



2nd Follow-Up Report

Mutual Evaluation of Fiji

September 2018





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FIJI: 2nd ENHANCED FOLLOW UP REPORT

I. INTRODUCTION

1. The mutual evaluation report (MER) of Fiji was adopted in September 2016. This follow-up report (FUR) analyses the progress of Fiji in addressing the technical compliance deficiencies identified in its MER. Technical compliance re-ratings are given where sufficient progress has been demonstrated. This report does not analyse any progress Fiji has made to improve its effectiveness, however provides a brief overview of reported progress towards effectiveness. Fiji's progress with effectiveness will be analysed as part of the 5th year follow-up assessment and, if found to be sufficient, may result in re-ratings of Immediate Outcomes at that time.

2. The 2018 assessment of Fiji's request for technical compliance re-ratings and the preparation of this report were undertaken by the following experts:

- Ms. Ahmutha Chadayan, Bank Negara Malaysia
- Ms. Sue Wong, Australia Transaction Reports and Analysis Centre (AUSTRAC)
- Detective Inspector Craig Hamilton, New Zealand Police
- Ms. Suzie White, APG Secretariat

3. The draft FUR was distributed to the global network for review on 15 June 2018 prior to its consideration by the APG Mutual Evaluation Committee on 22 July 2018 and adoption by the APG Plenary on 25 July 2018.

4. Section III of this report summarises the progress made to improve technical compliance. Section IV contains the conclusion and a table illustrating Fiji's current Technical Compliance ratings

II. FINDINGS OF THE MUTUAL EVALUATION REPORT

5. The MER rated¹ Fiji as follows:

IO 1	IO 2	IO 3	IO 4	IO 5	IO 6	IO 7	IO 8	IO 9	IO 10	IO 11
Mod	Mod	Mod	Mod	Low	Mod	Mod	Low	Low	Low	Low

R 1	R 2	R 3	R 4	R 5	R 6	R 7	R 8	R 9	R 10
PC	PC	LC	C	PC	NC	NC	PC	C	PC
R 11	R 12	R 13	R 14	R 15	R 16	R 17	R 18	R 19	R 20
PC	PC	C	C	PC	PC	PC	PC	NC	LC

¹ There are four possible levels of technical compliance: compliant (C), largely compliant (LC), partially compliant (PC), and non-compliant (NC).

R 21	R 22	R 23	R 24	R 25	R 26	R 27	R 28	R 29	R 30
LC	NC	PC	PC	PC	LC	LC	PC	C	C
R 31	R 32	R 33	R 34	R 35	R 36	R 37	R 38	R 39	R 40
LC	LC	PC	LC	PC	PC	LC	C	PC	LC

6. Given these results, Fiji was placed in enhanced follow-up (expedited)².

7. In Fiji's 2017 follow-up report it requested re-ratings for 16 recommendations (Recommendation 1, 5, 6, 7, 10, 11, 15, 16, 17, 18, 22, 23, 24, 25, 28 and 35). The review team concluded that progress to compliant (C) had been made on two Recommendations (Recommendations 5 and 11) and that progress to largely compliant (LC) had been made on six Recommendations (Recommendations 1, 10, 16, 17, 18 and 35). Eight of the 16 Recommendations requested for re-rating remained at, or were re-rated to, partially compliant (PC) (Recommendations 6, 7 and 22 were re-rated to PC and recommendations 15, 23, 24, 25 and 28 remained at PC). On the basis of progress made, Fiji exited enhanced follow-up (expedited) and was placed on enhanced follow-up.

III. OVERVIEW OF PROGRESS TO IMPROVE TECHNICAL COMPLIANCE

4.1. Progress to address technical compliance deficiencies identified in the MER

8. Further to the re-ratings conducted in 2017, based on progress made since its 2016 MER, Fiji requested re-ratings of the following nine Recommendations: 19 and 22 (which were rated NC in Fiji's MER, however Recommendation 22 was re-rated to PC in 2017); 2, 12, 15, 23, 28, 36 and 39 (which were rated PC).

9. As a result of this progress, Fiji has been re-rated on Recommendations: 2, 12, 15, 19, 22, 23, 28 and 36. Insufficient progress has been made to justify a re-rating of Recommendation 39. The summary analysis is provided below.

Recommendation [R.2] (Originally rated PC, re-rated to LC)

10. In its 3rd MER, Fiji was rated PC with R.2. The main technical deficiencies related to a lack of policies and strategies informed by the NRA and an absence of a co-ordination mechanism for proliferation financing (PF).

11. In January 2018 Fiji revised its National AML/CFT Strategy in response to the NRA, and there is now alignment between risk, strategy and policy. The NRA identified four areas of concern with respect to Fiji's AML/CFT regime, namely its cash economy, supervision of FIs and DNFBPs, technical resources and the financing of terrorism (TF) (due to the high risk globally, rather than a specific threat to Fiji). Fiji has implemented initiatives and/or strategies in response to the identification of these areas of concern. For example:

- The NRA identified that the cash intensive nature of Fiji's economy presented risk for ML/TF. In response the Fijian Government has implemented a number of initiatives to transition the economy towards greater use of digital payment methods. Payments of superannuation and tax refunds and some social support grants for families in need are no longer advanced in cash.

² There are three categories of follow-up based on mutual evaluation results: regular, enhanced and enhanced (expedited). For further information see the APG Mutual Evaluation Procedures.

- The NRA identified that the DNFBP sector required closer AML/CFT supervision. In response an additional resource has been recruited by the FIU for AML/CFT supervision and a targeted compliance programme has been developed and is being implemented for DNFBPs.
- To improve response to the high risk criminal behaviours identified in the NRA, Fiji Police Force and Fiji Customs and Revenue Agency have actively sought and received technical training to enable improved targeting of high risk crime types.

12. While PF does not explicitly fall under the mandate of any coordination body in Fiji, Fiji has improved its co-ordination mechanism relating to PF, with the National AML Council's Strategic Plan for 2017-2020 references PF in its goals and strategies.

13. There is no evidence of operational level coordination relating to PF.

14. Fiji has addressed most of the deficiencies relating to R.2 identified in its MER. On this basis R.2 is re-rated to LC.

Recommendation [R.12] (Originally rated PC, re-rated to C)

15. In its 2016 MER Fiji was rated PC for R.12, with the report noting that Fiji's legislation in relation to PEPs related only to foreign PEPs, and that in relation to life insurance policies there were no obligations to identify whether the beneficiary was a PEP.

16. In March 2018 Fiji issued Guideline 7 on PEPs, which contains additional measures relating to PEPs. The Guideline is an enforceable instrument issued pursuant to the powers of the FIU under the FTR Act 2004.

17. Section 3 of Guideline 7 sets out requirements for FIs to take reasonable measures when first engaging with a customer to determine if a customer or the beneficial owner of a customer is a domestic or international organisation PEP, and to assess the risk of an identified domestic or international organisation PEP. Enhanced due diligence measures, as set out in the FTR Act, must be applied if the business relationship is assessed as having a higher risk of ML/ TF.

18. Section 6.3 of the Guidelines requires that for existing non-PEP customers, ongoing due diligence of business relationships be undertaken to identify any customers that have acquired PEP status during the course of the business relationship. Given that the requirement to identify domestic PEPs is new, Section 6.3 also requires FIs to identify existing PEPs amongst their current clientele.

19. Section 5 of Guideline 7 contains requirements for FIs to take reasonable measures to determine whether the beneficiary, or BO of the beneficiary, of a life insurance policy is a PEP, and apply enhanced measures in high risk scenarios.

20. Fiji has addressed the deficiencies relating to R.12 identified in its 2016 MER. On this basis, R.12 is re-rated to C.

Recommendation [R.15] (Originally rated PC, re-rated to C)

21. In its 2016 MER Fiji was rated PC for R.15. The report noted that only banks and credit institutions are required to identify and assess ML/TF risks prior to the launch of new products services or delivery channels under the banking licence requirements. There are no requirements under the FTR Act and Regulation for FIs to undertake risk assessments of new products and new

business practices, new delivery mechanisms and the use of new or developing technologies for both new and pre-existing products.

22. In January 2018 Fiji issued an enforceable Guideline under the FTR Act, Guideline 5 on new technologies. This Guideline requires FIs to identify and assess the ML and TF risk of its products or services and to mitigate and manage its risks. Guideline 5 also requires FIs to identify and assess the ML and TF risks of new products, business practices (including delivery mechanisms), and the use of new or developing technologies for both new and pre-existing products.

23. Fiji has addressed the deficiencies identified in its MER. On that basis R.15 is re-rated to C.

Recommendation [R.19] (Originally rated NC, re-rated to C)

24. Fiji was rated NC with R.19 in its 2016 MER, with the report noting that there was no requirement for FIs to apply enhanced due diligence proportionate to the risks, business relationships and transactions from countries for which this is called by the FATF. Furthermore, there was no requirement to apply countermeasures when called upon to do so by the FATF and there were deficiencies in advising FIs about the weaknesses in the AML/CFT regimes of other countries.

25. In January 2018 Fiji issued Guideline 6 on higher risk countries. This enforceable Guideline requires FIs to apply enhance due diligence to business relationships and transactions with customers from countries for which it is called for by FATF. The Guideline also requires FIs to apply countermeasures when called upon to do so by the FATF or FIU, or when dealing with persons, entities or countries identified pursuant to the Public Order Act.

26. As noted in Fiji's MER, section 25(1)(h) of the FTR Act provides the FIU with powers to instruct FIs to take steps as may be appropriate in relation to any information or report received by the FIU. The mechanism used to do this is through the issuance of alert notices. In 2014 the FIU issued alert notices to FIs on Iran and DPRK. The deficiencies identified in the MER have been addressed. On this basis R.19 is re-rated to C.

Recommendation [R.22] (Originally rated NC, re-rated to LC)

27. In the 2016 MER Fiji was rated NC for R.22. In its 2017 follow-up report Fiji was re-rated to PC for R.22, with the report noting that deficiencies remained in relation to R.12 and R.15 obligations.

28. As noted above, Fiji has rectified the deficiencies relating to R.12 and R.15 (criterion 22.3 and 22.4) through the issuance of Guideline 5 (new technologies) and Guideline 7 (PEPs). The definition of FIs includes DNFBPs. Therefore, DNFBPs are required to comply with the PEP and new technology requirements.

29. There is a minor scope deficiency in the coverage of DNFBPs. While the FTRA schedule includes precious metal and stone dealers, they are only captured when they conduct transactions over a prescribed threshold and a threshold has not been prescribed. As a result the FTR Act obligations for dealers in precious metals and stones have not been implemented. Given the risk and context of the sector this is a minor deficiency.

30. Fiji has addressed the majority of deficiencies relating to R.22. On this basis, R.22 is re-rated to LC.

Recommendation [R.23] (Originally rated PC, re-rated to LC)

31. Fiji was rated PC with R.23 in its 2016 MER, with the MER noting that deficiencies in R.18 and R.19 applied. Furthermore, the FTR Act obligations for dealers in precious metal and stones had not been implemented.
32. R.18 was re-rated to LC in Fiji's 2017 FUR.
33. As noted above, R.19 is re-rated to LC, with only minor deficiencies remaining.
34. The minor scope deficiency in the coverage of dealers in precious metals and stones also applies to this recommendation; however the medium vulnerability posed by the sector (as recorded in Fiji's 2015 NRA) has been taken into account.
35. Fiji has addressed most of its deficiencies relating to R.23. On this basis, R.23 is re-rated to LC.

Recommendation [R.28] (Originally rated PC, re-rated to LC)

36. Fiji was rated PC with R.28 in its 2016 MER. The technical deficiencies included the following: (1) some parts of the FTR Act were not enforceable, hence limiting the supervisors' powers to compel compliance with AML/CFT requirements; (2) supervision of DNFBPs was not undertaken on a risk-sensitive basis; and (3) systems for monitoring DNFBPs' compliance with the FTR Act and Regulation were not in place.
37. Amendments to the FTR Act and its Regulations came into effect on 8 February 2017 and include penalties where none were previously provided. Penalties now apply for failure to comply with any instructions, guideline or direction issued by the FIU. Non-compliance with an instruction or guidelines issued by the FIU triggers criminal penalties subject to the maximum fine of FJD30,000 (USD14,700) and/ or maximum imprisonment of five years for individuals and FJD150,000 (USD73,000) for body corporates. In addition, the FIU may impose a fine of up to FJD5,000 (USD2,400) for each day a FI (which includes DNFBPs) fails to comply with its instructions or guidelines. These amendments address the gap identified in the MER, however the minor deficiencies noted in the analysis of R.35 in Fiji's 2017 follow-up report apply³.
38. The FIU developed and is implementing a Compliance and Policy Program for Q4 2017 – Q4 2018, which sets out its planned activities for each quarter. Fiji reported that entities (five law firms, five accountants and 10 real estate agents) have been selected for onsite compliance assessment in 2017/18 based on ML/TF risk factors, including their size, the type of services they provide, FIU intelligence and previous engagement with the FIU. Since the MER was adopted the FIU has conducted onsite compliance assessments on six law firms and two accountants.
39. The minor scope deficiency relating to the coverage of dealers in precious metals and stones, noted in R.22 and R.23 above, also applies here.
40. Fiji has addressed the majority of deficiencies relating to R.28, with only minor deficiencies remaining. On this basis Fiji R. 28 is re-rated to LC.

³ Deficiencies were noted to be that sanctions provided under the FTR Act are limited to criminal sanctions and that sanctions applicable against legal persons for non-compliance with AML/CFT obligations under the FTR Act are not proportionate and dissuasive.

Recommendation [R.36] (Originally rated PC, re-rated to LC)

41. In its 2016 MER, Fiji was rated partially compliant with R.36. The main technical deficiency identified was that Fiji had not ratified the Palermo Convention, although Fiji had implemented some measures required under the Palermo Convention including the criminalisation of money laundering. Furthermore, it was concluded that Fiji had not fully implemented the relevant obligations under all the relevant international instruments.

42. Fiji acceded to the Palermo Convention on 19 September 2017. Fiji implemented certain elements of that Convention prior to accession through legislation such as the POCA, Crimes Act 2009, FICAC Promulgation 2007 and the FTR Act. Moreover, Fiji has introduced several significant provisions in the Public Order (Amendment) (No. 2) Act 2017 for purposes of extending the scope of TF offences consistent with the TF Convention, among others, the offence of hostage taking (s. 12G) and movement of nuclear material (s. 12H).

43. While certain minor technical gaps with regard to the implementation of the elements of the relevant international instruments remain,⁴ Fiji has addressed the main deficiency identified in relation to R.36 in the 2016 MER by acceding to the Palermo Convention. On this basis, R.36 is re-rated to LC.

Recommendation [R.39] (Originally rated PC)

44. Fiji was rated PC with R.39 in its 2016 MER. One of the aspects of Fiji's Extradition Act highlighted in the 2016 MER is that it applies to a country designated as an 'extradition country' which includes Commonwealth countries, Pacific Island Forum (PIF) countries and any other country with which Fiji has an extradition treaty. The scope of the term 'extradition country' may include other countries which are referred to as 'comity' countries by way of exercise of Minister's discretion as provided under s.45 and s.47 Extradition Act.

45. The 2016 MER further noted that it is unclear how Fiji's legal provisions operate in circumstances where a 'comity' country is designated as an extradition country by certification from the Minister for the purposes of a request and the time taken in the ministerial decision making in the designation of a 'comity' country. For extradition requests from countries other than PIF countries, the Minister must consider each request and provide an authority to proceed with criminal proceedings with an opportunity for review in the High Court. The extradition procedure in respect of a request by a PIF country requires that a decision by a magistrate to surrender a person requested by a PIF country be referred to a judge, and can still be reviewed by the High Court even though the exercise of Ministerial authority is not needed.

46. Other gaps identified in the report include:

- no timeframe mandated for the exercise of Ministerial power;
- no system for prioritising requests for extradition on the basis of small number of extradition requests;
- no clarity on the processes for requests from treaty countries or 'comity' countries because in such circumstances, the Extradition Act applies subject to limitations, conditions, exceptions

⁴ Including R.3 (rated LC in MER), R.10 (rated to LC in 2017), R.20 (rated LC in MER), R.31 (rated LC in MER) and R.39 (rated PC in MER, refer above). Fiji was re-rated C with R.5 (note this was in accordance with the previous assessment methodology for R.5) and R.11 in 2017, which are applicable to R.36.

or qualifications contained in the particular extradition treaty or in the Minister's certification regarding the 'comity' country; and

- a judge may exercise discretion to refuse extradition on the basis that a person is a citizen of Fiji and such ground for refusal is not tied with a requirement that the domestic authorities must submit the case for prosecution in Fiji.

47. The main technical deficiencies identified in the 2016 MER are: that the requirement for Ministerial authority to proceed may lead to delays in the progress of an extradition request; the layers of decision making (magistrate, Minister and judge), with an opportunity for review, that applies to most requests from other countries, leads to a protracted process for extradition; and Fiji is able to refuse extradition of a national without being compelled to prosecute domestically.

48. Fiji's basis for requesting an upgrade are as follows: the extradition of a person to a third country is an act that is of a political nature and thus requires ministerial oversight; in an extradition request by the United States in 2014, there was only two weeks gap between the receipt of request from the United States and the issuance of the Ministerial authority to proceed and the entire extradition process took less than 12 months; given the small number of requests for extradition, Fiji does not operate a system of prioritising requests; and separation is maintained between the decision to prosecute a national domestically by the Director of Public Prosecutions depending on the sufficiency of evidence and the likelihood of a reasonable prospect of conviction and court's decision to extradite as safeguards to ensure the integrity of the criminal justice system.

49. The submission made by Fiji and its views on the matter are noted. However, the law relating to extradition in Fiji remains unchanged and the main deficiencies identified in the 2016 MER are yet to be addressed. Further, the example of the extradition request by the United States cited by Fiji was taken into account in the MER. On that basis, R.39 remains PC.

4.2 Brief overview of progress on other recommendations rated NC/PC

50. R.6 – Fiji passed the Public Order Amendment Act of 2017 which established a legal and operational framework for TFS relating to TF. Fiji is currently considering amendments to section 12W of the POA 2017 to rectify other deficiencies relating to R.6.

51. R.7 – The Public Order Amendment Act of 2017 established a legal and operational framework for TFS relating to PF. In November 2017 Fiji issued a Gazette Notice under the Public Order Act 2017 (POA 2017) which operationalised the law, bringing into effect section 12Q of the Act which provides that the UN list of specified entities will become the list of specified entities in Fiji and requires the FIU to publish the list on its website. Fiji is currently considering amendments to section 12W of the POA 2017 to rectify other deficiencies relating to R.7.

52. R.24 & R.25 – Fiji noted that the FTR Regulations and FIU Guidelines are now enforceable instruments, impacting compliance with R.24 and R.25.

IV. CONCLUSION

53. Overall, Fiji has made good progress in addressing the technical compliance deficiencies identified in its MER and has been re-rated on eight Recommendations. On the basis of progress made by Fiji, Recommendations 12, 15 and 19 have been re-rated to C and Recommendations 2, 22, 23, 28 and 36 have been re-rated to LC. Recommendation 39 has not been re-rated as Fiji is yet to address the main deficiencies identified in its 2016 MER.

54. Overall, in light of the progress made by Fiji since its MER was adopted, its technical compliance with the FATF Recommendations is currently as follows.

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

55. At the 2018 APG Annual Meeting members adopted the Fiji FUR and decided that Fiji will remain on enhanced follow-up, and will continue to report back to the APG on progress to strengthen its implementation of AML/CFT measures.

August 2018