely involves only aspects of practice) a determination is made regarding Jamaica's legal and regulatory framework that either: (i) the element is in place, (ii) the element is in place but certain aspects of the legal implementation of the element need improvement, or (iii) the element is not in place. In addition, to assess Jamaica's EOIR implementation and effectiveness in practice a rating is assigned to each element

of either: (i) compliant, (ii) largely compliant, (iii) partially compliant, or (iv) non-compliant. These determinations and ratings are accompanied by recommendations for improvement where appropriate. An overall rating is also assigned to reflect Jamaica's overall level of compliance with the EOIR standard.

18. In comparison with the 2010 ToR, the 2016 ToR includes new aspects or clarification of existing principles with respect to:

- the availability of and access to beneficial ownership information;
- explicit reference to the existence of enforcement measures and record retention periods for ownership, accounting and banking information;
- clarifying the standard for the availability of ownership and accounting information for foreign companies;
- rights and safeguards;
- incorporating the 2012 update to Article 26 of the OECD Model Tax Convention and its Commentary (particularly with reference to the standard on group requests); and
- completeness and quality of EOI requests and responses.

19. Each of these new requirements are analysed in detail in this report.

Brief on consideration of FATF evaluations and ratings

20. The Financial Action Task Force (FATF) evaluates jurisdictions for compliance with anti-money laundering and combating the financing of terrorism (AML/CFT) standards. Its reviews are based on a country's compliance with 40 different technical recommendations and the effectiveness regarding 11 immediate outcomes, which cover a broad array of money-laundering issues.

21. The definition of beneficial owner included in the 2012 FATF standards has been incorporated into elements A.1, A.3 and B.1 of the 2016 ToR. The 2016 ToR also recognises that FATF materials can be relevant for carrying out EOIR assessments to the extent they deal with the definition of beneficial ownership, as that definition applies to the standard set out in the 2016 ToR (see 2016 ToR, annex 1, part I.D). It is also noted that the purpose for which the FATF materials have been produced (combatting money-laundering and terrorist financing) are different from the purpose of the standard on EOIR (ensuring effective exchange of information for tax purposes), and

care should be taken to ensure that assessments under the ToR do not evaluate issues that are outside the scope of the Global Forum’s mandate.

22. While on a case-by-case basis, an EOIR assessment may use some of the findings made by the FATF, the evaluations of the FATF cover issues that are not relevant for the purposes of ensuring effective exchange of information on beneficial ownership for tax purposes. In addition, EOIR assessments may find that deficiencies identified by the FATF do not have an impact on the availability of beneficial ownership information for tax purposes; for example because mechanisms other than based on AML/CTF exist within that jurisdiction to ensure that beneficial ownership information is available for tax purposes.

23. These differences in the scope of reviews and in the approach used may result in differing outcomes.

Overview of Jamaica

24. This overview provides some basic information about Jamaica that serves as context for understanding the analysis in the main body of the report. This is not intended to be a comprehensive overview of Jamaica's legal, commercial or regulatory systems.

Legal system

25. Jamaica is a common law jurisdiction having inherited its legal system from the United Kingdom. The Head of State is the British Monarch represented by the Governor General in Jamaica. Jamaica is a parliamentary democracy, modelled on the Westminster system. The Parliament comprises the monarch, the Senate and the House of Representatives. The executive power of the government resides in the council of ministers (cabinet), which is led by the Prime Minister. The Prime Minister is the leader of the majority party or the leader of the majority coalition in the House of Representatives.

26. The legal system of Jamaica is based on English common law. Justice is administered by the court system consisting of the Court of Appeal, Supreme Court, Resident Magistrate's Court and Court of Petty Sessions. The Supreme Court has original jurisdiction and decides applications for redress of breaches of fundamental rights and freedom provisions of the Constitution. Within the Supreme Court, there are specialised courts such as the Revenue Court, established in 1971, and the Commercial Court, which began operations in February 2001. The hierarchy of laws in Jamaica is constituted by: (i) the Constitution of Jamaica; (ii) statutes and treaties; and (iii) common law and customs.

27. While there is a division between central government and local government (Parish Councils), all law making power unless delegated, resides with Jamaica's bicameral Parliament based on the British Westminster-Whitehall tradition. All laws enacted by Parliament must be in accordance with the Constitution and may be struck down by the judiciary where this is not the case.

28. For transposing the tax treaties into domestic law, the Minister of Finance makes a Cabinet Submission for Cabinet Approval. The approval is the ratification process. Thereafter, the treaty is incorporated into Jamaican laws where the Minister of Finance makes an Order pursuant to s.83 of the *Income Tax Act 1955* (ITA). The Order (which includes the actual treaty) is published by way of a Notice in the Gazette which introduces the treaty into Jamaican Law.

Tax system

29. All taxes on income are levied by the central government. Certain taxes on real property and licence fees are levied by central government but administered by local government. Jamaica levies tax on income of every person and the basis of imposition of income tax is provided in s.5 of the ITA. The “person” means any individual and also any body of persons, which include corporate. The “body corporate subject to income tax” means any body corporate, wherever resident, other than one whose entire income is, by s. 12 of the ITA or any other enactment, exempted or relieved from income tax.

30. Every person liable to pay income tax is required to deliver a true and correct return of his whole income in the prescribed form (s.67 of the ITA). Persons committing defaults in filing returns of income or making false claims are subject to penalties (including fines) and are liable to prosecution under the ITA. In Jamaica the tax year coincides with the calendar year.

31. Income tax is charged on the worldwide income of resident individuals in Jamaica and the income of non-residents derived from Jamaica. There is no income tax on capital gains earned on the disposal of capital assets. However, there is a transfer tax of 5% of gross consideration or market value when title passes. Resident individuals which are considered “non-domiciled” in Jamaica, as approved by the Commissioner, or are Commonwealth citizens who are resident but not ordinarily resident in Jamaica are in principle taxable on foreign income only on a remittance basis (to the extent that such income is received in Jamaica (s.27 of the ITA)). The test of residency in Jamaica is determined by whether the resident is ordinarily resident or domiciled in Jamaica. An individual is considered resident in Jamaica for a year of assessment, if the stay in the island is more than 183 days in that year of assessment. The rate of tax for individual is fixed at 25%.

32. Jamaican resident companies are liable to income tax on all sources of non-exempt income wherever arising. A company is regarded as resident in Jamaica if its central management and control is located and exercised in Jamaica. A non-resident company is taxed on income of a branch carrying on a trade or business in Jamaica, i.e. the income arising in Jamaica. The rate of tax on companies ranges from 25% to 33.3% depending on size of the

company and whether they are regulated by specified government agencies listed in Section 30(1A) of the ITA.

33. Partnerships and joint ventures are not regarded as separate persons for income tax purposes and are fiscally transparent entities. Their members or participants are chargeable in their own right and in accordance with their residence status on their share of profits as if they had derived the profits directly. These entities are required to file tax returns.

34. Trusts and estates are regarded as separate entities for tax purposes and any income accruing to the trust or estate is taxable. The trustees or personal representatives of the deceased are responsible for compliance. The profits and gains arising or accruing to a trustee from a trust estate or to a personal representative from the estate of a deceased person are subject to tax at the rate of 25%. Tax must be deducted at the rate of 25% from payments to beneficiaries out of the trust's estate, unless the Commissioner authorises the trustee(s) to make the payments gross after being satisfied that the beneficiary is not liable to file return under the provisions of the ITA (s. 6(6) of the ITA).

35. Every person liable to pay income tax in respect of any year of assessment is required to deliver a true and correct return of his/her income from every source. (s. 67 of the ITA).

Financial services sector

36. In 2015 the financial and insurance services sector made the fourth largest contribution to GDP accounting for 11% of GDP.¹

37. The financial services sector is made up of commercial banks, building societies, trust and merchant banks, co-operative societies. In addition Jamaica has a number of pension funds, security firms/dealers, unit trusts, mutual funds and private pension funds. Bureaus of exchange or cambios and credit bureaus are also part of the financial landscape.

38. Jamaica has seven commercial banks which together held JMD 945 billion in assets as at 31 March 2016.² There are also three building societies which have aggregate assets of JMD 252 billion as at 31 March 2016. There is one merchant bank and one trust company in addition to 34 smaller savings co-operatives called credit unions with 999 416 members and an asset base of JMD 89 billion as at December 2015.³

1. Statistics obtained from the Planning Institute of Jamaica: <https://webstore.pioj.gov.jm/images/PreviewDocument/20242.pdf>.
2. www.boj.org.jm/announcements/asearch.php?sel_sub=12.
3. https://creditunionsofjamaica.com/?page_id=1912.

39. The other major players in the financial sector are:⁴
- nine registered general insurance companies;
 - six registered life insurance companies are operational;
 - 802 pension funds covering approximately 10% of the employed labour force; and
 - 42 licensed securities dealers (including one building society, four insurance companies, and five other companies).

CFATF evaluation

40. Jamaica is a member of the Caribbean Financial Action Task Force (CFATF). The CFATF last published a Mutual Evaluation Report for Jamaica in January 2017 (reflecting the legal and regulatory framework in place as of June 2015). Immediate Outcome 5 concerning implementation of rules ensuring availability of beneficial ownership information in respect of legal persons and arrangements was rated Low and Jamaica was found to be Partially Compliant with each of FATF's recommendations 10 (Customer due diligence), 22 (DNFBPs: Customer due diligence), 24 (Transparency and beneficial ownership of legal persons) and 25 (Transparency and beneficial ownership of legal arrangements). The 2017 evaluation is available at (www.fatf-gafi.org/media/fatf/documents/CFATF-Mutual-Evaluation-Jamaica-2017.pdf)

Recent developments

41. Jamaica announced in 2008 plans to establish the Jamaican International Financial Service Centre (IFSC). In 2011, the Financial Services Authority Act established the Jamaica International Financial Service Authority (JIFSA) as the supervisory authority. As of today, the IFSC has not yet been established. However, recently JIFSA has been working towards establishing the IFSC. Two new Bills, the Partnership (General) Act and the Partnership (Limited) Act, were enacted in 2016 and are currently undergoing internal procedures for final approval and entry into force. There are also plans to enact a Trust Company Services Providers Act, which seeks to establish a regulatory framework for entities that provide trust and corporate services to international companies.

42. Jamaica repealed the Banking Act in 2014 through the enactment of the Banking Services Act which came into force 30 September 2015. The new provision on bank secrecy from the Banking Services Act mirrors the old one

4. www.fscjamaica.org.

from the Banking Act and remains in line with the international standard (see analysis under element B.1).

43. Jamaica enacted the Companies (Amendment) Act which entered into force on 21 June 2017. These amendments were not taken into account into this report as the cut-off date is 26 May 2017. The main amendments introduced by this Act are:

- New requirement for all companies to keep beneficial ownership information;
- New requirement for all companies to report annually the beneficial owner(s)
- New requirement to identify the individual on whose behalf shares are held;
- Prohibition for public companies to issue share warrants to bearer;
- New requirement for foreign companies carrying on business in Jamaica to keep legal and beneficial ownership information;
- New and increased penalties for failure to keep records (ownership and accounting).

44. Jamaica committed to automatically exchange financial account information with the United States under the United States' Foreign Account Tax Compliance Act (FATCA). On 30 June 2014, Jamaica signed a reciprocal (model one) intergovernmental agreement with the United States to implement the automatic exchanges under FATCA.

Part A: Availability of information

45. Sections A.1, A.2 and A.3 evaluate the availability of ownership and identity information for relevant entities and arrangements, the availability of accounting information and the availability of bank information.

A.1. Legal and beneficial ownership and identity information

Jurisdictions should ensure that legal and beneficial ownership and identity information for all relevant entities and arrangements is available to their competent authorities.

46. The 2013 Report found that element A.1 was determined to be “in place but certain aspects of the legal implementation of the element need improvement” and rated Largely Compliant. The 2013 Report contained recommendations concerning Jamaica’s legal framework on the availability of ownership and identity information for foreign companies, nominee shareholders and owners of share warrants to bearer issued by public companies. The 2013 Report also contained recommendations concerning the practical implementation of the legal framework, namely on penalties and enforcement actions under the commercial laws, mechanisms to ensure that identity of partners in a limited partnership and mechanisms to ensure that the settlors and beneficiaries of a trust is available.

47. None of the above recommendations have been addressed. Consequently, all recommendations remain applicable. In addition, a new recommendation is added regarding the retention period for companies to maintain the register of members that the company keeps.

48. No issues were identified by peers in the 2013 Report with respect to the availability of ownership and identity information. During the period of 2009-12 the TAJ received two requests concerning ownership and identity information of companies. The TAJ did not receive any requests in those three years regarding the identity of a settlor, trustee or beneficiary of a trust or of a partner in a partnership. These results continue to be the case during the current review period. There was one request on legal ownership of a company and the peer was satisfied with the response provided by the TAJ in relation to this one request.

49. In respect of the availability of beneficial ownership information, this information is only available to some extent in Jamaica through the concepts of “customer identification” and “evidence of identity” in the AML Regulations. However, in the case of companies and partnerships, these concepts cannot ensure that the bank will have to satisfy identifying the beneficial owner in accordance with the international standard. In addition, beneficial ownership information of companies, partnerships and trusts is only available for those entities or arrangements with a bank account or engaging in business with a regulated entity. Accordingly, Jamaica should take appropriate measures to ensure that beneficial ownership information is available in line with the EOIR standard for all relevant entities and arrangements. The same rules apply in respect of availability of beneficial ownership information of all account-holders. Consequently, Jamaica should ensure that adequate and accurate beneficial ownership information is kept in line with the standard for all relevant entities and arrangements that keep a bank account with a Jamaican bank.

50. In terms of effectiveness of availability of beneficial ownership, supervision is conducted by the Bank of Jamaica (BOJ) and the Financial Services Commission (FSC) of Jamaica. The BOJ supervised five banks during the current review period. The FSC conducted 25 on-site examinations during the current review period. Issues with CDD and KYC were identified in all of these inspections, but neither the BOJ nor the FSC imposed penalties other than remedial actions.

51. During the current peer review period Jamaica received one request related to ownership and identity information. The peer was satisfied with the information received in relation to this one request.

52. The new table of determinations and ratings for element A.1 is as follows:

Legal and Regulatory Framework		
	Underlying Factor	Recommendation
Deficiencies identified in the implementation of the legal and regulatory framework	Information is not required to be maintained by a company nor is it otherwise available to the competent authority that identifies the persons in an ownership chain where a legal owner in a public company acts on behalf of other person as a nominee or under similar arrangement.	Jamaica should establish a requirement that information is maintained indicating the person on whose behalf any legal owner holds his interest or shares in the public company or body corporate.

Legal and Regulatory Framework		
	Underlying Factor	Recommendation
Deficiencies identified in the implementation of the legal and regulatory framework <i>(continued)</i>	There are insufficient mechanisms in place to ensure the availability of information identifying the owners of share warrants to bearer that may have been issued by a public company.	Jamaica should take necessary measures to ensure that robust mechanisms are in place to identify the owners of these share warrants to bearer.
	Companies incorporated outside of Jamaica but having their central management and control in Jamaica are not required to provide information identifying their owners as a part of registration requirements and foreign companies are not required to compulsorily keep a share register in Jamaica. Therefore, the information that identifies the owners of foreign companies is not available.	Jamaica is recommended to ensure that ownership and identity information on foreign companies with sufficient nexus in Jamaica is available in all cases.
	Beneficial ownership information is available to some extent in Jamaica through the concepts of “customer identification” and “evidence of identity” in the AML Regulations. However, in the case of companies and partnerships, these concepts cannot ensure that the bank will have to satisfy identifying the beneficial owner in accordance with the international standard. In addition, beneficial ownership information of companies, partnerships and trusts is only available for those entities or arrangements with a bank account or engaging in business with a regulated entity.	Jamaica should take appropriate measures to ensure that beneficial ownership information is available in line with the standard for all relevant entities and arrangements
Determination: Not in Place		

Practical implementation of the standard		
	Underlying Factor	Recommendation
Deficiencies identified in the implementation of EOIR in practice	During the 2009-12 period of review, the penalties provided under the relevant tax laws and commercial laws appear to be insufficient in providing an effective deterrence against non-compliance. The enforcement actions undertaken by Jamaican authorities also do not appear to be adequate or effective in ensuring the compliance with the filing and reporting obligations under the relevant laws. The situation continues to be very similar, even though the penalties in the ITA were updated.	The Jamaican authorities should review its internal procedures for carrying out the enforcement actions to ensure that the filing and reporting obligations are complied with to ensure the availability of identity information of all relevant entities and arrangements.
	Information identifying partners of a limited partnership, which does not carry on a business in Jamaica or liable to tax in Jamaica, is not consistently available with the Public Record Office in practice.	Jamaica should put in place proper mechanisms to ensure that information identifying partners of a limited partnership can be made fully available regardless of whether the limited partnership is carrying on a business in Jamaica or liable to tax in Jamaica.
	It is not clear whether the mechanisms that are in place to ensure that information identifying the settlor(s) and beneficiaries of a trust is available with the relevant authorities are effective in practice.	Jamaica should put in place proper and robust mechanisms to ensure that information identifying the settlor(s) and beneficiaries of a trust is fully available with either the relevant authorities or the trustee.
Rating: Non-Compliant		

A.1.1. Availability of legal and beneficial ownership information for companies

53. The rules with respect to company formation in Jamaica are identical to those reported in the 2013 Report (see paras. 53-62). Briefly, all companies in Jamaica are formed pursuant to the *Companies Act 2004 (CA)*, and are required to register with the Jamaican Registrar of Companies (Registrar) and the TAJ. Upon incorporation, the identity of each member and director is made known.

54. Three main types of companies can be formed under the Companies Act:

- Companies limited by shares;
- Companies limited by guarantee; and
- Unlimited companies.

55. As at 7 December 2016, there were 57 152 companies limited by shares, 5 077 companies limited by guarantee, 34 unlimited liability companies and 1 456 foreign companies.

56. Jamaican companies incorporated under the Companies Act may also be categorised as a private company or a public company. In 2013, almost 95% of the companies registered in Jamaica were private companies; public companies represented 3% and the remaining 2% were foreign companies. As at 31 March 2017 there are 61 262 private companies, 1 867 public companies and 1 621 foreign companies registered in Jamaica.

Legal ownership and identity information requirements

57. As described in the 2013 Report in section A, paragraphs 63-74, legal ownership and identity requirements for companies are mainly found in Jamaica’s company law. In some cases, legal ownership and identity information could also be secured through obligations contained in the AML laws and regulations. Jamaica’s AML laws and regulations will also apply to ensure the maintenance of beneficial ownership information for some companies and are described in that section (see below). The following table⁵ shows a summary of the legal requirements to maintain legal ownership information in respect of companies:

Legislation regulating legal ownership information of companies

Type	Company Law	Tax law	AML Law
Jamaican private companies	Some	None	Some
Jamaican public companies	Some	None	Some
Foreign companies	None	None	Some

5. The table shows each type of entity and whether the various rules applicable require availability of information for “all” such entities, “some” or “none”. “All” in this context means that every entity of this type created is required to maintain ownership information for all its owners (including where bearer shares are issued) and that there are sanctions and appropriate retention periods. “Some” in this context means that an entity will be required to maintain information if certain conditions are met.

Company law requirements

Domestic companies

58. Up-to-date legal ownership information is required to be maintained by the Jamaican companies themselves in the register the company keeps. Pursuant to s. 109 of the Companies Act, every Jamaican company (private or public) is required to keep a register of its members containing information about the names and addresses and the occupation of the members (s. 109 of the CA). The date at which each person was entered in the register as a member and the date at which any person ceased to be a member must also be included. The register of members is generally kept at the registered office of the company and cannot be kept at a place outside Jamaica. The register of members is available for members as well as public for inspection and copying, on payment of a fee (free to shareholders) (s. 112 of the CA).

59. A company having share capital is also under obligation to keep a statement of the shares held by each member, distinguishing each share by its number, and the details of payments made. The company must register a transfer of shares or debentures of the company on the basis of receipt of a proper instrument of transfer and an entry of name of transferee is made in the register of members (s. 75 of the CA). A company that has issued debentures is required to keep a register of holders of debentures having various particulars including the name and addresses of the debenture holders (s. 84 of the CA) and this register of debenture holders is also available for public inspection (s. 86 of the CA).

60. Jamaican local companies must submit to the Registrar a return of shareholdings in the company on an annual basis (s. 121 of the CA) in the prescribed form set out in part II of fifth schedule. This requires a list of past and present members containing their names, addresses and occupations, number of shares held by them and also any change in their shareholding since the date of the last return. Information about the dates of registration of the transfers is also required in the form.

61. The Companies Act does not provide a retention period for companies to maintain the register of members that the company keeps. However, the Companies Act does provide an obligation for companies to file annual returns containing this information every year (s. 121). Accordingly, Jamaica confirmed that as an administrative practice, the information resides with the Registrar for 20 years after the return is filed. The 20-year deadline is used in order to facilitate restoration of a company, which pursuant to section 337 of the Companies Act, may be up to 20 years after a company has been struck-off from the Registry. However, if a company fails to file their annual return, Jamaica cannot ensure that the information is available. In addition, the obligation to file this annual return was not adequately supervised or enforced

throughout the review period (see below). Therefore, Jamaica should supervise the annual filing obligations to ensure that companies keep legal ownership and identity information for a minimum of five years. This in-text recommendation will be listed in Annex 5 *List of in-text recommendation* of this report.

62. Both companies and their officers are subject to fines under the Companies Act for failure to maintain documentation required by the Companies Act. For defaults relating to the register of members, the company and every officer of the company who is in default is liable to a fine up to JMD 50 000 (approximately USD 392) (s. 109(4) of the CA). Every company is obliged to deliver annual return to the registrar of companies. Failure to deliver the return as required results in a penalty of JMD 100 (approximately USD 0.80) for each day the default continues. The maximum penalty is limited to JMD 10 000 (approximately USD 80) (s. 121 of the CA).

Foreign companies

63. Provisions related to the keeping of legal ownership and identity information for foreign companies remain unchanged since the 2013 Report.

64. Part X of the *Companies Act* contains provisions relating to companies incorporated outside the Island and carrying on business within the Island. This may include companies not incorporated in Jamaica but having its central management and control in Jamaica. These companies are required, within one month of establishment of the place of business, to deliver to the Registrar for registration a certified copy of the charter, statutes or articles of the company, or other instrument constituting or defining the constitution and containing the name of the company, names and address of the directors or shadow directors of the company and particulars as are required in the register of directors of the company and the name and address of the resident person for receiving the notice (s. 363 of the CA). However, the information on the shareholders/owners of the parent company is not required to be provided.

65. Legal ownership and identity information, as well as beneficial ownership information may be available for some companies that keep a bank account in Jamaica, in accordance with the AML requirements (see below). However, there is no express obligation for foreign companies to maintain a bank account and consequently, ownership and identity information might not be consistently available for all foreign companies with a nexus in Jamaica.

66. Foreign companies are required to file returns for alterations, i.e. changes in the charter, statutes or articles of the company or the directors of the company). The officer or agent of the company is liable to a fine not exceeding JMD 50 000 (approximately USD 392), or in the case of a continuing offence, JMD 2 000 (approximately USD 16) for every day during which the default continues.

Tax law requirements

67. All persons, including individuals and corporate entities, doing business in Jamaica are required to obtain a Taxpayer Registration Number (TRN) from the TRN office in Kingston or revenue centres across Jamaica (s. 17D of Revenue Administration Act 1985).

68. Since January 2014, registration of companies with the TAJ (to obtain a TRN) is done through Form BRF1 with the Registrar. This one-stop registration system allows companies to simultaneously register with the TAJ and the Ministry of Labour upon incorporation. Information on the ownership of the company is provided as indicated above to the Registrar but not to the TAJ.

69. Foreign companies are also required to obtain a TRN. Since January 2014, foreign companies also obtain their TRN through the one-stop registration system implemented by the Registrar. Foreign companies are required to file the documents indicated above along with the application. No information about owners of foreign companies is required to be filed with the Registrar or the TAJ.

70. Domestic and foreign companies that are resident for tax purposes are taxable entities in Jamaica and are required to file annual income tax returns. A body corporate subject to income tax is defined in the ITA to mean any body corporate, wherever resident, other than one whose entire income is exempted or relieved from income tax. Tax returns are not required to contain any ownership information.

AML requirements

71. Banks and financial institutions are regulated businesses pursuant to Fourth Schedule of the Proceeds of Crime Act (POCA). Regulated businesses include banks and financial institutions. Companies that have accounts with or carry out transactions through banks and financial institutions are required to provide them with identity information as per regulation 7 of the POCA (MLP) Regulations 2007 as amended, and Part IV of the Bank of Jamaica (BOJ) AML/CFT Guidance Notes.

72. Regulated businesses are required to keep customer information when establishing a business relationship with a company. Regulation 7 of the POCA (MLP) Regulations 2007 defines customer information for companies as: (i) the identity of each director and shareholder (if any) holding ten percent or more of the voting rights; (ii) address of the company; (iii) provisions regulating the power to bind the company; and (iv) evidence of incorporation.

73. There is no express obligation for foreign companies to maintain a bank account in Jamaica and consequently, ownership and identity

information might not be consistently available for all foreign companies with a nexus in Jamaica. Jamaica is recommended to ensure that ownership and identity information on foreign companies with sufficient nexus in Jamaica is available in all cases.

Nominee shareholders

74. The 2016 ToR require that jurisdictions should ensure that information is available to their competent authorities that identify the owners of companies and any bodies corporate. Owners include legal owners, and, in any case where a legal owner acts on behalf of another person as a nominee or under a similar arrangement, that other person, as well as persons in an ownership chain, to the extent that it is held by the jurisdiction's authorities or is within the possession or control of persons within the jurisdiction's territorial jurisdiction.

75. The 2013 Report concluded that ownership information identifying the person in an ownership chain where a legal owner in a public company acts on behalf of another person as a nominee or under a similar arrangement is not required to be maintained by a company, nor is it otherwise available to the competent authority. Accordingly, Jamaica was recommended to establish a requirement to maintain information on the person on whose behalf any legal owner holds its interest or shares in a public company or body corporate. Jamaica has not acted on this recommendation since the 2013 Report. Consequently, the recommendation from the 2013 Report remains applicable.

76. There are 1 867 public companies in Jamaica as at 31 March 2016 and these represent approximately 3% of all companies in Jamaica. In the current review period, Jamaica did not receive any request concerning nominee shareholders.

Enforcement measures and oversight

77. Effective enforcement provisions to ensure the availability of information must be in place, including adequate monitoring for non-compliance, as well as sufficiently strong compulsory powers.

78. The 2013 Report concluded that the relevant commercial laws appear to be insufficient in providing an effective deterrence against non-compliance, and also that the enforcement actions undertaken by Jamaican authorities in the 2009-12 review period did not appear to be adequate or effective in ensuring the compliance with the filing and reporting obligations under the relevant laws. Accordingly, Jamaica was recommended to review the adequacy of the penalties provided under the relevant commercial laws to ensure that they are effective in providing deterrence against

non-compliance of the filing and reporting obligations. In addition, Jamaica was also recommended to review its internal procedures for carrying out the enforcement actions to ensure that filing and reporting obligations are followed to ensure the availability of identity information for all relevant entities and arrangements.

79. The COJ reported that they are in the process of fully amending the Companies Act and as such, it is reviewing the adequacy of the penalties for failure to lodge the annual return containing information on the legal owners of a domestic company.

80. The COJ also reported during the on-site visit that there has been no regular supervision around the aforementioned obligations during the review period. Enforcement actions are rarely taken against companies that fail to file annual returns, mainly due to the fact that a lengthy litigation process is required to apply the fines. In addition, the COJ reported that human resources are scarce with only seven officers working in the compliance area.

81. The number of companies that have not complied with the filing of the annual return, the number of cases where penalties were applied and the number of lawsuits instituted are summarised in the table below.

Fiscal year	Total No. of companies registered with COJ (including foreign companies)	No. of companies that have not submitted annual returns	No. of companies where penalties have been applied for late submission of annual returns	No. of lawsuits instituted against companies for non-submission of annual returns
2013	85 451	55 289	5 722	387
2014	87 474	57 322	5 795	387
2015	89 172	58 937	3 968	398
2016	92 402	59 086	6 236	397

82. The COJ reported that they have started a programme in 2014 to strike off companies from the register. While companies may not be struck from the register solely for not filing annual returns, the Registrar can only strike off a company where there is reasonable cause to believe that the company is not carrying on business or is not in operation Jamaica considers that a company is not carrying on business or in operation when it has failed to file an annual return and the COJ is unable to locate the company by way of its registered office. Before striking off a company, the COJ serves the company with a letter and if no response is received a notice is published in the Gazette and in a daily newspaper that circulates in Jamaica. If the Registrar either receives an answer to the effect that the company is not carrying on business or in operation, or does not within one month receive any answer, it will publish in the Gazette and in a daily newspaper circulating in

Jamaica, and send to the company by post, a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register. COJ struck off the register 1 731 companies in 2014, 1 720 companies in 2015 and 1 821 companies in 2016. Jamaica has informed that although there is no specific reference to companies struck off the register, section 330 of the Companies Act regarding dissolved companies will apply for struck-off companies. Section 330 of the Companies Act sets out that dissolved companies will have to keep books and papers, including the shareholder registry, for five years. Failure to keep these documents results in a fine not exceeding JMD 3 000 (approximately USD 23). Jamaica should monitor that struck-off companies keep all relevant documents, books and records for at least five years. This in-text recommendation will be listed in Annex 5 *List of in-text recommendation* of this report.

83. There was no monitoring during the current review period in regards to the obligation on foreign companies to lodge alteration returns.

84. Jamaica has not taken any significant action to address the recommendation in the 2013 Report. Consequently, the recommendation remains applicable.

Availability of legal ownership information in practice (Peer Experience)

85. During the current peer review period Jamaica received six EOI requests. In the 2009-12 review period, Jamaica received two requests pertaining to identity and ownership information of companies. Information was provided for both requests. In the current review period, Jamaica only received one request related to ownership and identity information of companies. The peer was satisfied with the information received.

Beneficial ownership information

86. Under the 2016 ToR, beneficial ownership on companies should be available for all relevant entities and arrangements.

87. Under the legal and regulatory framework in Jamaica, beneficial ownership of companies is mainly available with:

- financial institutions in Jamaica required to conduct CDD on their customers under the AML regime, namely for companies that have opened a bank account with a Jamaican bank ; and
- entities that conduct securities business or offer investment advice to the public, for any company that established such a business relationship.

88. Beneficial ownership information may also be available for companies that make a one-off transaction with a financial institution. However, one-off transactions are not subject to ongoing customer due diligence (CDD) and as such, is not a reliable source of beneficial ownership information for EOI purposes.

89. The international standard requires that beneficial ownership information be available for all relevant entities and arrangements. In the case of companies in Jamaica, beneficial ownership information would only be available for those companies with a bank account or engaging in business with a regulated entity. Accordingly, Jamaica should take appropriate measures to ensure that beneficial ownership information is available in line with the standard for all relevant entities and arrangements.

Corporate law

90. There are no requirements in the Companies Act for companies to keep beneficial ownership information. Beneficial ownership information will only be available under the Companies Act when the legal owner is also the beneficial owner.

Tax law

91. There are no requirements under the Jamaican tax law that compel companies to keep beneficial ownership information.

AML law requirements

92. The Proceeds of Crime Act 2007 and the Proceeds of Crime (Money Laundering Prevention) Regulations 2007 (POCA (MLP) Regulations 2007) form the basis on Jamaica's AML regime. These two pieces of legislation create obligations on business in a regulated sector.

93. Pursuant to the Fourth Schedule of the POCA, a business is in the regulated sector if the business is a: (i) a financial institution; or (ii) a designated non-financial institution.

94. Pursuant to s. 2 of the POCA, a financial institution includes:

- banks as defined under the Banking Services Act;
- a merchant bank as defined under the Banking Services Act;
- building societies as defined under the Banking Services Act;
- societies registered under the Co-operative Societies Act (carrying on credit union business);

- an the company registered under the Insurance Act;
- a person licensed under the Bank of Jamaica Act to operate exchange bureau;
- a person licensed under the Securities Act as a dealer or investment adviser;
- a money transfer and remittance agent or agency; and
- any other person declared by the Minister by order subject to affirmative resolution, to be a financial institution for the purposes of the Act.

95. Designated non-financial institutions is defined in the Fourth Schedule of POCA as a person who is not primarily engaged in carrying on a financial business and who is designated as a non-financial institution for the proposes of the POCA by the Minister. The following are designated non-financial institutions:

- attorneys-at-law;
- real estate dealers;
- gaming machine operators;
- casino operators; and
- public accountants.

96. Jamaica does not have an independent trust and company service providers (TCSP) sector. Currently these services may be provided by either accountants or attorneys, both of which are covered under the AML framework as designated non-financial institutions. However, there is no express requirement for a person to register a company through an accountant or an attorney and any person can register a company directly with the COJ.

97. Beneficial ownership information is maintained and verified by regulated entities in the same way as banks, see A.3 *Beneficial ownership information on account holders*.

98. Beneficial ownership information is available to some extent through the concepts “customer identification” and “evidence of identity” in the AML-related Regulations. However, these concepts cannot ensure that the bank will have to satisfy identifying the individual that exercises ultimate effective control before identifying the senior managing official. In addition, this information is only available for companies with a bank account or engaging in business with a regulated entity, and not all relevant companies in Jamaica. Accordingly, Jamaica should take appropriate measures to ensure that beneficial ownership information is available in line with the standard for all relevant entities and arrangements.

AML supervision in practice

99. The supervision of the AML obligations in Jamaica is carried out by the BOJ and the FSC. The BOJ is responsible for the supervision of deposit-taking institutions and money remitters. The BOJ supervised five banks during the current review period. Issues on CDD and KYC were raised in all of these supervisions, yet the BOJ did not impose any monetary penalties. The detailed analysis regarding the supervision and enforcement of the AML obligations applicable to banks are set out in element A.3 *Availability of beneficial ownership of bank accounts*.

100. The FSC is responsible of supervising insurance companies, insurance intermediaries and securities companies. During the current review period, the FSC conducted 25 on-site inspections to verify compliance on AML obligation of securities dealers. Some deficiencies on KYC and CDD were identified. No monetary penalties were imposed. Remedial actions were made to be taken in specific timeframes. A follow-up examination was conducted to confirm that the entity complied with the directions to rectify. In addition, 12 desktop examinations were also undertaken to assess the entity's policies and procedures in comparison with the requirements in the AML legislation.

101. Jamaica has reported that remedial actions have shown improvements in compliance by the regulated entities. However, there is room for improvement in respect of the verification processes to ensure the quality of the information, and also regarding effective enforcement, through the application of monetary penalties for regulated entities that fail to comply with the obligations to keep beneficial ownership information. Jamaica is therefore recommended take appropriate measures to ensure that beneficial ownership information is available in line with the standard.

102. Compliance of AML obligations is supervised by the Public Accountancy Board (PAB) for accountants and by the General Legal Council (GLC) for attorneys. Until recently, there was an injunction against the enforcement of the AML/CFT regime on attorneys. This injunction was overruled and attorneys are now subject to supervision on the compliance of their AML obligations. Jamaica indicated that the GLC started hiring staff and trained these on supervision and investigations. Registrants with PAB are subject to a Practising Monitoring Programme which determines whether they meet the international requirements to practice as an accountant and whether they are conducting activities that may qualify to be monitored for AML/CFT compliance. The PAB has plans to commence shortly a programme to supervise their registrants identified to be carrying out activities subject to AML/CFT supervision.

*Availability of beneficial ownership information in practice
(Peer experience)*

103. Jamaica has received one EOI request for beneficial ownership information of a company that owns a boat. Jamaica obtained this information from the Maritime Authority, who keeps legal ownership information. In this case, the legal owner of the company was also the beneficial owner. The peer was satisfied with Jamaica's response.

ToR A.1.2: Bearer shares

104. The 2013 Report concluded that there were insufficient mechanisms in place to ensure the availability of information identifying the owners of share warrants to bearer that may have been issued by a public company. Accordingly, Jamaica was recommended to take the necessary measures to ensure that robust mechanisms are in place to identify the owners of these share warrants to bearer. Jamaica has not acted on this recommendation since the 2013 Report. Consequently, the recommendation from the 2013 Report remains applicable.

105. Only public companies authorised by its articles can issue share warrants to bearer (s. 82 CA). There are 1 867 public companies in Jamaica as at 31 March 2017 (1 927 as at 31 December 2012) and these represent 3% of all companies in Jamaica.

106. No issues concerning bearer shares have arisen in practice in this review or in the previous reviews of Jamaica.

ToR A.1.3: Partnerships

107. Under the EOIR standard, jurisdictions should ensure that information is available that identifies the partners in, and the beneficial owners of, any partnership that (i) has income, deductions or credits for tax purposes in the jurisdiction, (ii) carries on business in the jurisdiction or (iii) is a limited partnership formed under the laws of that jurisdiction.

108. Limited Partnerships may be established under Jamaican law. In this type of partnership one or more partners, called general partners, have unlimited liability for partnership debts and other one or more partners have liability for those debts to the extent of the funds so subscribed by them or the capital they have subscribed. The general partners only have the authority to transact the business of the partnership and legal actions in respect of partnership business can be taken only against them. Limited partnerships are not allowed to carry on the business of banking or insurance. As at 31 March 2017, there were 24 432 partnerships in total registered in Jamaica.

109. Jamaica does not have any statutory provisions governing the general (ordinary) partnerships, wherein all the partners have unlimited liability for the partnership debts. Such partnerships are governed by the common law and the partnership agreement. This ordinary partnership does not have a legal personality of its own. There is no legal provision requiring partnerships to keep the information on the partners for a specified period of time. However, this information is kept by TAJ in the annual tax returns.

110. Foreign partnerships carrying on business in Jamaica must register their business names with the Registrar of Companies, and provide and update information on each of their partners. As at 31 March 2017, there were no foreign partnerships registered in Jamaica.

111. The 2013 Report (see paras. 94-105) concluded that there were comprehensive registration and record keeping requirements to ensure the availability of information in relation to partnerships under Jamaican law. Those can be summarised as follows:

- The Registrar of Companies retains updated identity information on general partners of general and limited partnerships and foreign partnerships, including their surname, name, nationality, usual residence and other business occupation, if any.
- A copy of the partnership agreement is kept with the Record Office.
- Partners of a partnership, including those of foreign partnerships carrying on a business in Jamaica, are required to make annual income tax returns with the TAJ, indicating information on the names and addresses of the partners in the partnership and the amount of income allocated to the partners as per their respective shares. Partnerships, including foreign partnerships carrying on a business in Jamaica, are also required to file annual income tax returns through form IT03. The form requires information on the partners, including taxpayer registration number, name, basis of distribution of partnership income and share of partnership income.

112. The 2013 Report also notes that following sanctions are provided by law to support the legal requirements described below:

- The Registration of Business Name Act provides that all partnerships that carry on business in a name other than the first and surnames of the partners must be registered with the COJ. If it is not registered, every person responsible for contravening the Act is liable on summary conviction before a Resident Magistrate to a fine not exceeding JMD 15 000 (approximately USD 117) and in default of payment of the fine to imprisonment of up to 3 months. The Act also gives the COJ power to apply to the Court to close a business whose

name is not registered after serving three notices on the unregistered business. The Act also provides the power for the COJ to request information from a partner of a business. If the information requested is not provided, the person responsible for providing the information shall be liable on summary conviction before a Resident Magistrate to imprisonment for a term not exceeding 3 months or to a fine not exceeding JMD 5 000 (approximately USD 39).

- Section 8 of the Registration of Business Names Act requires that any change in particulars need to be sent to the Registrar and any default shall be liable on summary conviction before a resident Magistrate to a fine up to JMD 200 (approximately USD 1.5) for each day of the default and the default in the payment of the fine may result into imprisonment with or without labour for a term up to 3 months.
- Penalties for non-registration with the TAJ under the RAA may be levied on taxpayers, who without reasonable cause or lawful excuse neglects or fail to apply for registration or neglects or fail to furnish the information required for registration. A partnership is liable on summary conviction before a Resident Magistrate to a fine not exceeding JMD 50 000 (approximately USD 388) and in default of payment of such fine to imprisonment for a term not exceeding 30 days (s. 17D(8) of the RAA).
- A wilful failure to deliver a true and correct return of the income and comply with the other provisions of s. 67 of the ITA makes the person guilty of an offence (s. 67(9) of the RAA). Any person who refuses, fails or neglects to deliver any return of the partnership shall be guilty of an offence (s. 69(3) of the RAA) as follows: (i) on summary conviction, in the case of a first offence to a fine not exceeding JMD 2 000 000 (approximately USD 15 450) and in default of payment thereof, to imprisonment for a term not exceeding one year. In the case of a second or subsequent offence, to a fine not exceeding JMD 5 000 000 (approximately USD 36 681) or to imprisonment for a term not exceeding five years or to both. (ii) on conviction of indictment in a Circuit Court, to a fine and in default of payment thereof, to imprisonment for a term not exceeding ten years.

Monitoring and enforcement in practice

113. The 2013 Report noted that the Record Office only performed depositary functions and they neither enforced the filing of deeds of partnerships nor conduct audits to ensure that all limited partnerships that have filed the deeds of partnership continued to be in existence. Furthermore, the COJ had discontinued lawsuits against businesses whose names were not registered

or whose registration had expired, due administrative and procedural difficulties encountered. In regards to the enforcement measures undertaken by the TAJ, the 2013 Report stated that no regular enforcement actions were taken mainly because all sanctions could only be applied by the courts and the prescribed monetary penalties were too low to produce a deterrent effect and in addition, the costs involved in preparing the cases far exceeded the monetary penalties prescribed. Consequently, the 2013 Report recommended Jamaica to put in place proper mechanisms to ensure that information identifying partners of a limited partnership were made fully available regardless of whether the limited partnership was carrying on a business in Jamaica or liable to tax in Jamaica.

114. The deficiencies identified in the 2013 Report and summarised above have not been addressed in the current period review. The Record Office continues to perform depository functions and does not enforce the filing of deeds of partnerships. The COJ has not amended its legislation regarding its powers to sanction businesses that do not register or whose registration has expired in accordance with the Registration Business Names Act.

115. Jamaica revised the penalties under the RAA in July 2013, shortly after the 2009-12 review period. The TAJ is of the opinion that these revised penalties have a deterrent effect. Jamaica does not have separate statistic on compliance levels for partnerships. These are compiled for entities, including companies, partnerships and trusts. The following table shows the tax filing compliance rates for the current review period were as follows:

Tax year	Compliance rate
2012-13	48.5%
2013-14	43%
2014-15	46%
2015-16	39.6%

116. Jamaica has reported that the 2015-16 compliance filing rate is lower as all tax returns have not yet been keyed into the system. However, although the TAJ reports improvements on registration and filing obligations compared to those in the past, tax filing compliance rates are still low. Jamaica should continue to monitor the implementation of the newly established penalties to ensure that information is available on partners of limited partnerships carrying on a business in Jamaica or liable to tax in Jamaica. This in-text recommendation will be listed in Annex 5 *List of in-text recommendation* of this report.

117. The situation remains the same as during the 2009-12 review period, where information identifying the partners of a limited partnership formed under Jamaican legislation and, which does not carry on a business in

Jamaica or is liable to tax in Jamaica, is not consistently available neither with the Record Office nor the COJ. Accordingly, the recommendation in the 2013 Report remains applicable.

Beneficial ownership information

118. The same rules regarding availability of beneficial ownership information for companies applies to domestic and foreign partnerships (see A.1.1 *Beneficial ownership information*). Beneficial ownership information of a partnership is only available in Jamaica when the partnership opens a bank account in Jamaica or otherwise has a relationship with and AML obligated person. Jamaica should ensure that beneficial ownership information is kept for all relevant entities and arrangements in line with the international standard.

119. For the effectiveness of the legal and regulatory framework in practice, see A.1 *AML supervision in practice*. Further analysis regarding the supervision and enforcement of the requirements for banks to keep beneficial ownership information is set out in element A.3 *Availability of beneficial ownership of bank accounts*.

Availability of ownership information in practice

120. In practice, in the three-year current period under review, Jamaica received no request for information on the identity of partners or beneficial owners of partnerships.

ToR A.1.4: Trusts

121. As Jamaica is a common law jurisdiction, the concept of a trust is part of Jamaican law. There are no specific laws regulating the formation of trusts in Jamaica.

122. Trustees are governed by the Trustees Act 1897 and by the terms of the trust deed. There are no restrictions on who may act as trustees and consequently trustees may be individuals or companies. There is also no restriction for a resident of Jamaica to act as a trustee of a trust formed under foreign law. Whereas the Trustees Act contains provisions in relation to the rights, responsibilities, powers and duties of trustees, it does not require trustees to obtain and hold adequate and accurate information on the identity of the settlor, the trustee or the beneficiaries. However, the duty to maintain this information is derived from common law principles. Reliance is therefore placed on common law obligations that are imposed on trustees as fiduciaries to obtain, keep and maintain this information.

123. A trust agreement has to be recorded as a registered deed with the Record Office. In addition, under section 4 of the Registration of Business Names Act, where a firm carries on the business wholly or mainly as nominee or trustee of or for another person, or other persons, or another corporation, or acts as general agent for any foreign firm, the first mentioned firm, individual, or corporation shall be registered with the COJ. In addition, the section 4 schedule requires the additional particulars as the present Christian name and surname, any former name, nationality, and, if that nationality is not the nationality of origin, the nationality of origin, and usual residence or, as the case may be, the corporate name, of every person, or corporation on whose behalf the business is carried on. If the business is carried on under any trust and any of the beneficiaries are a class of children or other persons, a description of the class shall be sufficient. However, in practice, for registering under a business name, trusts are required to submit the trust deed which contains information on all beneficiaries. Section 8 of the Registration of Business Names Act requires that any change in particulars need to be sent to the Registrar and any default shall be liable on summary conviction before a resident Magistrate to a fine up to JMD 200 (approximately USD 1.5) for each day of the default and the default of in the payment of the fine may result into imprisonment with or without labour for a term up to 3 months.

124. All trusts are required to register with the TAJ to obtain a tax registration number (s. 17D(2) of the RAA). Trusts apply for the tax registration number through “Form 2” which is signed by the trustee and filed along with the trust deed. All trusts, including approved charitable trusts, are required to file income tax returns through “Form IT03”. This form includes information on the name of the trustee, the taxpayer registration number of the trust and information on the distributions of trust income made to the beneficiaries. The approved charitable trusts are required to file their annual financial statements to the Taxpayer Audit and Assessment Department. This also applies to trusts having non-resident settlors or beneficiaries.

125. Trusts created under foreign laws will also have to register for tax purposes and deliver a tax return, if those have any taxable income (s. 5 of the ITA) or statutory income (s. 6 of the ITA). Returns are lodged through “Form IT03” includes information on the name of the trustee, the taxpayer registration number of the trust and information on the distributions of trust income made to the beneficiaries. This situation will arise in cases where either the trustee is a resident of Jamaica or the trust assets are invested in Jamaica or the trust assets are administered from Jamaica. Trustees are responsible for compliance with the ITA (s. 55 of the ITA).

126. The 2013 Report concluded that all the above requirements ensure the availability of information on trusts in Jamaica.

Oversight and enforcement

127. The 2013 Report noted that there was no oversight by the Record Office during the 2009-12 review period and there were no trusts registered under the Registration of Business Names Act. In addition, enforcement actions relating to compliance with the filing of tax returns were not taken. Accordingly, Jamaica was recommended to put in place robust mechanisms to ensure that information identifying the settlor(s) and beneficiaries of a trust is fully available with either the relevant authorities or the trustee.

128. The deficiencies identified in the 2013 Report and summarised above have not been fully addressed in the current period review. The Record Office only performs depository functions of the trust deeds and does not conduct oversight around the obligations to register the deed. The COJ has not amended its legislation regarding its powers to sanction businesses that do not register or whose registration has expired in accordance with the Registration Business Names Act.

129. All trusts are required to register with the TAJ to obtain a tax registration number (s. 17D(2) of the RAA). Jamaica revised the penalties under the RAA in July 2013, shortly after the 2009-12 review period. The TAJ is of the opinion that these revised penalties have a deterrent. Jamaica does not have separate statistics on compliance levels for trusts. These are compiled for all types of entities, including companies, partnerships and trusts. For tax filing compliance, see *A.1.3. Monitoring and Enforcement in practice under Partnerships*. Jamaica has reported that the 2015-16 compliance filing rates are lower, as all tax returns have not yet been keyed into the system. However, although the TAJ reports improvements on registration and filing obligations compared to those in the past, tax filing compliance rates are somehow low. Jamaica should continue to monitor the implementation of the newly established penalties to ensure that information on trusts is available. This in-text recommendation will be listed in Annex 5 *List of in-text recommendation* of this report.

Beneficial ownership information

130. The availability of ownership information of trusts is kept in the same manner as for companies (see *A.1 Beneficial ownership information on companies* and *A.3 Beneficial ownership information on account holders*). The only difference from that specified for companies is that in the case of trusts, evidence of identity is satisfactory if:

- The regulated business establishes the identity the settlor, legal owner or other person who exercises effective control of the trust, and each beneficiary under the trust arrangement, including the ultimate beneficial owner of the property concerned in the arrangement; and

- The trust discloses its legal status and the provisions regulating the power to bind the parties involved.

131. The provision of trusts services is not within the AML-regulated sector in Jamaica. There are no statutory obligations for trustees to maintain beneficial ownership information of the trust. Under the common law, trustees are required to keep clear and cogent financial accounts and provide information as to the management of the trust.⁶ Trustees are also required to keep a trust diary, described as a type of minute book in which information regarding the trust and decisions taken in the administration of the trust are recorded.⁷ Along with the trust diary, trustees are required to keep all deeds and documents related to the trust as well as all additional documentation concerned with the administration of the trust in a safe, organised and cogent manner to facilitate their inspection if required. In order to carry out the above, trustees will need to identify the beneficiaries of the trust. Despite trustees having to identify the beneficiaries with sufficient certainty for the trust to be validly constituted and administered, when a beneficiary is not a natural person the trustee has no obligation at law (and may not in fact be able to trace through a chain of beneficial interests) to identify the ultimate recipient of a distribution it makes to a non-natural person beneficiary. Consequently, beneficial ownership information of a trust is only available in Jamaica when the trustee opens a bank account in Jamaica on behalf of the trust. Accordingly, Jamaica should take appropriate measures to ensure that beneficial ownership information is available in line with the standard for all relevant entities and arrangements.

132. There are no legal obligations for trustees to maintain beneficial ownership information for a minimum period of five years. Although in practice this information could be available with the regulated business with which a trustee has engaged on business with, if a trustee fails to provide the information, Jamaica cannot ensure that the information is available.

Oversight and enforcement

133. In practice, there are limitations for trusts to provide information on beneficial ownership as there is no requirement for it to be maintained either under the Trustee Act or any other law in Jamaica. For the effectiveness of the legal and regulatory framework in practice, see A.1 *AML supervision in practice*. Further analysis regarding the supervision and enforcement of the requirements for banks to keep beneficial ownership information is set out in element A.3 *Availability of beneficial ownership of bank accounts*).

6. *Bartlett v Barclays Bank Trust Co Ltd No. 1* (1980) 1 All ER 139 at 159.

7. *Pearse v Green* (1819) 37 ER 327 at 329.

Availability of trust information in practice (Peer experience)

134. The 2010 Report noted that no requests had been received in the period 2009-12 that asked for information on trusts. This was also the case in the current review period.

ToR A.1.5: Foundations

135. The 2013 Report noted that Jamaica did not have specific provisions for the creation of foundations. Although certain companies limited by guarantee did use the term “foundation” in their names, they did not have the features of a foundation as understood under the laws of other jurisdictions. The regulations under the Companies Act apply equally to all these companies. As these companies are generally charitable organisations, they are treated as “charities” for tax purposes. The situation remains unchanged since the 2013 Report.

A.2. Accounting records

Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements.

136. As concluded in the 2013 Report, requirements to maintain accounting records, including underlying documentation, for a minimum period of five years are in place in Jamaica for all relevant entities and arrangements. This conclusion was reached after Jamaica amended its legislation in July 2013, to establish obligations for all persons to: (i) maintain underlying documentation, such as an invoice or contract; and (ii) keep accounting records (including underlying documentation) for a period of seven years. The effectiveness of these provisions in practice could not be ascertained or verified during the 2009-12 review period.

137. Moreover, the 2013 Report found that the penalties provided under the relevant tax and commercial laws appeared to be insufficient in deterring non-compliance, and that the enforcement actions undertaken by Jamaican authorities did not appear adequate or effective in ensuring compliance with filing and reporting obligations. Jamaica was recommended to review the adequacy of the penalties provided under commercial law to ensure that they were effective in deterring non-compliance. Jamaica’s authorities were also recommended to review their procedures for exercising their enforcement powers to ensure compliance with filing and reporting obligations by all relevant entities and arrangements.

138. Jamaica has not addressed the recommendation on reviewing the adequacy of the penalties in the commercial laws. Accordingly, the recommendation remains applicable. The TAJ has supervised through its regular

audit programme the obligations to keep accounting records, including underlying documentation, for the minimum period of time specified in the RAA. Considering that there has been monitoring by the TAJ around the implementation of the new RAA provisions introduced in 2013, and that there is a high level of compliance regarding these obligations, the monitoring recommendation has been removed.

139. During the current review period, Jamaica received one request for accounting information related to a company and information was found to be available to reply to this request.

140. The new table of determinations and ratings is as follows:

Legal and Regulatory Framework		
Determination: The element is in place.		
Practical implementation of the standard		
	Underlying Factor	Recommendation
Deficiencies identified in the implementation of EOIR in practice	Jamaica has not addressed the recommendation from the 2013 Report to review the adequacy of the penalties under the relevant commercial laws to ensure that they are effective in providing deterrence against non-compliance. In addition, during the current review period the COJ did not supervise effectively the filing and reporting obligations under the Companies Act. The availability of accounting information was supervised by the TAJ through their regular audit program and filing of annual tax returns. Although the tax filing compliance rates are low, it appears that TAJ's audit programme is comprehensive and ensures to a large extent the availability of accounting information for all relevant entities and arrangements subject to supervision by the TAJ.	Jamaica should put in place a comprehensive oversight programme to ensure the availability of accounting information for all relevant entities and arrangements in all cases.
Rating: Largely Compliant		

ToR A.2.1: General requirements and ToR A.2.2: Underlying documentation

Companies

141. The 2013 Report noted that companies, both domestic and foreign, are required to keep proper records of accounts and underlying documentation in accordance with the standard. There have been no changes since the 2013 Report in this regard.

142. Under section 144 of the Companies Act and section 89(2) of the ITA, companies are required to keep books of accounts as necessary to explain the transactions and financial position of the trade or business of the company, including books containing entries from day to day in sufficient details of all cash received and paid, and where the trade or business has involved dealings in goods, statements of annual stocktaking, and accounts of all goods sold and purchased. In addition, section 89 of the ITA is supplemented by section 17LA of the RAA, which requires companies to keep underlying documentation, such as invoices and contracts relevant to determine its tax liability. Under section 144(4) of the Companies Act, companies are required to keep accounting records in Jamaica. Records must be open to inspection by the directors.

143. Public and private companies with a corporate shareholder are required to file accounts annually with the Registrar. Accounts include the balance sheet and profit and loss account, as well as a copy of the report of the auditor. Failure to lodge annuals returns leads to a penalty of JMD 100 (approximately USD 0.80) for each day of default continues, but the maximum penalty is limited to JMD 10 000 (approximately USD 80) (s. 121 of the CA).

144. Section 17LA of the RAA requires every person in lawful possession of any book, record or other document – including those required documents prescribed by the Companies Act – that is relevant to determine the tax liability of any person, to keep such book, record or document for a period of not less than seven years (s. 269 and s. 275 of the Companies Act). Pursuant to section 330, companies that have been dissolved have to keep all records, including the shareholder registry for not less than five years, computed from the day the company is dissolved. Records are to be kept by the liquidator and after five years from the dissolution of the company, no responsibility will rest on the company, the liquidator or any other person to whom the custody of the records had been committed to (s. 330(2) of the Companies Act). Jamaica has reported that, although no specific reference to struck-off companies, the same rules as for dissolved companies apply. Jamaica should monitor that struck-off companies keep all relevant documents, books and records for at least five years. This in-text recommendation will be listed in Annex 5 *List of in-text recommendation* of this report.

145. Failure to comply with this obligation is an offence punishable upon summary conviction with a fine not exceeding JMD 2 million (approximately USD 15 661) and in default of payment thereof to imprisonment for a term not exceeding one year. Failure for dissolved companies to keep the records results in a fine to exceeding JMD 3 000 (approximately USD 23).

Partnerships

146. The 2013 Report found that accounting information is kept to the standard through a combination of requirements provided in the ITA and the RAA. There have been no changes since the 2013 Report in this regard.

147. Section 89 of the ITA requires every person engaged in any trade, profession or business to keep proper books of account sufficient to record all transactions necessary to ascertain the gains and profits made or the loss incurred. The books of account should exhibit or explain the transactions and financial position of the business. In addition, section 89 of the ITA is supplemented by section 17LA of the RAA, which requires companies to keep underlying documentation such as invoices and contracts relevant to determine its tax liability. Documents must be kept for at least seven years, even when the partnership has been dissolved (s. 17LA of the RAA). Failure to comply with section 17LA of the RAA is an offence and the offender is liable upon summary conviction to a fine not exceeding JMD 2 million (approximately USD 15 661) and in default of payment thereof to imprisonment for a term not exceeding one year.

Trusts

148. The 2013 Report found that accounting information is kept to the standard through a combination of requirements under the ITA, the RAA, the Trustees, Attorney and Executors Act and the common law. There have been no changes since the 2013 Report in this regard.

149. Under common law, all trustees are subject to an obligation to ensure that records and accounts are prepared and maintained for a reasonable period of time to ensure that the trust is properly managed. The Jamaican authorities confirm that the common law requirements are those principles as set out under English common law. It is a well-established principle of English common law that it is the “duty of a trustee to keep clear and distinct accounts of the property he administers, and to be constantly ready with his accounts”.⁸ Such accounts should be open for inspection at all times by the beneficiary and should trustees default in rendering such accounts,

8. The Trustee must allow a beneficiary to inspect the trust accounts and all documents relating to the trust. See *Halsburys Laws of England* Vol. 48, 4th Edition, paras. 961 and 962.

the beneficiary is entitled to have the accounts seized by the court. In such instances trustees would be held liable for paying the costs of such an order and in certain cases may also be removed. Furthermore where trustees are found guilty of active breaches of trust or wilful default or omission, they may be held personally liable for any loss.⁹

150. Section 89 of the ITA requires every person engaged in any trade, profession or business to keep proper books of account sufficient to record all transactions necessary to ascertain the gains and profits made or the loss incurred. The books of account should exhibit or explain the transactions and financial position of the business. In addition, section 89 of the ITA is supplemented by section 17LA of the RAA, which requires companies to keep underlying documentation such as invoices and contracts relevant to determine its tax liability. Documents must be kept for at least seven years, even when the trust arrangement has been terminated (s. 17LA of the RAA).

151. Failure to comply with section 17LA of the RAA is an offence and the offender is liable upon summary conviction to a fine not exceeding JMD 2 million (approximately USD 15 661) and in default of payment thereof to imprisonment for a term not exceeding one year.

Oversight and enforcement of requirements to maintain accounting records

Companies Office Jamaica

152. The COJ is the entity in charge of monitoring the compliance on the filing of annual returns by companies under the Companies Act. As indicated above, most companies are required to file an annual return which includes information on the company's accounts. The COJ reported during the on-site visit that there has not been any regular supervision of these obligations during the review period. Enforcement actions are rarely taken against companies who fail to file annual returns.

153. The 2013 Report recommended that Jamaica review the adequacy of the penalties provided under the relevant commercial laws to ensure their efficacy in deterring non-compliance. Jamaica's authorities were also recommended to review procedures for carrying out the enforcement actions to ensure compliance with filing and reporting obligations. The COJ has reported that they are in the process of fully amending the Companies Act, and that the adequacy of the penalties is one aspect being reviewed. In terms of reviewing the internal procedure to ensure compliance with filing and reporting obligations, Jamaican authorities have taken no actions. The availability of accounting information was supervised by the TAJ through their

9. Lewin on Trusts 17th Edition, p. 627, 1198 and 1199.

regular audit programme and filing of annual tax returns. Although the tax filing compliance rates are low, it appears that TAJ's audit programme is comprehensive and ensures to a large extent the availability of accounting information for all relevant entities and arrangements subject to supervision by the TAJ, see section below on *Tax Administration Jamaica*. Therefore, the recommendation from the 2013 Report remains applicable and it has been slightly amended to reflect the current situation.

Tax Administration Jamaica

154. Over the current review period, the availability of accounting records, including underlying documentation, has been monitored by the TAJ under its regular surveillance programme. The TAJ is of the view that the penalties contemplated in the RAA provide deterrence against non-compliance of the record keeping requirements.

155. The TAJ has reported that in the course of their inspections, amongst the documents they examine are the financial statements and accounting records maintained by the entity. The TAJ also verifies in the course of these inspections, that the minimum retention periods for accounting records, as well as maintenance of underlying documentation, are complied with. The TAJ further indicated that they have never encountered cases in which accounting records and underlying documentation were not kept or kept for less than the retention period.

156. The audit process conducted by the TAJ is intended to determine the accurate tax liability of the taxpayer. The process begins with an interview with the taxpayer, in which the findings from the pre-examinations are discussed. After this interview, the auditor schedules a tour or site inspection in the facilities of the taxpayer. During this session the auditor should make queries to determine the levels of internal control, nature of the business as observed versus what was verbally represented in the interview, documents used to record business transactions and the audit trail from the start of the transaction to the returns, deviations from the norms of business activities, significant fixed assets and how they are being used. During these audits, the TAJ reviews the physical files to sight the actual records.

157. Over the review period, the number of audits performed by the TAJ is as follows:

Year	Number of onsite inspections
1 April 2013-31 March 2014	846
1 April 2014-31 March 2015	966
1 April 2015-31 March 2016	944

158. In the course of performing on-site inspections, auditors reported finding a high level of compliance with accounting record requirements. In the case where breaches of obligations under the ITA and the RAA were found, the TAJ proceeded to impose the corresponding fines. The total amount of penalties imposed by the TAJ over the current review period is as follows:

Year	Total amount of fines imposed (JMD) ¹
1 April 2013-31 March 2014	9 524 203 983
1 April 2014-31 March 2015	8 326 546 937
1 April 2015-31 March 2016	16 267 543 429

Note: 1. The fines imposed over the review period are shown as aggregate numbers. Not all fines relate directly to non-compliance with requirements to maintain accounting information.

The TAJ further advised that during the current review period it also conducted desk audits in which compliance with record keeping requirements were also verified. On average, the TAJ conducts 520 of these desk audits per year.

159. The TAJ has monitored the compliance of the provisions introduced in 2013 through the audit process. The availability of accounting records, including underlying documentation, is verified in the course of audit process for all relevant entities and arrangements. In addition, the TAJ also verifies that such records are kept for the minimum retention period. Consequently, the monitoring recommendation from the 2013 Report is removed.

Availability of accounting information in practice (Peer Experience)

160. The 2013 Report indicated that in the 2009-11 review period, Jamaica received two EOI requests in relation to accounting information. During the current review period, Jamaica received one request for accounting information relating to a company. The peers have not indicated any issue regarding the availability of accounting information during the current review period.

A.3. Banking information

Banking information and beneficial ownership information should be available for all account holders.

161. The 2013 Report concluded that element A.3 was in place and Compliant. All requests for banking information had been answered. Since the 2013 Report, the Banking Act was repealed by the Banking Services Act 2014. Deposit taking institutions, including banks, are now licensed under the

Banking Services Act. However, banks are still subject to the POCA and the POCA (MLP) 2007 Regulations.

162. The EOIR standard now requires that beneficial ownership information (in addition to legal ownership) in respect of accountholders be available. Beneficial ownership information is available to some extent through the concepts of “customer identification” and “evidence of identity” in the AML-related regulations. These concepts cannot ensure that beneficial ownership information is available in accordance with the international standard. Accordingly, Jamaica should take appropriate measures to ensure that beneficial ownership information is available in line with the standard.

163. The compliance by banks of the requirements to maintain beneficial ownership information of their accountholders is subject to supervision and enforcement by the BOJ. Jamaica supervised five banks during the current review period. Issues on CDD and KYC were raised in all of these supervisions, yet the BOJ did not impose any monetary penalties.

164. During the previous review period Jamaica had no issues in respect of the availability of bank information. During the current review period Jamaica received one request for banking information and Jamaica was able to provide the information.

165. The new table of determinations and ratings is as follows:

Legal and Regulatory Framework		
Determination: The element is in place, but certain aspects of the legal implementation of the element need improvement.		
	Factors underlying recommendations	Recommendation(s)
Deficiencies Identified in the Legal and Regulatory EOIR Framework	The concept of beneficial ownership information is not defined for CDD purposes. However, beneficial ownership information is available to some extent through the concepts of “customer identification” and “evidence of identity” in the AML-related regulations. These concepts cannot ensure that the bank will have to satisfy identifying the individual that exercises ultimate effective control before identifying the senior managing official.	Jamaica should take appropriate measures to ensure that beneficial ownership information is available in line with the standard for all account-holders.

Practical implementation of the standard		
	Factors underlying recommendations	Recommendation(s)
Deficiencies Identified in the Implementation of EOI in Practice		
Rating: Partially Compliant		

ToR A.3.1: Record-keeping requirements

166. The 2013 Report noted that Regulation 14 of the POCA (MLP) 2007 Regulations requires that banks licensed under the Banking Act are required to keep identification records and transaction records for a period of five years commencing from the date on which the relevant financial business was completed or the business relationship terminated, whichever occurs later.

167. Since the 2013 Report, the Banking Act was repealed by the Banking Services Act 2014. Deposit taking institutions, including banks, are now licensed under the Banking Services Act. Banks are still subject to the POCA and the POCA (MLP) 2007 Regulations. Banks are also subject to the Terrorism Prevention Act 2010 and the Terrorism Prevention (Reporting Entities) Regulations 2010.

168. Regulation 14 of the POCA (MLP) 2007 Regulations was amended in 2009 for information to be kept for a period of seven years commencing from the date on which the relevant financial business was completed or the business relationship terminated, whichever occurs later. A bank that fails to comply with the record keeping requirements commits an offence and as is liable upon conviction: (i) before a Resident Magistrate to a fine not exceeding JMD 3 million (approximately 23 300); (ii) before a Circuit Court to a fine.

Beneficial ownership information on account holders

169. The 2016 ToR specifically require that beneficial ownership information be available in respect of all account holders. The term “ultimate natural beneficial owner” is defined in the third schedule of the Banking Service Act in the following manner: “ultimate natural beneficial owner, who, whether alone or jointly with another, exerts control or effective control and if no individual exerts control or effective control through ownership interests, identify the individuals exerting control or effective control through other means or in their absence, the directors or officers, or both.” Jamaica explained that although this concept is not strictly related to CDD and is used in the Banking Services Act as part of the matters that the Supervisory Committee look at when

determining whether to grant a license to operate as a deposit taking institution or to function as a financial holding company, this is the same definition used when requiring regulated entities to conduct CDD. However, it does not appear that this definition is the one used by banks when conducting CDD.

170. While the AML laws do not have a similar explicit definition of beneficial ownership, the POCA (MLP) Regulations 2007 provides a definition for “customer identification” and “evidence of identity”, which in combination set out all the information on beneficial ownership that needs to be kept for relevant entities and arrangements.

171. Under Regulations 7 and 13, customer information includes the applicant for business’s full name, current address, taxpayer registration number or other reference number, date and place of birth. Other specific information is required in cases in which transactions involve a settlement, trust or other type of legal arrangement; a person other than an individual; and a body corporate:

- Settlement, trust or other type of arrangement: (i) identity (as the case may require) of the settlor, legal owner or other person who exercises effective control of the legal arrangement, and each beneficiary under the legal arrangement, including the ultimate beneficial owners of the property concerned in the arrangement; and (ii) legal status of the arrangement and the provisions regulating the power to bind the parties involved.
- Person other than an individual: (i) identity of the individual who exercises ultimate effective control over the person; (ii) in any case where an individual who exercises ultimate effective control over that person cannot be identified, the identity of the senior manager who makes or implements decisions with respect to the activities of that person.
- Body corporate: (i) identity of each director and shareholder (if any) holding ten percent or more of the voting rights in the body corporate; (ii) address of the body corporate; (iii) the provisions regulating the power to bind the body corporate; and (iv) evidence of incorporation is provided.

172. In order to verify the identity of the beneficial owner, the following measures should be taken: (i) identity of the natural persons who ultimately have a controlling ownership interest; (ii) when in doubt of the person exercising control through ownership interest, identity of the natural persons (if any) exercising control through other means; and (iii) when no natural person can be identified, the identity of the natural person who holds the position of senior managing official. Pursuant to the standard, the information indicated above under (i)-(iii) are not alternative options, but cascading measures, with each to be used where the previous one has been applied and no beneficial

ownership was identified. Jamaican authorities have advised that in the case of companies and partnerships, regulated entities will have to obtain information for the following two categories: (i) persons other than an individual; and (ii) body corporate.

173. The concept of “ultimate effective control” is defined in the Regulations. Pursuant to Regulation 13 of the Terrorism Prevention (Reporting Entities) Regulations 2010, a person is regarded as exercising ultimate effective control if: (i) the person is in a position to determine the policy of the entity or make the final determination as to decisions to be made; or (ii) the person by himself or together with a connected person would be in a position to control 51% or more of the voting power in the entity or would hold interest in 51% or more of the issued shares of the entity. The Regulations further defines “connection” to include holding companies, subsidiaries, companies over which there is control and groups of companies, covering for situations in which control is exercised through a chain of ownership. This definition by itself does not ensure that all natural persons exercising ultimate effective control can be identified according to the standard.

174. The first category on persons other than an individual does not meet the standard. In addition, the wording in the POCA (MLP) Regulations 2007 seem to give the regulated business an option to identify the individual who exercises ultimate effective control or in cases in which this individual cannot be identified, the senior manager who make or implements decisions with respect to the activities of the company. It is not clear that the regulated business will have to satisfy identifying the individual that exercises ultimate effective control before identifying the senior managing official as there is no explanation of what constitutes a “cannot be identified.” In addition, this category does not contemplate the element of doubt indicated in the measures described above.

175. The second category on body corporate does not fill in the gaps left from applying the first category, as it only requires that the regulated business identifies the directors and shareholders that hold ten percent or more of the voting rights.

176. Under Regulation 13 of the POCA (MLP) 2007 Regulations, evidence of identity is satisfactory if:

- it is reasonably capable of establishing that the applicant for business is the person he claims to be;
- the person who obtains the evidence is reasonably satisfied, that such evidence establishes the fact that the applicant for business is the person he claims to be; and
- the aforementioned customer information is obtained by the regulated businesses.

177. The POCA (MLP) 2007 Regulations requires that the regulated business should be satisfied that the applicant for business is the person he claims to be. The BOJ has reported that these processes are verified through cross checking the information received from customers with other financial institutions in the regulated sector, including overseas databases for foreign customers.

178. Regulation 7(1)(c) of the POCA (MLP) 2007 Regulations requires regulated businesses to review customer information with a view to ensuring its accuracy and that it is updated at least once every seven years or more frequently as warranted by the risk profile of the business relationship. Regulated businesses must update customer information whenever there is any doubt about the veracity or adequacy of the previously obtained customer information. Further, Regulation 7A(3)(b) of the POCA (MLP) 2007 Regulations requires, *inter alia*, regulated businesses to conduct reasonable due diligence of every transaction so as to verify the identity of the applicant for business. As such, in practice, customer identity information is updated more often than every seven years. This is verified through the BOJ in the course of their inspections when examining the steps taken in regards to high risk customers requiring enhanced due diligence. Jamaica should monitor that the rule providing for updates every seven years does not prevent Jamaica from keeping adequate, accurate and timely information on the beneficial ownership of relevant entities and arrangements.

179. As for records on transactions, under Regulation 14 of the POCA (MLP) 2007 Regulations, evidence of identity must be kept for a period of seven years commencing from the date on which the relevant financial business was completed or the business relationship terminated, whichever occurs later. A bank that fails to comply with the record keeping requirements commits an offence and is liable upon conviction: (i) before a Resident Magistrate to a fine not exceeding JMD 3 million (approximately 23 300); (ii) before a Circuit Court to a fine.

180. Regulation 12 of the POCA (MLP) 2007 Regulations allows regulated business to rely on third-parties to undertake the CDD measures under Regulations 7 and 11 of the POCA (MLP) 2007 Regulations. The information can be transmitted by the third party to the regulated business “as soon as is reasonably practicable after the introduction or without delay upon request by the regulated business”. This wording does not convey immediacy and provides for an option to the regulated business. In addition, the Jamaican regulated business is not taking steps to satisfy itself that copies of identification or other relevant documentation relating to the CDD will be made available from the third party upon request without delay. Although no issues were identified in practice, Jamaica is recommended to monitor the implementation of the Regulation and ensure that the information is immediately

obtained and that the regulated business will be provided with the CDD information from the third party upon request without delay.

181. Regulated businesses relying on information from third parties are required to satisfy itself that the introducing institution is regulated and supervised. Further Regulation 11(6) of the POCA (MLP) 2007 Regulations provides that third parties must (i) be based or incorporated, or formed under the laws of a country in which there is in force at least AML laws equivalent to those set out at Part V of the POCA; (ii) be a regulated business if that person was situated in Jamaica; and (iii) acts in the course of a business in relation to which a foreign regulatory authority exercises regulatory functions and controls. Finally, paragraph 72 of the BOJ Guidance Notes on cases requiring third party evidentiary support stipulate that the ultimate responsibility for CDD measures should remain with the regulated business relying on the third party.

182. Under regulation 14, an AML obligated person may rely on certain third parties to undertake the required CDD measures as well as ongoing monitoring, however the AML obligated person remains liable for any failure to apply such measures. Where a third party is relied on, the obligation to retain records for a period of seven years is imposed on the third party, rather than the Jamaican AML obligated person.

183. Beneficial ownership information is available to some extent through the concepts “customer identification” and “evidence of identity” in the AML-related Regulations. However, as indicated above, these concepts cannot ensure that the bank will have to satisfy identifying the individual that exercises ultimate effective control before identifying the senior managing official. Accordingly, Jamaica should take appropriate measures to ensure that beneficial ownership information is available in line with the standard for all account-holders.

Enforcement provisions to ensure availability of banking information

184. Jamaica’s banking sector is formed of seven banks. They are supervised by the BOJ and subject supervision on their compliance with AML requirements, including the requirements to identify the beneficial owner of their customers.

185. During the peer review period, five of the seven banks were subject to an AML focused on-site inspection]. The AML Supervision Division within the BOJ is dedicated fully to AML compliance. It currently has six officials, all of which are working in a new three-year risk-based approach programme to supervise deposit taking institutions.

186. BOJ's supervision focuses on high-risk entities which obtain greater supervisory scrutiny. Through this programme the BOJ checks compliance with CDD and KYC policies. The BOJ reported that banks are largely able to provide identification information although issues on CDD and KYC were raised in all of the inspections carried out. This is verified through the use of a checklist developed for this purposes.

187. Although appropriate sanctions are in place in Jamaica's legal framework to enforce compliance of these obligations, none were enforced during the review period. BOJ has reported that up to date, the approach has been to issue warnings and recommendations to the banks. As at 20 January 2017, they had conducted on-site inspections in five banks and issued two reports with recommendations, both of which contained issues on CDD and identification requirements. BOJ follows-up with the banks, usually through written communications and on occasions through telephone conversations, to ensure that recommendations are being addressed. A subsequent on-site verification is conducted to determine how were the recommendations addressed and also to identify new AML/CFT deficiencies or merging issues, if any.

188. Jamaica has reported that remedial actions have shown improvements in compliance by the regulated entities with AML obligations in general, which includes KYC and CDD. However, there is room for improvement in respect of the verification processes to ensure the quality of the information, and also regarding effective enforcement, through the application of monetary penalties for regulated entities that fail to comply with the obligations to keep beneficial ownership information.

Availability of bank information in practice

189. The 2013 Report found that Jamaica had successfully responded to all of its requests for banking information in the period 2009-12. In the current review period, Jamaica received one request for bank information which was replied to the satisfaction of the treaty partner.

Part B: Access to information

190. Sections B.1 and B.2 evaluate whether competent authorities have the power to obtain and provide information that is the subject of a request under an EOI arrangement from any person within their territorial jurisdiction who is in possession or control of such information; and whether rights and safeguards are compatible with effective EOI.

B.1. Competent authority’s ability to obtain and provide information

Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information).

191. The 2013 Report concluded that Jamaica had adequate powers to obtain and provide information in response to an EOI request. However, at the time of the 2013 Report, Jamaica had just introduced amendments to its legal framework to exclude a domestic tax interest requirement and those amendments had not been tested in practice during the review period. As a result, Jamaica was recommended to put in place appropriate procedures to implement its access powers and monitor their effectiveness.

192. Since the 2013 Report, there have been no changes to the legal framework for the access of information in Jamaica. Moreover, Jamaica has put in place appropriate procedures to implement the legislation that eliminated domestic tax interest for EOI purposes.

193. In the current review period, Jamaica received six EOI requests. One request dealing with bank information was answered with the court production order procedure under section 17G of the RAA. The remaining requests were answered with information held by other public institutions or by TAJ itself.

194. The new table of determinations and ratings is as follows:

Legal and Regulatory Framework
Determination: The element is in place.
Practical implementation of the standard
Rating: Compliant

***ToR B.1.1: Ownership, identity and bank information and
ToR B.1.2: Accounting records***

195. The 2013 Report found that bank and accounting information can be accessed by the competent authority by requesting a production order from the Revenue Court under s. 17G of the RAA while all other information (e.g. ownership, identity and accounting information of companies, partnerships and trusts) can be accessed directly from the information holder through a written notice under s. 17IA of the RAA (see 2013 Report, paras. 216-228 for further details).

196. Beneficial ownership information is kept by financial entities regulated by BOJ and FSC. TAJ can access this information for EOI purposes under s. 17G of the RAA.

197. Since the 2013 Report, there have been no changes in respect to the judicial procedure established in s. 17G of the RAA regarding the access of bank and accounting information by the competent authority or the written notice procedure in s. 17IA of the RAA to access information directly from the holder of the information.

In practice

Bank, accounting and beneficial ownership information

198. During the review period, Jamaica only needed to use the court production order procedure set forth in s. 17G of the RAA in one instance for EOI purposes, to satisfy a request for bank information. There was also a request concerning accounting information of a company, but the court order production was not used because the information was available within TAJ.

199. TAJ has not used this procedure to obtain beneficial ownership information. TAJ has only provided beneficial ownership in one case and this was obtained from the Maritime Authority. The Maritime Authority keeps legal ownership information and in this case, the legal owner of the company was also the beneficial owner.

200. When s. 17G is used for EOI purposes, the General Manager of the Large Taxpayer Office of TAJ, under which the EOI Unit is housed, will direct a letter to the Special Enforcement Intelligence Division of TAJ. This letter contains the identification of the person for which the information is sought, a description of the required information, and a statement indicating that the information is required for EOI purposes under a valid international agreement.

201. In the one request received by Jamaica for banking information during the review period, the account holder was identified by its full name. Although Jamaica has not received a request where the name of the account-holder was not provided, TAJ indicated that a bank account number or a bank card number should satisfy the identification requirements in Jamaica's law, as there are no specific legal provisions requiring that a name is provided. It is recommended that Jamaica monitors that in practice, the identification requirement can be met with a bank account number or a bank card number. This in-text recommendation will be listed in Annex 5 *List of in-text recommendation* of this report.

202. The Special Enforcement Intelligence Division of TAJ handles the applications for a production order under s. 17G of the RAA. Applications consist of an affidavit which includes the information that is required and a statement from the Special Enforcement Intelligence Division of TAJ that the information is required to satisfy a valid request under an international agreement in force. This statement is necessary to circumvent the obligation to require the information from the taxpayer first. These applications are made *ex parte* and the information holder does not participate in the court proceedings. These cases are handled by the Supreme Court. Production orders have been issued diligently in the great majority of cases, which includes mainly cases in which information is sought for domestic purposes. The approximate time in which productions orders are issued is seven days.

203. In relation to the one request received over the review period, the Supreme Court has not requested clarification before issuing the order, nor has it declined a request from TAJ to obtain information in possession of a financial institution.

204. In the application to the Supreme Court, TAJ usually requests that a 10-day period be given to the information holder to supply the information. This is the common practice when accessing information through section 17G of the RAA for both domestic and EOI purposes. There is nothing in the law regarding the time period that the information holder has to supply the information. This will depend strictly on the court production order. TAJ has reported that the Judge in Chambers usually dictates a term ranging between 7 and 21 days for the obliged person to provide the information.

205. Once the court order is issued, TAJ serves it on the information holder. Information holders that fail to provide the required information will be subject to the enforcement measures further detailed in this section.

206. During the current period under review, Jamaican authorities did not have difficulties to obtain information through the judicial procedure established in s. 17G of the RAA in relation to the one request was received. In addition, peers have not raised any issue in this regard.

All other information

207. TAJ can access any information to administer or enforce a relevant law from the entity itself or a third party through section 17IA of the RAA. International tax agreements¹⁰ are incorporated into domestic law. Consequently, the TAJ can use the notification procedure in section 17IA of the RAA to administer or enforcement international tax agreements.

208. TAJ reported that no EOI requests received by Jamaica required the use of section 17IA of the RAA during the review period. However, this provision has been used for domestic tax purposes in three instances since its entry into force.

209. The Special Enforcement Intelligence Division is in charge of preparing and serving the notice to the person in possession of the information. The Jamaican competent authority indicated that in order for the Special Enforcement Intelligence Division to produce the notice the competent authority would provide details of the requested information, indicating that it would be exchanged under a valid EOI request. A copy of the request received from the treaty partner would not be disclosed. The Special Enforcement Intelligence Division informed that the notice served to the information holder would not indicate that the information is required for EOI purposes.

210. The information holder has 30 business days to provide the information and/or documents in the manner prescribed by TAJ. A person who (i) provides incomplete information; (ii) provides information beyond the time required; or (iii) fails to provide the information, commits an offence and is liable to the penalties further detailed in this section.

211. Jamaica did not require using the notification procedure under section 17IA of the RAA to respond to any of the requests. In the case where

10. International tax agreement is defined in Jamaican law as “a treaty, convention or other international agreement that is in force and to which Jamaica is a party, the purpose of which is to provide for the exchange of information for tax purposes or to afford relief from double taxation.”

accounting information was requested, information was available within TAJ. The four remaining requests, including the one on beneficial ownership information of a boat, the information was held within TAJ or obtained from other governmental agencies.

ToR B.1.3: Use of information gathering measures absent domestic tax interest

212. Before the 2013 RAA amendments, Jamaica relied on two legal provisions (s. 70 ITA and s. 17G of the RAA) to allow its competent authority to access information for EOI purposes. However, one provision could not be used to obtain information from financial institutions and similar entities, and the other provision, which was used to obtain information from financial institutions, was restricted by the requirement that the person to which the required information related to had to be under examination by TAJ. The latter requirement was considered tantamount to a domestic tax interest and, as such, was identified as an obstacle to the effective exchange of information. Jamaica amended its RAA to address the deficiency identified, by removing the domestic tax interest requirement, and therefore, allowing for powers to be exercised irrespective of whether the information was needed to Jamaica's own domestic purposes (see 2013 Report, paras. 219-226 for further details).

213. Considering that these amendments were only introduced after the 2009-12 review period, the 2013 Report recommended that Jamaica put in place appropriate procedures to implement the access powers provided under the amended RAA and monitor its effectiveness. Over the current review period, the Jamaican competent authority received one EOI request for which bank information was sought and where Jamaica has no domestic interest. In this one case, the Jamaican authorities had no difficulties to access the banking information requested by the EOI partner in that case, despite not needing that information for domestic purposes.

ToR B.1.4: Effective enforcement provisions to compel the production of information

214. It is an offence under s. 17G of the RAA to refuse to comply with an order or to knowingly provide false or misleading information in purported compliance with such order. A person convicted of such an offence is liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding JMD 2 million (approximately USD 15 552).

215. TAJ indicated that there has never been a case in which the information holder requires an extension to supply the information. In order to request an extension, the information holder will need to apply in writing

to the Commissioner General for the extension of time, stating the reasons. The extension is granted at the discretion of the Commissioner General. Once granted, the applicant would need to apply immediately to the court requesting that it be set aside for the time in the extension granted by the Commissioner General.

216. Supplying incomplete information, information beyond the established time or failing to provide information under s. 17IA of the RAA is an offence. A person convicted by a Resident Magistrate Court of such offence would be liable on the first offence to a fine not exceeding JMD 2 million (approximately USD 15 552) or imprisonment for a term not exceeding one year or both the fine and the imprisonment. For a second or subsequent offence, the person would be liable to a fine not exceeding JMD 5 million (approximately USD 38 880) or imprisonment for a term not exceeding five years or both such fine and imprisonment. If indicted in a Circuit Court (criminal jurisdiction of the Supreme Court), the person would be liable to a fine or imprisonment for a term not exceeding ten years or both to the fine and the imprisonment.

217. The Special Enforcement Intelligence Division is the authority in charge of prosecuting the offences under s. 17G and s. 17IA of the RAA. The Special Enforcement Intelligence Division prepares the complaint which is brought before the Resident Magistrate Court or the Circuit Court, as the case may be. Where these proceedings are initiated, it is expected that they be concluded within three to four months of the raising of the formal complaint.

218. Under s. 17J of the RAA, Jamaican authorities have powers to search and seize information with the approval of a judge from the Revenue Court. This is possible when a taxpayer fails to comply with any requirement of a relevant law, including the furnishing of information or the production of any documents or records and any notice served on that taxpayer by the Commissioner or any requirement made by the Commissioner in relation to the furnishing of information, the production of documents or records or the payment of any such tax. However, Jamaica has informed that search and seize powers cannot be used for EOI purposes.

219. During the 20-12 review period, these enforcement powers were not put to practice in respect of EOI at the time as information could only be obtained for domestic purposes. Moreover, section 17IA was only enacted after the 2009-12 review period. During the current review period, the enforcement powers under s. 17G were not used. In the one request in which bank information was requested, enforcement powers were not exercised. The Judge in Chambers that issued the court production order did not specify a timeframe for the bank to supply the information. The bank provided the information within ten months. Since no timeframe was provided, it could not be determined that the bank failed to comply with the order and no fine

could be imposed. Jamaica has reported that in all other court production orders issued for domestic purposes the Judge in Chambers always provided a specific timeframe to supply the information. In those cases, the specified timeframe ranged between seven and 21 days. Jamaica should monitor that enforcement powers are exercised when a financial institution is required to provide information under a production order. This in-text recommendation will be listed in Annex 5 *List of in-text recommendation* of this report.

220. The enforcement powers under s. 171A were not required to be used in the context of EOI during the review period as no requests were received that required access to information under s. 171A. However, these enforcement powers had to be applied for domestic purposes in three cases, resulting in two convictions. The case without conviction has been set for trial. In addition, in all three cases, the records were produced.

ToR B.1.5: Secrecy provisions

Bank secrecy

221. There are no limitations on the ability of Jamaica's tax authorities to obtain information held by a bank or other financial institution for either civil or criminal tax purposes in response to an EOI request. Accordingly, the 2013 Report concluded that the scope of bank secrecy is in line with the standard. Since then, Jamaica's legal framework has been amended. The Banking Services Act was enacted and it repealed the previous Banking Act. The Banking Services Act entered into force on 30 September 2015. However, only minor changes were made to the provision on bank secrecy and Jamaica's access powers continue to prevail over the bank secrecy provisions.

222. Section 134 of the Banking Services Act contains provisions for protecting secrecy or confidentiality of information held by banks on their customers. The officers of the licensees, agents or any person having access to information on customers are prohibited from giving, divulging or revealing any information regarding the money or other relevant particulars of the account of the customer. A person who discloses this information commits an offence and is liable to one of the following: (a) on summary conviction in a Resident Magistrate's Court to a fine not exceeding JMD five million or to imprisonment not exceeding a term of one year; (b) on conviction in the Supreme Court to a fine or imprisonment for a term not exceeding five years or to both such fine and imprisonment. Liability to conviction for breach of the secrecy requirements under s. 134 may be discharged by payment of a penalty of JMD 7 500 000 (approximately USD 58 525).

223. The above stated secrecy rule is overridden if one or more of the circumstances described in the Ninth Schedule of the Banking Services Act arise. These include:

- If the Minister directs in writing the disclosure to a foreign government or agency of such government where there exists between Jamaica and such foreign government an agreement for the mutual exchange of information and the Minister considers it in the public interest that such disclosure be made;
- If the disclosure is permitted or required under another enactment; and
- If the disclosure is required by virtue of an order of the court.

224. The powers to access banking information under section 17G of the RAA require that a court production order be issued and prevail over the banking secrecy provisions provided under the relevant act. In practice, these powers have been used in the one case where banking information has been requested for EOI purposes and no issues with banking secrecy have arisen. No concerns in respect of secrecy provisions were raised by peers.

Professional secrecy

225. The 2013 Report concluded that legal professional privilege in Jamaica was line with the standard. In Jamaica legal professional privilege can be broken down into two types: (i) litigation privilege which applies when the legal proceedings are adversarial (not applicable to non-adversarial and/or investigative); and (ii) legal advice privilege which applies to communications related to the giving and receiving of legal advice in the relevant legal context but not extensive to situations where the attorney is acting in a capacity other than an attorney-at-law (e.g. director of a company).

226. There has been no change in the legal and regulatory framework of legal professional privilege since the 2013 Report. Jamaica has not had to collect information from lawyers to respond to EOI requests during the review period.

B.2. Notification requirements, rights and safeguards

The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information.

227. The 2013 Report concluded that the rights and safeguard that apply to persons in Jamaica were compatible with effective exchange of information. At the time of the 2013 Report, Jamaica had just introduced amendments to its legal framework to remove a requirement equivalent to the prior notification of taxpayer in the case of access to banking information. More

specifically in July 2013, Jamaica removed the requirement, where there was a request for information arising from an international tax agreement, for the Commissioner General of TAJ to first request the information directly from the taxpayer before applying to the Court for the production order to compel a third party information holder. These amendments were introduced after the 2009-12 review period hence untested in practice. Consequently, the 2013 Report contained a recommendation for Jamaica to put in place appropriate procedures to implement the exceptions contained in section 17G(4A) of the amended RAA and ensure that such exceptions can be exercised without obstacle by the competent authority.

228. In the current review period, Jamaica exercised the exception to notify the taxpayer when obtaining bank information under section 17G(4A) in one case. Appropriate internal procedures are in place to apply section 17G(4A) when the information is required to respond to an EOI request. Accordingly, the recommendation from the 2013 Report has been removed.

229. The 2016 ToR have introduced a new requirement where an exception to notification has been granted – in those cases there must also be an exception from time-specific post-notification. Jamaica’s law does not require post notification; and therefore the change made in 2016 ToR did not have an impact in this review.

230. The new table of determinations and ratings is as follows:

Legal and Regulatory Framework		
Determination: The element is in place.		
Practical implementation of the standard		
	Underlying Factor	Recommendation
Deficiencies identified in the implementation of EOIR in practice		
Rating: Compliant		

ToR B.2.1: Rights and safeguards should not unduly prevent or delay effective exchange of information

Notification

231. The 2013 Report noted that Jamaica amended s.17G of the RAA to include a provision that allows the Commissioner not to make any prior request to the taxpayer where information sought under s. 17G of the RAA (namely bank information) relates to an international tax agreement.

232. Since the 2013 Report there have been no changes to s.17G of the RAA. During the current review period the exception contained in s.17G has been applied in one case in which bank information was requested by a treaty partner. TAJ applied properly the exception under s.17G and the person that was subject of the request (i.e. the taxpayer under investigation by the requesting jurisdiction) was not asked to provide information. Consequently, the person was not notified.

233. As explained in section B.1., the procedure for obtaining a production order under s.17G is handled by a Higher Court and is usually issued diligently, in approximately seven days in the great majority of cases. In the specific case in which the production order was used for EOI purposes, there were no delays in obtaining such order.

Other rights and safeguards

234. There are no specific provisions in the RAA in relation to the right to object or appeal from decisions concerning the access to information for EOI purposes. However, there is a general provision that a taxpayer can go through the Civil Proceedings in the Supreme Court and apply for a judicial review to seek redress or remedy from actions of TAJ. Under the judicial review procedure, the court is empowered to grant a *writ of certiorari*, for quashing or prohibiting unlawful acts or a *writ of mandamus*, for requiring the performance of a public duty, including a duty to make a decision or determination.

235. Under s.56(2) of the Civil Procedure Rules, the application may be made for by a person which has sufficient interest in the subject matter of the application and this includes a person who has been adversely affected by the decision which is the subject of the application because the public authority has acted *ultra vires*, outside the scope of its statutory power or in an irrational or disproportionate manner. This means that the person who is the object of an EOI request and the person holding the information are competent to make such an application. TAJ informed that if a person was to resort to the judicial review procedure, information would still have to be provided within the timelines indicated in the production order or the TAJ's written notice for production of information unless the court has granted a suspension or derogation of the court production order/notice for production of information.

236. Pursuant to s.56(6) of the Civil Procedure Rules, persons who are seeking judicial review must do so promptly and in any event within three months from the date when the grounds for the application first arose. Upon the hearing of the matter, the court can offer several remedies including quashing the decision of TAJ. Hearings do not take place in open court but

only made to a judge in chambers. Either party may then appeal to a higher court. The matter could go all the way to the Judicial Committee of the Privy Council. There is no stipulated timeframe for the court to arrive at a decision.

237. TAJ has reported that a typical review proceeding can take between six months and one year, depending on how far the appeal is taken. The application for a judicial review does not prevent EOI from happening. For this, the applicant would have to simultaneously apply for an injunction barring the Commissioner General from exchanging information. In practice, there have not been any requests for judicial review in relation to EOI cases and the peers did not raise any issue in this respect.

Part C: Exchanging information

238. Sections C.1 to C.5 evaluate the effectiveness of Jamaica’s EOI in practice by reviewing its network of EOI mechanisms – whether these EOI mechanisms cover all its relevant partners, whether there were adequate provisions to ensure the confidentiality of information received, whether it respects the rights and safeguards of taxpayers and third parties and whether Jamaica could provide the information requested in an effective manner.

C.1. Exchange of information mechanisms

Exchange of information mechanisms should provide for effective exchange of information.

239. The 2013 Report concluded that Jamaica’s network of EOI mechanisms was “in place” and was rated Largely Compliant. Jamaica received a recommendation to put in place appropriate procedures to implement the 2013 amendments made to the RAA and monitor their effectiveness. In 2013, Jamaica had 11 DTCs and 7 TIEAs and was also a signatory to the CARICOM Multilateral Tax Treaty. Whilst the 2013 Report identified some issues with some bilateral agreements entered into by Jamaica, these were considered minor issues and did not warrant a downgrade of the determination from “in place”.

240. Following the 2013 Report, Jamaica entered into one new TIEA with Brazil and one DTC with Mexico, bringing the total of bilateral instruments signed to 20, covering 18 jurisdictions through 12 DTCs and eight TIEAs. In addition, on 1 June 2016, Jamaica signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended (“the Multilateral Convention”). The Multilateral Convention addresses any remaining concerns in relation to Jamaica’s treaties that contain non-standard provisions (e.g. Germany), as both Jamaica and the treaty partners are now parties to the Multilateral Convention. Jamaica is in the process of completing its domestic procedures for the ratification the Multilateral Convention.

241. During the current review period Jamaica received six EOI requests and none of its treaty partners have raised issues regarding the TAJ’s application of the foreseeable relevance standard.

242. Neither Jamaica’s EOI instruments nor its domestic law exclude the possibility of making and responding to group requests. Jamaica has not received group requests or requests that referred to several taxpayers. Jamaica’s competent authority advised that it is in a position to process group requests. In such circumstances, the competent authority would need to receive some information identifying the group, such as banking account numbers, a tax identification number or other identifiers that may be available depending on the case.

243. The new table of determinations and ratings is as follows:

Legal and Regulatory Framework		
Determination: The element is in place.		
Practical implementation of the standard		
	Underlying Factor	Recommendation
Deficiencies identified in the implementation of EOIR in practice		
Rating: Compliant		

ToR C.1.1: Foreseeably relevant standard

244. Exchange of information mechanisms should allow for exchange of information on request where it is foreseeably relevant to the administration and enforcement of the domestic tax laws of the requesting jurisdiction. The 2013 Report found that Jamaica’s network of DTCs generally used the word “necessary” in lieu of “foreseeably relevant”. However, the term “necessary” is recognised in the commentary to Article 26 of the *OECD Model Tax Convention* as allowing for the same scope of exchange as does the term “foreseeably relevant” and Jamaican authorities have confirmed that they follow this interpretation when applying DTCs. Similarly, Jamaica’s TIEAs generally followed the *2002 Model Agreement on Exchange of Information on Tax Matters*.

245. The 2013 Report found that all but the DTC with Germany met the “foreseeably relevant” standard. This agreement provides for exchange of information that is “necessary” for carrying out the provisions of the agreement, but does not specifically provide for EOI in the administration and enforcement of the domestic laws. However, given that Jamaica is a signatory

to the Multilateral Convention and is currently in the process of completing its internal procedures to complete the ratification process and that Germany is a party to the Multilateral Convention, they will be in a position to exchange information under this agreement in accordance with the standard once it enters into force in Jamaica following the expiration of a period of three months after the date of deposit of the instrument of ratification.

246. Since the 2013 Report, Jamaica has expanded its EOI network by entering into one new TIEA with Brazil, one DTC with Mexico and by becoming signatory to the Multilateral Convention, as mentioned above. All three instruments meet the “foreseeably relevant” standard.

Interpretation and application of the foreseeable relevance standard

247. Jamaica continues to interpret and apply its DTCs and TIEAs consistently with the standard of foreseeable relevance, as embedded in the commentary to Article 26 of the OECD Model Convention.

248. Jamaica’s competent authority has reported that all incoming requests are processed according to the guidelines provided in their EOI Manual which is based on the OECD’s *Manual on the Implementation of Exchange of Information Provisions for Tax Purposes*. In determining the validity of an incoming request, the Jamaican competent authority will verify that the request:

- fulfils the conditions set forth in the applicable exchange of information provision;
- has been signed by the competent authority of the treaty partner and includes all the necessary information to process the request;
- provides sufficient information to identify the taxpayer; and
- provides sufficient information to understand the request.

249. The competent authority confirmed that it has never declined a request on the basis of lack of foreseeable relevance. The Jamaican authorities indicate that in practice, if a request is considered unclear or incomplete, the competent authority would seek clarification or additional information from the requesting jurisdiction before declining to respond to it. Jamaica did not seek clarification from its EOI partners for any of the six requests received during the current review period. Jamaica validly declined to respond to one request received from a jurisdiction with which Jamaica does not have an EOI agreement.

250. Peers have not raised concerns regarding the interpretation of the foreseeable standard by the TAJ.

Group requests

251. None of Jamaica’s EOI agreements exclude the possibility of replying to a group request. Jamaica interprets its domestic law and its EOI agreement such that it can reply to a group request to the extent that it meets the foreseeable relevance as described in the 2012 update to the Commentary on Article 26 of the OECD Model Convention.

252. Jamaica is yet to receive or make a group request. In replying to or preparing a group request, the TAJ indicated it would verify that the foreseeable relevance standard is met, notably by establishing that there is a detailed description of the group (such as banking account numbers, tax identification numbers or other identifiers that may be available depending on the case) and the specific facts and circumstances that have led to the request.

ToR C.1.2: Provide for exchange of information in respect of all persons

253. The 2013 Report found that all but one of Jamaica’s agreements allow for exchange of information with respect to all persons. The agreement with Germany only provides for exchange of information for carrying out of the provisions of the agreement applicable to a resident in one of the Contracting States. However, given that Jamaica is a signatory to the Multilateral Convention and is currently in the process of completing its internal procedures to complete the ratification process and that Germany is a party to the Multilateral Convention, they will be in a position to exchange information under this agreement in accordance with the standard once it enters into force in Jamaica following the expiration of a period of three months after the date of deposit of the instrument of ratification.

254. The DTC entered into between Jamaica and Mexico and the TIEA entered into recently with Brazil since the 2013 Report allow for exchange of information with respect to all persons.

255. Article 1 of the Multilateral Convention provides that the parties to the Convention shall provide administrative assistance (covering exchange of information) whether the person affected is a resident or national of a party to the Convention or any other state. Accordingly, it is not restricted to certain persons nor does it preclude the application of the exchange of information provisions in respect to certain types of entities or arrangements. This article will be applicable once the Multilateral Convention enters into force for Jamaica, following the expiration of a period of three months after the date of deposit of the instrument of ratification.

256. Peers have not raised any issues in practice during the current review period.

ToR C.1.3: Obligation to exchange all types of information

257. The 2013 Report found that 10¹¹ of Jamaica’s EOI agreements contained provisions similar to Article 5(4) of the OECD Model TIEA, obliging the contracting parties to exchange all types of information (see 2013 Report, paras. 296-297 for further details). Treaties with all other jurisdictions¹² (other than the jurisdictions to the CARICOM Multilateral Tax Treaty) do not contain paragraphs similar to paragraphs 4 and 5 of Article 26 of the OECD *Model Tax Convention*, but the domestic laws of these treaty partners do not have any provisions limiting the exchange of information and consequently, Jamaica as well as all treaty partners were able to exchange all types of information. The 2013 Report also found that the CARICOM Multilateral Tax Treaty only met the standard with respect to five jurisdictions. Accordingly, Jamaica was recommended to take the necessary measures to bring the exchange of information article in this treaty to be in line with Article 26(5) of the OECD Model Tax Convention (see 2013 Report, paras. 297-299 for further details).

258. Jamaican authorities reported having made efforts to promote that the exchange of information article in the CARICOM Multilateral Tax Treaty be amended to fully conform to the internationally agreed EOIR standard. However, the CARICOM agreement has not been amended to date. Notwithstanding the above, since Jamaica’s last review, three signatories to the CARICOM, Dominica, Grenada and Saint Lucia, have amended their legislation to address the deficiencies in their domestic legislation and can now exchange all types of information. Moreover, both Jamaica and Saint Lucia are now parties to the Multilateral Convention and this means that they can exchange all types of information once the Convention enters into force.

259. Since the 2013 Report, most of the parties to the CARICOM Multilateral Tax Treaty made legal changes that allowed for exchange of information to the standard. The only exception where exchange of information is still not to the standard is with Trinidad and Tobago due to serious deficiencies regarding access powers of the competent authority.¹³ Guyana has not yet been assessed by the Global Forum. Information is not available as regards Guyana’s competent authorities’ powers to access banking information and to obtain ownership, identity and accounting information

-
11. Denmark, Faroe Islands, Finland, Greenland, Iceland, Macau (China), Norway, Spain, Sweden, and United States.
 12. These countries include Canada, China, France, Germany, Israel and United Kingdom.
 13. As reviewed by the Global Forum in the Phase 1 Peer Review Report of Trinidad and Tobago, 2011.

for purpose of EOI. It is therefore not possible to confirm that the CARICOM Multilateral Tax Treaty with regard to Guyana meets the standard.

260. The two additional agreements that Jamaica has entered into since the 2013 Report, with Brazil and Mexico, do not contain any limitations concerning the exchange of all types of information. During the present review period, Jamaica exchanged different types of information, including ownership, accounting, real estate property records and bank information. No limitations were found in Jamaica's agreements and peers have not raised any issues in this respect.

ToR C.1.4: Absence of domestic tax interest

261. The 2013 Report identified that Jamaica's DTCs and TIEAs either contained language similar to that of paragraph 4 of Article 26 of the *OECD Model Convention* or, when this was not the case, the domestic legislation of the treaty partners did not require the presence of domestic tax interest for the purposes of exchange of information. The 2013 Report also found that in respect of Jamaica's CARICOM partners, a domestic tax requirement existed in the case of Dominica, Grenada and Trinidad and Tobago. Since the 2013 review, Dominica and Grenada have both amended their legislation to remove the domestic tax interest requirement. The situation remains the same in respect of Trinidad and Tobago. Guyana has not yet been assessed by the Global Forum. Information is not available as regards Guyana's competent authorities' powers to access banking information and to obtain ownership, identity and accounting information for purpose of EOI. It is therefore not possible to confirm that the CARICOM Multilateral Tax Treaty with regard to Guyana meets the standard.

262. The additional agreements that Jamaica has entered into since its last review also allow information to be obtained and exchanged even if not required for domestic tax purposes. In practice, no issue linked to domestic tax interest has arisen during the current review period and it is further confirmed by peer input.

ToR C.1.5: Absence of dual criminality principles

263. The 2013 Report did not identify any issues with Jamaica's network of agreements in respect of dual criminality and no issues arose in practice.

264. The EOI agreements concluded by Jamaica since the 2013 Report do not apply the dual criminality principle to restrict exchange of information. In practice, no issue linked to dual criminality has arisen during the present review period.

ToR C.1.6: Exchange information relating to both civil and criminal tax matters

265. The 2013 Report found that Jamaica’s network of agreements provided for exchange in both civil and criminal matters and no issues arose in practice.

266. The EOI agreements concluded by Jamaica since its last review provide for the exchange of information in both civil and criminal tax matters. Peers have not raised any issues in practice during the current review period.

ToR C.1.7: Provide information in specific form requested

267. The 2013 Report noted that Jamaica applies its EOI mechanisms consistent with the OECD Model Convention. It also noted that Jamaica can provide information in any form to the extent allowed under its domestic laws or administrative practice. The 2013 Report one EOI partner with a significant EOI relationship with Jamaica confirmed that Jamaica provided all information in the specific form requested. During the current review period, no peers raised concerns regarding Jamaica’s ability to provide information in a specific form. Further, the Jamaican competent authority indicated that it would accommodate the requesting jurisdiction’s needs in respect of the provision of information in a specific form. Jamaica has been able to provide information in the form requested by its partners during the current review period.

268. The agreements entered into since the 2013 Report also allow the parties to provide information in the specific form requested to the extent allowable under the requested jurisdiction’s domestic laws.

ToR C.1.8: Signed agreements should be in force

269. The 2013 Report noted that Jamaica had taken all steps necessary to bring into force most agreements it had signed. However Jamaica had not yet ratified the DTC protocols signed with Norway and Sweden and the TIEAs with Denmark, Faroe Islands, Finland, Greenland, Iceland and Macau, China.

270. Since then, Jamaica has ratified these agreements as well as the new DTC signed with Mexico (signed on 18 May 2016) and the TIEA signed with Brazil (signed on 13 February 2014).

271. In practice, once negotiations have been concluded, the Ministry of Finance will submit the draft EOI instrument to the Attorney General Chambers for a legal review. The draft is subsequently submitted to Cabinet for approval to sign. Jamaican authorities indicate that this process takes on average three to four months. Following Cabinet’s approval, the Minister of Finance will be notified that the signing can take place.

272. EOI agreements signed by the Minister of Finance generally come into force in Jamaica after signing and ratification by both Jamaica and its treaty partner. The Minister is not required to table EOI agreements before Parliament prior to their ratification.

Bilateral EOI Mechanisms

A	Total Number of DTCs/TIEAS	A = B+C	20
B	Number of DTCs/TIEAs signed (but pending ratification), i.e. not in force	B = D+E	2 (ratified by Jamaica)
C	Number of DTCs/TIEAs signed and in force	C = F+G	18
D	Number of DTCs/TIEAs signed (but pending ratification) and to the Standard	D	2
E	Number of DTCs/TIEAs signed (but pending ratification) and not to the Standard	E	0
F	Number of DTCs/TIEAs in force and to the Standard	F	17
G	Number of DTCs/TIEAs in force and not to the Standard	G	1 ¹

Note: 1. This refers to the DTC with Germany. Both jurisdictions are signatories to the Multilateral Convention and will be able to exchange information in accordance with the international standard once Jamaica brings the Multilateral Convention into force.

273. In addition to Jamaica’s bilateral mechanisms, Jamaica signed the Multilateral Convention on 1 June 2016. Jamaica is in the process of completing its domestic procedures for ratification of the Multilateral Convention. Jamaica is also party to the CARICOM Multilateral Tax Treaty. The CARICOM Multilateral Tax Treaty entered into force on 30 November 1994 for Jamaica.

ToR C.1.9: Be given effect through domestic law

274. Jamaica has in place the legal and regulatory framework to give effect to its EOI mechanisms.

275. No issues were raised by the peers in the 2013 Report in this regard, and again no issue arose during the current peer review period.

C.2. Exchange of information mechanisms with all relevant partners

The jurisdiction’s network of information exchange mechanisms should cover all relevant partners.

276. The 2013 Report concluded that Jamaica’s EOI network covered its major trading partners. Jamaica was rated “Largely Compliant” for not always responding to requests for negotiations to conclude EOI agreements in a timely manner. Accordingly, Jamaica was recommended to respond to requests to negotiate EOI agreement in a timely manner.

277. Since the 2013 Report, Jamaica has responded to all requests to conclude an EOI agreement. In addition, Jamaica has continued to expand its EOI network, demonstrating commitment with the EOI standard. As referenced under section C.1., on 1 June 2016, Jamaica signed the Multilateral Convention. It is currently completing its domestic procedures for ratification of the Multilateral Convention. Jamaica also entered into one new TIEA with Brazil and one new DTC with Mexico, bringing the total of bilateral EOI instruments to 20. Jamaica should continue to develop its EOI network with all relevant partners. This in-text recommendation will be listed in Annex 5 *List of in-text recommendation* of this report.

278. Comments were sought from Global Forum members in the preparation of this report and no jurisdiction advised that Jamaica had refused to negotiate or sign an EOI agreement with it. Furthermore, jurisdictions which reported to have ongoing negotiations were satisfied with Jamaica’s responses times and did not report any delay attributable to Jamaica. Accordingly, the recommendation to respond to all requests to negotiate EOI arrangements in a timely manner has been removed and the rating of this element has been upgraded to “Compliant”.

279. The new table of determinations and ratings is as follows:

Legal and Regulatory Framework		
Determination: The element is in place.		
Practical implementation of the standard		
	Underlying Factor	Recommendation
Deficiencies identified in the implementation of EOIR in practice		
Rating: Compliant		

C.3. Confidentiality

The jurisdiction’s information exchange mechanisms should have adequate provisions to ensure the confidentiality of information received.

280. The 2013 Report noted that all of Jamaica’s EOI agreements have confidentiality provisions in line with the standard. Moreover, Jamaican confidentiality rules were properly implemented in practice to ensure that the exchanged information was protected in line with standard. This continues to be the case.

281. Jamaica amended the RAA in 2013, allowing for access to bank information through the service of a court issued production order upon the information holder (see section B.1). In practice, the Jamaican competent authority has only disclosed information in accordance with the international standard.

282. The new EOI agreements entered by Jamaica since the 2013 Report contain adequate provisions concerning the protection of confidentiality.

283. The new table of determinations and ratings is as follows:

Legal and Regulatory Framework
Determination: The element is in place.
Practical implementation of the standard
Rating: Compliant

ToR C.3.1: Information received: disclosure, use and safeguards and [ToR C.3.2] Confidentiality of other information

284. All bilateral EOI agreements concluded by Jamaica meet the standards for confidentiality including the limitations on disclosure of information received, and use of the information exchanged, which are reflected in Article 26(2) of the OECD Model Tax Convention and Article 8 of the OECD Model TIEA. The Multilateral Convention also provides for confidentiality in line with the standard under Article 22. Article 22 will be applicable once the Multilateral Convention enters into force for Jamaica, following the expiration of a period of three months after the date of deposit of the instrument of ratification. The CARICOM agreement also has a confidentiality clause that determines that any information exchanged between the parties shall be treated as secret and shall only be disclosed to persons or authorities including courts and other administrative bodies concerned with the assessment or collection of the taxes which are dealt with in the agreement. It also specifies that such persons or authorities shall use the information only for the assessment or collection of taxes and may only disclose the information in public court proceedings or judicial decisions.

Domestic legislation

285. Provisions for keeping information confidential are available in the domestic laws of Jamaica, namely contained in:

- section 4 of the Income Tax Act;
- section 17 of the Tax Administration Jamaica Act; and
- section 17H of the Revenue Administration Act.

286. Since the 2013 Report, these provisions have not been repealed or amended. These provisions continue to ensure that information received under an EOI agreement will be treated as secret and can be disclosed only to persons and authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes, or the oversight of the above. Such persons or authorities shall use the information only for such purposes and may only disclose the information in public court proceedings and judicial decisions (see 2013 Report, paras. 317-321 for further details).

287. The Access to Information Act grants to the public a general right of access to official documents held by public authorities subject to the exemptions which balance that right against the public interest in exempting from disclosure governmental, commercial or personal information of a sensitive nature. Section 14 of the Access to Information Act exempts disclosure of official documents if the disclosure would prejudice the security, defence or international relations of Jamaica; and when documents contain information communicated in confidence to the Jamaican government by or on behalf of a foreign government or international organisation. Jamaica authorities have reported that an EOI request and its accompanying information are covered by the exemptions in section 14 and are not accessible to the general public.

Confidentiality in practice

288. In practice, the information contained in the EOI requests received by Jamaica is treated as secret. Information received from a treaty partner is only used for the purpose provided for in the treaty.

289. All EOI tasks are centralised within a single EOI Unit which is trained on confidentiality principles.

290. All documents pertaining to an EOI request are stamped “confidential” and the responses provided by Jamaica always contain the standard wording stating that the information is furnished under the provisions of a tax treaty and is subject to tax confidentiality under the provisions of that treaty.

291. Jamaica has started making outbound EOI requests to its EOI partners and has confirmed that all information received is only disclosed to those persons so authorised under the terms of the agreement.

292. Human resources management regarding the confidentiality principles covers the aspects described below.

Hiring process and departure policies

293. All employees and consultants with employment contracts are subject to security background checks by the Revenue Protection Division, the investigative arm of the Ministry of Finance and Planning. The screening process includes verifying the potential employee's identity and criminal records. An enhanced screening process can be applied to management levels, which would include verification on academic qualifications and employment history.

294. Employees and contractors hired by the TAJ must abide by the Code of Conduct, which details how the TAJ's employees and contractors must conduct themselves in the course of their work. This includes a section on handling confidential information in accordance to the secrecy provisions contained in the laws of Jamaica. Contractors do not have access to EOI information.

295. The TAJ has a range of internal policies, instructions and procedures to ensure access to confidential information is terminated for departing employees and contractors. System access granted to such employees and contractors are terminated immediately upon departure. These policies, instructions and procedures also address how property is to be returned to the TAJ upon resignation, termination, transfer or retirement of an employee or contractor.

Training

296. Initial training for the TAJ employees is mandatory and includes how to handle confidential information and information security aspects (e.g. password policy) and physical security (e.g. access control). As part of this initial training, employees are required to sign a declaration on appointment of the Official Secrets Act. This declaration includes an extract of the relevant section of the Act. In addition, the TAJ provides regular training sessions on the various requirements of Jamaica's tax laws including the employees' obligation to secrecy and confidentiality in dealing with tax information.

297. Officials involved in handling and processing an EOI request, including those that assist in gathering information, receive training in relation to the various EOI arrangements, with special emphasis on confidentiality requirements. This EOI training has been provided to all general managers of the local tax authorities within the TAJ, as well as general managers of divisions involved in gathering information for exchange (e.g. Special Enforcement Intelligence Division). The Jamaican competent authority has informed that in practice, general managers of other divisions always communicate with the general manager of the Large Taxpayers Office and verify the procedures that will be applied in the information gathering processes to ensure that their actions conform to the confidentiality standard.

Physical security

298. Currently, the Jamaican competent authority only handles EOI requests on paper format and information is not kept electronically. The Large Taxpayers Office hosts the EOI Unit. EOI requests and any attached documents are kept in a locked metal file cabinet inside the office of the General Manager of the Large Taxpayers Office. To enter this office, an electronic access code has to be entered. Only the General Manager of the Large Taxpayers Unit and the EOI officer have this access code and they are the only persons with access to the files on EOI requests stored in the file cabinet. This file cabinet is fire resistant and it is expected to overcome any natural disaster.

Information disposal policy

299. The TAJ's records and other government records are governed by internal policies and legislation. The main legislation and policy documents governing the disposal of government records are: The Archives Act, The Archives (Official Records) Regulations, The Financial Administration and Audit Act, and Ministry of Labour and Public Service Circular No. 2 Ref. MSD 19/7 (1981).

300. To date, EOI information has never been disposed of. All files on EOI requests, dating from 2009, are kept in the locked file as described above. The TAJ has informed that whenever they decide to dispose of EOI information, the same policies would apply to EOI information. The only exception would be that the disposal of physical documents (i.e. shredding) will be done by the EOI officer.

Content of production order and notifications

301. As noted under element B.1, Jamaica is required to issue a court production order under section 17G of the RAA to obtain information from financial institutions in order to reply to EOI requests for bank information. Jamaica's law does not specify the type of information that the TAJ has to provide to the court for the issuance of the production order, nor the information that will be contained in such production order. Jamaica is also required to produce a notification under section 17IA of the RAA when the TAJ seeks information directly from any person holding the information.

302. Jamaica does not have a production order template. Instead, the Large Taxpayer Office under which the EOI Unit is housed will direct a letter to the Special Enforcement Intelligence Division of the TAJ. This letter contains the identification of the person for which the information is sought, a description of the required information (type of information, years for which the information is needed), and a statement indicating that the information is required

for EOI purposes under a valid international agreement. The Jamaican competent authority never discloses the EOI request to the Special Enforcement Intelligence Division nor to the Higher Court that issues the court production order. In regards to the notification under section 171A of the RAA, Jamaica reported never having used it to satisfy an EOI request. The Jamaican competent authority indicated that the same procedure as for the court production order would be used for obtaining information under section 171A. The court production order has only been sought once during the review period, as Jamaica has only received one request that required its application.

ToR C.3.2: Confidentiality of other information

303. The confidentiality provisions in Jamaican domestic law set out in C.3.1 apply equally to protect the request for information itself and include background documents provided by a requesting jurisdiction, as well as any other information relation to the request such as communications between the EOI partners in respect of the request.

C.4. Rights and safeguards of taxpayers and third parties

The information exchange mechanisms should respect the rights and safeguards of taxpayers and third parties.

ToR C.4.1: Exceptions to provide information

304. The international standard allows requested parties not to supply information in response to a request in certain identified situations where an issue of trade, business or other secret may arise. The 2013 Report found that Jamaica's legal framework and practices concerning rights and safeguards of taxpayers and third parties were in line with the standard (see paras 327-328 of the 2013 Report). There has been no change in this area reported since then.

305. All of Jamaica's EOI relations including the new DTC and the new TIEA signed after the 2013 review allow for exceptions from the obligation to provide the requested information akin to the exemption contained in Article 26 (3) of the *OECD Model Tax Convention*. The Multilateral Convention contains a provision consistent with Article 8 of the *OECD Model TIEA*, ensuring the confidentiality of information exchanged and limiting the disclosure and use of the information received. This provision will be applicable once the Multilateral Convention enters into force for Jamaica, following the expiration of a period of three months after the date of deposit of the instrument of ratification. In addition, the scope of protection of information covered by this exception in Jamaica's domestic law is consistent with the international standard.

306. There was no instance during the period under review where a person refused to provide the requested information because of professional secrecy. Jamaica also did not decline to provide the requested information during the period under review because it is covered by legal professional privilege or any other professional secret and no peer indicated any issue in this respect.

307. The new table of determinations and ratings therefore remains unchanged, as follows:

Legal and Regulatory Framework
Determination: In Place
Practical implementation of the standard
Rating: Compliant

C.5. Requesting and providing information in an effective manner

The jurisdiction should request and provide information under its network of agreements in an effective manner.

308. In order for exchange of information to be effective, jurisdictions should request and provide information under its network of EOI mechanisms in an effective manner. In particular:

- *Responding to requests:* Jurisdictions should be able to respond to requests within 90 days of receipt by providing the information requested or provide an update on the status of the request.
- *Organisational processes and resources:* Jurisdictions should have appropriate organisational processes and resources in place to ensure quality of requests and quality and timeliness of responses.
- *Restrictive conditions:* EOI assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions.

309. The 2013 Report noted that Jamaica established an EOI Unit in March 2012 and put in place various operating procedures and monitoring mechanisms. These procedures and monitoring mechanisms yielded positive results during the 2009-12 peer review period and Jamaica's efforts were recognised by its peers. During that review period, Jamaica received 28 requests from two EOI partners and was able to provide a response within 90 days in 25 cases. For the remaining three cases which took more than 90 days, the peers indicated that Jamaica did not provide a status update. Those three requests had been received prior to when the EOI Unit was established. The 2013 Report concluded that, given the short time since the EOI Unit was established, it was

not possible to fully assess its operation and efficiency and recommended that Jamaica monitor the functions of the EOI Unit and the new processes that were put in place to ensure that EOI requests were dealt with expeditiously. Jamaica was also recommended to monitor the new procedure to provide status updates to its partners where the EOI Unit was unable to provide a complete response within 90 days. Element C.5 was rated Largely Compliant. An in-text recommendation was also given to encourage Jamaica to finalise the drafting of its EOI manual and to share the manual with all relevant officials to enable them to fully understand their roles and how they could utilise Jamaica’s EOI network for making outbound EOI requests.

310. Jamaica adopted its EOI Manual in November 2013 and it has been updated to reflect relevant changes to legislation, operations and to include new treaty partners. A significant portion of the EOI Manual is based on the OECD’s *Manual on the Implementation of Exchange of Information Provisions for Tax Purposes*.

311. During the current review period, Jamaica received six EOI requests, which represented a reduction of 79% in relation to the previous review period. Jamaica was able to respond to all the incoming requests in less than one year. An overall 33% of requests (i.e. two requests) have been answered within 90 days and 83% of all requests (i.e. five out of six requests) within one year. Jamaica validly declined one request. The EOI Unit is staffed adequately with qualified and trained personnel and appropriate standard operating procedures and monitoring mechanisms in place to ensure effective EOI.

312. Jamaica sent six EOI requests in the current peer review period. Peers were satisfied with the quality of the requests sent by Jamaica. Element C.5 is now rated Compliant.

313. The new table of determinations and ratings is as follows:

Legal and Regulatory Framework		
Determination: The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the implementation of EOIR in practice.		
Practical implementation of the standard		
	Underlying Factor	Recommendation
Deficiencies identified in the implementation of EOIR in practice		
Rating: Compliant		

ToR C.5.1: Timeliness of responses to requests for information

314. Over the period under review (1 July 2013-30 June 2016), Jamaica received six requests from four jurisdictions. This represented a decrease of 79% in the number of requests received in relation to the previous review period. For the current review period, the number of requests where Jamaica answered within 90 days, 180 days, one year or more than one year, are tabulated below.

Statistics on response times

	1 July 2013- 30 June 2014		1 July 2014- 30 June 2015		1 July 2015- 30 June 2016		Total	
	Num.	%	Num.	%	Num.	%	Num.	%
Total number of requests received	1	100	3	100	2	100	6	100
Full response: ≤90 days	0	0	2	67	0	0	2	33
≤180 days (cumulative)	1	100	2	67	1	50	4	67
≤1 year (cumulative)	1	100	3	100	1	50	5	83
>1 year	0	0	0	0	0	0	0	0
Declined for valid reasons	0	0	0	0	1	50	1	17
Status update provided within 90 days (for responses sent after 90 days)	1	100	0	0	1	100	2	66
Requests withdrawn by requesting jurisdiction	0	0	0	0	0	0	0	0
Failure to obtain and provide information requested	0	0	0	0	0	0	0	0
Requests still pending at date of review	0	0	0	0	0	0	0	0

Jamaica counts each written request from an EOI partner as one EOI request even where more than one person is the subject of an inquiry and/or more than one piece of information is requested.

The time periods in this table are counted from the date of receipt of the request to the date on which the final and complete response was issued.

315. The response times in this table are counted from the date of receipt of the request to the date on which the final and complete response was issued.

316. A request is counted as one case starting from the first letter initiating the matter until the request has been fully satisfied.

317. The timeliness of responding to requests is slightly less positive than what was reported in the 2013 Report in respect of the previous review period. Jamaica reported that, at the time, it had received more requests but they were less complex in nature. For the present review period, an overall 33% of requests (i.e. 2 requests) have been answered within 90 days and 83% of all requests (i.e. 5 out of 6 requests) within one year. Jamaica did not respond to one request received from a jurisdiction with which it does not have an EOI agreement. If the request that was validly declined by Jamaica is excluded from the total number of requests, Jamaica's response times improve

to an overall 40% of requests answered within 90 days and 100% of requests answered within one year. Jamaica should continue to monitor the effectiveness of its EOI processes and practices to ensure that all EOI requests are responded to in a timely manner.

318. The 2013 Report included a recommendation for Jamaica monitor the procedures that were put in place in 2012 to provide status updates to its EOI partners in cases where the EOI Unit was unable to provide a response within 90 days. The systems were improved through the establishing of the EOI Manual and by creating an alert in the EOI officer's system to track requests. However, although status updates were provided in most cases, one peer indicated that in relation to one request, it did not receive a status update. In that case, Jamaica provided a status update only after the peer contacted Jamaica to follow-up on the response to the request. It is noted that the peer in question indicated to be very satisfied with the information provided by Jamaica.

319. Jamaica has taken measures to ensure that another officer of the TAJ can assist the EOI unit where necessary – e.g. when the EOI officer is on international mission or on holidays. The EOI officer will provide a handoff document to the officer from the Large Taxpayer Office that will cover for him. The officer will be required to include the corresponding alerts in his Microsoft Outlook tasks and provide status updates where applicable. This will be supervised by the General Manager of the Large Taxpayers Office.

320. The recommendation to provide status update has been removed from the box because the Jamaican competent authority has put in place a system to monitor when the 90-day deadline has been reached. Accordingly, status updates were provided in most cases during the peer review period. However, as indicated by one peer, the EOI Unit has not provided a status update in one instance during the peer review period. As such, is recommended that Jamaica ensures that status updates to EOI partners after 90 days are provided in all those cases where it is not possible to provide a substantive response within that timeframe. This recommendation is listed in Annex 5 *List of in-text recommendation*.

Issues covered under other essential elements

321. The timeliness of the handling of requests may be affected by aspects of a jurisdiction's system other than the organisation of the EOI function itself that are dealt with in this essential element C.5. Where this is the case, then these issues are analysed under the appropriate heading. In particular, section B.1. *Access to Information* analyses the access to information generally. Section B.2 on *Rights and Safeguards* analyses issues arising in respect of notification rules or appeal rights. In addition, section C.3 *Confidentiality* deals with the storage and handling of requests and related information as

well as an assessment of whether disclosure of information to the holder of the information is in conformity with the standard.

322. Jamaica received very few requests during the review period. Requests that took more than 90 days to reply refer to:

- one request in which bank information was sought and for which the court production order did not provide the bank with a timeline to provide the information; and
- requests in which a large numbers of documents were sought and these documents had to be obtained from different divisions of the TAJ.

323. As noted in element B.1, court production orders usually indicate a specific time frame in which the required person has to provide the information. In the specific case in which bank information was sought by TAJ for EOI purposes, the court failed to indicate a time frame in which the bank had to produce such information. Consequently, the bank took 10 months for doing so. Jamaica considers this case as an isolated one. Where the court production order has been used to domestic purposes, the Higher Court usually grants the information holder a time period ranging from between 7 and 21 days to provide the response. Even in the instances where Jamaica was not able to reply to requests within 90 days, Jamaica's peers generally considered that the assistance provided by Jamaica was timely.

324. No other issues were identified under element B.1, and no issue whatsoever was identified under elements B.2 and C.4 which could have an impact on element C.5. Elements B.1, B.2 and C.4 have been rated Compliant.

ToR C.5.2: Organisational processes and resources

325. The organisational processes for exchanging information in Jamaica remain to a great scale similar to the ones described in the 2013 Report (paragraphs 338-335).

Resources and training

326. The Minister of Finance or his/her authorised representatives are designated as the Competent Authority under Jamaica's information exchange mechanisms. The Minister has delegated his role as competent authority to the Commissioner General. The EOI Unit is responsible for handling the incoming and outgoing requests. The day-to-day operation of the EOI Unit is undertaken by two officers who are supported by around 10 other officers in various capacities. These two officers are the General Manager of the Large Taxpayers Office and the Senior Exchange of Information Officer (EOI

Officer). The contact details of Jamaica’s competent authority are available at the Global Forum’s Competent Authorities Database. Jamaica also provides its EOI partners with its competent authority contact details.

327. The 2013 Report encouraged Jamaica to monitor the workload of the EOI Unit and enhance the resources of the EOI Unit, if needed, in order for Jamaica to continue exchanging information effectively. Throughout the review period, the same resources as indicated in the 2013 Report have been allocated to the EOI Unit (see 2013 Report, paras. 296-297 for further details) despite the significant decrease in the number of EOI requests received. Jamaica indicated that, considering the number of incoming and outgoing requests, the EOI Unit has appropriate level of human and budgeted financial resources.

328. Since the 2013 Report, the General Manager of the Large Taxpayers Office and the EOI Officer have had ongoing EOI training. Recently both participated in a Global Forum training seminar in preparation for the second round of reviews. In addition, other officers who support the EOI Unit (e.g. Legislation and Treaty Services, Technical Specialists in TAJ) have joined Global Forum plenary meetings.

Incoming requests

329. The EOI Unit uses a control spread sheet to log and track the progress in responding to every EOI request. Since September 2012, each incoming request is logged by the EOI Officer who is also responsible for the tracking. All requests from the current review period are included in the EOI spreadsheet. All information on EOI requests received, dating back to 2009, is also included in such spreadsheet. After logging in the request, the EOI officer also logs in all related deadlines into Microsoft Outlook tasks. This will enable alerts for upcoming deadlines concerning the response to the EOI request received, namely the 90-day status update.

330. Jamaica currently maintains statistics on the EOI requests received, including the type of information sought, the type of taxpayer for which information is sought (e.g. natural person, company, partnership, trust) and the nature of the foreign investigation (civil or criminal).

331. Acknowledgement of receipt of the request is generally sent by e-mail within three days of receipt of the request. The EOI officer will validate the request, which means that he will check whether or not the request is complete by confirming that the request:

- fulfils the conditions set forth in the EOI arrangement;
- has been signed by the CA and includes all the necessary information to process the request;

- provides sufficient information to identify the person subject of the request;
- provides sufficient information to understand the request; and
- includes the nature of the information to ensure that it can be provided having regard to the legal instrument on which it is based and the relevant laws of the requesting party.

332. If the request is valid and complete the EOI Unit will seek to gather the information itself or pass the request on to officials with the necessary investigative and information gathering powers. The process of gathering information is given a high priority aiming for timely and comprehensive replies. Officials involved in gathering information have been trained internally by officials from the EOI Unit and all have read the EOI Manual, which is also available at the TAJ’s intranet for all employees.

333. Based on the information gathered, the EOI officer will prepare the reply to the requesting jurisdiction. Appendix 6 of the EOI Manual provides for a checklist of the minimum information that needs to be included in a response, which permits the Jamaican competent authority to provide complete responses for every case.

334. All communication to the requesting competent authority is reviewed and validated by the General Manager of the Large Taxpayers Office and also by the Legal Services Division before signed by the TAJ’s Commissioner.

Outgoing requests

335. The 2016 ToR includes an additional requirement to ensure the quality of requests made by assessed jurisdictions. The EOI manual provides rules for handling outgoing requests establishing procedures to ensure the quality of the EOI requests. The quality of EOI requests sent by Jamaica was confirmed by the positive comments received from the sole peer to whom requests were sent.

- All outgoing requests are made through the EOI Unit and follow standard procedures to ensure consistency, all of which are contained in the EOI Manual. These procedures are in line with the OECD’s *Manual on the Implementation of Exchange of Information Provisions for Tax Purposes*. To date, Jamaica has only sent EOI requests via courier services. Jamaican authorities have reported that they are exploring the possibility of exchanging information via encrypted e-mail.
- The EOI Unit uses a template identical to the one contained in the Global Forum’s EOI Manual. In addition, Appendix 5 of the EOI

Manual sets out a checklist of everything that needs to be included in a request. The EOI Manual that contains the template and checklist is available to all tax examiners.

- The EOI officer reviews every EOI requests to ensure that the template was filled properly and drafts a cover letter that is attached to the template. The General Manager of the Large Taxpayers Office checks the work of the EOI officer. Moreover, requests are also checked by Legal Services Division before they are signed by the Commissioner General (Competent Authority). Peers indicated that requests received from Jamaica were complete, met the foreseeable relevance standard, were supported by appropriate elements and effectively communicated.
- EOI Outgoing requests during the peer review period. Jamaica has sent six EOI requests during the review period: one in 2013, two in 2014, two in 2015 and one in 2016. Jamaica only received one request for clarification, which dealt on the specific legal principles of Jamaica's legislation. This clarification was provided within two days by phone and e-mail. The TAJ indicated that the EOI Officer would be responsible to provide clarification after consulting with the tax examiner that made the initial request. TAJ reported that clarifications should not take more than one week to be provided from the date in which the request for clarification was received.

ToR C.5.3: Unreasonable, disproportionate or unduly restrictive conditions for EOI

336. Exchange of information should not be subject to unreasonable, disproportionate or unduly restrictive conditions. There are no factors or issues identified that could unreasonably, disproportionately or unduly restrict effective EOI.

Annex 1: Jurisdiction’s response to the review report¹⁴

Jamaica considers the report to be a fair assessment of the situation in Jamaica over the review period and as such accepts the overall rating of partially compliant.

Jamaica also wishes to highlight, that although out of time, on 21 June 2017, amendments to the Companies Act addressed most of the recommendations from the 2013 report. Jamaica will apply for an supplementary review after this report is adopted by the Global Forum.

14. This Annex presents the Jurisdiction’s response to the review report and shall not be deemed to represent the Global Forum’s views.

Annex 2: List of Jurisdiction's EOI mechanisms

1. Bilateral instruments for the exchange of information

EOI partner	Type of agreement	Date signed	Date entered into force
Brazil	TIEA	13.02.2014	Not yet in force
Canada	DTC	30.03.1978	02.04.1987
China	DTC	04.07.1996	16.03.1997
Denmark	DTC	16.08.1990	24.10.1991
	TIEA	04.12.2012	04.12.2012
Faroe Islands	TIEA	04.12.2012	04.12.2012
Finland	TIEA	04.12.2012	04.12.2012
France	DTC	09.08.1995	21.05.1998
Germany	DTC	08.10.1974	13.11.1976
Greenland	TIEA	04.12.2012	04.12.2012
Iceland	TIEA	04.12.2012	04.12.2012
Israel	DTC	29.06.1984	13.09.1985
Macau (China)	TIEA	05.10.2012	10.06.2013
Mexico	DTC	18.05.16	Not yet in force
Norway	DTC	30.09.1991	02.11.1992
	DTC Protocol	04.12.2012	26.09.2013
Spain	DTC	08.07.2008	16.05.2009
Sweden	DTC	13.03.1985	07.04.1986
	DTC Protocol	04.12.2012	18.10.2013
United Kingdom	DTC	16.03.1973	31.12.1973
United States	DTC	21.12.1980	29.12.1981
	TIEA	18.12.1986	18.12.1986

2. Convention on Mutual Administrative Assistance in Tax Matters (as amended)

The Convention on Mutual Administrative Assistance in Tax Matters was developed jointly by the OECD and the Council of Europe in 1988 and amended in 2010 (the Multilateral Convention).¹⁵ The Multilateral Convention is the most comprehensive multilateral instrument available for all forms of tax co-operation to tackle tax evasion and avoidance, a top priority for all jurisdictions.

The 1988 Multilateral Convention was amended to respond to the call of the G20 at its April 2009 London Summit to align it to the international standard on exchange of information on request and to open it to all countries, in particular to ensure that developing countries could benefit from the new more transparent environment. The amended Multilateral Convention was opened for signature on 1st June 2011.

Jamaica signed the Multilateral Convention on 1 June 2016. Jamaica is in the process of completing its domestic procedures for the ratification the Multilateral Convention. Currently, the amended Convention is in force in respect of the following jurisdictions^[1]:

15. The amendments to the 1988 Convention were embodied into two separate instruments achieving the same purpose: the amended Convention which integrates the amendments into a consolidated text, and the Protocol amending the 1988 Convention which sets out the amendments separately.

Jurisdictions participating in the Convention on Mutual Administrative Assistance in Tax Matters

	Original convention			Protocol (P)/Amended convention (AC)		
	Signature (opened on 25-01-1988)	Deposit of instrument of ratification, acceptance or approval	Entry into force	Signature (opened on 27-05-2010)	Deposit of instrument of ratification, acceptance or approval	Entry into force
Country/jurisdiction*						
1 Albania				01-03-2013 (AC)	08-08-2013	01-12-2013
2 Andorra				05-11-2013 (AC)	25-08-2016	01-12-2016
3 Anguilla ¹						01-03-2014
4 Argentina			01-02-1997	03-11-2011 (AC)	13-09-2012	01-01-2013
5 Aruba ²						01-09-2013
6 Australia				03-11-2011 (AC)	30-08-2012	01-12-2012
7 Austria				29-05-2013 (AC)	28-08-2014	01-12-2014
8 Azerbaijan	26-03-2003	03-06-2004	01-10-2004	23-05-2014 (P)	29-05-2015	01-09-2015
9 Barbados				28-10-2015 (AC)	04-07-2016	01-11-2016
10 Belgium	07-02-1992	01-08-2000	01-12-2000	04-04-2011 (P)	08-12-2014	01-04-2015
11 Belize				29-05-2013 (AC)	29-05-2013	01-09-2013
12 Bermuda ³						01-03-2014
13 Brazil				03-11-2011 (AC)	01-06-2016	01-10-2016
14 British Virgin Islands ⁴						01-03-2014
15 Bulgaria	26-10-2015			26-10-2015 (P)	14-03-2016	01-07-2016
16 Burkina Faso				25-08-2016 (AC)		
17 Cameroon				25-06-2014 (AC)	30-06-2015	01-10-2015
18 Canada	28-04-2004			03-11-2011 (P)	21-11-2013	01-03-2014
19 Cayman Islands ⁵						01-01-2014
20 Chile				24-10-2013 (AC)	07-07-2016	01-11-2016
21 China (People's Republic of)				27-08-2013 (AC)	16-10-2015	01-02-2016
22 Colombia				23-05-2012 (AC)	19-03-2014	01-07-2014
23 Cook Islands				28-10-2016 (AC)		
24 Costa Rica				01-03-2012 (AC)	05-04-2013	01-08-2013
25 Croatia				11-10-2013 (AC)	28-02-2014	01-06-2014

Country/jurisdiction*	Original convention			Protocol (P)/Amended convention (AC)		
	Signature (opened on 25-01-1988)	Deposit of instrument of ratification, acceptance or approval	Entry into force	Signature (opened on 27-05-2010)	Deposit of instrument of ratification, acceptance or approval	Entry into force
26 Curaçao ⁶			10-10-2010			01-09-2013
27 Cyprus ⁷	10-07-2014	19-12-2014	01-04-2015	10-07-2014 (P)	19-12-2014	01-04-2015
28 Czech Republic				26-10-2012 (AC)	11-10-2013	01-02-2014
29 Denmark	16-07-1992	16-07-1992	01-04-1995	27-05-2010 (P)	28-01-2011	01-06-2011
30 Dominican Republic				28-06-2016 (AC)		
31 El Salvador				01-06-2015 (AC)		
32 Estonia				29-05-2013 (AC)	08-07-2014	01-11-2014
33 Faroe Islands ⁸			01-01-2007			01 06 2011
34 Finland	11-12-1989	15-12-1994	01-04-1995	27-05-2010 (P)	21-12-2010	01-06-2011
35 France	17-09-2003	25-05-2005	01-09-2005	27-05-2010 (P)	13-12-2011	01-04-2012
36 Gabon				03-07-2014 (AC)		
37 Georgia	12-10-2010	28-02-2011	01-06-2011	03-11-2010 (P)	28-02-2011	01-06-2011
38 Germany	17-04-2008	28-08-2015	01-12-2015	03-11-2011 (P)	28-08-2015	01-12-2015
39 Ghana				10-07-2012 (AC)	29-05-2013	01-09-2013
40 Gibraltar ⁹						01-03-2014
41 Greece	21-02-2012	29-05-2013	01-09-2013	21-02-2012 (P)	29-05-2013	01-09-2013
42 Greenland ¹⁰						01-06-2011
43 Guatemala				05-12-2012 (AC)		
44 Guernsey ¹¹						01-08-2014
45 Hungary	12-11-2013	07-11-2014	01-03-2015	12-11-2013 (P)	07-11-2014	01-03-2015
46 Iceland	22-07-1996	22-07-1996	01-11-1996	27-05-2010 (P)	28-10-2011	01-02-2012
47 India				26-01-2012 (AC)	21-02-2012	01-06-2012
48 Indonesia				03-11-2011 (AC)	21-01-2015	01-05-2015
49 Ireland				30-06-2011 (AC)	29-05-2013	01-09-2013
50 Isle of Man ¹²						01-03-2014
51 Israel				24-11-2015 (AC)	31-08-2016	01-12-2016
52 Italy	31-01-2006	31-01-2006	01-05-2006	27-05-2010 (P)	17-01-2012	01-05-2012
53 Jamaica				01-06-2016 (AC)		
54 Japan	03-11-2011	28-06-2013	01-10-2013	03-11-2011 (P)	28-06-2013	01-10-2013

Country/jurisdiction*	Original convention			Protocol (P)/Amended convention (AC)		
	Signature (opened on 25-01-1988)	Deposit of instrument of ratification, acceptance or approval	Entry into force	Signature (opened on 27-05-2010)	Deposit of instrument of ratification, acceptance or approval	Entry into force
55 Jersey ¹³						01-06-2014
56 Kazakhstan				23-12-2013 (AC)	08-04-2015	01-08-2015
57 Kenya				08-02-2016 (AC)		
58 Korea	27-05-2010	26-03-2012	01-07-2012	27-05-2010 (P)	26-03-2012	01-07-2012
59 Kuwait				05-05-2017 (AC)		
60 Latvia				29-05-2013 (AC)	15-07-2014	01-11-2014
61 Lebanon				12-05-2017 (AC)	12-05-2017	01-09-2017
62 Liechtenstein				21-11-2013 (AC)	22-08-2016	01-12-2016
63 Lithuania	07-03-2013	04-02-2014	01-06-2014	07-03-2013 (P)	04-02-2014	01-06-2014
64 Luxembourg	29-05-2013	11-07-2014	01-11-2014	29-05-2013 (P)	11-07-2014	01-11-2014
65 Malaysia				25-08-2016 (AC)	03-01-2017	01-05-2017
66 Malta				26-10-2012 (AC)	29-05-2013	01-09-2013
67 Marshall Islands				22-12-2016 (AC)	22-12-2016	01-04-2017
68 Mauritius				23-06-2015 (AC)	31-08-2015	01-12-2015
69 Mexico	27-05-2010	23-05-2012	01-09-2012	27-05-2010 (P)	23-05-2012	01-09-2012
70 Moldova	27-01-2011	24-11-2011	01-03-2012	27-01-2011 (P)	24-11-2011	01-03-2012
71 Monaco				13-10-2014 (AC)	14-12-2016	01-04-2017
72 Montserrat ¹⁴						01-10-2013
73 Morocco				21-05-2013 (AC)		
74 Nauru				28-06-2016 (AC)	28-06-2016	01-10-2016
75 Netherlands	25-09-1990	15-10-1996	01-02-1997	27-05-2010 (P)	29-05-2013	01-09-2013
76 New Zealand				26-10-2012 (AC)	21-11-2013	01-03-2014
77 Nigeria				29-05-2013 (AC)	29-05-2015	01-09-2015
78 Niue				27-11-2015 (AC)	06-06-2016	01-10-2016
79 Norway	05-05-1989	13-06-1989	01-04-1995	27-05-2010 (P)	18-02-2011	01-06-2011
80 Pakistan				14-09-2016 (AC)	14-12-2016	01-04-2017
81 Panama				27-10-2016 (AC)	16-03-2017	01-07-2017
82 Philippines				26-09-2014 (AC)		
83 Poland	19-03-1996	25-06-1997	01-10-1997	09-07-2010 (P)	22-06-2011	01-10-2011

Country/jurisdiction*	Original convention			Protocol (P)/Amended convention (AC)		
	Signature (opened on 25-01-1988)	Deposit of instrument of ratification, acceptance or approval	Entry into force	Signature (opened on 27-05-2010)	Deposit of instrument of ratification, acceptance or approval	Entry into force
84 Portugal	27-05-2010			27-05-2010 (P)	17-11-2014	01-03-2015
85 Romania	15-10-2012	11-07-2014	01-11-2014	15-10-2012 (P)	11-07-2014	01-11-2014
86 Russia				03-11-2011 (AC)	04-03-2015	01-07-2015
87 Saint Kitts and Nevis				25-08-2016 (AC)	25-08-2016	01-12-2016
88 Saint Lucia				21-11-2016 (AC)		
89 Saint Vincent and the Grenadines				25-08-2016 (AC)	31-08-2016	01-12-2016
90 Samoa				25-08-2016 (AC)	31-08-2016	01-12-2016
91 San Marino				21-11-2013 (AC)	28-08-2015	01-12-2015
92 Saudi Arabia				29-05-2013 (AC)	17-12-2015	01-04-2016
93 Senegal				04-02-2016 (AC)	25-08-2016	01-12-2016
94 Seychelles				24-02-2015 (AC)	25-06-2015	01-10-2015
95 Singapore				29-05-2013 (AC)	20-01-2016	01-05-2016
96 Sint Maarten ¹⁵			10-10-2010			01-09-2013
97 Slovak Republic				29-05-2013 (AC)	21-11-2013	01-03-2014
98 Slovenia	27-05-2010	31-01-2011	01-05-2011	27-05-2010 (P)	31-01-2011	01-06-2011
99 South Africa				03-11-2011 (AC)	21-11-2013	01-03-2014
100 Spain	12-11-2009	10-08-2010	01-12-2010	11-03-2011 (P)	28-09-2012	01-01-2013
101 Sweden	20-04-1989	04-07-1990	01-04-1995	27-05-2010 (P)	27-05-2011	01-09-2011
102 Switzerland				15-10-2013 (AC)	26-09-2016	01-01-2017
103 Tunisia				16-07-2012 (AC)	31-10-2013	01-02-2014
104 Turkey				03-11-2011 (AC)		
105 Turks and Caicos Islands ¹⁶						01-12-2013
106 Uganda				04-11-2015 (AC)	26-05-2016	01-09-2016
107 Ukraine	20-12-2004	26-03-2009	01-07-2009	27-05-2010 (P)	22-05-2013	01-09-2013
108 United Arab Emirates				21-04-2017 (AC)		
109 United Kingdom	24-05-2007	24-01-2008	01-05-2008	27-05-2010 (P)	30-06-2011	01-10-2011
110 United States	28-06-1989	13-02-1991	01-04-1995	27-05-2010 (P)		
111 Uruguay				01-06-2016 (AC)	31-08-2016	01-12-2016

Notes: * This table includes State Parties to the Convention as well as jurisdictions which are members of the GFTEI or that have been listed in Annex B naming a competent authority, to which the application of the Convention has been extended pursuant to Article 29 of the Convention.

1. Extension by the United Kingdom.
2. Extension by the Kingdom of the Netherlands.
3. Extension by the United Kingdom.
4. Extension by the United Kingdom.
5. Extension by the United Kingdom.
6. Extension by the Kingdom of the Netherlands. Curacao used to be a constituent of the “Netherlands Antilles”, to which the original Convention applied as from 01-02-1997.
7. Note by Turkey: The information in this document with reference to “Cyprus” relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the “Cyprus issue”.
Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.
8. Extension by the Kingdom of Denmark.
9. Extension by the United Kingdom.
10. Extension by the Kingdom of Denmark.
11. Extension by the United Kingdom.
12. Extension by the United Kingdom.
13. Extension by the United Kingdom.
14. Extension by the United Kingdom.
15. Extension by the Kingdom of the Netherlands. Sint Maarten used to be a constituent of the “Netherlands Antilles”, to which the original Convention applied as from 01-02-1997.
16. Extension by the United Kingdom.

3. CARICOM

The Agreement among the Governments of the Member States of the Caribbean Community for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, Profits or Gains and Capital Gains and for the Encouragement of Regional Trade and Investment allows for EOI between Antigua and Barbuda, Barbados, Belize, Grenada, Guyana, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, and Trinidad and Tobago.

Annex 3: List of laws, regulations and other material received

Bank of Jamaica Act 1960
Bank of Jamaica (Amendments) Act 2015
Banking Services Act 2014
Building Societies Act 1967
Charities Act 2013
Civil Procedure Rules 2012
Companies Act 2004
Companies (Amendment) Act 2013
Cybercrimes Act 2010
Deposit Insurance Act 1998
General Consumption Tax Act 1991
General Consumption Tax (Amendment) Act 2014
Income Tax Act 1955
Legal Profession Act 1972
Official Secrets Act 1911
Partnership Act 1890
Pensions (Superannuation Funds and Retirement Schemes) Act 2006
Proceeds of Crime Act 2007
Proceeds of Crime (Amendment) Act 2013
Proceeds of Crime Act (Money Laundering Prevention) Regulations 2007
Records of Deeds, Wills and Letters Patent Act 1681
Registration of Business Names Act 1934

Revenue Administration Act 2013
Revenue Administration (Amendment) Act 2015
Securities Act 1993
Securities (Amendment) Act 2013
Stamp Duty Act 1974
Taxes Penalties (Harmonization) Act 2014
Terrorism Prevention Act 2005
Terrorism Prevention (Amendments) Act 2013
Terrorism Prevention Reporting Entities Regulations 2010

Annex 4: Authorities interviewed during on-site visit

Bank of Jamaica

Charities Authority

Companies Office Jamaica

Financial Investigations Division

Financial Services Commission

Jamaican Bankers Association

Jamaica International Financial Services Authority

Ministry of Finance

Records Office

Tax Administration Jamaica

Annex 5: List of in-text recommendations

Element A.1

Paragraph 60: However, if a company fails to file their annual return, Jamaica cannot ensure that the information is available. In addition, the obligation to file this annual return was not adequately supervised or enforced throughout the review period (see below). Therefore, Jamaica should supervise the annual filing obligations to ensure that companies keep legal ownership and identity information for a minimum of five years.

Paragraph 81: Jamaica has informed that although there is no specific reference to companies struck off the register, section 330 of the Companies Act regarding dissolved companies will apply for struck-off companies. Section 330 of the Companies Act sets out that dissolved companies will have to keep books and papers, including the shareholder registry, for five years. Jamaica should monitor that struck-off companies keep all relevant documents, books and records for at least five years.

Paragraph 115: Jamaica has reported that the 2015-16 compliance filing rate is lower as all tax returns have not yet been keyed into the system. However, although Jamaica reports improvements on registration and filing obligations by the TAJ, tax filing compliance rates are still low. Jamaica should continue to monitor the implementation of the newly established penalties to ensure that information is available on partners of limited partnerships carrying on a business in Jamaica or liable to tax in Jamaica.

Paragraph 128: Jamaica revised the penalties under the RAA in July 2013, shortly after the 2009-12 review period. The TAJ is of the opinion that these revised penalties have a deterrent effect. Jamaica should continue to monitor the implementation of the newly established penalties to ensure that information on trusts is available.

Element A.2

Paragraph 143: Pursuant to section 330, companies that have been dissolved have to keep all records, including the shareholder registry for not less than five years, computed from the day the company is dissolved. Records are to be kept by the liquidator and after five years from the dissolution of the company, no responsibility will rest on the company, the liquidator or any other person to whom the custody of the records had been committed to (s.330(2) of the Companies Act). Jamaica has reported that, although no specific reference to struck-off companies, the same rules as for dissolved companies apply. Jamaica should monitor that struck-off companies keep all relevant documents, books and records for at least five years.

Element A.3

Paragraph 177: Regulation 7(1)(c) of the POCA (MLP) 2007 Regulations requires regulated businesses to review customer information with a view to ensuring its accuracy and that it is updated at least once every seven years or more frequently as warranted by the risk profile of the business relationship. Regulated businesses must update customer information whenever there is any doubt about the veracity or adequacy of the previously obtained customer information. Further, Regulation 7A(3)(b) of the POCA (MLP) 2007 Regulations requires, *inter alia*, regulated businesses to conduct reasonable due diligence of every transaction so as to verify the identity of the applicant for business. As such, in practice, customer identity information is updated more often than every seven years. This is verified through the BOJ in the course of their inspections when examining the steps taken in regards to high risk customers requiring enhanced due diligence. Jamaica should monitor that the rule providing for updates every seven years does not prevent Jamaica from keeping adequate, accurate and timely information on the beneficial ownership of relevant entities and arrangements.

Paragraph 179: Regulation 12 of the POCA (MLP) 2007 Regulations allows regulated business to rely on third-parties to undertake the CDD measures under Regulations 7 and 11 of the POCA (MLP) 2007 Regulations. The information can be transmitted by the third party to the regulated business “as soon as is reasonably practicable after the introduction or without delay upon request by the regulated business”. This wording does not convey immediacy and provides for an option to the regulated business. In addition, the Jamaican regulated business is not taking steps to satisfy itself that copies of identification or other relevant documentation relating to the CDD will be made available from the third party upon request without delay. Although no issues were identified in practice, Jamaica is recommended to monitor the implementation of the Regulation and ensure that the information is

immediately obtained and that the regulated business will be provided with the CDD information from the third party upon request without delay.

Element B.1

Paragraph 200: Although Jamaica has not received a request where the name of the accountholder was not provided, TAJ indicated that a bank account number or a bank card number should satisfy the identification requirements in Jamaica's law, as there are no specific legal provisions requiring that a name is provided. It is recommended that Jamaica monitors that in practice, the identification requirement can be met with a bank account number or a bank card number.

Paragraph 218: The Judge in Chambers that issued the court production order did not specify a timeframe for the bank to supply the information. The bank provided the information within six months. Since no timeframe was provided, it could not be determined that the bank failed to comply with the order and no fine could be imposed. Jamaica has reported that in all other court production orders issued for domestic purposes the Judge in Chambers always provided a specific timeframe to supply the information. In those cases, the specified timeframe ranged between seven and 21 days. Jamaica should monitor that enforcement powers are exercised when a financial institution is required to provide information under a production order.

Element C.2

Paragraph 276: Jamaica should continue to develop its EOI network with all relevant partners.

Element C.5

Paragraph 316: The timeliness of responding to requests is slightly less positive than what was reported in the 2013 Report in respect of the previous review period. Jamaica reported that, at the time, it had received more requests but they were less complex in nature. For the present review period, an overall 33% of requests (i.e. 2 requests) have been answered within 90 days and 83% of all requests (i.e. 5 out of 6 requests) within one year. Jamaica did not respond to one request received from a jurisdiction with which it does not have an EOI agreement. If the request that was validly declined by Jamaica is excluded from the total number of requests, Jamaica's response times improve to an overall 40% of requests answered within 90 days and 100% of requests answered within one year. Jamaica should

continue to monitor the effectiveness of its EOI processes and practices to ensure that all EOI requests are responded to in a timely manner.

Paragraph 319: The recommendation to provide status update has been removed from the box because the Jamaican competent authority has put in place a system to monitor when the 90-day deadline has been reached. Accordingly, status updates were provided in most cases during the peer review period. However, as indicated by one peer, the EOI Unit has not provided a status update in one instance during the peer review period. As such, is recommended that Jamaica ensures that status updates to EOI partners after 90 days are provided in all those cases where it is not possible to provide a substantive response within that timeframe.

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

The OECD is a unique forum where governments work together to address the economic, social and environmental challenges of globalisation. The OECD is also at the forefront of efforts to understand and to help governments respond to new developments and concerns, such as corporate governance, the information economy and the challenges of an ageing population. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies.

The OECD member countries are: Australia, Austria, Belgium, Canada, Chile, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The European Union takes part in the work of the OECD.

OECD Publishing disseminates widely the results of the Organisation's statistics gathering and research on economic, social and environmental issues, as well as the conventions, guidelines and standards agreed by its members.

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE
OF INFORMATION FOR TAX PURPOSES

**Peer Review Report on the Exchange of Information
on Request JAMAICA 2017 (Second Round)**

The Global Forum on Transparency and Exchange of Information for Tax Purposes is a multilateral framework for tax transparency and information sharing, within which over 140 jurisdictions participate on an equal footing.

The Global Forum monitors and peer reviews the implementation of international standard of exchange of information on request (EOIR) and automatic exchange of information. The EOIR provides for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. All Global Forum members have agreed to have their implementation of the EOIR standard be assessed by peer review. In addition, non-members that are relevant to the Global Forum's work are also subject to review. The legal and regulatory framework of each jurisdiction is assessed as is the implementation of the EOIR framework in practice. The final result is a rating for each of the essential elements and an overall rating.

The first round of reviews was conducted from 2010 to 2016. The Global Forum has agreed that all members and relevant non-members should be subject to a second round of review starting in 2016, to ensure continued compliance with and implementation of the EOIR standard. Whereas the first round of reviews was generally conducted as separate reviews for Phase 1 (review of the legal framework) and Phase 2 (review of EOIR in practice), the EOIR reviews commencing in 2016 combine both Phase 1 and Phase 2 aspects into one review. Final review reports are published and reviewed jurisdictions are expected to follow up on any recommendations made. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, please visit www.oecd.org/tax/transparency.

This report contains the 2017 Peer Review Report on the Exchange of Information on Request of Jamaica.

Consult this publication on line at <http://dx.doi.org/10.1787/9789264280281-en>.

This work is published on the OECD iLibrary, which gathers all OECD books, periodicals and statistical databases.

Visit www.oecd-ilibrary.org for more information.

OECD publishing
www.oecd.org/publishing



ISBN 978-92-64-28023-6
23 2017 18 1 P

